

The Honorable Roy A. Cooper III
North Carolina Office of the Governor
20301 Mail Service Center
Raleigh, NC 27699-0301

Sent via email and hand delivery

RE: Senate Bill 711 Veto Request

Dear Governor Cooper,

Our organizations write to urge you to veto Senate Bill 711, the Farm Act of 2018. Section 10 of the bill, the 'nuisance lawsuit' provision, radically upends North Carolina law to prevent residents near agricultural and forestry operations from seeking any remedy for nuisance. S711 is bad policy, jeopardizes the health and property of vulnerable neighbors, and exposes state government to potentially enormous liabilities. Please veto this bill.

As you know, last year, despite your veto, the General Assembly enacted S.L. 2017-11 (H467), limiting the compensatory damages that could be awarded in future nuisance lawsuits against agricultural operations. In April, a jury of North Carolina citizens, hearing a nuisance claim against Smithfield that was filed before H467 became law, awarded neighbors \$50 million in punitive damages based on the evidence they were shown. S711 is explicitly a response to that verdict, and is a significantly more destructive bill than H467.

S711 deserves your veto for multiple reasons:

- S711 eliminates property rights that pre-date North Carolina statehood and strips neighbors and communities of access to the courts in an effort to protect a single industry from liability. The bill constrains nuisance challenges so tightly that the only example of a viable claim the bill sponsor could imagine is a lawsuit following the complete abandonment of a farm by its owners.
- The communities surrounding intensive hog farms in North Carolina are already disproportionately burdened based on their race or ethnicity. In January 2017, the US EPA expressed its concern that the impacts of animal agriculture, coupled with inadequate state remedies, violate Title VI of the Civil Rights Act. Your Administration has shown leadership on this issue and recently settled negotiations resulting from that EPA letter. S711, section 10 would entrench the same unequal protection that concerned the federal agency, and is inconsistent with the values and direction of your Administration.
- Even viewed from the perspective of H467's supporters, S711 is unnecessary. There have been no nuisance suits filed against any agricultural operations in North Carolina other

than the suits against Smithfield in a number of years. Furthermore, it is our understanding that no lawsuits filed after the effective date of H467 have reached a judgment against Smithfield or any other farm or integrator, and the ongoing lawsuits are not subject to either H467 or S711. Thus, even if one believed it was important to limit nuisance claims against the corporation, there is no evidence that S711 is needed to reach that goal.

- Because the bill precludes lawsuits that have not been filed as of the date of the bill's enactment, it effectively 'takes' the accrued but as yet unfiled claims of an unknown number of neighbors. Under *Rhyne v. K-Mart Corp*, 258 N.C. 160, 594 S.E. 2nd 1 (2004), S711 may leave the State responsible for compensating each of these residents for their lost claims, imposing an unknowable financial liability on state government.

At base, S711 attempts to exempt Smithfield and animal agriculture generally from a fundamental rule of civil society, a rule that applies to all other industries and residents: one cannot unreasonably burden other people's quiet enjoyment of their properties. Neighbors of industrial animal agriculture operations have had to bear unreasonable burdens for two decades. It is time for a solution that moves past the ever-failing technology of sprayfields, to a future that allows residents and farms to coexist. Stripping neighbors of their civil rights and access to justice is not a legitimate or honorable solution, and we urge you to veto S711.

Sincerely,

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