A Property Rights Battle in Minnesota Over Deer Farming and CWD

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Overview

In Minnesota, a legal and legislative battle has reached a tipping point. For over a decade, the state's Department of Natural Resources (DNR) and the private deer farming industry have been locked in a struggle over the management of Chronic Wasting Disease (CWD). CWD is a fatal, contagious neurological disease. By late 2025, a series of court rulings and aggressive new fencing mandates have pushed the industry to the brink of extinction, sparking a constitutional battle that is now heading to the U.S. Supreme Court.

What's the battle all about, and what is the major constitutional issue involved? It's the topic of today's post.

Regulation of Deer Farming Operations

In *Minnesota Deer Farmers Association v. Stommen*,[1] the U.S. Court of Appeals for the Eighth Circuit upheld a 2023 state law that many deer farmers described as a "death sentence" for their profession. Utilizing "rational basis" review, the court held that there is no fundamental right to pursue the occupation of white-tailed deer farming under the 14th Amendment.[2] The court determined that because the state had a legitimate interest in protecting the wild deer herd, a public resource fueling a multi-billion dollar hunting economy, it had the authority to regulate or even phase out private deer farms to prevent the spread of CWD. Because of this legitimate state interest, the governing statute was subject to rational basis review rather than strict scrutiny.

Statutory provisions. At the heart of the conflict is Senate File 553, passed in the 2025 legislative session. This bill codified the most stringent fencing requirements in the nation, effectively moving the state to a "no-contact" standard between wild and farmed deer. Under Minn. Stat. §35.155, all registered farms must utilize "exclusionary" fencing. The primary configurations for farmers are both physically and financially daunting:

- **Option 1:** Double Fencing – Two separate 8-foot-high (96-inch) fences, spaced at least 4 feet apart.
- **Option 2:** Secondary Mesh Barrier – A secondary mesh fence (holes no larger than 2x4 inches) attached to the primary fence with 12-inch spacers.
- **Option 3:** Solid Material – Attaching wood, tin, or dense shade cloth to the fence, reaching a minimum height of 5 feet.
- **Option 4:** Electrified Barrier – A multi-strand 5,000-volt fence with a battery backup and alarm system.

For many small family farms, the cost of installing these systems can exceed $200,000 and is cost prohibitive.

[1] 146 F.4th 664 (8th Cir. 2025)
[2] The court determined that the statutory recognition of deer farming as an occupation does not render it a fundamental constitutional right.

Administrative issues. The 2025 law also introduced the "Notice of Violation" (NOV) process, an administrative hammer used to ensure compliance. If a deficiency is found, farmers have a strict 14-day repair window. If a defect allows for the possibility of entry or escape, it must be fixed immediately.

Steve Porter, owner of Steve Porter's Trophy Whitetail, became a central figure in the opposition to the statutory scheme. Porter received an NOV in July of 2025 for failing to install the mandated double-fencing system.[3] Porter claimed that because his deer are legally defined as "livestock," the DNR's wildlife-based rules contradict the Minnesota Constitution's protections for farmers. However, his refusal to comply due to the cost of compliance and the state's position of phasing out the industry triggered the registration revocation process - the "death penalty" for a deer farm.[4]

> **Note:** Once an NOV is issued for a first-time violation, the farm has 14 days to fix the problem and must pay a fee for reinspection once the deficiency is corrected. If the deficiency noted in the NOV is not corrected, the DNR has the authority to revoke the farm's registration and can issue an order to the farm to depopulate the herd. A second escape of a deer constitutes automatic grounds for seizure and destruction. Transporting deer without a permit is a criminal misdemeanor and leads to immediate herd quarantine.

Industry Economics

The number of registered white-tailed deer farms in Minnesota has declined from nearly 200 in 2020 to just 79 as of December 2025. Because the state has banned all new registrations and limited transfers to a one-time hand-off to immediate family members, the industry is "self-extinguishing" - legally designed to die out with the current generation of owners.

Litigation Update

On October 27, 2025, the Minnesota Deer Farmers Association filed a petition for a writ of certiorari with the U.S. Supreme Court.[5] The key question that the farmers are asking is whether the right to pursue a chosen profession is a "fundamental right" that the 14th Amendment protects.

If the Supreme Court declines to hear the case, the DNR's "no-contact" regime will likely be the final chapter for Minnesota's deer farmers. If the Court steps in, it could redefine the legal protections for small business owners and farmers nationwide against state regulatory "wipeouts."

The Legal Limit of Regulatory Phase-Outs

The *Strommen* case is an example of the tension between state police power and the right to pursue an occupation. When a legislature regulates a business to the point where it can no longer survive, they are walking a fine line between two major legal doctrines – the "police power" and fundamental rights. Minnesota's primary argument which was upheld by the Eighth Circuit is that states have an inherent police power to protect public health, safety, and welfare. In particular, the state's position is that protecting the wild deer population from CWD is a legitimate government interest, and that banning new registrations and mandating expensive double-fencing is a "reasonable" exercise of that

[3] Porter has a history of conflict with the DNR, including receiving a misdemeanor citation in 2020 for moving trophy bucks to a sports show in violation of an emergency Chronic Wasting Disease (CWD) moratorium

[4] As of late December, the DNR has not shut down Porter's operation, but the statutory requirements have, in effect, destroyed the operation beyond repair, according to Porter.

[5] Docket No. 25-533.

power. Because the court ruled that "deer farming" is not a "fundamental right" (like free speech or religion), the law only needs to pass the rational basis test. This is the lowest level of judicial review: the state just needs to show that the law is "rationally related" to a "legitimate" state interest.

Under the Fifth Amendment, the government cannot take private property for public use without "just compensation." A physical taking is not necessary. Regulatory takings are compensable if all "economically viable" use of the property in issue has been effectively "taken" via regulation. Courts use the complex three-part test from *Penn Central Transportation Company v. New York City,*[6] to decide if a regulation is actually a taking. They look at the economic impact on the owner; the extent to which the regulation interferes with "investment-backed expectations"; and the character of the government action (e.g., whether it is a physical invasion or simply a general program).

Conclusion

If the U.S. Supreme Court takes the case, the question of whether the right to pursue one's chosen occupation is a fundamental constitutional right will be evaluated under the *Penn Central* test. Under that analysis, the law favors the state. If a legislature can link its regulations to a public health crisis (like CWD), it can impose costs that make a business model obsolete. To win, deer farmers must prove the state is acting arbitrarily or that the state's goal is a "sham" to target a specific person or industry without any scientific basis.

It is being watched by the broader agricultural community because it tests the limits of how much "risk" a state can use to justify the total elimination of a private industry. The case also highlights a growing legal rift over what constitutes "livestock." Under the traditional view, if an animal is owned, fenced, and bred for profit, it is livestock and protected under agricultural right-to-farm laws. However, the Minnesota courts (and the Eighth Circuit) focused on the notion that because deer are a "public trust" resource, the state has a unique, superior interest in them that overrides farmers' property rights.

> **Note:** The issue also concerns bison, elk, and even some exotic cattle ranchers. If the state can reclassify "livestock" as a "managed public resource" because of a disease risk (like CWD or Brucellosis), property rights become significantly more fragile.

For broader agriculture (pork, poultry, beef), the case is a warning sign. It suggests that if a state agency (like a Department of Health or Environmental Quality) declares that a certain farming practice is a "public health threat," the courts may not look very deeply into whether that science is settled before allowing the state to shut the industry down.

Agriculture has historically been seen as a foundational right in America. This case shifts it into the category of a "privileged activity" that exists only at the pleasure of the state legislature. "The regulatory phase-out of deer farming in Minnesota challenges the Jeffersonian ideal of the 'virtuous cultivator.' By imposing costs that dictate 'when to sow and when to reap,' the state moves away from Jefferson's warning that central direction leads to the collapse of industry, shifting the farmer from an independent producer to a regulated tenant of state policy.

[6] 483 U.S. 104 (1978)