

The Rise of Anti-Regulatory Legal Advocacy: The Farm Bureau Case Study

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While the public perceives the American Farm Bureau Federation and its state affiliates as innocuous insurance providers and traditional advocates for the family farmer, they are in fact responsible for a wide-ranging, corporatist siege on the U.S. regulatory state. This Article reveals the true nature of Farm Bureau's unique hybrid structure—a 501(c)(5) nonprofit network fronting for multi-billion dollar insurance and agribusiness interests and a wider web of corporate dark money.¹ Positioning itself as a grassroots agricultural voice, the organization leverages its nonprofit status to exploit the lack of transparency afforded to corporate actors post-Citizens United, effectively shielding its lobbying, litigation, and funding from public accountability. Through empirical analysis of Farm Bureau litigation and amicus activity from 2020 through 2025, the Article documents strategic deployment of legal resources designed to dismantle federal and state oversight across a broad spectrum of public interests, including environmental standards (CWA, ESA, NEPA), labor protections, immigration policy, occupational safety, and pesticide exposure. This case study uncovers how corporate financial power, filtered through a nonprofit shell, is fundamentally redirecting natural resource policy and the future of federal administrative authority.

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1. See FARM BUREAU PROP. & CAS. INS. CO., ANN. STATEMENT (2025), <https://www.fbfs.com/getattachment/d5151745-c2d1-4de1-8fa0-6ca30271dbb6/2025-fbpc-annual-statement-final.pdf> [<https://perma.cc/UD3H-8AZB>] (confirming the multi-billion-dollar valuation of Farm Bureau's insurance operation).

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INTRODUCTION

Lewis F. Powell Jr.'s storied 1971 memo to the U.S. Chamber of Commerce urged conservative activists to fight back aggressively against successful legal advocacy by organizations like the American Civil Liberties Union and National Association for the Advancement of Colored People.² Since then, conservatives have “built an impressive infrastructure for policy change through the courts . . . as Republican Presidents appointed more reliably conservative judges [than past conservative judges, who were less ideologically

2. Ann Southworth, *Conservative Legal Advocacy Organizations and Constitutional Change in the Roberts Court*, 93 *FORDHAM L. REV.* 1239, 1241 (2025) (citing Memorandum from Lewis F. Powell Jr. to Eugene B. Sydnor Jr., Chairman, Educ. Comm. of the U.S. Chamber of Com. 1, 26–27 (Aug. 23, 1971), <https://scholarlycommons.law.wlu.edu/powellmemo> [<https://perma.cc/XD6P-SSZH>]).

motivated].”³ In the half century since, few conservative organizations have employed the sort of multi-faceted legal advocacy strategy Powell endorsed quite as aggressively, or successfully, as the American Farm Bureau Federation (AFBF or Farm Bureau) and its state and territorial affiliates.⁴ A nationwide insurance operation that also engages widely in advocacy through related 501(c)(5) entities, Farm Bureau cultivates an image as a wholesome family farm organization, while simultaneously working through courts, legislatures, and electoral politics to shift and undermine some of the pillars of democratic governance.⁵ This Article examines Farm Bureau’s recent litigation activities as a window into its strategic goals.

In one example of Farm Bureau advocacy, Laketown, Wisconsin, population 1,024, found itself the target of a lawsuit after it became one of five Wisconsin communities that enacted local ordinances in 2022 to regulate factory farm development.⁶ In *Michael Byl v. Town of Laketown*, livestock confinement owners Michael, Joyce, and Sara Byl and Merle and Janice Spoelstra sued the

3. *Id.* at 1243.

4. These entities are referred to collectively here by the common shorthand of “Farm Bureau,” while the central national organization is sometimes specifically referenced as “AFBF.” The affiliates comprise a complex network of related entities. The Michigan Farm Bureau serves as an example of this complexity: “[T]he term ‘Michigan Farm Bureau Family of Companies’ refers to the following affiliates and subsidiaries of Michigan Farm Bureau®, a Michigan nonprofit corporation: (a) Farm Bureau General Insurance Company of Michigan, Farm Bureau Mutual Insurance Company of Michigan, Farm Bureau Life Insurance Company of Michigan, Community Service Acceptance Company (which collectively may be herein referred to as ‘Farm Bureau Insurance’); and (b) Michigan Farm Bureau Financial Corporation, MFB, Inc., Michigan Agricultural Cooperative Marketing Association, and the Michigan Foundation for Agriculture.” *Copyrights & Disclaimers*, MICH. FARM BUREAU FAM. OF COS., <https://www.michfb.com/copyrights-disclaimers> [<https://perma.cc/RRR2-WCZG>] (last visited June 25, 2026).

5. See, e.g., *American Farm Bureau Federation*, CANDID, <https://app.candid.org/profile/7451365/american-farm-bureau-federation-36-0725160> [<https://perma.cc/255X-S7SZ>] (last visited Feb. 13, 2026); *Iowa Farm Bureau Federation*, CANDID, <https://app.candid.org/profile/7618324/iowa-farm-bureau-federation-42-0684991> [<https://perma.cc/3TFF-NUN4>] (last visited Feb. 13, 2026); *Michigan Farm Bureau*, CANDID, <https://app.candid.org/profile/7531056/michigan-farm-bureau-38-1718391> [<https://perma.cc/PG6A-7EMV>] (last visited Feb. 13, 2026). On federal tax forms and its homepage, AFBF describes its mission as “families working together to build a sustainable future of safe and abundant food, fiber and renewable fuel for our nation and the world.” *American Farm Bureau Federation*, AM. FARM BUREAU FED’N., <https://www.fb.org> [<https://perma.cc/UQ3Y-GR8L>] (last visited Feb. 13, 2026).

6. See Bennet Goldstein, *Wisconsin Towns Brace for Next Fight on Local Control Over Large Farms*, WIS. WATCH (July 6, 2023), <https://wisconsinwatch.org/2023/07/wisconsin-towns-big-farms-local-control-cafo-regulations> [<https://perma.cc/2BSZ-FWDB>]; Greg Seitz, *New Members of Wisconsin Town Board Revoke Factory Farm Rules*, ST. CROIX 360 (Apr. 27, 2023), <https://www.stcroix360.com/2023/04/new-members-of-wisconsin-town-board-revoke-factory-farm-rules> [<https://perma.cc/TMV7-CJGM>]; *Wisconsin Farm Bureau Statement on Lawsuit Over Unlawful Regulation of Farms*, WIS. FARM BUREAU FED’N (Feb. 17, 2023), <https://wfbf.com/farm-bureau-news/wisconsin-farm-bureau-statement-on-lawsuit-over-unlawful-regulation-of-farms> [<https://perma.cc/L8RB-PQUS>]; Wis. Leg., *Population and Political Subdivisions, in 2021–2022 Wis. BLUE BOOK* 498, 519 (2022), https://docs.legis.wisconsin.gov/misc/lrb/blue_book/2021_2022/170_population_and_political_subdivisions.pdf [<https://perma.cc/RX86-475X>] (providing Laketown’s estimated 2020 population).

Laketown Town Board in Wisconsin state court over the law setting out “the procedures for obtaining a CAFO [Concentrated Animal Feeding Operation] Operations Permit for the operation of new and expanded livestock facilities.”⁷ Wisconsin Farm Bureau joined the Byls and Spoelstras as a co-plaintiff, arguing that state law preempted local control of CAFO siting.⁸ Wisconsin Farm Bureau Federation government relations director Tim Fiocchi “expressed alarm that local ordinances, such as Laketown’s, ‘destabilize agricultural production’ by creating a ‘patchwork of regulatory hurdles.’”⁹ The litigation became moot in April 2023, when after an extremely tight election for Laketown Town Board, two newly elected members voted with the existing minority faction to overturn the ordinance.¹⁰

In 2024, Farm Bureau pushed for Wisconsin legislation to restrict local control over “animal welfare, the administration of medications and vaccinations, and the ways animals are used.”¹¹ Opponents criticized the resulting bill as establishing a “legal precedent that could limit any safeguards against potential harms caused by large livestock farms.”¹² It passed both houses before Governor Tony Evers vetoed it.¹³ Describing her experience chairing the town board that passed the local ordinance, Laketown farmer Lisa Doerr said:

It’s pretty much hand-to-hand combat with the Farm Bureau every day for years now in my town and across farm country. The fight is about protecting our health and property values from water pollution by these corporate livestock factories. Everyone in our town relies on well water for their families and their animals.¹⁴

This multi-pronged challenge of Laketown’s ordinance by Farm Bureau was successful at the local level and nearly became the basis for statewide restrictions on factory farm regulation.

This Article’s short lookback at just the last five years of Farm Bureau litigation gives a compelling view of a focused strategy. The broader arc of Farm Bureau’s history, as well as its lobbying and grassroots penetration, underscore the scale and impact of its influence. Farm Bureau is no ordinary litigant defending a carefully defined set of interests. It represents a century of growing

7. Summons at 3–4, *Byl v. Town of Laketown*, No. 22-CV-000274 (Wis. Cir. Ct. Polk Cnty. Oct. 12, 2022), [<https://perma.cc/EJ3Y-HHZY>].

8. Goldstein, *supra* note 6; Seitz, *supra* note 6.

9. Bennet Goldstein, *Wisconsin Town of Eureka Sued Over Large Farm Regulations*, WIS. WATCH (Aug. 9, 2024), <https://wisconsinwatch.org/2024/08/wisconsin-cafo-farm-eureka-agriculture-livestock-regulations> [<https://perma.cc/5ZZM-NW3Z>].

10. Goldstein, *supra* note 6; Seitz, *supra* note 6.

11. See Goldstein, *supra* note 9.

12. *Id.*

13. *Id.*

14. Keith Schneider, *What We’re Up Against: North Dakota Towns Fight Farm Bureau to Keep Water Clean*, INVESTIGATE MIDWEST (Nov. 17, 2023), <https://investigatemidwest.org/2023/11/17/what-were-up-against-north-dakota-towns-fight-farm-bureau-to-keep-water-clean> [<https://perma.cc/ZB3Y-SEE5>].

corporate control of U.S. farm policy, with an accompanying redistribution upward of wealth and land ownership. By pursuing—and critically, by *funding*—extended litigation while advancing simultaneous political and legislative tactics, Farm Bureau and its affiliates have achieved local victories as well as extensive policy and jurisprudential shifts at the state and federal level. In turn, Farm Bureau advocacy staff advance an anti-regulatory agenda that aggravates consolidation in the agricultural sector and constructs barriers to the viability of smaller, more environmentally sustainable farms.

As Legal Director for a water protection organization that intervened in Michigan National Pollutant Discharge Elimination System (NPDES)-CAFO¹⁵ litigation and challenged inadequate application of the Michigan Environmental Protection Act to CAFO regulation, and as a former Iowa Environmental Protection Commissioner who witnessed aggressive Iowa Farm Bureau efforts to undermine stronger water quality standards through lobbying, litigation, and hardball politics, I sought a data-oriented understanding of Farm Bureau's wider policy goals through examining their litigation strategy and partnerships as an element of this broader conservative trend. A 501(c)(5) tax-exempt organization with extensive federal and state lobbying and litigation activities and an annual budget of nearly \$40 million, AFBF's muscle extends from the halls of Congress and the U.S. Supreme Court to the dirt roads of the tiniest rural communities.¹⁶ This Article colors in anecdotal observations with nationwide data documenting trends in Farm Bureau litigation.

These often small-scale efforts have cumulative impacts. Real wins, like the rollback of Clean Water Act jurisdiction, overturning of *Chevron* deference, and striking down of the Council on Environmental Quality's (CEQ) regulatory authority are not Farm Bureau victories alone. Rather, these wins resulted from coordinated efforts from a broad coalition, including a change in administrations, extensive lobbying, partisan gerrymandering, post-*Citizens United* super PAC election interference, and the combined efforts of right-wing think tanks and entities like the Federalist Society. Farm Bureau is a relatively non-ideological cog in this machine, working for whatever will advance large agribusiness interests and their partners in chemical and other industries. This pragmatic approach to jurisprudential trends makes progress.

Part I describes more than a century of Farm Bureau activity in U.S. courts and politics, counterbalancing agrarian reform movements and contributing to the consolidation of the U.S. farm sector into ever larger and wealthier

15. NPDES refers to federal Clean Water Act permitting.

16. John Francis Reilly, Carter C. Reilly & Barbara A. Braig Allen, *Exempt Organizations—Technical Instruction Program for FY 2003: IRC 501(c)(5) Organizations*, I.R.S. (2003), <https://www.irs.gov/pub/irs-tege/eotopicj03.pdf> [<https://perma.cc/3K52-CBNP>] (stating that section 501(c)(5) of the Internal Revenue Code exempts labor, agricultural, and horticultural organizations from federal income taxes, and explaining that included within the exemption are organizations that are educational or instructive—including unions that are created for the purpose of improving conditions of work, or for improving efficiency).

operations. This historical perspective highlights the organization's agenda and position on the ideological spectrum. Part II surveys Farm Bureau's litigation from 2020 through the first half of 2025, including extensive amicus briefing by AFBF and its state entities. This analysis delineates the underlying litigation strategy and its outcomes. Part III identifies case theories and approaches that have been successful for Farm Bureau and those that have failed. Finally, the Conclusion places Farm Bureau's influential role in the context of current legal battles over the rule of law and executive overreach. It serves as a case study of successful conservative legal advocacy that is altering the face of the regulatory state, with serious implications for health, safety, and quality of life in the United States.

I. FARM BUREAU'S LONG SHADOW IN U.S. AGRICULTURAL AND NATURAL RESOURCE POLICY

Anthropologist Brian Campbell wrote that in 1919, AFBF “emerged seemingly out of nowhere, subsumed the visibility and role of extant and preceding farmer organizations, and became the sole ‘voice of agriculture.’”¹⁷ According to the mission statement, “The American Farm Bureau Federation is the Voice of Agriculture®. We are farm and ranch families working together to build a sustainable future of safe and abundant food, fiber and renewable fuel for our nation and the world.”¹⁸

But this emergence was far from organic. AFBF was founded in opposition to the “radical” farmer-led movements of the late nineteenth and early twentieth centuries.¹⁹ At the founding meeting in Chicago, organizers announced their intent to counter any affiliation of farmers with “radicals.”²⁰ Organizations like Farmers' Union, the Grange, and the Populist Party were advocating for cooperative marketing, fair pricing, and regulatory reform to protect small farmers from monopolies and market volatility.²¹ Farm Bureau leadership characterized these movements as “insane” and instead sought to build an organization more palatable to commercial interests, co-opting the small family farms that it continues to use as the face of its organization, while actively working against their interests.²²

17. Brian C. Campbell, *Developing Dependence, Encountering Resistance: The Historical Ethnoecology of Farming in the Missouri Ozarks* 61 (May 2005) (Ph.D. dissertation, Univ. of Ga.) (on file with Univ. of Ga.), [<https://perma.cc/W3PY-24QD>].

18. *Farm Bureau*, FARM BUREAU, [<https://www.fb.org>] [<https://perma.cc/D4CA-LQAD>] (last visited Feb. 1, 2026).

19. Campbell, *supra* note 17, at 63–65.

20. *Id.* at 63–64.

21. *See id.* at 49; *see generally* Edward Winslow Martin, *The Agricultural Classes and Their Wrongs*, in *HISTORY OF THE GRANGER MOVEMENT, OR THE FARMER'S WAR AGAINST MONOPOLIES* 283 (1874).

22. *See* Campbell, *supra* note 17, at 63.

*A. Farm Bureau's Historic Development in Opposition to
Populist, Small Farm Activism*

Farm Bureau arose out of broad cultural trends in the early twentieth century, when U.S. land-grant universities launched agricultural “extension” services.²³ Initially, this effort to introduce scientific and academic perspectives into an agricultural sector steeped in millennia of folk wisdom and insular communities was less than successful.²⁴ Yet as the U.S. Department of Agriculture’s (USDA) funding grew “from \$2.8 million in 1899 to \$28 million by 1917 and concomitant farm legislation ‘authorized the USDA to collect information, conduct investigations, and compel compliance,’ the department’s influence grew proportionally.”²⁵ Part of this work was agricultural extension services.²⁶ The programs encountered a population highly resistant to the idea that it needed to be educated by academics to farm successfully.²⁷ Laughter was a common response at early events.²⁸ Populist anger about access to markets and other small farm challenges ran high, shifting the electorate leftward—or so their opponents alleged—in farm states.²⁹

In response, a highly coordinated corporatist opposition to left-leaning farm organizations arose in concert with government agricultural programming to gain control of the agricultural sector, shape its collective “voice,” and advance the market interests of businesses eager to sell products to farmers—including the forerunners of modern agribusiness giants like Monsanto, Archer Daniels Midland, John Deere, and Cargill.³⁰ Many commentators describe the founding of AFBF not as a grassroots movement of independent farmers, but as a strategic response by business interests seeking to stabilize rural unrest and channel farmer organizing into more business-friendly channels.³¹ Supported by corporate interests, including the U.S. Chamber of Commerce and agribusiness allies, Farm Bureau quickly adopted a pro-market, anti-regulatory stance.³²

U.S. Supreme Court decisions striking down major New Deal farm legislation were an early litmus test of the kind of legal advocacy Farm Bureau would embrace and foreshadowed its modern position on the Commerce Clause.

23. *Id.* at 6–8, 48.

24. *See id.* at 56.

25. *Id.* at 62 (citing R. DOUGLAS HURT, *PROBLEMS OF PLENTY: THE AMERICAN FARMER IN THE TWENTIETH CENTURY* 34 (2002)).

26. *See id.* at 55–60.

27. *Id.* at 57–58 (citing R. L. REEDER, *THE PEOPLE AND THE PROFESSION* 16–17 (1979); Michael V. Angrosino, *The Culture Concept and the Mission of the Roman Catholic Church*, 96 AM. ANTHROPOLOGIST 824, 825–29 (1994); GILBERT RIST, *THE HISTORY OF DEVELOPMENT FROM WESTERN ORIGINS TO GLOBAL FAITH* (2002); ORVILLE MERTON KILE, *THE FARM BUREAU THROUGH THREE DECADES* 25 (1948)).

28. Campbell, *supra* note 17, at 56.

29. *See id.* at 8.

30. *Id.* at 64–66.

31. *See, e.g., id.* at 63–65.

32. *Id.* at 64–65.

The Nation's Agriculture, an early Farm Bureau journal, expressed the “traditional conservative veneration for the Court” in supporting the rulings in *Schechter v. United States*³³ and *United States v. Butler*,³⁴ which respectively invalidated the National Industrial Recovery Act of 1933, setting fair competition codes and authorizing public infrastructure projects, and the Agricultural Adjustment Act of 1933, taxing food processors to fund payments to farmers to reduce production and slaughter livestock to avoid surpluses that drove down prices.³⁵ According to an analysis of publications from the period, Farm Bureau considered *Butler* positive because it would “encourage farmers to join the Farm Bureau . . . and fight for a new farm program . . . which could be constitutionally justified under the general welfare clause by basing the program on the principle of soil conservation.”³⁶ The division among farm publications on these decisions, which demonstrably damaged small farm interests, highlighted the very real political divide that existed among farmers at the time³⁷—a constituency that today leans heavily to the right.³⁸

The close affiliation of Farm Bureau and university-linked agricultural extension services would ultimately serve corporate interests far better than those of small farmers. A pattern emerged of Farm Bureau pushing political positions contrary to those of its purported grassroots membership. AFBF opposed World War II agricultural price controls that helped small farmers stay in business as farm product supply and demand fluctuated wildly due to many factors beyond farmers’ control.³⁹ In the mid-twentieth century, Farm Bureau pushed to lower farm price supports and commercialize markets in favor of large agribusiness, again undermining small farms’ economic viability.⁴⁰ At the same time, AFBF began to take aggressive stances in opposition to environmental statutes enacted in the 1970s and regulatory and enforcement actions, alleging threats to farmers’ private property rights, despite widespread support by rural residents for such regulation.⁴¹

33. A.L.A. Schechter Poultry Corp. v. U.S., 295 U.S. 495 (1935).

34. *United States v. Butler*, 297 U.S. 1 (1936).

35. James C. Duram, *The Farm Journal and the Constitutional Issues of the New Deal*, 47 AGRIC. HIST. 319, 321–24 (1973).

36. *Id.* at 325.

37. *See id.* at 320.

38. Adam Jadhav, *Was it Rural Populism? Returning to the Country, “Catching Up,” and Trying to Understand the Trump Vote*, 82 J. RURAL STUD. 553, 553–69 (2021).

39. *American Farm Bureau Federation*, BRITANNICA (May 8, 2026), <https://www.britannica.com/topic/American-Farm-Bureau-Federation> [https://perma.cc/SVA9-AGHC]; *see Federal Farm Subsidies: What the Data Says*, USAFACTS (June 23, 2025), <https://usafacts.org/articles/federal-farm-subsidies-what-data-says> [https://perma.cc/3VJ5-KBYJ] (providing a summary of the economics of farm subsidies and price controls).

40. *See id.*

41. *Id.*; *see also* Robert Bonnie et al., *Understanding Rural Attitudes Toward the Environment and Conservation in America*, NICHOLAS INST. FOR ENV’T’L POL’Y SOLS., DUKE UNIV. (2020), <https://nicholasinstitute.duke.edu/sites/default/files/publications/understanding-rural-attitudes-toward-environment-conservation-america.pdf> [https://perma.cc/Y5A5-KDHJ].

Because an integrated local presence in insular farm communities was necessary for Farm Bureau to stake its present claim as *the* voice of American agriculture, Farm Bureau employees and volunteers worked to expand the organization's membership and influence in such communities throughout the early twentieth century.⁴² As Grant McConnell observed of the creation of USDA's extension program in *The Decline of Agrarian Democracy*, referring to the program's first leader:

Dean Eugene Davenport could hardly have foreseen the exact manner in which the new law would operate, but his words at the 1913 meeting had a prophetic quality: "The inevitable result of the department's concerning itself intimately with local conditions is to attract the attention of unscrupulous politicians, who will find therein a powerful means of advancing their own personal interests."⁴³

This was a prophetic description of the relationships among USDA, extension services, agribusiness corporations, Farm Bureau, other agricultural trade associations, politicians, and farmers. Close cooperation with both USDA and USDA-funded university agricultural extension programs provided funding and essential local networks that drove Farm Bureau's expansion and success as an insurance business and political force.⁴⁴

In *Dollar Harvest*, a 1971 history of Farm Bureau, historian Samuel R. Berger presented his view of the organization's long-term influence:

The nation's largest, most powerful, most affluent farm organization—the Farm Bureau—has not been . . . part of the solution to the rural problem. It has been a major part of the problem. . . . At a time when the American family-farmer is engaged in a quiet struggle for survival, the Farm Bureau has one hand on the shovel that is digging his financial grave.⁴⁵

Unlike the populist movements it opposed, which focused on empowering small landholders and challenging structural inequities, Farm Bureau promoted a vision of efficiency, modernization, and integration into commodity markets.⁴⁶ Over time, this stance positioned the organization as a key representative of industrial-scale agriculture.⁴⁷ In Campbell's view, Farm Bureau was "not a farmer organization by farmers," but rather "an organization of business interests

42. See ORVILLE MERTON KILE, *THE FARM BUREAU MOVEMENT* 124–127 (1921); MAURICE CHASE BURRITT, *THE COUNTY AGENT AND THE FARM BUREAU* 171 (1922); GLADYS L. BAKER, *THE COUNTY AGENT* 22–25 (1939).

43. Campbell, *supra* note 17, at n.14 (citing GRANT MCCONNELL, *THE DECLINE OF AGRARIAN DEMOCRACY* 34–35 (1959)).

44. See *id.* at 19, 22–25.

45. SAMUEL R. BERGER, *DOLLAR HARVEST: THE STORY OF THE FARM BUREAU* 2, 4–5, 90–93 (1st ed. 1971).

46. See *id.* at 73.

47. See *id.* at 2; Campbell, *supra* note 17, at 61.

that co-opted the voice and vote of farmers to make and maintain them dependent on merchants' goods."⁴⁸

Farm crises and massive consolidation of the sector into ever-larger operations have been themes in farm news since at least the farm foreclosure crisis of the 1980s.⁴⁹ For instance, "in 1964, there were 62,000 pig farms in Missouri; as of 2007 there were about 3,000, producing roughly the same number of pigs."⁵⁰ This vast consolidation and corporatization of Missouri pig farming can be attributed to Farm Bureau's ties to major agribusiness giants. Corporations' aggressive efforts to industrialize agriculture were ultimately devastating to smaller, yet still profitable producers.⁵¹

Today, all fifty states and Puerto Rico have Farm Bureau entities, comprising tax-exempt 501(c)(5) advocacy organizations alongside for-profit insurance businesses of the same or a similar name.⁵² These entities combine insurance with travel and other products, creating robust revenues that support litigation and lobbying, activities that are not commonly disclosed to members in public-facing materials.⁵³ AFBF in turn presents itself as the unified "voice of agriculture"—so much so that it registered this phrase as a trademark.⁵⁴ The description obscures its complicated history of additionally acting as the voice of agribusiness, often directly opposing the interests of smaller farm operations and their neighbors, and its entanglement with conservative political agendas.

48. Campbell, *supra* note 17, at 65.

49. See, e.g., Ron Wirtz, *Not Your Father's Farm Recession*, FED. RSRV. BANK OF MINNEAPOLIS (Sept. 30, 1999), <https://www.minneapolisfed.org/article/1999/not-your-fathers-farm-recession> [<https://perma.cc/6FYT-SS3H>]; Alan D. Barkema, *The Farm Slump Continues*, 85 FED. RSRV. BANK KAN. CITY ECON. REV. 43 (2000); Alicia Harvie, *A Looming Crisis on American Farms*, FARM AID (Apr. 13, 2017), <https://www.farmaid.org/issues/looming-crisis-american-farms> [<https://perma.cc/9NWR-FXST>]; *Tracking the Farm Economy in Crisis*, FARM AID (Apr. 27, 2026), <https://www.farmaid.org/blog/tracking-the-farm-economy-in-crisis> [<https://perma.cc/V6EX-9C7Q>].

50. Ian T. Shearn, *Whose Side Is the American Farm Bureau On?*, THE NATION (July 16, 2012), <https://www.thenation.com/article/archive/whose-side-american-farm-bureau> [<https://perma.cc/BP7D-GPMP>].

51. See Campbell, *supra* note 17, at 6–15.

52. *Get Involved*, AM. FARM BUREAU FED'N, <https://www.fb.org/get-involved> [<https://perma.cc/S95R-KSYV>] (last visited Feb. 1, 2026) (listing state and territorial Farm Bureau affiliates); *Farm and Ranch Insurance*, FARM BUREAU FIN. SERVS., <https://www.fbfs.com/insurance/farm-and-ranch-insurance> [<https://perma.cc/JHD6-8ZRL>] (last visited Feb. 1, 2025) (providing details about the insurance business); see, e.g., *supra* note 4 (listing Michigan Farm Bureau's nonprofit and for-profit entities).

53. See *It's Your Future. Let's Protect It.*®, FARM BUREAU FIN. SERVS., <https://www.fbfs.com> [<https://perma.cc/5UCY-Y8HA>] (last visited Feb. 1, 2026); *Travel*, MICH. FARM BUREAU, https://portal.michfb.com/member_benefits/travel [<https://perma.cc/4B8U-3BPT>] (last visited Feb. 1, 2026); *Client Profile: American Farm Bureau*, OPEN SECRETS, <https://www.opensecrets.org/federal-lobbying/clients/summary?id=D000021832> [<https://perma.cc/34X9-UBD9>] (last visited Feb. 1, 2026) (showing AFBF lobbying expenditures by year); *Legal Defense Fund*, MICH. FARM BUREAU FAM. OF COS., <https://www.michfb.com/agriculture/farming-resources/legal-resources/legal-defense-fund> (last visited June 26, 2026) [<https://perma.cc/7ATE-EXBE>] (providing Michigan Farm Bureau's description of how member dues fund litigation).

54. See *Farm Bureau*, *supra* note 18.

Headquartered in Washington, D.C.,⁵⁵ AFBF operates as the central body for a network of independent state-level Farm Bureaus, which in turn own stock in agribusiness giants like Cargill, ConAgra, Dow Chemical, DuPont, Tyson and Archer Daniels Midland.⁵⁶ These state organizations support influential county chapters, creating a structure that has a “carefully cultivated grassroots image” but is corporate-dominated and closely coordinated at the national level.⁵⁷ While each state Farm Bureau is legally independent, they work closely with AFBF on federal policy advocacy, litigation strategy, and public messaging, and pay hefty dues (totaling \$29.1 million in 2024) that fund AFBF’s issue advocacy and litigation.⁵⁸

While AFBF continues to represent itself as a grassroots voice, its policy priorities and alliances have been decidedly corporate-oriented. Missouri cattle farmer Rolf Christen, a formerly enthusiastic local Farm Bureau board member who parted ways with the organization over a CAFO fight in the 1990s, said: “Farm Bureau has always supported the industry . . . not the small farmers.”⁵⁹ The trends Berger warned about have only expanded in the intervening fifty years, as Farm Bureau’s communications have taken on a decidedly partisan and corporate political tone.⁶⁰ During the tenth annual national AFBF convention in Salt Lake City in 2024, language used in AFBF videos mirrored that of Make America Great Again (MAGA) Republicans in the concurrent election season, declaring a desire to restore the “rural, family values” that “made America great.”⁶¹ In January 2025, AFBF delegates added language to their policy book that opposes “any and all forms of diversity, equity, and inclusion or wokeness being forced into our public-school systems and publicly funded institutions or agencies.”⁶² AFBF’s annual conference sponsors—agribusiness giants including Bayer, Syngenta, John Deere, and BASF—illustrate the organization’s ties to the

55. *American Farm Bureau Federation*, *supra* note 5.

56. Shearn, *supra* note 50, at 5.

57. *Id.*

58. *American Farm Bureau Federation*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/360725160/202531959349301288/full> [<https://perma.cc/TR33-AVYM>] (last updated Oct. 24, 2025); see Beth Swanson, *Question: I Don’t Get How Farm Bureau Is Structured*, THE ZEBRA, <https://www.thezebra.com/ask/how-is-farm-bureau-structured/> [<https://perma.cc/MU8U-W8BV>] (explaining state Farm Bureaus’ legal status and structure); AMERICAN FARM BUREAU FEDERATION, 2017 ADVOCATE’S GUIDE (2017), https://www.fb.org/files/2017_FB_Advocacy_Guide_Web.pdf [<https://perma.cc/XX9D-XEBS>] (explaining state coordination with AFBF).

59. Shearn, *supra* note 50.

60. See Sam Robinson, *Farm Bureau a Big Player in Election Campaigns*, INVESTIGATE MIDWEST (Nov. 16, 2012), <https://investigatemidwest.org/2012/11/16/american-farm-bureau-a-big-player-in-election-campaigns> [<https://perma.cc/HBC6-K7CY>]; see also Campbell, *supra* note 17, at 61 n.18; Berger, *supra* note 45, at 2–5; Shearn, *supra* note 50.

61. See Emma Penrod, *Farmers Face a Precarious Future. Is the Farm Bureau on Their Side?*, BARN RAISER (Mar. 25, 2024), <https://bamraisingmedia.com/farm-bureau-annual-convention-farmers-face-a-precarius-future> [<https://perma.cc/NZ62-2ESP>].

62. Chris Clayton, *Farm Bureau Focuses on Policy Agenda as White House Pulls Back Federal Aid Freeze*, PROGRESSIVE FARMER (Jan. 29, 2025) <https://www.dtnpf.com/agriculture/web/ag/news/article/2025/01/29/farm-bureau-focuses-policy-agenda> [<https://perma.cc/B58P-KLQZ>].

largest players in the agricultural and chemical sectors.⁶³ Farm Bureau affiliates also own stock in corporate agriculture giants such as ConAgra, Dow Chemical, Kraft Heinz, Kroger, Premium Standard, and Tyson.⁶⁴

AFBF's outsized influence over Congress is undiluted at the state and local level, where politicians are careful not to antagonize Farm Bureau and its deep pockets. Food and Water Watch reported:

The Farm Bureau also raises huge sums of money to influence ballot issues, as it did in Ohio in 2009. In a matter of two months, the Farm Bureau was able to raise more than \$1.3 million from its national, state and county-level farm bureau affiliates to help pass a ballot issue in Ohio that transferred oversight of animal agriculture, including large-scale factory farms, from government agencies to a politically appointed board, on which Farm Bureau affiliates would eventually sit. This radical change to Ohio's constitution was also supported by Monsanto, Syngenta and a host of industry groups representing corporate agriculture.⁶⁵

Not only Farm Bureau critics observe its strong corporate bias. The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America aligns with AFBF on land and water rights, but Chief Executive Officer Bill Bullard noted, "[W]e find the Farm Bureau to lean heavily towards corporate interests."⁶⁶

In addition to its anti-regulatory agenda, AFBF has opposed civil rights legislation several times, including the 1965 Voting Rights Act.⁶⁷ In 1997, Farm Bureau opposed a bill aimed at correcting USDA's longstanding discrimination against minority farmers.⁶⁸ Former Farm Bureau president Bob Stallman—who served from 2000–2016—has invoked post-slavery reparations to score policy points, referring to consumers and farmers who oppose the industrial model of agriculture as "elitists" and "extremists who want to drag agriculture back to the day of 40 acres and a mule."⁶⁹

63. Madison McVan, *The American Farm Bureau Federation Claims It's the 'Voice of Agriculture.' These Groups Beg to Differ*, INVESTIGATE MIDWEST (Feb. 8, 2022), <https://investigatemidwest.org/2022/02/08/the-american-farm-bureau-federation-claims-its-the-voice-of-agriculture-these-groups-beg-to-differ> [https://perma.cc/5RTK-AZWA].

64. See Penrod, *supra* note 61.

65. *The Farm Bureau's Billions: The Voice of Farmers or Agribusiness?*, FOOD & WATER WATCH 3 (July 2010), https://www.panna.org/wp-content/uploads/2015/09/FWW_FarmBureau.pdf [https://perma.cc/W65U-P39P].

66. McVan, *supra* note 63.

67. Mike Wallace, *The Farm Bureau's Big Business*, CBS NEWS (Apr. 6, 2000), <https://www.cbsnews.com/news/the-farm-bureaus-big-business> [https://perma.cc/JT8J-LZJJ].

68. See USDA Accountability and Equity Act of 1997, H.R. 2185, 105th Cong. (1997); *Civil Rights Legislation and Other Issues: Hearing Before the Comm. on Agric.*, 105th Cong. 101–02 (1997), http://commdocs.house.gov/committees/ag/hagCivil.000/hagCivil_0f.htm [https://perma.cc/GJL9-UF67] (including a statement by the American Farm Bureau Federation).

69. Allison Winter, *Farm Bureau Fires Back Against Climate Bill's 'Power Grab'*, N.Y. TIMES (Jan. 11, 2010), <https://archive.nytimes.com/www.nytimes.com/cwire/2010/01/11/11climatewire-farm-bureau-fires-back-against-climate-bills-93758.html> [https://perma.cc/2Y8L-FCWB].

Unsurprisingly, the farming operations and land consolidation advanced by Farm Bureau have hit Black farmers particularly acutely. In the 1920s, there were almost one million Black farmers in the United States, but as of 2019, that number had dwindled to forty-five thousand.⁷⁰ Additionally, “[f]rom 1992 to 2002, 94 percent of Black farmers lost part or all of their farmland—three times the rate at which white farmers lost land.”⁷¹ The disadvantage was systemic and governmental: In 1999, USDA agreed to pay more than \$1 billion to settle claims from Black farmers that the agency “systematically discriminated against them on the basis of their race.”⁷²

Social programs that commonly benefit small farms have also encountered significant AFBF opposition. In July 2025, AFBF embraced the Trump administration’s One Big Beautiful Bill Act despite its deep cuts to health care and rural hospitals on which farm families rely.⁷³ Referring to AFBF at all levels as “the right wing in overalls,” Berger questioned Farm Bureau’s practices:

Why has the Farm Bureau consistently opposed legislation to upgrade the quality of rural life—Medicare, federal aid to education, anti-poverty legislation, housing bills, minimum wage laws—and advocated a farm policy opposed by nearly all the other farm organizations, one that most agricultural economists agree would be disastrous for most farmers?⁷⁴

AFBF has also opposed measures to address climate change, a tack that would appear counterintuitive for an industry heavily dependent upon reliable climate and weather.⁷⁵ AFBF has long attempted to link farm policy to fossil fuel interests, denying the reality of climate change while claiming that “attempts to control greenhouse gas emissions would drive up costs for fuel and fertilizer.”⁷⁶ “‘The Farm Bureau was absolutely critical in derailing Kyoto,’ said Stuart

70. Summer Sewell, *There Were Nearly a Million Black Farmers in 1920. Why Have They Disappeared?*, THE GUARDIAN (Apr. 29, 2019), <https://www.theguardian.com/environment/2019/apr/29/why-have-americas-black-farmers-disappeared> [https://perma.cc/5HJY-RX23].

71. Austin Price, *Reversing the Trend of Black Land Loss*, BERKELEY FOOD INST. (Apr. 28, 2023), <https://food.berkeley.edu/q-and-a/reversing-the-trend-of-black-land-loss> [https://perma.cc/8SDF-7JFS].

72. *Pigford v. Glickman*, 185 F.R.D. 82, 111 (D.D.C. 1999), *aff’d* *Pigford v. Glickman*, 206 F.3d 1212, 1213–14 (D.C. Cir. 2000), *enforcement denied sub nom.* *Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008).

73. See Samantha Ayoub & Faith Parum, *One Big Beautiful Bill: Senate Edition*, MKT. INTEL (July 2, 2025), <https://www.fb.org/market-intel/one-big-beautiful-bill-senate-edition> [https://perma.cc/9UFQ-YVW5]; Zachary Levinson & Tricia Neuman, *A Closer Look at the \$50 Billion Rural Health Fund in the New Reconciliation Law*, KFF (Aug. 4, 2025), <https://www.kff.org/medicaid/a-closer-look-at-the-50-billion-rural-health-fund-in-the-new-reconciliation-law> [https://perma.cc/39AQ-TQRH].

74. Berger, *supra* note 45, at 3, 5.

75. AM. FARM BUREAU FED’N, GLOB. CLIMATE CHANGE (2019), https://www.fb.org/files/climate_2019.pdf [https://perma.cc/34VT-2LZ2].

76. Neela Banerjee, et al., *The Farm Bureau: Big Oil’s Unnoticed Ally Fighting Climate Science and Policy*, INSIDE CLIMATE NEWS (Dec. 21, 2018), <https://insideclimatenews.org/news/21122018/american-farm-bureau-fossil-fuel-nexus-climate-change-denial-science-agriculture-carbon-policy-opposition> [https://perma.cc/35U3-SL7U].

Eizenstat, President Bill Clinton's chief U.S. negotiator on the Kyoto Protocol, a landmark treaty that was the first to set emissions targets country by country. The United States ultimately backed out."⁷⁷ Then under the Biden administration, as climate measures surged, AFBF shifted its stance to pursuing subsidies for carbon soil sequestration and biofuels, while pushing for weak standards on clean energy and climate policy measures, undermining greenhouse gas reduction goals.⁷⁸

On the whole, over Farm Bureau's history, it has consistently advanced corporate interests that undermine the survival of the exact agricultural communities it purports to represent.

B. A Nonprofit Network with For-Profit Revenues, Assets, and Salaries

The wealth and compensation levels of "not-for-profit" Farm Bureau entities raise questions about their purportedly grassroots nature. Tax-exempt since 1950, AFBF operates on an annual revenue of more than \$36 million, holding assets of over \$107 million and claiming over five million nationwide members, while the United States had 1.88 million farms in 2024.⁷⁹ Most of this revenue comes from "program services," with nearly \$29 million sourced from affiliate "member dues."⁸⁰ An elected president, a paid national board of directors, and a network of closely aligned state officers and staff lead the organization.⁸¹ In 2023, a year in which the U.S. agriculture sector contracted by 5,700 farms, AFBF President Zippy Duvall received over \$640,000 in cumulative compensation.⁸²

77. Neela Banerjee et al., *How the Farm Bureau's Climate Agenda is Failing Its Farmers*, INSIDE CLIMATE NEWS (Oct. 24, 2018), <https://insideclimatenews.org/news/24102018/farm-bureau-climate-change-denial-farmers-crop-insurance-subsidies-drought-future-at-risk> [https://perma.cc/9UFQ-YVW5].

78. Charlie Hope-D'Anieri, *The Farming Lobby's Cunning Plan to Fight Climate Change—and Regulation*, THE NEW REPUBLIC (Apr. 2, 2021), <https://newrepublic.com/article/161926/farming-lobby-cunning-plan-fight-climate-changeand-regulation> [https://perma.cc/JTB6-6TGF].

79. Rebecca Colnar, *American Farm Bureau Voting Delegates Establish 2024 Policies*, MONT. FARM BUREAU FED'N (Jan. 28, 2024), <https://mfbf.org/Article/American-Farm-Bureau-Voting-Delegates-Establish-2024-Policies> [https://perma.cc/Y3ND-6A7D]; see also *American Farm Bureau Federation*, *supra* note 58 (depicting the AFBF's 2024 Form 990); *Farm Bureau Member Benefits*, AM. FARM BUREAU FED'N., <https://www.fb.org/about/benefits> [https://perma.cc/525D-R77W] (last visited July 16, 2026) (providing membership numbers); Katherine Lacy, *The Number of U.S. Farms Continues Slow Decline*, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV. (Mar. 12, 2025), <https://www.ers.usda.gov/data-products/chart-gallery/chart-detail?chartId=58268> [https://perma.cc/7SUF-8AK4] (providing US farm numbers).

80. *American Farm Bureau Federation*, *supra* note 58 (depicting the AFBF's 2024 Form 990).

81. *Id.*

82. *Id.*; see also Steve Davies, *CEO Compensation Report: Salaries Up for Ag-Related Trade Group Leaders*, AGRI-PULSE (Sept. 10, 2025), <https://www.agri-pulse.com/articles/23432-ceo-compensation-report-salaries-up-for-ag-related-trade-group-leaders> [https://perma.cc/Z8FZ-ASBU]; U.S. DEP'T OF AGRIC., *FARMS AND LAND IN FARMS 2023 SUMMARY 3* (2024), <https://esmis.nal.usda.gov/sites/default/release-files/5712m6524/b2775h03z/ns065w04d/fnl0224.pdf> [https://perma.cc/HYC3-ZVWP].

With \$15 million in annual revenue in 2023 and \$12.3 million in assets, Michigan Farm Bureau's nonprofit arm benefits from close ties to Michigan Farm Bureau Family of Companies, which has 65 county offices, some 800 associates, 450 agents, and a suite of insurance products available to farm and non-farm customers alike.⁸³ North Carolina Farm Bureau Federation, Inc. had \$18.5 million in annual revenue in 2024 and \$44.1 million in assets, while Texas Farm Bureau had \$34 million in annual revenue in 2024 and nearly \$100 million in assets.⁸⁴ In 2015, North Carolina Farm Bureau Federation, Inc., a 501(c)(5), registered with the Internal Revenue Service a similarly named, litigation-focused nonprofit subsidiary called North Carolina Farm Bureau Federation.⁸⁵ With minimal assets and uncompensated leadership, this entity may be a hedge against countersuit liability, because it would be unable to pay any significant monetary judgment.

C. Success of Farm Bureau Activism Throughout the Organization's History

Farm Bureau activism deserves careful scrutiny in light of its extraordinary reach and success. The Agricultural and Applied Economics Association calls AFBF "[c]hief among" U.S. agricultural organizations "in its ability to influence the [F]arm [B]ill process."⁸⁶ According to nonprofit newsroom Investigate Midwest, AFBF is "the most powerful institution representing rural Americans, and it spends more than anyone else on lobbying the federal government on agricultural issues."⁸⁷ Farm Bureau opponents say it "wields massive influence on state legislatures, with the power to kill any agriculture bill they want."⁸⁸ Many supporters would likely agree.⁸⁹

But AFBF's greatest influence lies in its historical alignment and cross-promotion with USDA and state departments of agriculture, agribusiness associations, and land grant universities, all advancing "agricultural exceptionalism." As described by University of Missouri Professor Emeritus of Agricultural Economics John Ikerd, this "doctrine of treating agriculture differently from other sectors of the economy" is an approach "intended to

83. *Michigan Farm Bureau*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/381718391> [<https://perma.cc/L7Z4-B9U5>] (last visited July 16, 2026) (explaining the Michigan Farm Bureau's 2023 Form 990); *see also About*, MICH. FARM BUREAU FAM. OF COS., <https://www.michfb.com/about> [<https://perma.cc/6VJW-VH2J>] (last visited Feb. 1, 2026).

84. *North Carolina Farm Bureau Foundation*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/560340590> [<https://perma.cc/75PS-HEEE>] (last visited Apr. 27, 2026); *Texas Farm Bureau*, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/741145986> [<https://perma.cc/H9JE-9493>] (last visited July 16, 2026) (explaining Texas Farm Bureau's 2024 Form 990).

85. *North Carolina Farm Bureau Foundation*, *supra* note 84.

86. Stephanie Mercier, *The Making of a Farm Bill*, 31 CHOICES 1, 2 (2016).

87. *See* McVan, *supra* note 63.

88. *Id.*

89. *See id.*

respect the differences between independent, diversified family farms and industrial manufacturing organizations.”⁹⁰ However, Ikerd cautioned,

[T]he American Farm Bureau Federation, agricultural commodity organizations, U.S. and State Departments of Agriculture, and Land Grant Universities all continue to promote the myth that industrial agriculture is just the modern version of traditional family farming and is worthy of the doctrine of agricultural exceptionalism. This misinformation has misled many family farmers and rural residents into opposing the environmental and public health regulations that would have protected their health, allowed family farms to survive, and preserved a desirable quality of life.⁹¹

Ikerd observes that in farm states, Farm Bureau is often more powerful than the governor.⁹² “[N]o farm legislation can make it through agricultural committees, and thus even be considered for a vote, unless it is first approved by lobbyists for the state Farm Bureau and locally prominent corporate agribusinesses.”⁹³

For example, in a dramatic county-level conflict over factory farming in southwestern Missouri, Farm Bureau pushed a successful legislative strategy to block regulation and then became a defendant in ensuing litigation. Rural Cedar County had deliberated carefully on its 2016 factory farm ordinance, working for several years to craft regulations that would protect property values, the agricultural economy, and quality of life.⁹⁴ The law set standards for livestock confinement siting and operations, including design and water quality protection baselines, plus setbacks from occupied residences conditioned on the size of the operation.⁹⁵ The county commission relied on section 192.300 of the Missouri Code, which granted public health authority that many Missouri counties used to craft similar ordinances in response to the needs of residents living in proximity to industrial scale livestock facilities that house anywhere from thousands to tens of thousands of hogs, cattle, or poultry and spread their untreated waste on nearby farmland.⁹⁶

After Cedar County enacted its ordinance, the response from the industry was swift. Missouri Farm Bureau, leading an industry coalition including the Missouri Cattlemen’s Association, went to the Missouri Legislature to urge restrictions on county regulation of agricultural operations through amendment

90. John Ikerd, *Failure to Regulate CAFOs: Abuse of Agricultural Exceptionalism*, UNIV. OF MO., <https://ikerdj.mufaculty.umsystem.edu/presentation-papers/factory-farms-cafos/failure-to-regulate-cafos-abuse-of-agricultural-exceptionalism> [<https://perma.cc/CF3P-LLLS>] (last visited Feb. 1, 2026).

91. *Id.*

92. *See id.*

93. *Id.*

94. *See Cedar County Officials Ignored During Passage of State CAFO Law*, EL DORADO SPRINGS SUN (June 20, 2019), <https://eldoradospringsmo.com/front-page/cedar-county-officials-ignored-during-passage-of-state-cafo-law> [<https://perma.cc/PW9F-HZ9Y>].

95. Cedar County, Mo., Ordinance No. 05102016 (May 11, 2016).

96. *Id.*

of section 192.300.⁹⁷ Cedar County, population fifteen thousand, pushed back.⁹⁸ The *El Dorado Springs Sun* newspaper reported that Cedar County officials contacted every Missouri legislator during the 2019 session in an attempt to reach a compromise, including possible grandfathering of the ordinance they had already enacted, to save their ordinance.⁹⁹ Although the Cedar County Commissioners included the county Republican Party chair and a Farm Bureau board member, ultimately the bill passed without any provisions to exempt twenty county CAFO ordinances already in place.¹⁰⁰ On June 8, 2019, Governor Parsons signed the bill in front of seven hundred members of the Missouri Cattlemen's Association at a "ceremonial" event at the association's Annual Steak Fry and PAC Auction at the Sedalia State Fair Grounds.¹⁰¹

Afterward, disappointed Cedar County officials told the *Springs Sun*:

[We] are not anti-agriculture, [our] law just requires a reasonable distance between a CAFO unit and an occupied residence, a stream, a town and a large body of water. County officials say they have not refused to let any CAFO be built since they passed the ordinance and have had no complaints.¹⁰²

Cedar County Commissioner Don Boultinghouse declined reappointment to the Cedar County Farm Bureau board over the conflict and resigned in protest from the Missouri and National Cattlemen's Associations.¹⁰³ He also voted to authorize a lawsuit.¹⁰⁴ *Cedar County Commission v. Parson* challenged the constitutionality of the 2019 amendments to Missouri Revised Statutes section 192.300 and their effect on local CAFO ordinances.¹⁰⁵ Missouri Farm Bureau was initially named as a defendant but was eventually dismissed.¹⁰⁶

Fifth-generation Cedar County farmer Cheryl Y. Marcum described the remaining statutorily compliant setbacks in an April 13, 2022 letter to the *Cedar County Republican* newspaper:

[C]onsider swine weighing over 55 pounds as an example. Cedar

97. *Cedar County Officials*, *supra* note 94.

98. *QuickFacts: Cedar County, Missouri*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/cedarcountymissouri/HCN010222> [<https://perma.cc/LN4Q-Z56P>] (last visited Feb. 1, 2026).

99. *Cedar County Officials*, *supra* note 94.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. Allison Kite, *While Cedar County Awaits Ruling in CAFO Lawsuit, A Large Chicken Operation Moves In*, MO. INDEP. (July 15, 2021), <https://missouriindependent.com/2021/07/15/while-cedar-county-awaits-ruling-in-cafo-lawsuit-a-large-chicken-operation-moves-in> [<https://perma.cc/47UK-YDZF>] (referencing Commissioner Boultinghouse as part of the three-member Cedar County Commission when it voted to authorize a lawsuit challenging Missouri Senate Bill 391).

105. *Cedar Cnty. Comm'n v. Parson*, 661 S.W.3d 766, 769–70 (Mo. 2023).

106. *Id.* at 770 n.3.

County has two Class IC¹⁰⁷ hog CAFOs. The state requires a Class IC CAFO facility, including manure lagoon, with up to 7,499 swine set back from an occupied residence by just 1,000 feet, that's 320 feet less than a quarter of a mile, roughly the length of three football fields! More than double the maximum number of swine up to 17,499 and the state adds another 1,000 feet to buffer the stench and manure particulate from a Class IB CAFO. That 2,000 feet buffer equals one-third of a mile. The state adds another 1,000 feet buffer between an occupied residence and an unlimited number of swine in excess of 17,500; making a 3,000 feet buffer for a Class IA CAFO that may confine an unlimited number of animals!¹⁰⁸

The Missouri Supreme Court ruled against Cedar County on March 21, 2023.¹⁰⁹

While the conflict in Cedar County demonstrates Farm Bureau's success in the legislature and courthouse, a different example shows that Farm Bureau's interventionist attitude does not stop there. Iowa blogger Chris Jones is a scientist—now running for Iowa Secretary of Agriculture¹¹⁰—who was employed by the University of Iowa Institute of Hydraulic Research until his outspokenness on water quality drew the ire of right-wing legislators, leading to his early retirement in response to legislative threats to the entire program's funding.¹¹¹ He described in a June 2023 Substack post a series of threats used by neighbors affiliated with Farm Bureau to intimidate and discourage a northwest Iowa farmer who was monitoring water quality in a creek adjacent to the farmer's land and posting the results online.¹¹² The farmer's project was grant-funded through a state institute and the creek, contrary to the assertions of the county

107. Under Missouri law, "[w]hether an operation is required to obtain a permit is determined by its 'class size', [sic] which is based on the total number of animal units confined at the operation. Class IC (1,000 animal units), Class IB (3,000 animal units) and Class IA (7,000 animal units) are required by state regulation to obtain a wastewater permit." *Concentrated Animal Feeding Operation (CAFO)*, MO. DEP'T OF NAT. RES., <https://dnr.mo.gov/water/business-industry-other-entities/agriculture-landowners/concentrated-animal-feeding-operation-cafo> [<https://perma.cc/DN3N-HWUK>] (last visited Feb. 1, 2026).

108. Cheryl Y. Markum, *Letter to Editor: CAFO Definition, Classifications, and Buffer Distances*, CEDAR CNTY. REPUBLICAN (Apr. 13, 2022), <https://cedarrepublican.com/stories/letter-to-editor-cafo-definition-classifications-and-buffer-distances,54691> [<https://perma.cc/SL5E-AFZF>].

109. Cedar Cnty. Comm'n, 661 S.W.3d at 778.

110. *Chris Jones for Iowa Secretary of Agriculture*, <https://chrisjonesforiowa.com> [<https://perma.cc/KF5L-ZQL4>] (last visited July 13, 2026).

111. Keith Schneider, *In Iowa, a Tale of Politics, Power, and Contaminated Water*, CIRCLE OF BLUE (May 25, 2023), <https://www.circleofblue.org/2023/agriculture/in-iowa-a-tale-of-politics-power-and-contaminated-water> [<https://perma.cc/725C-XGQ4>]; Telephone Interview with Chris Jones, Candidate for Iowa Sec'y of Agric. (July 23, 2025).

112. "Things got interesting as UI began deploying the water quality sensors in Hardin Creek the first week of April (2018). Field staff reported back that area farmers stood by watching menacingly as equipment was deployed in the creek." Chris Jones, *Bureau Behaving Badly: Exhibit A on Why Putting Ag in Control of Water Quality Policy is a Bad Idea*, THE SWINE REPUBLIC (June 30, 2023), <https://riverraccoon.substack.com/p/bureau-behaving-badly> [<https://perma.cc/S2YF-PT2V>].

Farm Bureau president, was not a ditch but a perennial, Clean Water Act-jurisdictional stream.¹¹³

Nevertheless, in consultation with its attorneys, Iowa Farm Bureau insisted on not just removing the water monitoring results from the internet but taking the sensors out of the creek.¹¹⁴ Jones posted evidence of threats that \$30,000 worth of state-owned sensor equipment might be damaged if it stayed in place.¹¹⁵ Senior scientists and university administrators affiliated with the project were summoned to Iowa Farm Bureau headquarters in Des Moines for a June 2018 meeting.¹¹⁶ Jones's summary of the experience echoed the disillusionment and frustration that emerge from these stories of bruising interactions with Farm Bureau:

[I]t was clear, to me anyway, the objective of the meeting was for Farm Bureau to intimidate us into not ever again trying anything so crazy as to use water quality sensors and [the Iowa Water Quality Information System] to broadcast data from [Iowa Nutrient Research Center]-funded on-farm research projects.¹¹⁷

In other words, a publicly funded water quality research project conducted by scientists at a publicly funded university was subject to veto by Farm Bureau.

These documented stories are the tip of the iceberg of a farm country oral history about Farm Bureau's unchecked power to shape agricultural policy from the federal Farm Bill to the most molecular deliberations of local governments, and its scorched-earth tactics that discourage public opposition. One place where Farm Bureau is unable to hide the paper trail of its strategies is in the courts, a history explored in Part II.

II. EXTENT AND FOCUS OF FARM BUREAU LITIGATION: 2020 TO PRESENT

At every opportunity, Farm Bureau steps into the legal fray to advance its anti-regulation agenda. Not counting cases associated with their insurance business, Farm Bureau entities have initiated, as plaintiff, at least eleven state

113. In an April 9, 2018 email to University of Iowa scientists, the farmer monitoring water quality stated: "Today I received a call from a local farmer who is also President of the County Farm Bureau Association. He was quite concerned with the availability of our live stream data to the outside world on the IWQIS site Given this is a drainage ditch and not a natural creek there may be some efforts by drainage district members to stop broadcasting our info. Additionally, he questioned if it is even legal to install the water monitoring system without approval of the drainage district." *Id.*

114. In an April 10, 2018 email, University of Iowa's Keith Schilling stated: "In a nutshell, we installed a Nitratax sensor in a branch of Hardin Creek at a road crossing . . . and the local Farm Bureau and drainage district members are upset about it Would Iowa State be in a position to talk to the local Farm Bureau about the project, the importance of the monitoring, and the unique design to allow us to measure the effectiveness of the future practices and fulfill the objectives of the INRC funded project? . . . A subsequent email . . . indicated that we either pull the equipment now or essentially risk future damage to the \$30k worth of equipment." *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

and federal lawsuits since 2020.¹¹⁸ They have intervened as a party or filed amicus briefs in at least twenty-five more.¹¹⁹ Most are still pending.¹²⁰ The numerous cases filed prior to 2020 are only included in this analysis where they reached final resolution between 2020 and 2025—a total of twenty-one more cases.¹²¹ The clear trend of Farm Bureau’s litigation efforts—from the Clean Water Act definition of waters of the United States (the “WOTUS Rule”) to chemical regulation to First Amendment rights—is toward more restrictive interpretations of federal and state environmental, animal welfare, and labor laws, expanded access and control by private parties of public (and public trust) resources, and reduced human health safeguards, including attacks on regulation of chemicals and toxic biological pollutants that frequently contaminate land and water. Where federal law is invoked, disputes often involve agricultural and energy interests partnering to assert that they are being subjected to fragmented or extraterritorial regulatory regimes that undermine uniform standards and interstate commerce, as demonstrated in examples below. The bottom line every time is larger profits for big agribusiness, often at the expense of small farmers and their rural communities, up to and including loss of livelihood—or life.

A. Targets of Farm Bureau Legal Actions Since 2020

This analysis groups lawsuits pursued or supported by Farm Bureau into six general areas, with consistent anti-regulatory and property rights themes. There are cases (1) attacking CAFO regulation; (2) seeking to narrow and undermine the Clean Water Act; (3) challenging Endangered Species Act protections; (4) seeking to limit National Environmental Policy Act review; (5) promoting decreased regulation of pesticides and other toxic chemicals; and (6) in a catch-all category, including anti-regulation activism beyond the agricultural context, opposition to exercise of First Amendment rights, and efforts to keep state affiliates in line with the national organization. These efforts often fall short of their ambitious targets, but the arc of the U.S. regulatory state is shifting in the direction Farm Bureau and its allies are pushing.

1. CAFO Regulation

Table 1: CAFO-Focused Cases¹²²

118. Carrie La Seur, *Tab: Litigation Tracker, Rows 10–13, 22–27*, in FARM BUREAU TRACKER (2026), <https://docs.google.com/spreadsheets/d/1LXDwJgDhKUmKHD7QvoF5QqcsOrYy1F3T/edit?usp=sharing&ouid=105330992561872356972&rtpof=true&sd=true> [https://perma.cc/ZY24-YMKB].

119. *Id.* at *Tab: AFBF Tracker*, Rows 2–54.

120. *See, e.g., id.* at *Tab: Litigation Tracker, Rows 2–4, 10, 12–20, 22–28*; *id.* at *Tab: AFBF Tracker*, Rows 6–11, 15, 20, 23, 24, 26–27, 35, 43–44, 46, 54, 63–66.

121. *Id.* The 2020 cutoff is pragmatic both to keep the number of cases manageable and to focus on Farm Bureau’s current litigation strategy, which is important from an advocacy perspective.

122. *Id.* at *Tab: AFBF Litigation* (summarizing the nature of suits; because many cases cited have not concluded, they are organized in tables by filing years rather than years of disposition).

Year Filed	Case Name	Farm Bureau's Role	Case No. or Reporter
2023	<i>Stein v. People for the Ethical Treatment of Animals</i>	Amicus Brief	60 F.4th 815 (4th Cir. 2023)
2023	<i>N.C. Dep't of Env't'l Quality v. N.C. Farm Bureau</i>	Respondent	895 S.E.2d 437 (N.C. App. 2023)
2023	<i>Project Veritas v. Vasquez</i>	Amicus Brief	Project Veritas v. Schmidt, 72 F.4th 1043 (9th Cir. 2023) (en banc)
2022	<i>Mich. Farm Bureau v. Dep't of Env't, Great Lakes, & Energy</i>	Plaintiff	511 Mich. 971 (2023), 990 N.W.2d 360 (mem.) (May 31, 2023); 515 Mich. 481 (2024), 28 N.W.3d 629 (July 31, 2024)
2020	<i>Michael Byl v. Town of Laketown</i>	Co-Plaintiff	Polk County Circuit Court
2020	<i>Howes Township v. N.D. Farm Bureau</i>	Plaintiff	09-2020-CV-03482 (D.N.D. Cass County)
2020	<i>Nat'l Pork Producers Council v. Ross</i>	Plaintiff	6 F.4th 1021 (9th Cir., 2021)
2019	<i>McKiver v. Murphy-Brown, LLC</i>	Amicus Brief	980 F.3d 937 (4th Cir., 2020)

Livestock confinements, or CAFOs, are a particular focus of Farm Bureau legal activism. Corporate consolidation of the supply chain has shifted livestock husbandry from the idyllic red barn family farms on butter packaging to an industry run by international conglomerates with a ruthless eye on the bottom line, which Farm Bureau defends aggressively.¹²³ Successful small-scale livestock farming now often requires carefully cultivated niche markets, without

123. See SONJA TROM EAYRS, DODGE COUNTY, INCORPORATED: BIG AG AND THE UNDOING OF RURAL AMERICA 11, 50 (2024); Sonja Trom Eayrs, *Opinion: Big Ag's Corporate Culture of Indifference Has Been Years in the Making*, THE MINN. STAR TRIB. (May 26, 2025), <https://www.startribune.com/opinion-big-ag-corporate-culture-of-indifference-has-been-years-in-the-making/601359545> [<https://perma.cc/PC29-X2S3>]; see also Zoe Pharo, *Death of a Sales Barn: How Corporations Took Over Our Food System*, IN THESE TIMES (Jan. 26, 2022), <https://inthesetimes.com/article/industrial-agriculture-corporate-consolidation-actionaid-report> [<https://perma.cc/83UE-4WZT>].

the large subsidies and externalized environmental impacts exploited by large operations.¹²⁴ A single CAFO can be a vast, industrial-scale operation producing sewage equivalent to or greater than that of a major city.¹²⁵ As *Dodge County, Incorporated: Big Ag and the Undoing of Rural America* author Sonja Trom described the market situation:

In the transition to a corporate nation, multinational giants such as Hormel, JBS, Smithfield, Tyson and others have created a closed system that is only open to those farmers willing to construct a factory farm to industry specifications. Only those farmers who construct a large industrial facility capable of holding several thousand animals are given access to the corporate marketplace.¹²⁶

Impacts often include crippling odors, degraded road infrastructure from heavy trucking, and disposal of CAFO waste by releasing a vast nutrient burden into watersheds as “fertilizer.”¹²⁷ Downstream communities often need to fund costly new infrastructure, such as new water wells or nitrate removal facilities, to mitigate CAFO pollution entering their water treatment plants.¹²⁸ These expenditures, such as an anticipated \$344 million upgrade in Des Moines, Iowa, are effectively a tax on downstream water users to support industrial agriculture upstream.¹²⁹

124. See Kehinde Oluseyi Olagunju, Simone Angioloni & Maurizio Canavari, *Niche Markets for Sustainable Agri-Food Systems: A Systematic Review*, 11 HELIYON e42346 (2025); U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-106347, DEPARTMENT OF AGRICULTURE: FINANCIAL ASSISTANCE TO LIVESTOCK FEEDING OPERATIONS (2024), <https://www.gao.gov/products/gao-25-106347> [<https://perma.cc/3DSC-SV82>] (explaining the scale of subsidies to large livestock confinement operations); *Livestock Operations: Uncovering the Hidden Costs to Rural Communities and Watersheds*, NPDES TRAINING INST., <https://npdestraining.com/2025/02/10/livestock-operations-uncovering-the-hidden-costs-to-rural-communities-and-watersheds> [<https://perma.cc/UXT5-PT5T>] (last visited July 15, 2026) (explaining the externalized environmental costs of CAFOs).

125. See CARRIE HRIBAR, UNDERSTANDING CONCENTRATED ANIMAL FEEDING OPERATIONS AND THEIR IMPACT ON COMMUNITIES 2 (Mark Schultz ed., 2010), <https://stacks.cdc.gov/view/cdc/59792> [<https://perma.cc/2LPY-CD2J>].

126. Eayrs, *Dodge County*, *supra* note 123.

127. Paul Ebner, *CAFOs and Public Health: Pathogens and Manure*, PURDUE UNIV. EXTENSION (Aug. 2007), <https://www.extension.purdue.edu/extmedia/id/cafo/id-356.html> [<https://perma.cc/DV27-WN7V>]; see Kelley J. Donham et al., *Community Health and Socioeconomic Issues Surrounding Concentrated Animal Feeding Operations*, 115 ENVT'L HEALTH PERSP. 317, 317–320 (2007) (discussing odor); John Ikerd, *Economic Realities of CAFOs*, UNIV. OF MO. (May 2020), <https://ikerdj.mufaculty.umsystem.edu/presentation-papers/factory-farms-cafos/economic-realities-of-cafos> [<https://perma.cc/2VN4-W3TD>] (discussing heavy truck traffic, as discussed in a presentation at screenings of the CAFO documentary film *Right to Harm*).

128. See Jessica Fargen Walsh, *Small Communities Pay High Costs for Clean Water*, UNIV. OF NEB.-LINCOLN INST. OF AGRIC. & NAT. RES. (Oct. 2, 2020), <https://water.unl.edu/article/groundwater/small-communities-pay-high-costs-clean-water> [<https://perma.cc/JSP9-4MD6>].

129. See, e.g., Lucas Grundmeier, *Clean Water Out of Reach?*, DES MOINES REG. (June 22, 2025), <https://www.pressreader.com/foryou?popupArticleId=282815017220775> [<https://perma.cc/SFM8-86LE>]; Kayla James, *Central Iowa Water Works Reveals How It Will Address High Nitrate Levels in the Future*, KCCI (June 17, 2025), <https://www.kcci.com/article/central-iowa-water-works-reveals-how-it-will-address-high-nitrate-levels-in-the-future/65094440> [<https://perma.cc/D8D4-X8N7>].

Farm Bureau focuses on limiting federal and state CAFO regulation and blocking the ability of neighboring communities to impose conditions on their operations. Where these efforts are successful, they create a tremendous economic advantage for large-scale operations. Farm Bureau's CAFO-related litigation has recurring themes of federalism and preemption, or exceedance of regulatory authority, where Farm Bureau as plaintiff or intervenor claims that state or local regulations exceed authority granted by state legislatures or improperly conflict with federal law. Yet this stance appears more opportunistic than ideological because Farm Bureau will take both sides of the same issue—for example, on local control—to gain a tactical advantage, particularly where CAFOs are concerned.

To be sure, Farm Bureau is not always successful in its legal defense of CAFOs. In *McKiver v. Murphy-Brown, LLC*, AFBF weighed in as an amicus on lengthy North Carolina nuisance litigation against Murphy-Brown, a commercial hog producer and subsidiary of a Chinese conglomerate, and its contractors, only to have the Fourth Circuit affirm a significant damage award.¹³⁰ To address the threat of nuisance claims, Farm Bureau endorses and lobbies in many states for “Right to Farm” laws that typically limit the availability of nuisance as a tort claim against agricultural operations and raise the stakes by awarding attorney fees to prevailing defendants.¹³¹ Another less than triumphant Farm Bureau legal effort concluded recently in Michigan, where five years of litigation by Michigan Farm Bureau and industry allies over the state's 2020 NPDES-CAFO General Permit preceded the October 2025 issuance of a new permit with little significant rollback of new CAFO permitting standards the industry sought to block.¹³² The Michigan story, however, is instructive on the value to the industry of regulatory delay achieved by Farm Bureau's legal advocacy.

In 2020, Michigan Farm Bureau and more than one hundred factory farm and industry association co-plaintiffs launched a challenge of incrementally tighter conditions in Michigan's 2020 NPDES-CAFO General Permit, regulating factory farm discharges under the Clean Water Act and state law—a reissuance that happens every five years.¹³³ In its Draft 2020 NPDES-CAFO General

130. *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 972 (4th Cir. 2020).

131. See, e.g., Press Release, John L. Hoblick, President, Florida Farm Bureau, Florida Farm Bureau Applauds Gov. DeSantis for Signing Historic Right to Farm Bill (Apr. 29, 2021), <https://floridafarmbureau.org/news/florida-farm-bureau-applauds-gov-desantis-for-signing-historic-right-to-farm-bill> [<https://perma.cc/9VLQ-EU69>]; see also *Agricultural Policy & Farming Legislation*, WIS. FARM BUREAU, <https://wfbf.com/policy> [<https://perma.cc/L3UV-BS22>] (last visited July 15, 2026) (noting Farm Bureau's successful lobbying in support of a Wisconsin Right to Farm law); *HB 545: Right to Farm*, GA. FARM BUREAU, <https://www.gfb.org/advocate/righttofarm> [<https://perma.cc/XKM6-SETJ>] (noting Georgia Farm Bureau's Right to Farm Bill advocacy).

132. *Mich. Farm Bureau v. Dep't of Env't, Great Lakes, & Energy*, 28 N.W.3d 629, 636, 643–44 (2024), *reh'g denied*, *Mich. Farm Bureau v. Dep't of Env't*, 515 Mich. 984 (2024).

133. *Mich. Farm Bureau*, 28 N.W.3d at 642–44 (describing Michigan's NPDES-CAFO permitting process); see *id.* at 677 (confirming in the dissent that the new permit conditions are more stringent, stating that “[t]his notion—i.e., that the 2020 general permit conditions prohibit certain

Permit, Michigan's Department of Environment, Great Lakes, and Energy (EGLE) tightened some CAFO permit conditions, apparently to address a growing list of state waters "impaired" by nutrient and toxic biological pollution linked to CAFO discharges.¹³⁴ A reporter summary of the Michigan Supreme Court's 2024 ruling on EGLE's permitting authority described the changes to the permit:

The 2020 general permit imposed new conditions that included a reduction of the limit on the amount of phosphorus that may be applied to land; revised setback provisions, requiring both: (1) that farms keep a 35-foot wide vegetated barrier, in which CAFO waste may not be applied, along any surface water of the state, open tile line intake structures, sinkholes, and agricultural well heads, including but not limited to roadside or any ditches that are conduits to surface waters of the state (with the exception of surface waters of the state that are up-gradient of the land application), and (2) that the permittee may not apply waste within 100 feet of any surface water of the state or those same conduits to surface waters of the state; and a presumptive three-month ban during January through March on applying waste on land and on transferring waste to other entities that apply waste to land during those months.¹³⁵

One of the most hotly contested permit terms is the ban on spreading CAFO waste on farm fields in March, when partially frozen fields and wet weather hasten the transfer of pathogens and harmful levels of nutrients to lakes and streams.¹³⁶ These conditions might appear relatively minor, but Farm Bureau and its allies challenged them: "[T]he new discretionary permit conditions exceeded EGLE's statutory authority, were contrary to state and federal law regulating CAFOs . . . were arbitrary and capricious and were unconstitutional."¹³⁷

Farm Bureau's interlocutory appeal asked state courts to weigh in on EGLE's authority to impose discretionary permit terms in its General Permit Certificates of Coverage.¹³⁸ As discussed later in this Subpart, the tactic of

activities that were previously allowed—does not appear to be in serious dispute"); *see also* MICH. DEP'T OF ENV'T, GREAT LAKES, AND ENERGY, WATER QUALITY AND POLLUTION CONTROL IN MICHIGAN 2022: SECTIONS 303(D), 305(B), AND 314 INTEGRATED REPORT, <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/WRD/GLWARM/IR/Report-2022-Integrated.pdf> [<https://perma.cc/RGH8-E76V>] (noting a smaller list of impaired waters than the 2024 Michigan 303(d) list, cited *infra* note 134).

134. *See* MICH. DEP'T OF ENV'T, GREAT LAKES, & ENERGY, 2024: APPENDIX D2: NEW SECTION 303(D) LISTINGS, <https://www.michigan.gov/egle/about/organization/water-resources/glwarm/integrated-report> [<https://perma.cc/S5DC-4AYL>] (documenting new listings, of which a large proportion are based on *E. coli* or other biological pollution linked to CAFO discharges).

135. *Mich. Farm Bureau v. Dep't of Env't, Great Lakes, & Energy*, No. 165166 (Mich. July 31, 2024), <https://case-law.vlex.com/vid/mich-farm-bureau-v-1044917556> [<https://perma.cc/ZM9Z-UGST>].

136. *Id.* at 134; *Mich. Farm Bureau*, 28 N.W.3d at 643.

137. *Mich. Farm Bureau*, 28 N.W.3d at 644–645.

138. *Id.* at 645.

attacking a regulatory agency's authority is common in other Farm Bureau litigation, with divergent results depending on jurisdiction.¹³⁹

In a ruling carefully worded to sidestep a 2006 statute barring new EGLE rulemaking on water resources, the Michigan Supreme Court affirmed EGLE's permitting authority, finding that the General Permit on its own did not have the "force and effect of law" and therefore did not require formal rulemaking, while the tailored Certificates of Compliance issued to individual CAFOs were not rules of general applicability.¹⁴⁰ When EGLE finally issued the 2020 General Permit in October 2025, the agency changed the dates so that the 2020 Permit *became* the delayed 2025 General Permit and will remain in force until 2030.¹⁴¹ Without Farm Bureau's prolonged challenge of the 2020 General Permit, the 2025 General Permit would likely have been more restrictive than its predecessor because the Clean Water Act requires more stringent regulatory measures, such as "Total Maximum Daily Load" designations to limit certain pollutants, to respond to the kind of persistent agricultural degradation of water quality evidenced by Michigan's expanding list of waters impaired by *E. coli* bacteria, present in CAFO waste.¹⁴² Critically, while the contested case was pending, CAFO operators secured administrative extensions of the more permissive 2015 General Permit for all regulated CAFOs for an additional five years.¹⁴³ Michigan Farm Bureau called the 2020 General Permit terms "far more complex and burdensome for livestock operators" than previous permit terms.¹⁴⁴ The ensuing five years of litigation allowed the weaker 2015 regulatory regime to remain in force and in all likelihood avoided a stronger 2025 General Permit.¹⁴⁵ In

139. See *infra* p. 28 (discussing *N.C. Dep't of Env't'l Quality v. N.C. Farm Bureau* as an example of Farm Bureau litigation attacking a regulatory agency's authority).

140. Mich. Farm Bureau, 28 N.W.3d at 676.

141. See *Environmental Permit Review: Opinion of the Director*, MOAHR Docket No. 20-009773 (Mich. Dep't of Env't, Great Lakes, & Energy Oct. 29, 2025).

142. See *id.* (explaining Michigan's 2024 list of new impaired water designations); Eric Paul Dennis, *Regulation of Large Livestock Farms Is Not Working for Farmers or the Environment*, CITIZENS RSCH. COUNCIL OF MICH. (Oct. 1, 2025), https://crcmich.org/cafopermitting_dennis_20251001 [<https://perma.cc/TAK7-9PHW>]; see also Henry Lieberman & Stephanie DuPont Golda, *How CAFOs Affect Escherichia Coli Contents in Surrounding Water Sources*, J. OF EMERGING INVESTIGATORS 1-4 (Feb. 24, 2023); Mich. Farm Bureau, 28 N.W.3d 629 (evidencing the prolonged challenge of the 2020 General Permit).

143. See Dennis, *supra* note 142 (stating that "[m]ost Michigan CAFOs continue to operate under administrative extension of the 2015 general permit, which expired in 2020").

144. Mitch Galloway, *EGLE CAFO Ruling Appealed; MI Operators Consider Moving Business Elsewhere*, MICH. FARM NEWS (Dec. 18, 2025), <https://www.michiganfarmnews.com/egle-cafo-ruling-appealed-mi-operators-consider-moving-business-elsewhere> [<https://perma.cc/8SGA-QSYX>] (disclosing in the headline that Michigan Farm News is "[a]n official publication of Michigan Farm Bureau").

145. See MICH. DEP'T OF ENVT'L QUALITY, NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM WASTEWATER DISCHARGE GENERAL PERMIT NO. MIG010000 – CONCENTRATED ANIMAL FEEDING OPERATIONS (Apr. 30, 2015), <https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Programs/WRD/CAFO/MIG010000-General-Permit-2020.pdf> [<https://perma.cc/R7RU-ZE4C>]; *supra* pp. 24 (providing a description of the more stringent 2020 permit terms in a block quote).

December 2025, Michigan Farm Bureau initiated a challenge of the new permit.¹⁴⁶

Farm Bureau also struck out with a U.S. Supreme Court challenge to California's Proposition 12, a statewide ballot initiative approved by 62.65 percent of voters, limiting the proliferation and destructive practices of large CAFO operations housing thousands or tens of thousands of animals.¹⁴⁷ In *National Pork Producers Council v. Ross*, AFBF and its co-plaintiffs sought to overturn Proposition 12, a law that "forbids the in-state sale of whole pork meat that comes from breeding pigs (or their immediate offspring) that are 'confined in a cruel manner.'"¹⁴⁸ Under the statute, confinement is "cruel" if it prevents a pig from "lying down, standing up, fully extending [its] limbs, or turning around freely."¹⁴⁹ The plaintiffs argued that "the law unconstitutionally interferes with their preferred way of doing business in violation of this Court's dormant Commerce Clause precedents."¹⁵⁰ Both the district court and court of appeals dismissed the producers' complaint for failing to state a claim, followed by a grant of certiorari by the U.S. Supreme Court.¹⁵¹ In a ruling authored by Justice Gorsuch, the Court affirmed the Ninth Circuit's unanimous ruling that the statute does not violate the dormant Commerce Clause.¹⁵² The pork producers and AFBF argued that because California imports nearly all the pork it consumes, the burden of the law would fall disproportionately and unconstitutionally on out-of-state producers.¹⁵³ Justice Gorsuch summed up the modern notion of the dormant Commerce Clause as the idea that "the Commerce Clause prohibits the enforcement of state laws 'driven by . . . "economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.'"¹⁵⁴ In Gorsuch's words:

[N]o State may use its laws to discriminate purposefully against out-of-state economic interests. But the pork producers do not suggest that California's law offends this principle. Instead, they invite us to fashion two new and more aggressive constitutional restrictions on the ability of States to regulate goods sold within their borders. We decline that invitation. While the Constitution addresses many weighty issues, the type of pork chops California merchants may sell is not on that list.¹⁵⁵

146. Claim of Appeal, *Mich. Farm Bureau v. Mich. Dep't of Env't, Great Lakes, & Energy*, No. 2025-6752-AA (30th Jud. Cir. Ct., Ingham Cnty., Mich. Dec. 18, 2025) [<https://perma.cc/X8EH-W2UW>]; see Galloway, *supra* note 144.

147. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 363–65 (2023).

148. *Id.* at 365.

149. *Id.* at 366 (citing Cal. Health & Safety Code Ann. § 25990(b)(2)).

150. *Id.* at 364; see also U.S. CONST. art. I, § 8, cl. 3 (authorizing Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes").

151. *Nat'l Pork Producers Council*, 598 U.S. at 364.

152. *Id.*

153. *Id.* at 367.

154. *Id.* at 369 (citing *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337–338 (2008)).

155. *Id.* at 364.

Invoking what they called “extraterritoriality doctrine,” the petitioners contended that their “dormant Commerce Clause cases suggest an additional and ‘almost *per se*’ rule forbidding enforcement of state laws that have the ‘practical effect of controlling commerce outside the State,’ even when those laws do not purposely discriminate against out-of-state economic interests.”¹⁵⁶

In addition, Gorsuch noted that petitioners cited language from *Pike v. Bruce Church, Inc.* to support the proposition that “a court must at least assess ‘the burden imposed on interstate commerce’ by a state law and prevent its enforcement if the law’s burdens are ‘clearly excessive in relation to the putative local benefits.’”¹⁵⁷

Gorsuch rejected both theories and responded with regard to the first:

Petitioners’ “almost *per se*” rule against laws that have the “practical effect” of “controlling” extraterritorial commerce would cast a shadow over laws long understood to represent valid exercises of the States’ constitutionally reserved powers. It would provide neither courts nor litigants with meaningful guidance in how to resolve disputes over them. Instead, it would invite endless litigation and inconsistent results.¹⁵⁸

Regarding the second theory, the Court based its rejection in part on a common standard in the *Pike* line of cases that a discriminatory purpose must exist for a statute to be struck down.¹⁵⁹ No one, not even petitioners, had argued a discriminatory purpose to Proposition 12.¹⁶⁰ The dormant Commerce Clause would not stretch to this extraordinary length. Proposition 12 was fully implemented on January 1, 2024.¹⁶¹

Through amicus briefing, Farm Bureau has also endorsed CAFO-focused regulation to restrict citizen advocacy, with limited success. In an initial 2018 ruling in *Stein v. People for the Ethical Treatment of Animals* (PETA), the Fourth Circuit held that applying North Carolina’s Property Protection Act to PETA’s undercover CAFO investigations was sufficient to give plaintiffs standing for a

156. *Id.* at 371.

157. *Id.* at 1144 (citing Brief for Petitioners at 44, Nat’l Pork Producers Council v. Ross, 598 U.S. 356 (2023) (No. 21-468), 2022 WL 2165184, at *44 (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 141 (1970)); see also Petition for a Writ of Certiorari, Nat’l Pork Producers Council v. Ross, 598 U.S. 356 (2023) (No. 21-468), 2021 WL 4480405 (discussing *Pike v. Bruce Church, Inc.*).

158. Nat’l Pork Producers Council, 598 U.S. at 375.

159. See *id.* at 378.

160. The author’s search of Docket 21-468 case documents revealed no allegations of discriminatory purpose. See Docket, Nat’l Pork Producers Council v. Ross, 598 U.S. 356 (2023) (No. 21-468).

161. Allyson M. Maur & Micaela C. Enger, *California’s Prop 12 Fully in Effect*, MCGUIREWOODS (Mar. 6, 2024), <https://www.mcguirewoods.com/client-resources/alerts/2024/3/californias-prop-12-fully-in-effect> [https://perma.cc/AC6L-HFTD]; see also Cal. Dep’t of Food & Agric., *Animal Care Program, Animal Confinement: Important Dates* (2023), https://www.cdffa.ca.gov/AHFSS/AnimalCare/docs/Animal_Confinement_Important_Dates.pdf [https://perma.cc/RJ2-DFUP].

First Amendment claim.¹⁶² A coalition led by PETA, with a large academic and media coalition expressing support, had challenged the statute as chilling PETA's and other organizations' First Amendment rights to conduct covert investigations of CAFOs to gather evidence of "unethical and illegal" animal practices.¹⁶³ The Fourth Circuit described the statute at issue in a February 2023 ruling affirming in part and reversing in part a lower court's injunction on implementation of the law:

[The statute was] passed to punish "[a]ny person who intentionally gains access to the nonpublic areas of another's premises and engages in an act that exceeds the person's authority to enter." The Act goes on to explain what actions "exceed" authority. Some provisions cover wide swaths of activities, such as "substantially interfer[ing] with the ownership or possession of real property." Others appear more narrowly focused, prohibiting capturing, removing, or photographing employer data—but only when the employee uses the data "to breach the person's duty of loyalty to the employer."¹⁶⁴

Then-North Carolina Attorney General Josh Stein (now governor) and North Carolina Farm Bureau Federation petitioned the Supreme Court for review.¹⁶⁵

AFBF's brief in support of the certiorari petition claimed that the statute was a necessary defense of family farmers and ranchers who "have long been the targets of threats, harassment, and violence by respondents and other activist organizations," without providing descriptions or evidence of such behavior.¹⁶⁶ In Farm Bureau's view, the Fourth Circuit's limited ruling "threatens the property rights and business operations of many of amici's members, but also the safety and well-being of family farmers, for whom their places of work are also where they live and raise their families"—a dubious claim given the large CAFO business model, in which vast operations staffed by paid employees allow owners to live at a comfortable distance from their facilities.¹⁶⁷ On October 16, 2023, the Supreme Court denied certiorari without comment.¹⁶⁸

162. See *People for the Ethical Treatment of Animals, Inc. v. N.C. Farm Bureau Fed'n, Inc.*, 60 F.4th 815, 820 (4th Cir. 2023) (citations omitted).

163. See *People for Ethical Treatment of Animals, Inc. v. Stein*, 259 F. Supp. 3d 369, 373 (M.D.N.C. 2017).

164. *People for the Ethical Treatment of Animals, Inc.*, 60 F.4th at 820.

165. Petition for Writ of Certiorari, *Stein v. People for the Ethical Treatment of Animals*, 144 S. Ct. 326 (mem.) (2023) (No. 22-1150), 2023 WL 3738940; Petition for a Writ of Certiorari, *N.C. Farm Bureau Fed'n, Inc. v. People for the Ethical Treatment of Animals*, 144 S. Ct. 326 (mem.) (2023) (No. 22-1150), 2023 WL 3738930; see *Stein v. People for the Ethical Treatment of Animals*, 144 S. Ct. 326 (2023) (mem.) (denying cert.); North Carolina Office of Governor Josh Stein, *Josh Stein*, <https://governor.nc.gov/josh-stein> [<https://perma.cc/PEJ3-WPW8>] (last visited July 13, 2026); Brief for Am. Farm Bureau Fed'n et al. as Amici Curiae Supporting Petitioners at 4, *N.C. Farm Bureau Fed'n v. People for the Ethical Treatment of Animals*, 144 S. Ct. 325 (No. 22-1148), *Stein v. People for the Ethical Treatment of Animals*, 144 S. Ct. 326 (2023) (No. 22-1150), 2023 WL 4532419, at *4.

166. See *Stein v. People for the Ethical Treatment of Animals*, 144 S. Ct. at *4.

167. See *id.*

168. See *id.*

Trying again in 2024, the Farm Bureaus of Maryland, North Carolina, and South Carolina and other trade groups submitted related amicus briefing in *Project Veritas and Project Veritas Action Fund v. Vasquez*, supporting U.S. Supreme Court review of a Ninth Circuit ruling upholding Oregon’s “unequivocal or arbitrary” ban on secret recordings by citizens while acknowledging to a limited extent the First Amendment interest of investigating parties.¹⁶⁹ The Farm Bureau entities argued that the Supreme Court should address a circuit split on privacy and attempted to justify their participation:

Thousands of amici’s members are farmers and other business people who have fundamental privacy and private property rights guaranteed by the Constitution that are violated by the investigative activities of animal rights, environmental, and other activists. Those activists frequently engage in clandestine operations in private areas of amici’s members’ farms and businesses to obtain videos, photos, and other information in support of the agendas those parties seek to advance. The Ninth Circuit’s decision deepens the split between the Circuits about how private property rights and other privacy interests are to be balanced against these undercover activities.¹⁷⁰

The petition for certiorari was denied on October 6, 2025.¹⁷¹

Other Farm Bureau legal and lobbying offensives have resulted in significant wins in the campaign against CAFO regulation. The Wisconsin and Missouri cases described in the Introduction and Part I are prominent examples.¹⁷² Additionally, in 2020, North Dakota Farm Bureau sued a North Dakota township of forty-nine residents over CAFO restrictions.¹⁷³ Howes Township had enacted an ordinance requiring at least a 1.5-mile CAFO setback from occupied residences when a nine thousand hog CAFO was proposed.¹⁷⁴ In

169. *Project Veritas v. Schmidt*, 125 F.4th 929 (9th Cir. 2025); see Stephen Klein, *Secret Recording and the Right to Privacy: Project Veritas at the Supreme Court*, THE FEDERALIST SOC’Y (Apr. 21, 2025), <https://fedsoc.org/commentary/fedsoc-blog/secret-recording-and-the-right-to-privacy-project-veritas-at-the-supreme-court> [<https://perma.cc/25PX-38AQ>]; see also Brief for N.C. Farm Bureau Fed’n et al. as Amici Curiae Supporting Petitioner at 7, *Project Veritas v. Vasquez*, 146 S. Ct. 90 (2025) (No. 24-1061), https://www.supremecourt.gov/DocketPDF/24/24-1061/359473/20250522151417983_Project%20Veritas%20NC%20Farm%20Bureau%20Amicus.pdf [<https://perma.cc/SA7V-5JU3>].

170. Brief for N.C. Farm Bureau Fed’n et al., *supra* note 169, at 3.

171. *Project Veritas v. Vasquez*, 146 S. Ct. 90 (2025) (mem.).

172. See *supra* pp. 3–4, 16–19.

173. Patrick Springer, *Judge Strikes Down Rural Cass County Township’s Zoning Restriction on Feedlot Siting*, INFORUM (Oct. 10, 2022), <https://www.inforum.com/news/north-dakota/judge-strikes-down-rural-cass-county-townships-zoning-restriction-on-feedlot-siting> [<https://perma.cc/9ALQ-UG2Z>]; see *Howes Township, Cass County, ND*, CENSUS REPORTER, <https://censusreporter.org/profiles/06000US3801739140-howes-township-cass-county-nd> [<https://perma.cc/SD8G-QSXG>] (providing population statistics from the 2024 US Census for Howes township in North Dakota); see also Findings of Fact, Conclusions of Law, & Order for Judgment, N.D. Farm Bureau v. Howes Twp., No. 09-2020-CV-03482 (D.N.D. 2022), https://ndfb.org/image/cache/2022_Howes_Township_judgment.pdf [<https://perma.cc/M9Q5-JHK9>].

174. Findings of Fact, Conclusions of Law, & Order for Judgment, *supra* note 173; see also 40 C.F.R. § 122.23(b) (2012) (defining CAFOs as dischargers under the Clean Water Act); Dakota

North Dakota Farm Bureau v. Howes Township, a state trial court struck down the ordinance as beyond the town's authority because Howes Township could not "demonstrate compelling, objective evidence specific to the township" sufficient to justify a greater setback than specified by the state.¹⁷⁵ After a judge in another county upheld a CAFO siting ordinance, the North Dakota Legislature set up a committee to review local siting control.¹⁷⁶ Further restrictions on local zoning are expected to emerge.¹⁷⁷

As mentioned above, Farm Bureau also demonstrates the flexibility to argue both sides of the local control issue. A few years after contesting the 2020 NPDES-CAFO General Permit, Michigan Farm Bureau filed an amicus brief with the Michigan Court of Appeals in *Almer Charter Township v. Michigan Public Service Commission*, supporting an appeal brought by seventy-two townships and seven counties of Michigan Public Service Commission rules for large-scale renewable energy project siting.¹⁷⁸ In its filing, Michigan Farm Bureau argued that "allowing [land use] decisions to be made by the communities most affected by them is crucial"—the opposite of Farm Bureau's obstruction of local CAFO ordinances in North Dakota, Missouri, Wisconsin, and other states through litigation, legislation, and the electoral process.¹⁷⁹ The Michigan renewable energy siting case is now pending leave to appeal to the Michigan Supreme Court.¹⁸⁰

Finally, reflecting the difficulty of bringing citizen challenges to CAFO siting and regulatory enforcement, the makeup of a state's judiciary can be a critical factor in CAFO rulings. While *Michigan Farm Bureau v. Department of Environment, Great Lakes, and Energy* ended in a ruling adverse to Farm Bureau, a similar case in North Carolina had the opposite outcome.¹⁸¹ In proceedings before the state's Office of Administrative Hearings, North Carolina Farm Bureau had challenged three aspects of North Carolina Department of

Resource Council, *Devils Lake, North Dakota: When a Confined Animal Feeding Operation Comes to Town*, HOMEGROWN STORIES, <https://www.homegrownstories.org/devils-lake-cafo> [https://perma.cc/9MAQ-9EJT] (last visited Feb. 1, 2026) (explaining why residents might want a setback from a CAFO).

175. Findings of Fact, Conclusions of Law, and Order for Judgment, *supra* note 173, at 6.

176. *See* Schneider, *supra* note 14.

177. *Id.*

178. *See* Brief for Michigan Farm Bureau as Amicus Curiae Supporting Appellants, *Almer Charter Twp. v. Mich. Pub. Serv. Comm'n* (2025) (PSC Case No. U-21547) [https://perma.cc/96TJ-CNDX]; *see also* Dennis Rudat, *MFB Files Amicus Brief Supporting Local Control of Utility-Scale Energy Project Siting*, MICH. FARM NEWS (Apr. 16, 2025), <https://www.michiganfarmnews.com/mfb-files-amicus-brief-supporting-local-control-of-utility-scale-energy-project-siting> [https://perma.cc/P7LB-X372].

179. *See* Brief for Michigan Farm Bureau, *supra* note 178, at xi.

180. *In Re Implementing Provision of Public Act 233 of 2023*, MICH. CT. OF APPEALS, <https://www.courts.michigan.gov/c/courts/coa/case/373259> [https://perma.cc/XW9R-N5F3] (last visited July 16, 2026) (showing that an application for leave to appeal to the Michigan Supreme Court was filed on June 18, 2026).

181. *See* Mich. Farm Bureau v. Dep't of Env't, Great Lakes, & Energy, 28 N.W.3d 629 (2024); N.C. Dep't of Env't'l Quality v. N.C. Farm Bureau Fed'n, Inc., 291 N.C. App. 188, 195-96 (2023).

Environmental Quality’s permit: “(1) farmers with waste structures within the 100-year floodplain must install monitoring wells; (2) certain farmers must conduct a Phosphorus Loss Assessment Tool (“PLAT”) analysis; and (3) all permitted farmers must submit an annual report summarizing the system’s operations.”¹⁸²

North Carolina Department of Environmental Quality v. North Carolina Farm Bureau was a November 7, 2023, appeal stemming from an administrative challenge to North Carolina’s CAFO permitting system.¹⁸³ The trial court upheld the permit conditions as valid.¹⁸⁴ North Carolina Farm Bureau appealed.¹⁸⁵ On questions regarding the legitimacy of the regulator’s authority, which were remarkably similar to those presented to the Michigan Supreme Court in *Michigan Farm Bureau v. Department of Environment, Great Lakes, and Energy*, the North Carolina Court of Appeals held that the General Permit terms were invalid because they had not been adopted through the rulemaking process.¹⁸⁶ Although these rulings do not conflict (because they are based on different states’ laws), they demonstrate the divergent outcomes possible under delegated NPDES-CAFO permitting programs in different states.

2. *Clean Water Act Challenges: Waters of the United States Rule, Citizen Suits, Total Maximum Daily Loads, and Wetland Delineations*

Table 2: Clean Water Act/Waters of the U.S. (WOTUS) Cases

Year Filed	Case Name	Farm Bureau’s Role	Case No. or Reporter
2023	<i>Ass’n of Wash. Bus. v. EPA</i>	Plaintiff	No. 1:23-cv-00534 (E.D. Wash. filed May 12, 2023)
2023	<i>Tex. v. EPA</i>	Plaintiff	No. 23-40076 (5th Cir., filed Jan. 18, 2023)
2023	<i>W. Va. v. EPA</i>	Intervenor	No. 23-1746 (8th Cir., filed June 20, 2023)
2021	<i>Pueblo of Laguna v. Regan</i>	Amicus Brief	No. 1:21-cv-00277-WJ-KK (D.N.M. filed Mar. 26, 2021)

182. N.C. Dep’t of Env’tl Quality, 291 N.C. App. at 191.

183. *Id.* at 189-92.

184. *Id.*

185. *Id.*

186. *See id.*; *Mich. Farm Bureau*, 28 N.W.3d at 636.

2020	<i>Colo. v. EPA</i>	Intervenor	445 F. Supp. 3d 1295 (D. Colo. 2020)
2020	<i>Conservation L. Found. v. EPA</i>	Amicus Brief	881 F.3d 24 (1st Cir. 2018)
2019	<i>N.Y. v. Wheeler</i>	Intervenor	No. 1:19-cv-11673 (S.D.N.Y. filed Dec. 20, 2019)
2019	<i>S.C. Coastal Conservation League v. Wheeler</i>	Intervenor	No. 2:19-cv-03006 (D.S.C. filed Oct. 23, 2019)
2015	<i>Ga. v. Wheeler</i>	Plaintiff	418 F. Supp. 3d 1336 (S.D. Ga. 2019)
2015	<i>North Dakota v. EPA</i>	Amicus Brief	127 F. Supp. 3d 1047 (D.N.D. 2015)
2015	<i>Puget Soundkeeper All. v. McCarthy</i>	Intervenor	389 F. Supp. 3d 497 (S.D. Tex. 2019)
2014	<i>Foster v. USDA</i>	Amicus	144 S. Ct. 2707 (2024)

This Subpart groups a large number of WOTUS challenges and other attacks on the Clean Water Act with efforts to restrict citizen enforcement suits. Legal challenges targeting EPA, state rulemakings, and implementation of the much-litigated Clean Water Act are nearly as old as the landmark 1972 amendments to the weaker Federal Water Pollution Control Act of 1948.¹⁸⁷ In the last five years alone, Farm Bureau has attempted to limit the jurisdictional definition of WOTUS, advance weak designations of Total Maximum Daily Loads (TMDLs)—Clean Water Act-mandated limits on pollution loads in impaired waters—for watersheds devastated by CAFO pollution, weaken state Clean Water Act permitting programs, and restrict wetland delineations necessary to protect delicate, hydrologically complex ecosystems.¹⁸⁸

On January 18, 2023, AFBF and co-plaintiffs, including the American Petroleum Institute and the National Mining Association, challenged the legality of EPA’s final administrative rule titled “Revised Definition of ‘Waters of the United States’” (“2023 WOTUS Rule”), which was published in the Federal Register the same day.¹⁸⁹ The complaint for declaratory judgment and injunctive

187. See Stephen Johnson, *From Protecting Water Quality to Protecting States’ Rights: Fifty Years of Supreme Court Clean Water Act Statutory Interpretation*, 74 SMU L. REV. 359, 362 (2021).

188. See, e.g., Carrie La Seur, *supra* note 118, at Tab: *Litigation Tracker*, Rows, 10, 15, 22, 24.

189. Complaint at 2–3, *Am. Farm Bureau Fed’n v. EPA*, No. 3:23-cv-00020 (S.D. Tex. Jan. 18, 2023) (later consolidated in Memorandum Opinion and Order Granting Preliminary Injunction, *State of Tex. v. EPA*, No. 3:23-cv-00017 (S.D. Tex. Mar. 19, 2023)); see also Revised Definition of “Waters of the United States,” 88 Fed. Reg. 3004 (Jan. 18, 2023) (to be codified at 33 C.F.R. pt. 328 and 40 C.F.R. pt. 120).

relief argued *inter alia* that the new rule exceeded EPA's authority under the Commerce Clause pursuant to *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*.¹⁹⁰ AFBF's case, consolidated as *Texas v. EPA*, has been in active litigation for the last two years as of June 2025, with the EPA continuing to provide status reports to the court.¹⁹¹

Meanwhile, an intervening U.S. Supreme Court decision shifted the trajectory of *Texas v. EPA*. In May 2023, *Sackett v. EPA* (*Sackett II* to distinguish from a 2012 ruling with the same caption) again modified the WOTUS interpretation, with AFBF and numerous state Farm Bureaus filing amicus briefs in favor of a more restrictive interpretation.¹⁹² In *Sackett II*, the Court restricted the "use of 'waters'" under the Clean Water Act to "only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic[al] features' that are described in ordinary parlance as 'streams, oceans, rivers, and lakes.'" ¹⁹³

The *Sackett II* ruling also aligned with the *Rapanos v. United States* conception of when wetlands are part of WOTUS—"when wetlands have a continuous surface connection to bodies that are [WOTUS] in their own right, so that there is no clear demarcation between 'waters' and wetlands."¹⁹⁴ The Court concluded in *Sackett II* that the interpretation of adjacent wetlands as WOTUS set out in the 2023 WOTUS Rule "is inconsistent with the text and structure of the [Clean Water Act]" insofar as it incorporated the "significant nexus" test and defined "adjacent" differently than the *Rapanos* plurality had.¹⁹⁵

Post-*Sackett II*, EPA and the U.S. Army Corps of Engineers released the final 2023 WOTUS Rule amendments on August 29, 2023, without public notice and comment, to conform Clean Water Act regulations to the new precedent.¹⁹⁶ In light of injunctions already in place, twenty-four states and Washington, D.C. are now subject to the new rule, while the 2015 rule remains applicable elsewhere.¹⁹⁷ On November 17, 2025 EPA announced a revised WOTUS rule,

190. Complaint, *supra* note 189 (citing *Solid Waste Agency of Northern Cook Cnty. v. U.S. Army Corp. of Eng'rs*, 531 U.S. 159, 172 (2001)).

191. See *State of Texas v. United States Environmental Protection Agency* (3:23-cv-00017), CT. LISTENER, <https://www.courtlistener.com/docket/66739450/state-of-texas-v-united-states-environmental-protection-agency> [<https://perma.cc/YNG6-ESJ2>] (last updated June 1, 2026).

192. *Sackett v. EPA*, 598 U.S. 651 (2023); see Brief for Ariz. Farm Bureau Fed'n et al. as Amici Curiae Supporting Petitioners, No. 21-454 (U.S. 2022), https://www.supremecourt.gov/DocketPDF/21/21-454/221606/20220421135815919_21-454.Amended.Brief.pdf [<https://perma.cc/JQ49-XM65>].

193. *Sackett v. EPA*, 598 U.S. at 671 (quoting *Rapanos v. United States*, 547 U.S. 715, 739 (2006)).

194. *Id.* at 678 (citing *Rapanos*, 547 U.S. at 742, 755).

195. *Id.* at 679.

196. Revised Definition of "Waters of the United States"; Conforming, 88 Fed. Reg. 61,964 (Sept. 8, 2023) (to be codified at 33 C.F.R. pt. 328 and 40 C.F.R. pt.120).

197. *Defining Waters of the United States (WOTUS)*, HARV. L. SCH. ENVT'L & ENERGY LAW PROGRAM REGUL. TRACKER (Nov. 17, 2025), <https://eelp.law.harvard.edu/tracker/defining-waters-of-the-united-states-wotus> [<https://perma.cc/J6SS-XB6N>].

narrowing jurisdictional definitions.¹⁹⁸ Meanwhile, slow progress continues in *Texas v. EPA*, where the US Army Corps of Engineers and EPA filed a status report on June 1, 2026.¹⁹⁹ The net result to date is Clean Water Act jurisdiction over fewer water bodies.

Of note on the legislative and policy side of the 2023 WOTUS Rule is AFBF's political maneuvering through state governments and leadership of a national industry group called the Waters Advocacy Coalition.²⁰⁰ In partnership with the American Exploration & Mining Association, Essential Minerals Association, Independent Petroleum Association of America, National Asphalt Pavement Association, National Mining Association, National Pork Producers Council, and U.S. Chamber of Commerce, the Coalition pressed the position that the 2023 WOTUS Rule "threatens economic growth, hinders job creation and raises the cost of goods and services for American families."²⁰¹ The relationship with Farm Bureau is cozy: AFBF's Senior Director of Government Affairs Courtney Briggs chairs the Waters Advocacy Coalition.²⁰² But with Lee Zeldin as EPA administrator and with the agency's new WOTUS rule, the need for this advocacy has abated. Indeed, on January 12, 2026, twenty states went even further:

[The States asked EPA and the U.S. Army Corps of Engineers] to adopt Sackett's 'indistinguishability' standard for identifying when wetlands constitute covered waters. We further recommend that the Agencies remove all language that extends jurisdiction to temporary or ephemeral waters that result from events like 'wet seasons' and replace it with unambiguous language confined to ordinary conditions. Finally, the States believe that the Agencies' use of 'abandonment' language when addressing prior converted cropland poses potential Fifth Amendment regulatory takings and due process issues; we recommend that the Agencies therefore remove that language.²⁰³

198. *EPA & Army Corps Unveil Clear, Durable WOTUS Proposal: Definition to Protect Water Resources, Accelerate Growth & Economic Opportunity*, EPA (Nov. 17, 2025), <https://www.epa.gov/newsreleases/epa-army-corps-unveil-clear-durable-wotus-proposal> [<https://perma.cc/SN8Y-38RY>].

199. *State of Texas v. United States Environmental Protection Agency* (3:23-cv-00017), *supra* note 191.

200. See WATERS ADVOC. COAL., <https://watersadvocacy.org> [<https://perma.cc/N6EM-GWV5>] (last visited June 26, 2026).

201. *Id.*; see Letter from Waters Advocacy Coalition to Michael L. Connor, Assistant Secretary of the Army, and Bruno Pigott, Acting Assistant EPA Administrator 5 (Mar. 29, 2024), <https://watersadvocacy.org/wac-letter-shares-concerns-and-questions-about-implementation-of-revised-wotus-rules> [<https://perma.cc/DK3G-JWLH>].

202. See Courtney F. Briggs, Biography, *Hearing on Waters of the United States Implementation Post-Sackett Decision: Experiences and Perspectives Before the Subcomm. on Water Res. & Env't of the H. Comm. on Transp. & Infrastructure*, 118th Cong. (Sept. 11, 2024), <https://www.congress.gov/118/meeting/house/117592/witnesses/HHRG-118-PW02-Bio-BriggsC-20240911.pdf> [<https://perma.cc/T335-DC5L>]; Letter from Waters Advocacy Coalition, *supra* note 201, at 5 (referencing Courtney Briggs as the Waters Advocacy Coalition chair).

203. State of W. Va. et al., Comment Letter on "Updated Definition of 'Waters of the United States'" at 2 (Jan. 12, 2026), [<https://perma.cc/2BE3-ES6C>]; see also Carr Urges Federal Agencies to

Georgia Attorney General Chris Carr argued that “[s]tates should be in control of their own waters”—virtually a call for repeal of the Clean Water Act.²⁰⁴

Farm Bureau is participating simultaneously in other attacks on federal water quality standards. In *Idaho v. EPA*, Idaho and other states challenged a new EPA rule titled “Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights,” effective June 3, 2024.²⁰⁵ In the U.S. District Court for the District of North Dakota, an increasingly popular venue for advancing corporate interests, the lawsuit alleged that the rule oversteps EPA’s authority by essentially recasting the Clean Water Act as a “Tribal Rights Act” and requiring states to adopt specific water quality standards to protect rights reserved by treaty to tribal nations.²⁰⁶ To date, seven tribal nations have intervened in support of EPA’s rule.²⁰⁷ AFBF has filed an amicus brief in support of the states’ challenge, which is pending.²⁰⁸

Often, however, Farm Bureau finds itself in alignment with federal agencies on water quality standards. In 2024, Ohio Farm Bureau Federation, AFBF, and other trade associations moved to intervene in *Board of Lucas County Commissioners v. EPA* before the U.S. District Court for the Northern District of Ohio, defending EPA’s position on TMDLs against a challenge by local government and environmental plaintiffs.²⁰⁹ In response to a severe algal bloom in the Western Lake Erie Basin that has been the focus of costly cleanup efforts and a threat to urban drinking water sources, EPA had approved an Ohio TMDL addressing agriculture-sourced (primarily CAFO) phosphorus pollution entering the Maumee River in northwestern Ohio and southern Michigan.²¹⁰ Plaintiffs seek “more stringent and detailed limits on phosphorus from both point and nonpoint sources of agricultural phosphorus” and “a detailed implementation

Restore State Authority Over Water Regulation, GA. OFF. ATT’Y GEN. (Jan. 12, 2026), <https://law.georgia.gov/press-releases/2026-01-12/carr-urges-federal-agencies-restore-state-authority-over-water-regulation> [<https://perma.cc/XB8Q-76QM>].

204. *Carr Urges Federal Agencies to Restore State Authority Over Water Regulation*, *supra* note 203.

205. Complaint & Petition for Review, *Idaho v. EPA*, No. 1:24-cv-00100-DLH-CRH (D.N.D. May 8, 2024), ECF No. 1.

206. *Id.*; see Plaintiffs’ Motion for Stay & Preliminary Injunction, *Idaho v. EPA*, No. 1:24-cv-00100-DLH-CRH (D.N.D. June 14, 2024), ECF No. 4.

207. *Id.*; see *Idaho v. EPA*, No. 1:24-cv-00100-DLH-CRH (D.N.D. 2024), ECF Nos. 14–15, 19–21, 27–28, 66, 68, 75–79, 107–09, 114, 118.

208. See *Idaho v. EPA*, No. 1:24-cv-00100-DLH-CRH (D.N.D. 2024), ECF No. 55.

209. Defendants’ Motion to Intervene, *Bd. of Lucas Cnty. Comm’rs v. EPA*, No. 3:24-cv-00779-JGC (N.D. Ohio Sept. 20, 2024), ECF No. 19, [<https://perma.cc/EDP4-S5AU>] (filed by Ohio Pork Council, Ohio Dairy Producers Association, Ohio Cattlemen’s Association, Ohio Poultry Association, Ohio Soybean Association, Ohio Corn & Wheat Growers Association, National Pork Producers Council, National Corn Growers Association, and United Egg Producers).

210. *Id.*

plan that provides reasonable assurances that those new limits will be achieved,” ultimately arguing for a federal phosphorus TMDL.²¹¹

The prospective Farm Bureau intervenors justified their participation with the claim that their “members raise livestock or grow crops within the Maumee Watershed and thus have a significant interest in any new limits and restrictions on the amount of phosphorus that may enter the Maumee River and, ultimately, the Western Lake Erie Basin.”²¹² However, Judge Helmick denied the motion to intervene on the grounds that the trade associations had failed to demonstrate that EPA would not adequately represent their interests and opined that their arguments “would be premature and ‘unnecessarily complicate [the] case and delay the proceedings.’”²¹³ This judicial conclusion can read as a simple acknowledgment that the trade associations sought only to support EPA’s position. It can also be interpreted as recognition of the close relationship between industry and Lee Zeldin’s EPA. Substantive issues remain pending.²¹⁴

On wetland delineations, AFBF weighed in to support the 2023 certiorari petition of South Dakota farmer Arlen Foster in *Foster v. U.S. Department of Agriculture*, a challenge of the Natural Resource Conservation Service’s application of the “Swampbuster” provisions of the 1985 Food Security Act.²¹⁵ The Swampbuster Act conditioned federal assistance programs provided by USDA to wetland preservation on recipients’ land.²¹⁶ In the context of the then-brewing challenge to *Chevron* deference in *Loper Bright*, this case took on broader significance as a challenge to environmental compliance conditions placed upon agricultural subsidies by federal agencies.²¹⁷ Cases involving agency failure to provide appropriate review and appeal opportunities to farmers denied USDA program benefits have long been extraordinarily difficult to pursue but have rarely interested Farm Bureau.²¹⁸ This case was different. In its

211. *Id.* at 2; Memorandum of Points & Authorities in Support of Defendants’ Motion to Intervene at 2, Bd. of Lucas Cnty. Comm’rs v. EPA, No. 3:24-cv-00779-JGC (N.D. Ohio Sept. 20, 2024), ECF No. 19–1, [<https://perma.cc/EDP4-S5AU>].

212. Defendants’ Motion to Intervene, *supra* note 209, at 1–2.

213. Bd. of Lucas Cnty. Comm’rs v. EPA, No. 3:24-cv-00779-JHH, 2025 U.S. Dist. LEXIS 125813, at *18 (N.D. Ohio, July 2, 2025) (citing *Ohio v. EPA*, 313 F.R.D. 65, 71–72 (S.D. Ohio 2016)).

214. Docket, Bd. of Lucas Cnty. Comm’rs v. EPA, No. 3:24-cv-00779-JJH (N.D. Ohio 2025).

215. Brief for Am. Farm Bureau Fed’n as Amicus Curiae Supporting Petitioner, *Foster v. USDA*, 144 S. Ct. 2707 (2024) (mem.) (No. 23-133), 2023 WL 6130513; see *Foster v. Vilsack*, 580 U.S. 1048 (2017) (mem.); *Foster v. USDA*, 609 F. Supp. 3d 769 (D.S.D. 2022); *Foster v. USDA*, 68 F.4th 372, 374 (8th Cir. 2023); *Foster v. USDA*, No. 22-2729, 2024 U.S. App. LEXIS 28536 (8th Cir. Nov. 7, 2024).

216. See U.S.C. §§ 3821–3824 (detailing the Swampbuster Act, which is located within the 1985 Food Security Act, which is codified at U.S.C. § § 3801–3862); *Wetland Reserve Easements (WRE)*, U.S. DEP’T OF AGRIC. NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/programs-initiatives/wetland-reserve-easements> [<https://perma.cc/HX8Y-DBSX>] (last visited June 26, 2026).

217. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

218. See, e.g., SARAH VOGEL, *THE FARMER’S LAWYER: THE N. D. NINE AND THE FIGHT TO SAVE THE FAMILY FARM* 117, 122, 181–83, 187–90 (1st ed. 2021) (chronicling the years-long *Coleman v. Block* class action—followed by related cases highlighting targeted discrimination against African

amicus brief, AFBF addressed the following question: “[w]hether 16 U.S.C. § 3822(a)(4) requires respondents to treat a wetlands certification issued pursuant to the Swampbuster program as invalid and not in effect when a person affected by that certification requests review,” specifically mentioning the potential relationship to *Loper Bright*—a case pending at the time of briefing.²¹⁹ This was another case, the brief signaled, that could justify striking down *Chevron* deference, a thorn in the side of much Farm Bureau litigation.²²⁰ The real source of Farm Bureau’s interest in this otherwise obscure case perhaps lies in the following language from the brief:

The reordering of the judicial approach to the relations of Congress, executive agencies, and the federal courts that this Court is currently undertaking in order to restore the separation of powers required by our Constitution cannot be achieved solely by curtailing *Chevron* deference or explaining that agencies cannot allocate to themselves the power to decide questions of major social or economic significance. It also requires directing the lower courts, which have displayed considerable recalcitrance in shifting authority from agencies back to Congress, that statutes must be given a fair reading and not distorted to enhance agency power. The lower courts’ complicity in agencies’ expansion of their authority should be halted at the threshold by requiring the courts to do what they are uniquely suited to do—apply their statutory interpretation tools to determine the meaning of Congress’s enactments.²²¹

The argument gives insight into Farm Bureau’s broader judicial strategy of stripping power from agencies and its frustration at the Supreme Court’s reluctance to issue more forceful directives. In the context of a Congress that has largely ceded its authority to the executive branch, a movement away from deference for career civil servants’ expertise also represents a shift of power toward an increasingly politicized judiciary.²²² *Foster v. U.S. Department of Agriculture* was remanded to the U.S. District Court for the District of South Dakota for further consideration consistent with the new *Loper Bright* standard of agency deference.²²³ While the judicial campaign against *Chevron* deference was successful, *Foster*’s fate remains uncertain as Natural Resource

American and Native American farmers—necessary to restore civil rights in agency proceedings to farm plaintiffs).

219. Brief of Am. Farm Bureau Fed’n, *supra* note 215, at i.

220. *Id.* at 6.

221. *Id.* at 6–7.

222. See Carol Khorramchahi, *The Supreme Court’s Next Big Test: A Turning Point for Judicial Power*, BOS. UNIV. NEWS SERV. (Nov. 3, 2025), <https://bunewsservice.com/the-supreme-courts-next-big-test-a-turning-point-for-judicial-power> [<https://perma.cc/PFC9-WSYM>].

223. *Foster v. USDA*, 144 S. Ct. 2707 (2024) (mem.), 2024 WL 3259663 (granting certiorari, vacating, and remanding for further consideration in light of *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024)); see also *Foster v. USDA*, 609 F. Supp. 3d 769 (D.S.D. 2022).

Conservation Service continues to defend its position.²²⁴ Farm Bureau is no longer involved.²²⁵

One player in the drama of court challenges to agency actions has retained most of its traditional authority. The courts have been reluctant to roll back citizen suit authority, despite frequent challenges by Farm Bureau coalitions. In 2024, AFBF led a trade coalition in amicus briefing on a certiorari petition requesting review of *Port of Tacoma v. Puget Soundkeeper Alliance*,²²⁶ a Ninth Circuit ruling upholding Clean Water Act citizen suits to enforce state permitting measures more stringent than required by federal law.²²⁷ Farm Bureau's brief claimed that an expansive reading of the citizen suit clause "upset[s] the delicate balance that Congress struck for enforcing the Clean Water Act[.] . . . [T]his mistaken approach 'promises to invite excessive, costly, and counterproductive citizen suits' that Congress never authorized."²²⁸ The Supreme Court declined to issue the writ of certiorari in this case or in *ExxonMobil v. Environment Texas Citizen Lobby*, in which the Fifth Circuit upheld standing for an environmental group, authorizing millions of dollars in civil penalties for Clean Air Act violations, despite AFBF amicus briefing critical of the reach of citizen enforcement suits.²²⁹

If citizen suit rights themselves remain thus far unassailable, the penalties that attach to environmental violations may succumb to collateral attack by Farm Bureau. AFBF joined an August 2022 industry amicus brief in *Bittner v. United States*, in which the Supreme Court reviewed a Fifth Circuit ruling upholding civil penalties for reporting violations under the Bank Secrecy Act.²³⁰ As an example of how severe civil penalties could be, the amici noted, "the Clean Water Act now imposes a maximum civil penalty of \$59,973 'per day for each violation' (originally, \$25,000) and a maximum criminal penalty of '\$25,000 per day of violation' for negligent violations," arguing that this was excessive.²³¹

224. Todd Neeley, *Farmer Awaits Ruling in Wetlands Case*, PROGRESSIVE FARMER (Apr. 25, 2025), <https://www.dtnpf.com/agriculture/web/ag/news/article/2025/04/25/sd-farmer-foster-wait-wetlands-court> [https://perma.cc/9222-RYSN].

225. The author's docket review showed that no Farm Bureau entities have filed appearances or briefing in the remanded proceeding as of this date. See Docket, *Foster v. USDA*, No. 4:21-cv-04081-RAL (D.S.D. last visited Apr. 30, 2026).

226. Brief for the Chamber of Commerce of the United States et al. as Amici Curiae Supporting Petitioners, *Port of Tacoma v. Puget Soundkeeper All.*, 145 S. Ct. 2849 (mem.) (Oct. 28, 2024) (No. 24-350), [https://perma.cc/KD2A-RW5S].

227. See *Puget Soundkeeper All. v. Port of Tacoma*, 104 F.4th 95 (9th Cir. 2024).

228. Brief for the Chamber of Commerce of the U.S. et al. as Amici Curiae Supporting Petitioners at 3–4, *Port of Tacoma v. Puget Soundkeeper All.*, No. 24-350 (U.S. Oct. 28, 2024).

229. Brief for the Chamber of Commerce of the U.S. et al. as Amici Curiae Supporting Petitioners at 5–8, *ExxonMobil Corp. v. Env't Tex. Citizen Lobby, Inc.*, No. 24-982 (U.S. Apr. 16, 2025); see also *Env't Tex. Citizen Lobby, Inc. v. ExxonMobil Corp.*, 968 F.3d 357 (5th Cir. 2020) (revised Aug. 3, 2020).

230. *Bittner v. U.S.*, 598 U.S. 85 (2023), *rev'g* *United States v. Bittner*, 19 F.4th 734 (5th Cir. 2021).

231. Brief for the Chamber of Commerce, *supra* note 229, at 4.

The Court agreed that applying the rule of lenity was appropriate, reversing and remanding in a ruling authored by Justice Gorsuch.²³² However, Justices Thomas, Sotomayor, and Kagan joined Justice Barrett’s dissent, which insisted on the “most natural reading” of the plain language of the Bank Secrecy Act, imposing a fine for each failure to report an account.²³³ How this precedent may affect fines for violations of the Clean Water Act and other statutes relevant to agriculture remains to be seen.

3. Weakening the Endangered Species Act

Table 3: Endangered Species Act

Year Filed	Case Name	Farm Bureau’s Role	Case No. or Reporter
2025	<i>Am. Farm Bureau Fed. v. U.S. Fish & Wildlife Serv.</i>	Plaintiff	No. 1:25-cv-00947-SLS (D.D.C.)
2023	<i>Flathead-Lolo-Bitterroot Citizen Task Force v. Mont.</i>	Defendant/Intervenor	98 F.4th 1180 (9th Cir. 2024)
2022	<i>Ctr. for Biological Diversity v. Haaland</i>	Defendant/Intervenor	58 F.4th 412 (9th Cir. 2023)
2021	<i>WildEarth Guardians v. Am. Farm Bureau Fed’n</i>	Defendant	No. 21-15651 (9th Cir.)
2011	<i>Ctr. for Biological Diversity v. EPA</i>	Defendant/Intervenor	56 F.4th 55 (D.C. Cir. 2022)

Farm Bureau has long targeted the Endangered Species Act (ESA) because the ESA protects many apex predators, such as wolves and grizzly bears, that target domestic livestock, and because its protections are exceptionally strong among the federal environmental statutes.²³⁴ In the following cases, citizen suit plaintiffs contended that agencies had exceeded statutory limits, failed to consider environmental impacts, or ignored public input and scientific evidence, seeking Administrative Procedure Act (APA) review under an arbitrary and

232. Bittner, 598 U.S. at 104.

233. *Id.*

234. See AM. FARM BUREAU FED’N, ENDANGERED SPECIES ACT (ESA) (2018), <https://www.fb.org/files/ESA.pdf> [<https://perma.cc/FAW7-SU8B>] (stating that the ESA “is one of the most far-reaching environmental statutes ever passed”); see also ERIN H. WARD, PERVAZE A. SHEIKH & BENJAMIN M. BARCZEWSKI, CONG. RSCH. SERV., GRIZZLY BEARS AND THE ENDANGERED SPECIES ACT (2024), <https://www.congress.gov/crs-product/R48116> [<https://perma.cc/GD9B-73KR>] (describing the conflict between grizzly bear habitat protection under ESA and domestic livestock production).

capricious standard.²³⁵ In each case, Farm Bureau intervened or filed amicus briefing in defense of state and federal agencies, suggesting the agencies' leanings.

In *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, a western Montana citizen advocacy group challenged Montana state regulations allowing wolf trapping and snaring at a time of year when grizzly bears are active, arguing that the risk to endangered grizzlies was too great and violated section 9 of the ESA.²³⁶ Montana Farm Bureau Federation intervened in support of the state government alongside stock and wool growers' associations.²³⁷ The injunction issued by Judge Molloy of the U.S. District Court for the District of Montana was affirmed in part, reversed in part, and remanded for further proceedings by the Ninth Circuit.²³⁸ Judge Molloy then denied cross-motions for summary judgment and set trial for December 2024.²³⁹ By November, however, the state had shortened the trapping season, adopting the injunction's terms and mooted the case, so the parties stipulated for dismissal.²⁴⁰ Pursuant to the stipulation, the court ordered defendants to pay plaintiffs \$210,000 in attorney fees and costs.²⁴¹

A few months later, AFBF led a coalition of energy, ranching, and real estate industry groups²⁴² challenging the Biden administration U.S. Fish and Wildlife Service's critical habitat designations under the ESA, which plaintiffs argued adversely affected agricultural and energy operations.²⁴³ Alleging that the designations were made without adequate consideration of economic impacts or proper adherence to statutory procedure, plaintiffs sought declaratory judgment, vacation and remand, and restoration of the 2019 regulations promulgated during

235. 5 U.S.C. § 706(2)(A).

236. *Flathead-Lolo-Bitterroot Citizen Task Force v. Mont.*, 98 F.4th 1180, 1184 (9th Cir. 2024) (listing Montana Farm Bureau Federation as defendant-intervenor); *see also* Motion to Intervene as Defendants, *Defenders of Wildlife v. Jewell*, No. 1:14-cv-01025-BAH (D.D.C. Oct. 31, 2014).

237. *Flathead-Lolo-Bitterroot Citizen Task Force v. Mont.*, 98 F.4th at 1184; *see Flathead-Lolo-Bitterroot Citizen Task Force v. State of Mont.*, No.9:23-cv-00101-DWM (D. Mont. Sep. 11, 2023), ECF No. 69.

238. *Flathead-Lolo-Bitterroot Citizen Task Force v. Mont.*, 98 F.4th at 1184.

239. *Flathead-Lolo-Bitterroot Citizen Task Force v. Mont.*, No. 9:23-cv-00101-DWM, 2024 U.S. Dist. LEXIS 154812, at *5 (D. Mont. Aug. 28, 2024).

240. *Id.*; Unopposed Stipulated Motion for Order of Dismissal at 3, *Flathead-Lolo-Bitterroot Citizen Task Force v. State of Mont.*, No. 9:23-cv-001-1-DWN (D. Mont. Nov. 21, 2024).

241. Unopposed Stipulated Motion for Order of Dismissal, *supra* note 240, at 4; *see Flathead-Lolo-Bitterroot Citizen Task Force v. State of Mont.*, No. 9:23-cv-00101-DWM, 2024 U.S. Dist. LEXIS 212331 (D. Mont. Nov. 21, 2024); *see also* Denny Bedard, *Why a Montana Wolf and Coyote Trapping Lawsuit Was Dismissed*, 94.9 KYSS FM (Nov. 27, 2024), <https://kyssfm.com/montana-wolf-and-coyote-trapping-lawsuit-dismissed> [<https://perma.cc/7CJ5-CYM5>] (stating that "[i]n this case, it appears that the Montana Farm Bureau is one of the parties most satisfied with the results").

242. Coalition members included: Western Energy Alliance, National Cattlemen's Beef Association, National Association of Home Builders, American Petroleum Institute, National Mining Association, and Public Lands Council. Civil Cover Sheet at 3, *Am. Farm Bureau Fed'n v. U.S. Fish & Wildlife Serv.*, No. 1:25-cv-00947-SLS (D.D.C. March 31, 2025).

243. *Am. Farm Bureau Fed'n v. U.S. Fish & Wildlife Serv.*, No. 1:25-cv-00947-SLS (D.D.C. Mar. 31, 2025).

the first Trump administration.²⁴⁴ On November 21, 2025, the Trump administration U.S. Fish and Wildlife Service and National Marine Fisheries Service published proposed rules in the Federal Register that would rescind and make changes to parts of the 2024 Regulations.²⁴⁵ In light of the changed regulatory environment and ongoing action by the regulatory agencies to “consider and respond to public comments” on the matter, the case was dismissed without prejudice on November 26, 2025.²⁴⁶

4. Weakening the National Environmental Policy Act

Table 4: NEPA

Year Filed	Case Name	Farm Bureau's Role	Case No. or Reporter
2024	<i>Am. Farm Bureau Fed'n v. U.S. Dep't of Interior</i>	Plaintiff	No. 2:24-cv-00665 (D. Wyo.)
2023	<i>W. Watersheds Project v. Haaland</i>	Defendant/Intervenor	69 F.4 th 689 (10th Cir. 2023)
2021	<i>Wild Va. v. Council on Env't'l Quality</i>	Defendant/Intervenor	No. 3:20-cv-0045 (4th Cir.)
2020	<i>Env't'l Justice Health All. V. Council on Env't'l Quality</i>	Defendant/Intervenor	No. 1:20-cv-06143 (S.D.N.Y.)

Limiting the environmental impact review required under the National Environmental Policy Act (NEPA) for major federal actions is another longtime Farm Bureau litigation goal, as illustrated most recently by the following cases. A sustained, coordinated attack on NEPA by industry—with Farm Bureau deeply involved—came to a head in the last five years, following a rulemaking under the first Trump administration limiting NEPA's reach.²⁴⁷

244. *Id.*; Complaint, *Am. Farm Bureau Fed'n v. U.S. Fish & Wildlife Serv.*, No. 1:25-cv-00947-SLS (D.D.C. Mar. 31, 2025), ECF No. 1.

245. *See* Endangered and Threatened Wildlife and Plants; Listing Endangered and Threatened Species and Designating Critical Habitat, 90 Fed. Reg. 52,607 (proposed Nov. 21, 2025) (to be codified at 50 C.F.R. pt. 424); Endangered and Threatened Wildlife and Plants; Interagency Cooperation Regulations, 90 Fed. Reg. 52,600 (proposed Nov. 21, 2025) (to be codified at 50 C.F.R. pt. 402); Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants, 90 Fed. Reg. 52,587 (proposed Nov. 21, 2025) (to be codified at 50 C.F.R. pt. 17).

246. *See* Stipulation of Dismissal Without Prejudice, *Am. Farm Bureau Fed. v. U.S. Fish & Wildlife Serv.*, No. 1:25-cv-00947-SLS (D.D.C. Nov. 26, 2025).

247. 40 C.F.R. § 1507.3.

In *Wild Virginia v. Council on Environmental Quality*, Farm Bureau intervened in defense of the Council on Environmental Quality's (CEQ) adoption of revised regulations implementing NEPA (the "2020 Rule") following notice-and-comment rulemaking.²⁴⁸ The 2020 Rule was a Trump administration effort to curtail NEPA's reach.²⁴⁹ Environmental groups brought an APA lawsuit in the U.S. District Court for the Western District of Virginia to challenge the 2020 Rule.²⁵⁰ The plaintiffs claimed that CEQ had arbitrarily and capriciously reversed policy positions, including requirements for consideration of indirect and cumulative impacts; failed to respond to relevant and significant comments, including comments that eliminating consideration of climate change would lead to wasteful spending and poor decision-making; failed to consider alternative approaches that would adequately protect the climate; failed to demonstrate that the amended rules were consistent with NEPA; and made changes outside CEQ's authority.²⁵¹ AFBF and its co-intervenors²⁵² advanced a justiciability argument with which the court ultimately agreed, dismissing on standing and ripeness grounds on June 21, 2021.²⁵³

The challenge to the 2020 Rule, however, was not dead yet. In *California v. Council on Environmental Quality*, California sued over the 2020 Rule alongside twenty other states, the territory of Guam, and various counties and cities, directly questioning CEQ's authority to issue binding NEPA regulations.²⁵⁴ AFBF and the same defendant-intervenors, with the addition of the Laborers International Union of North America, joined again on CEQ's side, moving unsuccessfully for dismissal.²⁵⁵ After extended stays and status reports, the plaintiffs moved for dismissal, and the U.S. District Court for the Northern District of California so ordered on October 28, 2024.²⁵⁶

Then, on November 12, 2024, the D.C. Circuit issued a surprise ruling overturning half a century's worth of NEPA precedent and practice in *Marin Audubon Society v. Federal Aviation Administration*, holding that CEQ's rulemaking authority was tied to presidential executive orders dating to 1970,

248. *Wild Va. v. Council on Env'tl Quality*, 544 F. Supp. 3d 620, 625 (W.D. Va. 2021).

249. *EDGI/EHAC Critiques Trump Admin's Efforts to Weaken the National Environmental Policy Act*, ENV'TL DATA AND GOVERNANCE INITIATIVE (Mar. 14, 2020), <https://envirodatagov.org/edgi-ehac-critiques-trump-admins-efforts-to-weaken-nepa> [<https://perma.cc/B4RJ-HCET>].

250. *Wild Va. v. Council on Env'tl Quality*, 544 F. Supp. 3d 620 (W.D. Va. 2021).

251. *Id.* at 627–28.

252. Co-intervenors included American Forest Resource Council, American Fuel & Petrochemical Manufacturers, American Petroleum Institute, American Road & Transportation Builders Association, U.S. Chamber of Commerce, Federal Forest Resource Coalition, Interstate Natural Gas Association of America, and National Cattlemen's Beef Association. *Id.* at 620.

253. *Id.* at 620–21, 632.

254. Complaint for Declaratory and Injunctive Relief at 2–3, *State of Cal. v. Council on Env'tl Quality*, No. 3:20-cv-06057 (N.D. Cal. Aug. 28, 2020).

255. *Id.*; Filers List, *State of Cal. v. Council on Env'tl Quality*, No. 3:20-cv-06057 (N.D. Cal. Oct. 28, 2024), ECF No. 257.

256. Notice of Dismissal; Order, *State of Cal. v. Council on Env'tl Quality*, No. 3:20-cv-06057-RS (N.D. Cal. Oct. 28, 2024).

not a congressional enactment, and was therefore *ultra vires*.²⁵⁷ At the outset, it looked like a simple case. Environmental groups and one resident challenged a Federal Aviation Administration and National Park Service plan to allow tourist flights over four national parks near San Francisco.²⁵⁸ The plaintiffs petitioned for direct APA review, alleging that the agencies failed to produce an Environmental Impact Statement for this action, as NEPA required.²⁵⁹ The D.C. Circuit, however, declined to address the merits of this argument and instead reached the *ultra vires* holding regarding CEQ's rules—a ruling no party had asked for.²⁶⁰ Farm Bureau played no direct role in *Marin*, and indeed had defended CEQ's authority in *California v. Council on Environmental Quality* where CEQ's rulemaking weakened NEPA review.²⁶¹ Yet, the arguments it and others consistently advanced regarding agency overreach had resonated deeply, resulting in another chunk chiseled from the edifice of federal regulatory authority.

5. Decreased Regulation of Pesticides and Other Chemicals

Table 5: Chemical Regulation

Year Filed	Case Name	Farm Bureau's Role	Case No. or Reporter
2025	<i>Monsanto Co. v. Durnell</i>	Amicus	No. 24-1068 (8th Cir.)
2022	<i>Red River Valley Sugarbeet Growers Ass'n v. Regan</i>	Plaintiff	No. 22-1422 (8th Cir.)
2020	<i>Nat. Res. Def. Council v. EPA</i>	Defendant/Intervenor	No. 20-70787 (9th Cir.)
2011	<i>Ctr. for Biological Diversity v. EPA</i>	Defendant/Intervenor	No. 21-16831 (9th Cir.)

Where pesticides and chemicals commonly found in agricultural settings are concerned, Farm Bureau argues for broad use of pesticides, restricted application of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and federal preemption of state pesticide regulation, frequently finding common cause with chemical companies. In this area, Farm Bureau has enjoyed greater litigation success.

257. *Marin Audubon Soc'y v. FAA*, 121 F.4th 902, 908 (D.C. Cir. 2024).

258. *Id.* at 905.

259. *Id.*

260. *Id.*

261. Filers List, *supra* note 255 (identifying American Farm Bureau Federation as an Intervenor-Defendant for the Council on Environmental Quality).

In one example, AFBF partnered with growers' associations and Gharda Chemicals International, Inc., to seek judicial review of a 2021 EPA ban of the pesticide chlorpyrifos in *Red River Valley Sugarbeet Growers Association v. Regan*.²⁶² Studies show that long-term chlorpyrifos exposure “may result in various health abnormalities, mainly in the nervous, cardiovascular, and respiratory systems,” and the compound “exhibits reproductive toxicity, neurotoxicity, and genotoxicity.”²⁶³ In response, the European Commission and a number of other countries have banned chlorpyrifos.²⁶⁴ The Eighth Circuit, however, rejected as unlawful EPA's decision to revoke all food tolerances for chlorpyrifos, vacating and remanding the decision because the agency had failed to exercise “the full scope” of its discretion.²⁶⁵ A February 5, 2024, Federal Register notice modified the chlorpyrifos registration to reflect the court's ruling, allowing greater public exposure to the chemical.²⁶⁶

In 2020, the Ninth Circuit ruled on two chemical cases brought by National Family Farm Coalition in which AFBF submitted amicus briefing.²⁶⁷ Plaintiffs in *National Family Farm Coalition v. EPA* (“NFFC I”) challenged EPA's conditional new-use registrations of three dicamba-based herbicides produced by Bayer CropScience (formerly Monsanto Company), for post-emergent uses on cotton and soybean plants.²⁶⁸ The appellate panel vacated the registrations, finding an “absence of substantial evidence to support the EPA's decision.”²⁶⁹ In the second case, NFFC II (also titled *National Family Farm Coalition v. EPA*), plaintiffs alleged that EPA's decision to “register Enlist Duo—a pesticide designed to kill weeds on corn, soybean, and cotton fields—in 2014, 2015, and 2017” violated the Federal Insecticide, Fungicide, and Rodenticide Act and the

262. *Red River Valley Sugarbeet Growers Ass'n v. Regan*, 85 F.4th 881 (8th Cir. 2023).

263. Elżbieta Wolejko, Bożena Łozowicka, Agata Jabłońska-Trypuć, Marta Pietruszyńska & Urszula Wydro, *Chlorpyrifos Occurrence and Toxicological Risk Assessment: A Review*, 19 INT'L J. ENV'T'L RSCH. PUB. HEALTH 12209, 1–2 (2022); M.S. Bootharaju & T. Pradeep, *Understanding the Degradation Pathway of the Pesticide, Chlorpyrifos by Noble Metal Nanoparticles*, 28 LANGMUIR 2671, 2671–79 (2012).

264. *Commission Implementing Regulation (EU) 2020/18*, 2020 O.J. L. 7 14 (EU) (Jan. 10, 2020), https://eur-lex.europa.eu/eli/reg_impl/2020/18/oj [<https://perma.cc/U8DK-69XN>] (showing the regulation promulgated by the European Commission that banned chlorpyrifos); see *Database of Notifications of Final Regulatory Action*, ROTTERDAM CONVENTION, <https://chm.pops.int/Portals/0/download.aspx?d=UNEP-POPS-POPRC19CO-ChlorpyrifosCPLCPFCAs-3-DRME-AddInfo-Excel-20240226.En.xlsx> [<https://perma.cc/Z5K6-AML2>] (last visited June 25, 2026) (depicting a list of chlorpyrifos bans in other countries).

265. *Red River Valley Sugarbeet Growers Ass'n*, 85 F.4th at 896.

266. Chlorpyrifos; Reinstatement of Tolerances, 89 Fed. Reg. 7625 (Feb. 5, 2025) (to be codified at 40 C.F.R. pt. 180).

267. Nat'l Family Farm Coal. v. EPA (*NFFC I*), 960 F.3d 1120 (9th Cir. 2020); Nat'l Family Farm Coal. v. EPA (*NFFC II*), 966 F.3d 893 (9th Cir. 2020); see *NFFC I*, No. 19-70115 (9th Cir.) (CM/ECF Case Query), [<https://perma.cc/D8BM-CBU7>] (last visited Apr. 30, 2026) (showing AFBF as having submitted amicus briefing); *NFFC II*, No. 17-70810 (9th Cir.) (CM/ECF Case Query), [<https://perma.cc/W3JY-VQNW>] (last visited Apr. 30, 2026) (showing AFBF as having submitted amicus briefing).

268. See *NFFC I*, 960 F.3d 1120.

269. *Id.* at 1145.

ESA.²⁷⁰ Petitioners argued that EPA had applied too weak a standard, failed to conduct sufficient ESA review of potential harm to monarch butterflies, and neglected to consider other potential impacts.²⁷¹ The Ninth Circuit panel remanded without vacatur to the agency, and litigation over Enlist Duo's registration continues.²⁷²

Where chemicals have been approved for use, Farm Bureau resists jury verdicts for damages and state efforts to warn about risks. In May 2025, AFBF joined a large trade coalition²⁷³ to support a Monsanto petition for certiorari in *Monsanto v. Durnell*, following Plaintiff John Durnell's \$1.25 million jury verdict and appellate affirmation in Missouri state courts on state law failure to warn claims.²⁷⁴ Durnell alleged that "his exposure to Monsanto's product Roundup and its ingredient glyphosate caused him to develop non-Hodgkin's lymphoma."²⁷⁵ AFBF argued against allowing individual states to place warnings on pesticides generally: "To require agricultural operations and manufacturers to account for individualized state warnings—that are inconsistent with EPA's findings—will create unnecessary confusion and substantial harm to farmers, manufacturers, and the American public."²⁷⁶ Claiming without citing evidence that "[w]ithout technological developments, modern farmers would be unable to maintain output necessary to meet growing demand and to feed the country and the world," Farm Bureau argued that the Federal Insecticide, Fungicide, and Rodenticide Act should supersede all state efforts to restrict pesticide use or labeling: "To allow states to impose additional or different requirements on glyphosate's labeling and packaging would contradict both [the Federal Insecticide, Fungicide, and Rodenticide Act] and EPA."²⁷⁷ On June 30, 2025, the Supreme Court invited a brief from the U.S. Solicitor General, who duly filed one on December 1, 2025.²⁷⁸ On June 25, 2026, in a 7-2 decision authored by Justice Kavanaugh, the Supreme Court ruled in

270. NFFC II, 966 F.3d at 904.

271. *Id.* at 916.

272. *Id.* at 929, 930; see also *Lawsuit Challenges Registration of Enlist One and Enlist Duo*, NAT'L AGRIC. L. CTR. (Sept. 9, 2025), <https://nationalaglawcenter.org/lawsuit-challenges-registration-of-enlist-one-and-enlist-duo> [<https://perma.cc/CL6D-DYB4>].

273. Coalition members included: the American Soybean Association, American Sugarbeet Growers Association, Cherry Marketing Institute, Florida Fruit and Vegetable Association, International Fresh Produce Association, National Association of Wheat Growers, National Corn Growers Association, National Cotton Council of America, National Sorghum Producers, North American Blueberry Council, and Western Growers. Brief for Am. Farm Bureau Fed'n et al. as Amici Curiae Supporting Petitioner, *Monsanto Co. v. Dumell*, 145 S. Ct. 2841 (2025) (mem.) (No. 24-1068), 2025 WL 1414059.

274. *Dumell v. Monsanto Co.*, 707 S.W.3d 828, 831 (Mo. Ct. App. 2025).

275. *Id.*

276. Brief for Am. Farm Bureau Fed'n et al., *supra* note 273, at 19.

277. *Id.* at 14.

278. See *Monsanto Co. v. Dumell*, 145 S. Ct. 2841 (2025) (mem.) (inviting the U.S. Solicitor General to submit a brief on the case); Brief for the United States as Amicus Curiae, *Monsanto Co. v. Dumell*, 145 S. Ct. 2841 (2025) (mem.) (No. 24-1068), 2025 WL 3472305 (responding to the invitation).

favor of Bayer and Monsanto, holding that because FIFRA “expressly preempts state labeling requirements that are ‘in addition to’ or ‘different from’ federal labeling requirements,” the statute therefore expressly preempts Durnell’s state law tort claim since it would require Roundup to include an additional cancer warning on its label.²⁷⁹

Finally, where chemicals are designated hazardous substances, Farm Bureau briefs argue that “passive receivers” of contamination, such as farm operations, should not be legally liable for cleanup under CERCLA’s strict liability structure.²⁸⁰ AFBF filed a 2025 amicus brief in *Chamber of Commerce of United States v. EPA*, supporting an industry challenge to EPA’s designation of several per- and polyfluoroalkyl substances (PFAS), perfluorooctanoic acid (PFOA), and perfluorooctane sulfonic acid (PFOS) as hazardous substances under the Safe Drinking Water Act or CERCLA.²⁸¹ Industry petitioners contend that EPA exceeded its authority and the agency’s interpretation of the “substantial danger” standard is overly broad and inconsistent with CERCLA’s intent.²⁸² On February 7 and 25, 2025, the D.C. Circuit granted EPA’s requests for temporary stays in the litigation as EPA administrator Zeldin reviews the rule, raising the possibility that the agency may revise or rescind the regulations.²⁸³ This consolidated action remains pending before the D.C. Circuit.²⁸⁴

6. Other Challenges to the Regulatory State and AFBF’s Affiliate Structure

The remaining cases in which Farm Bureau has played a role since 2020 do not fit neatly into the categories above but are significant enough to include because of the policy goals they advanced. Some stray from subject matter with direct agricultural relevance but are nevertheless consistent with the organization’s overall litigation strategy and its historic character as described in Part I—all in its push to reduce regulatory oversight, expand private property rights insofar as they benefit agribusiness, limit protective designations for

279. *Monsanto Co. v. Dumell*, 146 S. Ct. 2001, 2017 (2026).

280. Brief for Passive Receivers as Amici Curiae in Support of Remand at 8–9, *Chamber of Commerce of the U.S. v. EPA*, No. 24-1193 (D.C. Cir. Nov. 13, 2024), [<https://perma.cc/C2CR-CXXU>].

281. *Chamber of Commerce of U.S. v. EPA*, No. 24-1193, 2025 U.S. App. LEXIS 13421 (D.C. Cir. June 2, 2025).

282. *Id.*

283. Amanda G. Halter, Ashleigh K. Myers & Jillian Marullo, *Court Approves 60-Day Stays in Legal Battles over Biden-Era PFAS Regulations amid Administration Shift*, PFAS OBSERVER, PILLSBURY LAW (Mar. 11, 2025), [<https://pfas.pillsburylaw.com/court-approves-60-day-stays-legal-battles-biden-era-pfas-regulations>] [<https://perma.cc/XWA7-CKS6>].

284. See Docket, *Chamber of Commerce of the U.S. v. EPA*, No. 24-1193 (D.C. Cir. last visited Jan. 12, 2026); *Chamber of Commerce v. EPA Challenge to EPA’s Rule Designating PFOA and PFOS as Hazardous Substances Under CERCLA*, U.S. CHAMBER OF COMM., [<https://www.uschamber.com/cases/energy-and-environment/cerclarule>] [<https://perma.cc/ZGD7-RAV3>] (last visited Jan. 12, 2026).

natural resources, resist labor organizing, and keep state affiliates under tight control by the national organization.

a. Regulatory Oversight

Where Farm Bureau strays from litigation involving agricultural issues into broader ideological advocacy, it leaves a particularly clear impression of its political and policy goals. Nowhere is this truer than in its interventions and amicus briefing regarding the role of regulatory oversight, which have been influential with the U.S. Supreme Court. For example, AFBF filed amicus briefing in *Loper Bright Enterprises v. Raimondo*,²⁸⁵ joining other trade associations to support Loper Bright, noting first that the case “could be decided within the *Chevron* framework on the narrow and unexceptional basis that congressional silence concerning powers expressly granted elsewhere in the statute, but not in the relevant provision, does not constitute an ambiguity requiring judicial deference to an agency interpretation.”²⁸⁶ Although these more moderate grounds, the amici said, were legally sufficient, the amici instead took the argument significantly further by arguing to overturn *Chevron* on the grounds that “*Chevron* deference lacks a historical grounding, violates the separation of powers doctrine, is inconsistent with the Administrative Procedure Act, and has in practice led to an unwarranted expansion of bureaucratic power beyond anything authorized by Congress.”²⁸⁷

In overturning *Chevron*, the Court hewed closely to the views advanced by the Farm Bureau brief, which was careful to quote the justices, often by name.²⁸⁸ In his concurrence, Justice Gorsuch similarly echoed the fear of bureaucratic power that was expressed in the Farm Bureau brief:

If a judge could discard an old meaning and assign a new one to a law’s terms, all without any legislative revision, how could people ever be sure of the rules that bind them? Were the rules otherwise, Blackstone warned, the people would be rendered “slaves to their magistrates.” Yet, replace “magistrates” with “bureaucrats,” and Blackstone’s fear becomes reality when courts employ *Chevron* deference. Whenever we confront an ambiguity in the law, judges do not seek to resolve it impartially according to the best evidence of the law’s original meaning. Instead, we resort to a far cruder heuristic: “The reasonable bureaucrat always wins.” And because the reasonable bureaucrat may change his mind year-to-year and election-to-election, the people can never know

285. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

286. Brief for Eight Nat’l Bus. Orgs. as Amici Curiae in Support of Petitioners at 3, *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (No. 22-451), 2023 WL 4824946, at *3. The wide-reaching significance of this case striking down judicial deference to agencies under the doctrine has been articulated elsewhere. See e.g., Thomas W. Merrill, *The Demise of Deference—And the Rise of Delegation to Interpret*, 138 HARV. L. REV. 227 (Nov. 2024); *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837 (1984), *overruled by* *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

287. Brief of Eight Nat’l Bus. Orgs., *supra* note 286, at 2–3.

288. See, e.g., *id.* at 3–6, 8–26.

with certainty what new “interpretations” might be used against them.²⁸⁹

In the history of amicus briefs, this one was a resounding success, perhaps because it dovetailed so neatly with a widely coordinated anti-regulatory strategic goal.

AFBF has argued against agency deference wherever an opportunity arises. Supporting a petition for certiorari in *Tabb v. United States*, a Second Circuit criminal case involving deference to federal sentencing guidelines, AFBF and the National Association of Homebuilders argued that when a federal statute carries both civil and criminal penalties, courts should not defer to agency interpretations of the statute when used to impose criminal liability.²⁹⁰ The underlying facts had little agricultural (or home-construction) relevance, a point the associations acknowledged at the beginning of their brief.²⁹¹ However, they said, “[a]mici appear in this case because a court that can deploy *Auer* deference to extend petitioner’s incarceration by nine years can use the same technique to destroy the settled expectations of American builders and farmers,” noting that they had briefed a veterans’ benefits case called *Kisor v. Wilkie*²⁹² the previous year on the same question, resulting in a ruling striking down “reflexive” *Auer* deference.²⁹³ Although the trade associations argued for the need to resolve a circuit split on *Kisor* deference, the Supreme Court declined the opportunity to review.²⁹⁴

Farm Bureau argues on one hand that federal agencies deserve no deference and must be stripped of power, then on the other hand that federal law must preempt state regulations that prove more protective of human health and safety, or the environment. This argument did not carry the day in *Lighthouse Resources Inc. v. Inslee*, where coal export interests challenged a decision by Washington state to deny permits for a coal export terminal.²⁹⁵ The complaint alleged that the denial disrupted the uniformity of federal foreign commerce policy and imposed burdens on foreign commerce, usurping federal powers including those of the Surface Transportation Board.²⁹⁶ AFBF joined the National Mining Association, National Association of Manufacturers, and American Fuel & Petrochemical Manufacturers on amici briefing.²⁹⁷ The amici argued that Washington was

289. *Loper Bright Enters.*, 603 U.S. at 434 (citations omitted).

290. Brief for the Nat’l Ass’n of Home Builders & the Am. Farm Bureau Fed’n as Amici Curiae Supporting Petitioner at 4, *Tabb v. United States*, 141 S. Ct. 2793 (2020) (mem.) (No. 20-579) (referencing *Auer v. Robbins*, 519 U.S. 452 (1997), authored by the late Justice Scalia).

291. *Id.*

292. *Kisor v. Wilkie*, 588 U.S. 558 (2019).

293. Brief of Am. Coatings Ass’n et al., *supra* note 285, at 2.

294. *Tabb v. U.S.*, 141 S. Ct. 2793 (2021).

295. *Lighthouse Res., Inc. v. Inslee*, No. 3:18-cv-05005-RJB, 2018 U.S. Dist. LEXIS 208762 (W.D. Wash. Dec. 11, 2018).

296. *Id.* at *20–22.

297. *Id.*

trying “to steer national and foreign policy, based not upon local environmental impacts but on broader ideological opposition to coal.”²⁹⁸

[The amici declared their interest] because Washington’s actions to block construction of a new coal export facility at the Millennium Bulk Terminal threaten the United States’ energy economy and will set a harmful precedent that encourages other states to interfere with national trade policy that they oppose, in violation of the Constitution’s command that the federal government be the sole representative of the nation in trade and foreign affairs. Denial of relief would, moreover, open the floodgates to local obstruction of national foreign policy initiatives with which coastal states disagree.²⁹⁹

Granting summary judgment against federal preemption claims, Judge Bryan of the U.S. District Court for the Western District of Washington authored an opinion holding that the plaintiffs had failed to carry the burden of proof to show that the state’s actions were beyond its authority.³⁰⁰

A multi-front attack on the Biden administration’s Bureau of Land Management (BLM) Conservation and Landscape Health Rule is underway through 2024 lawsuits in multiple federal courts.³⁰¹ In *American Farm Bureau Federation v. U.S. Department of Interior* in the U.S. District Court for the District of Utah, plaintiffs argued that the Rule exceeded BLM’s statutory authority, was arbitrary and capricious, and violated NEPA.³⁰² The states of North Dakota, Montana, and Idaho filed in the District of North Dakota, while trade associations led by AFBF filed in the District of Wyoming, including in their complaint allegations that the rule was barred under the Congressional Review Act due to congressional rejection of the 2016 Planning 2.0 Rule.³⁰³ In September 2024, the case was transferred to the District of Utah upon the defendants’ unopposed motion.³⁰⁴

298. *Id.* at *16.

299. Brief of the National Mining Ass’n et al. as Amici Curiae Opposing Defendants’ Motion for Summary Judgment at 1–2, *Lighthouse Res., Inc. v. Inslee*, No. 3:18-cv-5005-RJB (W.D. Wash. Mar. 11, 2018).

300. *Lighthouse Res., Inc. v. Inslee*, No. 3:18-cv-05005-RJB, 2018 U.S. Dist. LEXIS 208762 (W.D. Wash. Dec. 11, 2018).

301. See, e.g., Complaint, *Alaska v. Haaland*, No. 3:24-cv-00161 (D. Alaska July 24, 2024) (alleging the rule improperly elevated conservation over other land uses, violating the Federal Land Policy and Management Act (FLPMA)); Complaint, *Utah v. Haaland*, No. 2:24-cv-00438-DAO (D. Utah June 18, 2024); Complaint, *Am. Farm Bureau Fed’n v. U.S. Dep’t of the Interior*, No. 2:24-cv-00665-DBB-DAO (D. Utah Sept. 10, 2024) (arguing the rule violates NEPA); Complaint, *Am. Farm Bureau Fed’n v. U.S. Dep’t of Interior*, No. 2:24-cv-00136 (D. Wyo. July 12, 2024) (alleging the rule exceeds BLM’s statutory authority, is arbitrary and capricious, and violates NEPA); Complaint, *N.D. v. U.S. Dep’t of Interior*, No. 1:24-cv-00124 (D.N.D. July 12, 2024) (alleging the rule exceeds federal authority and violates FLPMA).

302. Complaint, *Am. Farm Bureau Fed’n v. U.S. Dep’t of the Interior*, No. 24-cv-00665-DBB-DAO (D. Utah Sept. 10, 2024).

303. Complaint, *Am. Farm Bureau Fed. v. U.S. Dep’t of the Interior*, No. 2:24-cv-00136-ABJ (D. Wyo. transferred Sept. 10, 2024).

304. *Id.*

The case has been stayed since February 3, 2025.³⁰⁵ On June 2, 2025, BLM and the Department of Interior filed a status report including the following justification for a further stay, citing the February 3, 2025, “Unleashing American Energy” Secretary’s Order.³⁰⁶

Due to the recent change in administration on January 20, 2025, there is new leadership at the Department of the Interior. Those new officials are in the process of familiarizing themselves with the Public Lands Rule and the litigation regarding the rule. In addition, Secretary’s Order 3418 directs Department of the Interior staff to review certain previously issued rules, including the Public Lands Rule, and take steps, as appropriate, to suspend, revise, or rescind such rules.³⁰⁷

Judge Barlow granted repeated extensions of time in late 2025.³⁰⁸ Actions consistent with BLM’s new management under the Trump administration are likely to change the course of the litigation. In fall 2025, BLM took public comments on a proposal to withdraw the Conservation and Landscape Health Rule in its entirety.³⁰⁹

b. Groundwater Regulation

Exempted from the Clean Water Act, groundwater has been neglected in federal regulatory schemes (with certain exceptions targeting human health, such as the Safe Drinking Water Act and CERCLA’s cleanup provisions).³¹⁰ As a result, vast commonly held water resources such as the Great Plains’ Ogallala aquifer have been nearly emptied.³¹¹ Some states, including California, have

305. Order Granting Motion to Stay and Denying Motion for Leave to File Amicus Curiae Brief, *American Farm Bureau Fed. et al v. U.S. Dep’t of the Interior*, No. 2:24-cv-00665 (D. Utah Feb. 2, 2025).

306. See Sec’y Order No. 3418, *Unleashing American Energy* § 4(b) (Feb. 3, 2025), https://www.doi.gov/sites/default/files/document_secretarys_orders/so-3418-signed.pdf [<https://perma.cc/7AEM-SMUC>].

307. Joint Status Report at 2–3, *Am. Farm Bureau Fed’n. v. U.S. Dep’t of the Interior*, No. 2:24-cv-00665-DBB-DAO (D. Utah June 2, 2025), [<https://perma.cc/2SXA-MJMD>].

308. *Id.*

309. Public comment closed on November 10, 2025. Recission of Conservation and Landscape Health Rule, 90 Fed. Reg. 43,990, 43,990 (proposed Sept. 11, 2025) (to be codified at 43 C.F.R. pts. 1600, 6100).

310. See *Federal Clean Water Act Basics*, NAT’L ASS’N OF CLEAN WATER AGENCIES, <https://www.nacwa.org/docs/default-source/conferences-events/older-events/2017-law-seminar/nacwa---clean-water-act-basics.pdf> [<https://perma.cc/5VBE-ZYDU>] (summarizing 33 U.S.C. §§ 1251-1388); see also *Safe Drinking Water Act*, 42 U.S.C. § 300f-300j-27 (2018); 40 C.F.R. § 300.430(e)(2)(B)–(C) (tying CERCLA cleanup standards to maximum contaminant levels set by the Safe Drinking Water Act).

311. Michon Scott, *National Climate Assessment: Great Plains’ Ogallala Aquifer Drying Out*, NAT’L OCEANIC AND ATMOSPHERIC ADM. (Feb. 19, 2019), <https://www.climate.gov/news-features/featured-images/national-climate-assessment-great-plains%E2%80%99-ogallala-aquifer-drying-out> [<https://perma.cc/Y2MU-LYRM>].

enacted their own groundwater legislation to fill the gap,³¹² with Farm Bureau quick to dispute implementation. For instance, *Kings County Farm Bureau v. California State Water Resources Control Board* addresses the California State Water Resources Control Board's use of the Sustainable Groundwater Management Act—California legislation that requires agricultural users to register their wells and pay fees to the state for groundwater extraction³¹³—to place Tulare Lake Subbasin on probation in April 2024.³¹⁴ Kings County Farm Bureau argued that the board had exceeded its authority and the probationary designation was arbitrary and lacked evidentiary support.³¹⁵ The trial court granted Farm Bureau a preliminary injunction and reversed the Water Board's dismissal of several causes of action.³¹⁶ In October 2025, however, a state appellate court held for the state, overturning the injunction and upholding the Water Board dismissals but allowing Farm Bureau to pursue claims that the Water Board acted beyond its authority and improperly sanctioned agricultural users.³¹⁷ The trial will take place in 2026, and Farm Bureau anticipates an appeal of the appellate court's decision to the California Supreme Court.³¹⁸

c. Labor Organizing

Minnesota farmer, attorney, and author Sonja Trom Eayrs wrote of scenes she witnessed of the conditions endured by farm laborers, migrant and otherwise, including “cement block huts with no air conditioning, no bathroom, no stove and no oven. A gang bathroom provided toilets and shower facilities for the nearly 200 migrant workers and their children, while a single hot plate heated food for families living inside these crude facilities.”³¹⁹ USDA's Economic Research Service estimated approximately 1.18 million farmworkers in the United States in 2024.³²⁰ They are 63 percent Hispanic and predominantly male, earning wages as low as \$14 per hour.³²¹ The proportion of farm workers without legal authorization to work in the United States has climbed steadily since the early 1990s, when it was roughly 14 percent, to nearly 42 percent between 2020

312. See, e.g., Mich. Admin. Code R. 323.2210 (exemplifying states besides California that have enacted their own groundwater legislation).

313. Cal. Water Code § 10720 (2024).

314. *Kings Cnty. Farm Bureau v. State Water Res. Control Bd.*, 115 Cal. App. 5th 782, 793–94 (Oct. 29, 2025).

315. *Id.* at 7.

316. Lois Henry & Monserrat Solis, *Appellate Court Tanks Injunction That Had Held Off State Groundwater Intervention in Kings County*, SJV WATER (Oct. 29, 2025), <https://sjvwater.org/wp-content/uploads/2025/10/injunction-opinion.pdf> [<https://perma.cc/3485-2CFJ>].

317. *Kings Cnty. Farm Bureau v. State Water Res. Control Bd.*, 115 Cal. App. 5th at 782.

318. *Kings County Farm Bureau Takes on State Water Board Over Groundwater Rights*, AGNET WEST (Nov. 13, 2025), <https://agnetwest.com/kings-county-farm-bureau-state-water-board-over-groundwater-rights> [<https://perma.cc/Z7G8-CL9D>].

319. Eayrs, *Big Ag's Corporate Culture*, *supra* note 123.

320. *Farm Labor*, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV., <https://www.ers.usda.gov/topics/farm-economy/farm-labor> [<https://perma.cc/RA2C-HWKW>] (last updated Nov. 18, 2025).

321. *Id.*

and 2022.³²² Contrary to stereotype, farm laborers tend to be settled rather than migrant, with 83 percent living at a fixed location within 75 miles of their work, a jump from 41 percent in 1996–98.³²³ They may be integral members of their communities, although many are treated as second-class citizens, which implicates the broader health of society. The living and work conditions of U.S. farm labor affect not just laborers themselves but their dependent families, the farm economy, and the population that depends on domestic farming for food.

Rather than acknowledging the importance of farm labor, Farm Bureau has opposed labor organizing, collective bargaining, health and safety measures, and regularization of the immigration system. Certainly, Farm Bureau pays lip service to labor issues. During 2025 debates over immigration policy and funding for Customs and Border Patrol enforcement, AFBF President Zippy Duvall “expressed concern over reports that immigration enforcement focus will resume on farms and ranches,” arguing that fixing farm labor programs should be prioritized over removing undocumented workers because of the potential impact on food prices.³²⁴ Yet in 2022, American Farm Workers Foundation documented the central role AFBF played in defeating the Affordable and Secure Food Act, which was “bipartisan compromise legislation supported by both agricultural workers and employers” intended to normalize the immigration status of essential farm workers by granting them legal status to work in the United States.³²⁵

Even as Farm Bureau advocates for limiting immigration enforcement against agricultural operators who hire undocumented, easily exploitable workers, its legal activism on labor rights has targeted labor organizing and collective bargaining rights. According to sworn court filings by North Carolina Farm Bureau, “Farm Bureau farmer members have consistently opposed the unionization of agricultural employees.”³²⁶ In 2021, *Cedar Point Nursery v. Hassid* rose to the U.S. Supreme Court. The case addressed 2015 incidents when United Farm Workers union organizers attempted to enter the property of Cedar Point Nursery in Dorris, California, and Fowler Packing Company in Fresno, relying on a California regulation that allowed union organizers to enter agricultural employers’ property to solicit support for unionization for up to three

322. *Id.*

323. Marcelo Castillo, *Migration Patterns of Hired Crop Farmworkers, Fiscal 1991–2022*, U.S. DEP’T OF AGRIC. ECON. RSCH. SERV. (Sept. 12, 2025), <https://www.ers.usda.gov/data-products/chart-gallery/63475> [<https://perma.cc/6YGA-DJXC>].

324. *Farm Bureau Statement on Immigration Enforcement on Farms*, FLA. FARM BUREAU FED’N (June 18, 2025), <https://floridafarmbureau.org/news/farm-bureau-statement-on-immigration-enforcement-on-farms> [<https://perma.cc/2XHG-5KUL>].

325. *Senate Republicans and American Farm Bureau Deny Farm Workers Legal Status*, UFW FOUND. BLOG (Dec. 22, 2022), https://www.ufwfoundation.org/senate_republicans_and_american_farm_bureau_deny_farm_workers_legal_status [<https://perma.cc/KZ49-T3U4>].

326. Verified Complaint at 3, *N.C. Farm Bureau v. U.S. Dep’t of Labor*, No. 5:24-cv-00527 (E.D.N.C. Sept. 13, 2024), 2024 WL 4183774.

hours per day, 120 days per year.³²⁷ Both companies denied United Farm Workers entry and filed a 2016 federal lawsuit against the California Agricultural Labor Relations Board, arguing that the access regulation effectively granted an easement to union supporters without providing just compensation, an alleged violation of the Fifth Amendment's Takings Clause.³²⁸

After the Ninth Circuit affirmed the lower court's dismissal, in 2020 the Supreme Court granted certiorari.³²⁹ California Farm Bureau Federation and AFBF each filed an amicus brief, the former highlighting other means of communication available to union organizers and the latter arguing that the regulation served no public use or purpose, but created a private right in violation of another party's private property rights.³³⁰ Chief Justice Roberts delivered a 6-3 decision in 2021 reversing the Ninth Circuit, holding that the access regulation "appropriates a right to invade the growers' property and therefore constitutes a *per se* physical taking," and the plaintiffs' complaint thus "states a claim for an uncompensated taking in violation of the Fifth and Fourteenth Amendments."³³¹

Joined by Justices Sotomayor and Kagan, Justice Breyer authored a dissent from the finding that the rule was a *per se* taking.³³² In Breyer's view:

[T]he question before us is whether the access regulation falls within one of two narrow categories of government conduct that are *per se* takings. The first is when "the government directly appropriates private property for its own use." The second is when the government causes a permanent physical occupation of private property. It does not.³³³

According to Breyer, neither of these categories of taking existed in the case of the California statute, but the constraint on organizing stands.³³⁴

Farm Bureau has also litigated against government labor protections. In *International Fresh Produce Association v. U.S. Department of Labor*, plaintiffs including AFBF, Mississippi Farm Bureau, Stone County Farm Bureau, and the State of Mississippi challenged the Department of Labor's final H-2A Unionization Rule titled "Improving Protections for Workers in Temporary

327. *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021); *see also* Cal. Code Regs. tit. 8, § 20900(e)(1)(C) (2020).

328. *Cedar Point Nursery*, 594 U.S. at 139.

329. *Cedar Point Nursery v. Hassid*, 141 S. Ct. 844 (2020) (mem.).

330. *See* Brief for California Farm Bureau Federation as Amicus Curiae in Support of Petitioners, *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021) (No. 20-107), 2021 WL 86904; Brief of American Farm Bureau Federation as Amicus Curiae in Support of Petitioners, *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021) (No. 20-107), 2021 WL 130107.

331. *Id.* at 152.

332. *Id.*

333. *Cedar Point Nursery*, 594 U.S. at 165–66 (citations omitted).

334. *Id.* at 165–68; *see also* Brief of Ohio Farm Bureau Federation as Amicus Curiae in Support of Petitioner, *O'Connor v. Eubanks*, 83 F.4th 1018 (6th Cir. 2023) (No. 23-1167), 2024 WL 2818682 (cert. denied.); Brief of American Farm Bureau Federation as Amicus Curiae in Support of Petitioners, *DeVillier v. Tex.*, 601 US 285, 293 (2024) (No. 22-913), 2023 WL 8114326 (vacating and remanding a Fifth Circuit ruling holding that property owners "should be permitted to pursue their claims under the Takings Clause through the cause of action available under Texas law").

Agricultural Employment in the United States.”³³⁵ They argued the rule illegally granted collective bargaining rights, violated the First Amendment, and exceeded Department of Labor statutory authority.³³⁶ In November 2024, the U.S. District Court for the Southern District of Mississippi granted the Farm Bureau coalition’s motion for a nationwide stay of provisions regarding labor organizing and labor rights in the Rule, holding that Congress had not given the Department of Labor a broad grant of authority to effectively provide collective action rights to H-2A workers.³³⁷ However, in another example of the fragmented nature of federal jurisprudence on questions related to the agriculture industry, a parallel case in the U.S. District Court for the Eastern District of North Carolina concluded in May 2025 with a summary judgment ruling in favor of the Department of Labor.³³⁸ In *North Carolina Farm Bureau Federation Inc. v. U.S. Department of Labor*, a Farm Bureau coalition argued that the Unionization Rule exceeded statutory authority under the Immigration and Nationality Act, but this challenge failed to convince the court.³³⁹

Worker safety standards and enforcement by the Occupational Safety and Health Administration are another target of AFBF amicus briefing. In *Allstates Refractory Contractors, LLC v. Su*, the Sixth Circuit upheld the Occupational Safety and Health Act’s delegation of workplace safety standard-setting to the Occupational Safety and Health Administration.³⁴⁰ In support of a certiorari petition, AFBF and other industry amici argued for a stricter interpretation of the non-delegation doctrine, citing the exclusive grant of legislative powers to the legislature in Article I, Section 1 of the Constitution, declaring: “[T]he unbounded and sweeping delegation to [the Occupational Safety and Health Administration] of the powers both to create workplace-safety standards—a legislative function—and then to enforce those rules against countless employers cannot be tolerated under existing precedent.”³⁴¹ The Court denied the petition, but Justice Thomas provided a road sign in his dissent for future arguments on congressional power to delegate:

[U]nder our precedents, a delegation of authority is constitutional so long as the relevant statute sets out an “intelligible principle” to guide the agency’s exercise of authority. . . . I continue to adhere to my view that the intelligible principle test “does not adequately reinforce the Constitution’s allocation of legislative power.” This case exemplifies

335. *Int’l Fresh Produce Ass’n v. U.S. Dep’t of Lab.*, No. 1:24cv309HSO-BWR (S.D. Miss. filed Oct. 8, 2024).

336. *Id.*

337. *Id.*

338. *N.C. Farm Bureau Fed’n, Inc. v. U.S. Dep’t of Lab.*, No. 5:24-CV-00527-FL, 2025 U.S. Dist. LEXIS 85300 (E.D.N.C. May 5, 2025).

339. *Id.*

340. *Allstates Refractory Contractors, LLC v. Su*, 79 F.4th 755 (6th Cir. 2023).

341. Brief for Am. Farm Bureau Fed’n et al. as Amici Curiae Supporting Petitioner at 4–5, *Allstates Refractory Contractors, LLC v. Su*, 144 S. Ct. 2490 (2024) (mem.) (No. 23-819), 2024 WL 916107.

the problem. Congress purported to empower an administrative agency to impose whatever workplace-safety standards it deems “appropriate.” That power extends to virtually every business in the United States. The agency claims authority to regulate everything from a power lawnmower’s design to the level of “contact between trainers and whales at SeaWorld.” The Occupational Safety and Health Act may be the broadest delegation of power to an administrative agency found in the United States Code. If this far-reaching grant of authority does not impermissibly confer legislative power on an agency, it is hard to imagine what would.³⁴²

d. National Monument Designation

The U.S. Supreme Court rejected a 2023 attempt, supported by Arizona Farm Bureau Federation via certiorari petition amicus briefing, to limit the power of presidential executive orders. In *Murphy Co. v. Biden*, the Ninth Circuit upheld an August 2023 presidential executive order creating the 917,000 acre Baaj Nwaajio I’tah Kukveni-Ancestral Footprints of the Grand Canyon National Monument, calling for reservation of “entire landscapes” and requiring a new management plan to “protect” the area with specified priorities.³⁴³ Objecting to “[t]he relatively recent presidential practice of not only designating national monuments and reserving land for such use, but also affirmatively preventing specific and otherwise lawful uses by executive proclamation” as contrary to “the statutorily expressed will of Congress,” Farm Bureau argued that the case presented “a useful, relatively narrow, vehicle for this Court to determine what law prevails when edicts in monument designations conflict with statutes.”³⁴⁴ With Justices Gorsuch and Kavanaugh dissenting, the Court denied certiorari on a question that might have conflicted with the Trump administration’s expansive use of presidential executive orders.³⁴⁵

e. Affiliate Independence

Finally, AFBF has found itself on the receiving end of litigation from one of its own affiliates: Illinois Farm Bureau (IFB). The Illinois Agricultural Association, now doing business as IFB, filed suit in *Illinois Agricultural Association v. American Farm Bureau Federation* in November 2024, responding to AFBF’s decision to terminate IFB’s membership in the national

342. *Allstates Refractory Contractors, LLC v. Su*, 144 S. Ct. 2490 (2024) (Thomas, J., dissenting from denial of cert.) (citations omitted).

343. *Murphy Co. v. Biden*, 65 F.4th 1122 (9th Cir. 2023); *see also* Proclamation No. 10606, 88 Fed. Reg. 55,331 (Aug. 15, 2023).

344. Brief for Ariz. Farm Bureau Fed’n & New Civil Liberties All. as Amici Curiae Supporting Petitioners at 2–3, *Murphy Co. v. Biden*, 144 S. Ct. 1111 (2024) (mem.) (No. 23-525), 2023 WL 8848352, at *3–4.

345. *See* *Murphy Co. v. Biden*, 144 S. Ct. 1111 (2024) (mem.).

association, effective December 20, 2024.³⁴⁶ Earlier that year, IFB's insurance affiliate, Country Mutual, had eliminated the requirement for non-farm insurance policyholders to be Farm Bureau members, prompting AFBF to retaliate.³⁴⁷ The lawsuit alleges breach of contract, defamation, and commercial disparagement, and seeks an injunction.³⁴⁸ Although this is an insurance-business-related claim, it is relevant to AFBF's tight control of affiliates and desire to require Farm Bureau membership of all insurance policyholders—an essential component of its large membership claims and lobbying power.³⁴⁹ Motion hearings and status conferences are scheduled in state court through mid-2026, but as of summer 2026, the case has not yet come to trial.³⁵⁰

B. Geographic Concentration of Farm Bureau Legal Action Since 2020

Farm Bureau's state court legal actions concentrate on a handful of states, and as we have seen above, frequently involve CAFO issues. Farm Bureau plaintiff actions, heat mapped in blue on Table 6 below, cluster most densely in California, Texas, Virginia, and Washington. These states represent some of the densest CAFO agriculture in the United States, according to mapping produced by the University of Iowa.³⁵¹ The correlation hints at a high-level Farm Bureau agenda around shaping CAFO regulation. These are also jurisdictions where intensive agriculture exists adjacent to active environmental and conservation organizations, wrestling over regulatory control of the industry.³⁵²

346. Complaint at 2, Ill. Agric. Ass'n v. Am. Farm Bureau Fed'n, Case No. 2024CH000046 (Ill. Cir. Ct. McLean Cnty. filed Nov. 13, 2024).

347. *Id.* at 6.

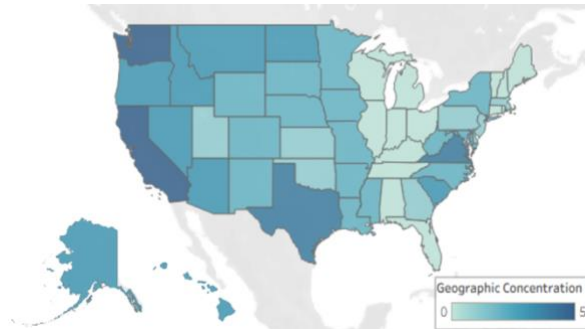
348. *Id.* at 15–19.

349. *See id.* at 11–12.

350. *See* Record Sheet Information, Ill. Agric. Ass'n v. Am. Farm Bureau Fed'n, Case No. 2024CH000046 (Ill. Cir. Ct. McLean Cnty. last visited July 17, 2026), https://publicaccess.mcleancountyil.gov/PubAC_Record_SheetCivil.aspx [<https://perma.cc/5SKH-9A4M>].

351. Rachael Ann Nicoletta, *CAFOs in the US, an In Depth Look at Concentrated Animal Feeding Operations (CAFOs) in the United States and Their Scope in Meat Production* (May 13, 2022), <https://storymaps.arcgis.com/stories/d9db6d31a8534aa38b3f94e8a3caca0> [<https://perma.cc/P9KB-Z3QW>].

352. *See supra* Tables 1–5 (identifying agricultural litigation and environmental law organizations maintaining offices in California, Texas, Virginia, and Washington); *see also Contact Us*, EARTHJUSTICE, <https://earthjustice.org/about/contact> [<https://perma.cc/R9PJ-3QWY>] (last visited July 14, 2026); *Contact Us*, ENV'T'L INTEGRITY PROJECT, <https://environmentalintegrity.org/contact-us> [<https://perma.cc/R9PJ-3QWY>] (last visited July 14, 2026); Nat. Res. Def. Council, <https://www.nrdc.org/contact-us> [<https://perma.cc/4WZ6-ZAKN>] (last visited July 14, 2026); *Virginia*, S. ENV'T'L L. CTR., <https://www.selc.org/our-states/virginia> [<https://perma.cc/MN84-KSTW>] (last visited July 14, 2026).

Table 6: Plaintiff and Plaintiff-Intervenor Actions by Farm Bureau Parties

C. *Affiliated and Co-Plaintiff Organizations and Legal Counsel*

Farm Bureau rarely litigates alone. Instead, it coordinates with agricultural and other industry trade groups as co-plaintiffs or amici in a sustained and strategic legal campaign to shape the boundaries of regulation in the United States, even beyond environmental and agricultural subject matter. In a review of ongoing major cases, AFBF and its state affiliates repeatedly partnered with organizations tied to livestock, energy, and construction industries. Of the thirty-two cases where additional parties were identified, the National Cattlemen's Beef Association appeared eighteen times (56.25 percent of cases); the National Mining Association and American Petroleum Institute both appeared fifteen times (46.9 percent of cases); and the National Association of Home Builders and Public Lands Council both appeared fourteen times (43.75 percent of cases).³⁵³ Other organizations that joined AFBF in more than 25 percent of the cases are: National Corn Growers Association, American Road and Transportation Builders Association, U.S. Poultry & Egg Association, National Pork Producers Council, National Alliance of Forest Owners, Leading Builders of America, National Sand Stone & Gravel Association, and National Association of Manufacturers.³⁵⁴ Of the organizations identified, livestock and mining or energy groups most often partner with national and state Farm Bureau organizations in legal disputes.³⁵⁵

Other organizations that appeared several times included: American Exploration & Mining Association, Buckeye Institute, CATO Institute, U.S. Chamber of Commerce, Mountain States Legal Foundation, and Southeastern Legal Foundation.³⁵⁶ These “free market” think tanks and advocacy groups are affiliated with the State Policy Network, another tax-exempt nonprofit that

353. See Carrie La Seur, *supra* note 118, at Tab: AFBF Tracker.

354. See *id.*

355. See *id.* at Tab: Frequent Collaborators.

356. *Id.*

serves as a kind of “IKEA catalog” of conservative policy initiatives and a link to billionaire donors who back state-focused work.³⁵⁷

AFBF and its allies rely on a small group of repeat legal counsel, including some of the country’s most experienced appellate litigators. Attorneys like Michael Kimberly of Winston Taylor LLP in Washington, D.C.,³⁵⁸ and Brett Legner and Timothy Bishop of Mayer Brown in Chicago are consistently linked to Farm Bureau litigation across the country.³⁵⁹ Kimberly has represented AFBF, the U.S. Chamber of Commerce (57 percent of his cases over the past five years), National Cattlemen’s Association (43 percent), and the American Petroleum Institute (38 percent) in dozens of cases—nearly all focused on procedural or constitutional arguments seeking to curtail regulatory power.³⁶⁰

At the state level, nonprofits affiliated with business interests and right-wing donors are often tapped to represent Farm Bureau in court at no cost to the organization. In the Wisconsin CAFO litigation, for example, Farm Bureau and affiliated plaintiffs were represented by a 501(c)(3) nonprofit called WMC Litigation Center, an affiliate of Wisconsin Manufacturers and Commerce, the combined state Chamber of Commerce and manufacturers’ association.³⁶¹

III. THE LAW ACCORDING TO FARM BUREAU

The clear trend of Farm Bureau’s litigation efforts, from WOTUS to the ESA, is toward more restrictive interpretations of federal and state environmental, animal welfare, and labor laws; expanded access by private parties to public (and public trust) resources; and reduced human health safeguards, including attacks on regulation of chemicals that frequently contaminate land, air, and water. In short, Farm Bureau litigation aggressively pursues a weak to nonexistent regulatory structure that maximizes corporate profits at the expense of human and animal health, safety, and quality of life. This Part will define the types of Farm Bureau arguments that have been most successful, and those that have fallen short.

357. Jane Mayer, *Is IKEA the New Model for the Conservative Movement?*, NEW YORKER (Nov. 15, 2013), <https://www.newyorker.com/news/news-desk/is-ikea-the-new-model-for-the-conservative-movement> [https://perma.cc/ZS8K-ETYM].

358. Michael Kimberly, WINSTON TAYLOR, <https://www.winstontaylor.com/people/michael-branch-kimberly> [https://perma.cc/988S-NP3X] (last visited July 14, 2026).

359. See Carrie La Seur, *supra* note 118, at Tab: AFBF Tracker.

360. Michael Kimberly, Attorney Profile, WESTLAW LITIGATION ANALYTICS, [https://1.next.westlaw.com/Analytics/Profiler?docGUID=I27C545841DD211B2A417260072037375&contentType=attorney&originationContext=typeAhead&transitionType=LegalLitigation&contextData=\(sc.Default\)&analyticNavigation=none&pathAnalytic=%2FAnalytics%2FHome#/attorney/I27C545841DD211B2A417260072037375/profile](https://1.next.westlaw.com/Analytics/Profiler?docGUID=I27C545841DD211B2A417260072037375&contentType=attorney&originationContext=typeAhead&transitionType=LegalLitigation&contextData=(sc.Default)&analyticNavigation=none&pathAnalytic=%2FAnalytics%2FHome#/attorney/I27C545841DD211B2A417260072037375/profile) [https://perma.cc/X7XE-SHG3] (last visited Aug. 19, 2025).

361. *About Us*, WMC LITIGATION CTR., <https://wmc litigationcenter.org/about-us> [https://perma.cc/88AR-APUQ] (last visited Aug. 19, 2025).

A. *Victories: Little and Big*

Even where it ultimately lost on significant disputed issues, Farm Bureau has used delay successfully, such as in *Michigan Farm Bureau v. Department of Environment, Great Lakes, and Energy* and the underlying administrative contested case, which can be interpreted as a tactic to keep weaker regulation in force years after it should have expired.³⁶² Farm Bureau affiliates in Missouri, North Dakota, and elsewhere have initiated and achieved passage of bills to overturn local CAFO ordinances and secured court rulings upholding them.³⁶³ By acting at the grassroots and grasstops levels—for example, in local elections and state legislative chambers—and funding lengthy court and political processes, Farm Bureau has in some cases overwhelmed the resistance of tiny units of local government and citizen advocates. In Wisconsin, however, a similar effort met with a gubernatorial veto, proving that farm politics can swing both ways.³⁶⁴

In the case of Laketown, Wisconsin, discussed in the Introduction, a principled stand against CAFO development was overturned in a single local election. Farm Bureau has urged its members to run for office at all levels to advance “farm-friendly” policies, while characterizing generational family farmers who oppose industrial-scale livestock operations in their neighborhoods as “activists” and “outside special interests.”³⁶⁵ Michigan Farm Bureau, for example, has hosted an Academy for Political Leadership in Lansing and Washington, D.C. since 2017, training potential candidates on Farm Bureau’s policies, supporting their campaigns, and promoting successful elections of Farm Bureau-prepped candidates.³⁶⁶

Because today’s federal courts are increasingly filled with judicial appointees who subscribe to the Federalist Society, originalist interpretations of the Constitution, traditional constitutional arguments, and advocacy urging restraints on government at all levels can land well. Take, for example, the Commerce Clause, which Federalist Society scholar Robert G. Natelson has interpreted as strictly limited to regulating “mercantile trade” such as business affairs among states, Native American tribes, and other entities that might otherwise place restrictions on trade that would harm the national interest.³⁶⁷ This perspective contrasts sharply with that of constitutional scholars Akhil

362. Mich. Farm Bureau v. Dep’t of Env’t, Great Lakes, & Energy, 28 N.W.3d 629, 636 (2024).

363. Mo. Rev. Stat. § 192.300 (2023); N.D. Cent. Code § 54-52.1-02 (2023).

364. Danielle Kaeding, *Evers Vetoes Bill Limiting Local Control of Animal Welfare on Farms*, WIS. PUB. RADIO (Apr. 2, 2024), <https://www.wpr.org/news/evers-vetoes-bill-limiting-local-control-of-animal-welfare-on-farms> [https://perma.cc/8CNB-FP8S].

365. Eayrs, *Dodge Cnty., Incorporated*, *supra* note 123, at 251.

366. *Academy for Political Leadership*, MICH. FARM BUREAU, <https://www.michfb.com/agriculture/political-action/elections-agripac/academy-political-leadership> [https://perma.cc/J2CG-39V3] (last visited Aug. 19, 2025).

367. See Robert G. Natelson, *The Meaning of “Regulate Commerce” to the Constitution’s Ratifiers*, 23 FEDERALIST SOC’Y REV. 307 (2022).

Amar and Jack Balkin, who have argued for an interpretation of “commerce” as “all forms of intercourse in the affairs of life.”³⁶⁸ The whittling down of congressional and executive agency powers has led to expanded interest in state legislation and regulation from major national players like AFBF, which now seek to impose their will upon potentially more malleable state legislatures and agencies.

Farm Bureau’s argument for expansive use of the dormant Commerce Clause to bar state regulation that may affect activities in other states and for a highly restrictive interpretation of the Commerce Clause itself where WOTUS is concerned are both consistent in light of the effects on agribusiness. If the Constitution authorizes only regulation of navigable waters that contribute to interstate commerce, the Clean Water Act’s reach and resulting limits on agricultural pollution are minimized. Farm Bureau would have the Commerce Clause function as a remarkably malleable and convenient bit of constitutional law, using it to block state environmental regulation on federalist grounds, while simultaneously wielding it to undermine federal regulatory protections. The end result is the same: fewer protections for public resources at every level, externalized business costs, and higher private profits.

B. Points of Weakness

Ballot initiatives have established legislation that withstands aggressive legal challenges. As discussed above, in *National Pork Producers Council v. Ross*, courts upheld California’s Proposition 12 through U.S. Supreme Court scrutiny of Farm Bureau’s dormant Commerce Clause argument, suggesting judicial respect for clearly expressed popular support for a well-drafted ballot measure.³⁶⁹ Elsewhere, in *Port of Tacoma v. Puget Soundkeeper Alliance*, the U.S. Supreme Court declined a certiorari petition seeking review of the Ninth Circuit’s ruling upholding the use of Clean Water Act citizen suits to enforce state permit provisions more stringent than required by federal law.³⁷⁰ Attempts to restrict exercise of First Amendment activities have also met judicial resistance, as in *Stein v. People for the Ethical Treatment of Animals* and the failed certiorari petition in *Project Veritas v. Vasquez*.³⁷¹ Rather than advancing environmental or animal rights claims against North Carolina’s “ag gag” law, advocates were successful with a straightforward First Amendment argument.³⁷² The golden thread here may be enduring respect for the value of citizen participation in legislative and regulatory processes.

368. See AKHIL REED AMAR, *AMERICA’S CONSTITUTION: A BIOGRAPHY* 107-08 (2005); Jack M. Balkin, *Commerce*, 109 MICH. L. REV. 1, n. 46 (2010).

369. See *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356 (2023).

370. *Port of Tacoma v. Puget Soundkeeper All.*, 145 S. Ct. 2849 (mem.) (Oct. 28, 2024).

371. *Stein v. People for the Ethical Treatment of Animals*, 144 S. Ct. 326 (2023) (mem.); *Project Veritas v. Vasquez*, 146 S. Ct. 90 (2025) (mem.).

372. *Stein*, 144 S. Ct. at 326.

Direct attempts to overturn state permitting actions in more progressive states, such as Michigan and Washington, have not seen great success, while North Carolina and Missouri have been more receptive.³⁷³ Undermining enforcement activities more subtly, through agency and legislative committees, is perennially and universally successful. But the divergent results achieved by CAFO-regulation advocates in Missouri and North Carolina's highest courts compared to Michigan's, on similar underlying law, is a lesson in the importance of judicial elections and persistent local and state-level engagement by advocates.

CONCLUSION

Farm Bureau litigation reflects a broader ideological posture that defends and bolsters industrial-scale agriculture, promotes secrecy surrounding industry practices, and seeks to limit regulation through all possible channels, even where there may appear to be no direct agricultural relevance to a particular legal issue. The organization takes a broad view and a big tent approach, persistently advancing a worldview in which only owners of large CAFOs are qualified to speak on livestock regulation, shutting out community concerns, investigative journalists, and public health advocates. AFBF's activities promote an exclusionary approach to food systems and regulation generally, criticizing consumers for their attempts at engagement while shielding agribusiness practices from scrutiny.

From CAFO permitting battles to NEPA challenges, the trend is clear: Farm Bureau's goals are to minimize regulation, constrain Clean Water Act authority, and maintain legal uncertainty long enough to stall reform. Whether or not they win in court, delay serves their larger strategic interest. In this sense, Farm Bureau's litigation strategy is less about winning and more about managing the policy environment: keeping it reactive, fractured, and favorable to large-scale agricultural interests. Their efforts present a significant obstacle to the project of democratizing, localizing, and regulating American food systems in the public interest. As courts and agencies continue to restrict regulation in the interests of the wealthiest fraction of society, a clear-eyed view of their allies is vital for all those who work in the interest of the 99 percent.

Table 7: Farm Bureau Amicus Brief Participation

Year Filed	Case Name	Farm Bureau's Stance	Case No. or Reporter
2015	<i>N.D. v. EPA</i>	Challenging the Clean Water Rule of WOTUS	127 F. Supp. 3d 1047

373. See *supra* parts II.A.1, II.A.6, II.A.2, and II.C.

2018	<i>Lighthouse Res. Inc. v. Inslee</i>	Arguing to allow the construction of a coal export facility	429 F. Supp. 3d 736
2018	<i>United States v. Lovato</i>	Against agency deference	No. 18-1468 (10th Cir. 2020)
2018	<i>United States v. Nasir</i>	Against the continued use of Auer deference	17 F.4th 459
2019	<i>McKiver v. Murphy-Brown, LLC</i>	Defending CAFO pollutants	980 F.3d 937
2020	<i>Conservation L. Found. v. EPA</i>	Challenging the WOTUS rule definition	223 F. Supp. 3d 124
2021	<i>Pueblo of Laguna v. Regan</i>	Challenging the WOTUS rule	No. 1:21-cv-00277 (D.N.M.)
2022	<i>Bittner v. United States</i>	Arguing for reduced civil monetary penalties through the application of lenity	19 F.4th 734, 2021 U.S. App. LEXIS 35341
2023	<i>Devillier v. Tex.</i>	Arguing against blanket immunity under the 11th Amendment	144 S. Ct. 938
2024	<i>Allstates Refractory Contractors v. Su</i>	Supporting a strong nondelegation doctrine	144 S. Ct. 2490
2024	<i>Port of Tacoma v. Puget Soundkeeper All.</i>	Supporting limiting citizen suits under the Clean Water Act	D.C. No. 3:17-cv-05016- BHS
2025	<i>ExxonMobil Corp. v. Env't Tex. Citizen Lobby</i>	Arguing for stricter standing rules in environmental citizen-suit actions	123 F.4th 309
2025	<i>Monsanto Co. v. Durnell</i>	Opposing herbicide restrictions	707 S.W.3d 828

Table 8: AFBF Defendant-Intervenor Participation

Year Filed	Case Name	Farm Bureau's Stance	Case No. or Reporter
2011	<i>Ctr. for Biological Diversity v. EPA</i>	Arguing that pesticide authorization by the EPA did not violate the ESA	No. 3:11-cv-00293 (N.D. Cal.)

2015	<i>Puget Soundkeeper All. v. McCarthy</i>	Challenging the WOTUS Rule	389 F. Supp. 3d 497
2019	<i>N.Y. v. Wheeler</i>	Challenging the 2015 WOTUS Rule	No. 1:19-cv-11673
2019	<i>S.C. Coastal Conservation League v. Wheeler</i>	Challenging the WOTUS Rule	2:20-cv-01687 DCN
2020	<i>Colo. v. EPA</i>	Arguing the definition of WOTUS	445 F. Supp. 3d 1295
2020	<i>Env't'l Integrity Project v. Wheeler</i>	Opposing a Clean Air Act citizen suit for Texas facilities	D.D.C.
2020	<i>Env't'l Justice Health All. v. Council on Env't'l Quality</i>	Supporting accelerated environmental reviews under NEPA	No. 1:20-cv-06143
2020	<i>Nat. Res. Def. Council v. EPA</i>	Against the review of a pesticide decision	9th Cir.
2021	<i>Wild Va. v. Council on Env't'l Quality</i>	Supporting Executive Order reducing environmental regulations under NEPA	No. 3:20-cv-00045
2021	<i>WildEarth Guardians v. Am. Farm Bureau Fed'n</i>	Attempting to intervene in a case challenging a California decision to revive protections for gray wolves	No. 21-15651 (9th Cir.)
2022	<i>Ctr. for Biological Diversity v. Haaland</i>	Challenging ESA regulations promulgated in 2019	58 F.4th 412
2023	<i>W. Va. v. EPA</i>	Claiming WOTUS rule is unconstitutional and violates APA	No. 23-1746 (8th Cir.)

Table 9: AFBF Plaintiff Actions

Year Filed	Case Name	Farm Bureau's Role	Case No. or Reporter
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2015	<i>Am. Farm Bureau Fed'n v. EPA</i>	Challenging the WOTUS Rule	792 F.3d 281
2015	<i>Ga. v. Wheeler</i>	Challenging the WOTUS rule definition	418 F. Supp. 3d 1336
2017	<i>Wilderness Soc'y v. Trump</i>	Supporting the Trump Administration in reducing and dividing a national monument	D.D.C.
2020	<i>Nat'l Pork Producers Council v. Ross</i>	Against California initiative barring the sale of pork from CAFOs inconsistent with California standards	6 F.4th 1021
2022	<i>Red River Valley Sugarbeet Growers Ass'n v. Regan</i>	Against more regulations for chlorpyrifos (pesticides)	22-1530
2023	<i>Ass'n of Wash. Bus. v. EPA</i>	Arguing the definition of WOTUS	No. 1:23-cv-00534
2023	<i>Tex. v. EPA</i>	Claiming that WOTUS rule is unconstitutional	No. 23-40076
2023	<i>W. Watersheds Project v. Haaland</i>	Opposing accelerating environmental reviews of federal land	69 F.4th 689
2024	<i>Am. Farm Bureau Fed'n v. Dep't of Interior</i>	Challenging the Bureau of Land Management's Conservation and Landscape Health Rule	D. Wyo.
2024	<i>Valero Renewable Fuels Co. v. EPA</i>	Challenging fuel economy standards	5th Cir.
2024	<i>Am. Farm Bureau Fed'n v. Va. Farm Bureau Mutual</i>	Suing over a trademark violation	E.D. Va.

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