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Tess Bedingfield  · a few seconds ago · 3 min read

Maine's Right To Food: A Symbolic Right Or A Practical Right?

In November 2021, Maine became the first U.S. state to adopt a constitutional amendment guaranteeing the right to food.[1] The amendment passed by a wide, bipartisan margin of 61% to 31%[2] and states that "[a]ll individuals have a natural, inherent and unalienable right to food, including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing." [3] Although many states have protected constitutional rights to hunt, fish, and farm, Maine's constitutional amendment is the first to adopt such broad language enshrining food as an unalienable right.[4] Prior to this amendment, the right to food was seen as an integral part of a standard of living but was not considered a standalone right.[5] Although Maine's right to food will have broad practical applications, its most impactful consequence may be its language officially designating the right to food as an essential human right.

The amendment has largely been met with confusion, with both proponents and opponents unsure of what exactly this amendment guarantees and what its impact will be.[6] One proponent, who, like many of the amendment's proponents, identifies as libertarian, interpreted the amendment as "a public health statement . . . an affirmation of our relationship with Mother Earth, and [an amendment that] speaks to the spirit of Maine." [7] Skeptics expressed confusion over the amendment and how it seemed to enshrine the right to food without putting anything in place to address food insecurity.[8] Other opponents of the amendment included the Maine Veterinary Association ("voicing concerns about animal welfare if inexperienced" and ill-equipped people became empowered to raise livestock), the Maine Municipal Association (raising concern over years of litigation over the new amendment), and the Maine Farm Bureau (concerned about the potential lack of regulation in pasteurization and other food processing).[9]

Two recent lawsuits filed in Maine have the potential to reach the Maine Supreme Judicial Court and help define the on-the-ground meaning of the right to food amendment. The first lawsuit challenges Maine's ban on hunting on Sundays.[10] The plaintiffs argue that the relevant key phrase of the amendment is the "harvest" phrase, contending that the prohibition of hunting on Sunday infringes on their right to harvest.[11] The plaintiffs claim that they cannot hunt Monday through Friday and the right to food should afford them the right to hunt on days of the week that they are able to harvest food.[12] If successful, the plaintiff's argument could potentially call into question many hunting and fishing regulations, and has been strongly opposed by the Maine Farm Bureau, the Maine Woodland Owners, and the Maine Forest Production Council and on the ground that removing these limits "would actually have a deleterious effect on hunting access." [13] However, there is no evidence, from either

the legislature or the voting public, that the right to food amendment was intended to alter hunting and fishing laws.[14] A lower court dismissed the complaint and the Maine Supreme Court is expected to hear arguments in October 2023.[15]

The second suit involves a small home kitchen business suing the state after the state shut down their business in October 2022 for failing to have an operating license.[16] The plaintiffs seek a declaratory judgment that the state's closure of their business constitutes an infringement of their right to food under the new amendment.[17] The rulings on these two cases, and the many more likely to be filed in the coming years, will be crucial to determining the effects of this amendment in Maine and, if more states seek to adopt similar regulations or constitutional amendments, across the United States.

[1] ME. CONST. art. I, § 25 (2021).

[2] Pierre Desrochers & Pierre Lemieux, *Maine's Mysterious New 'Right to Food,'* CATO INSTITUTE (2022), <https://www.cato.org/regulation/spring-2022/maines-mysterious-new-right-food>.

[3] ME. CONST. art. I, § 25 (2021).

[4] Desrochers & Lemieux, *Maine's Mysterious New 'Right to Food,' supra* at n.2.

[5] Tess Brennan, *Maine Becomes The First US State to Recognize The Right to Food In a Constitutional Amendment,* UNIVERSAL RTS. GRP. (Jan. 19, 2022), <https://www.universal-rights.org/maine-becomes-the-first-us-state-to-recognise-the-right-to-food-in-a-constitutional-amendment/>.

[6] Jesse Ellison, *What Does Maine's "Right to Food" Amendment Mean?,* DOWNEAST (Feb. 2022), <https://downeast.com/food-drink/what-does-maines-right-to-food-amendment-mean/>.

[7] Desrochers & Lemieux, *Maine's Mysterious New 'Right to Food,' supra* at n. 2.

[8] Ellison, *What Does Maine's "Right to Food" Amendment Mean?, supra* at n. 6.

[9] *Id.*

[10] Rachael Moore & Matt Bober, *Do You Have a Constitutional Right to Food? Understanding the Food Sovereignty Movement,* THOMPSONCOBURN (Jul. 26, 2023), <https://www.thompsoncoburn.com/insights/blogs/food-fight/post/2023-07-26/do-you-have-a-constitutional-right-to-food-understanding-the-food-sovereignty-movement>.

[11] *Id.*

[12] Martha Davis, *In Maine, a 'Second Amendment for Food'?,* STATE CT. REP. (Aug. 9, 2023), <https://statecourtreport.org/our-work/analysis-opinion/maine-second-amendment-food>.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] Moore & Bober, *Do You Have a Constitutional Right to Food? Understanding the Food Sovereignty Movement, supra* at n. 18.

[17] *Id.*