

YOU CAN'T GROW THAT HERE: OBSTACLES TO AN AGRARIAN RENAISSANCE

I. INTRODUCTION

It is no secret that an adequate food supply is an essential element to the continued survival of the human species.¹ Bearing this in mind, it is necessary to consider the risks inherent in the United States' increasing dependence on imported foods, population growth, and other environmental and industrial factors, such as sprawl² and the emergence of the biofuel industry.³ Recognition of these risks has resulted in an increased interest in local foods and a heightened appreciation of the need to pursue sustainable agricultural practices.⁴ Urban agriculture is a term used to describe community gardening in neighborhoods and in public housing, by residents who may or may not own the land.⁵ An awareness of the numerous benefits that urban agriculture affords has prompted some cities to begin encouraging its practice.⁶ As a means of promoting the health of the community, providing a secure food supply, and encouraging economic development, some cities have begun to promote the practice of urban agriculture with "protective zoning" that permits land to be used for this purpose.⁷ Despite the myriad of benefits derived from urban agriculture, numerous legal impediments exist which are not conducive to the production of food in the places where many people live.⁸

¹ See Kathryn A. Peters, Note, *Creating a Sustainable Urban Agriculture Revolution*, 25 J.Env'tl.L & Litig. 203 at 204 (2010).

² See *id.* at 205.

³ *Id.* at 204.

⁴ *Id.* at 206.

⁵ *Id.* at 214.

⁶ See Stephanie A. Maloney, Note, *Putting Paradise In The Parking Lot: Using Zoning to Promote Urban Agriculture*, 88 Notre Dame L. Rev. 2551, 2553 (2013) (discussing Americans' awareness of urban agriculture).

⁷ See *id.*

⁸ See Nicole Civita, *Home Free: Legalizing Home-Produced Foods*, AGRICULTURAL LAW (Dec. 28, 2012), <http://aglaw.blogspot.com/2012/12/home-free-legalizing-home-produced-foods.html>.

Apartment tenants and individuals who live in developments that are governed by homeowner associations are often limited in what use they may make of the land where they reside.⁹ This is due to either the covenants, conditions, and restrictions of the development or by lease agreements, which place similar restrictions on renters.¹⁰ Removing these barriers will contribute to a more sustainable agricultural system¹¹ and help to ensure that even the less advantaged in urban areas may access fresher, more nutritious foods.¹² Additionally, there would be the benefit of increasing economic activity within the community, as individuals will be able to supplement their incomes through the sale of homegrown produce.¹³

This Comment will address the manner in which current agricultural practices undermine the fragile state of our food system and the obstacles to home-based agriculture for members of homeowner associations and apartment tenants. This Comment will also discuss the benefits of implementing policies that facilitate the growing of food at home for personal and community use. Part II will discuss the threats to economic and environmental sustainability posed by the current system of agriculture in the U.S. Part III will provide a historical context for common interest developments and discuss the impediments confronting residents who wish to grow food in or around their home. Part IV will provide a brief case study of legislative efforts at the federal, state, and local levels to address the concerns of sustainability and ensure access to fresh and healthy foods. In Part V, recommendations will be made for advancing these objectives legislatively and through the establishment of public policies, which would in turn have a measurable impact on the decision-making process of the courts. This Comment will conclude that the passage of legislation indicative of a change in public policy, which facilitates urban food production, would serve to benefit the public health, decrease reliance on imported foods and provide the judiciary with the necessary impetus to prevent the enforcement of land use restrictions contrary to these aims.

⁹ *See id.*

¹⁰ *See id.*

¹¹ *See Peters, supra* note 1, at 205.

¹² *See Civita, supra* note 8.

¹³ *Id.*

II. FEAST OR FAMINE: THE FRAGILE STATE OF OUR FOOD SYSTEM AND THE EXISTING THREATS TO ECONOMIC AND ENVIRONMENTAL SUSTAINABILITY

To fully understand the precarious state of our current food system it is helpful to compare current agricultural practices employed in the U.S. to those utilized by Cuba in the years prior to the food crisis experienced in that country.¹⁴ The Cuban system of producing and supplying food prior to 1990 was fraught with unrealized vulnerabilities.¹⁵ The problematic nature of the Cuban agricultural system in place prior to 1990 became apparent when the Cuban people experienced a food-shortage crisis and faced the real possibility of starvation had they not implemented a more self-sufficient means of producing food.¹⁶ In response, the Cuban people began to make use of any and all land for planting crops and for raising small animals, where space provided, which resulted in a sustainable urban agricultural system.¹⁷ An examination of the food crisis experienced in Cuba lays a foundation for criticism of the industrialized agribusiness model in place in the U.S. today.¹⁸ While there is ample evidence to substantiate the benefits of growing food for personal use, the opportunity to do so for those living in urban areas has not been given adequate consideration.¹⁹

A. The Cuban Food Crisis: Lessons Learned the Hard Way

Following the Soviet Union's collapse in 1990, the U.S. tightened an existing embargo on Cuba, which, because of their dependence on imported foods, placed the health of the Cuban people in jeopardy.²⁰ Traditionally, as much as fifty-seven percent of the food consumed in Cuba was imported from the Soviet Union, with the Cuban government designating most of the available land for sugar

¹⁴ See generally Colin Crawford, Article, *Necessity Makes the Frog Jump: Land-Use Planning and Urban Agriculture in Cuba*, 16 TUL. ENVTL. L.J. 733 (2003) (discussing Cuba's agricultural practices prior to the collapse of the Soviet Union and the crisis which resulted from the tightening of the U.S. embargo).

¹⁵ See Peters, *supra* note 1, at 231.

¹⁶ See Crawford, *supra* note 14, at 734.

¹⁷ See Peters, *supra* note 1, at 232. .

¹⁸ *Id.* at 231.

¹⁹ See Civita, *supra* note 8.

²⁰ See Peters, *supra* note 1, at 231.

production.²¹ Cuba's agricultural practices during that time were heavily dependent upon imported petroleum products, which were necessary for operating the machinery of industrialized agriculture.²² After the collapse of the Soviet Union, U.S. actions to tighten the embargo served to cut Cuba off from foreign imports while reducing the country's own means of production.²³ The subsequent shortages in fuel meant that foods could not be refrigerated when transported into urban areas.²⁴ Consequently, Cuba plunged into a crisis that resulted in a drop in the daily intake of calories and protein by Cubans of as much as thirty percent.²⁵ While the Cuban people's initial response to their food crisis, by transforming their agricultural practices, was a necessary occurrence, an Urban Agriculture Department has since been created in Cuba to support these practices, which is some testament to the success of these activities.²⁶

The Cuban food system, which precipitated that country's food crisis, was remarkably analogous to that currently in place in the U.S. and foreshadows what the U.S. food system will become if current trends continue.²⁷ These trends in U.S. agricultural practices have served to increase reliance on imported fruits and vegetables as a means of supplementing the U.S. food supply.²⁸ These same trends involving industrialized agriculture have increasingly made the U.S. dependent upon foreign oil for the operation of farming equipment and made the U.S. more susceptible to foreseeable threats to the supply chain.²⁹ The Cuban Food Crisis is helpful in illuminating the threat posed by current U.S. agricultural practices, as well as in providing a model for urban agriculture that could be employed to reduce, if not eliminate, that threat.³⁰

B. Current Agricultural Practices in the U.S. and the Potential for Catastrophe

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 231-232.

²⁶ *Id.* at 232.

²⁷ *Id.* at 231.

²⁸ *Id.* at 207.

²⁹ *Id.* at 209.

³⁰ *Id.* at 247.

The food supply in the U.S. is almost entirely produced by industrialized agricultural practices aimed primarily towards generating profits.³¹ Large agricultural operations have been the principal beneficiary of government subsidies, which has resulted in a disproportionate production of commodity crops for export.³² Consequently, there has been an increase in the U.S.'s dependence upon imported fruits and vegetables since industrialized farming and commodity crops are generally mono-cultural, meaning there is a focus on increased production of one crop.³³ This is much like Cuba's sugar monoculture.³⁴

Corn provides a telling example of commodity driven agriculture in the U.S.³⁵ Eighty-four million acres in the U.S. produce thirty-two percent of the world's corn.³⁶ Domestic livestock and poultry consume eighty percent of this corn.³⁷ Agricultural imports in the U.S. have increased 115% since 1995.³⁸ The massive volume of monoculture crops such as corn that are used for purposes other than consumption, necessarily mean that the potential of valuable farmland for growing food is not being realized.³⁹ The grave impact of the overproduction of commodities and consequential reliance on food imports has already been realized by Cuba, but Cuba's response may provide a working model of sustainable agriculture, which could be employed to avoid a similar food crisis in the U.S.⁴⁰ However, the obstacles faced by homeowner association members and apartment tenants hindering their ability to grow food at home, serves to discourage small-scale production of food for personal use.⁴¹

³¹ *Id.* at 207.

³² *Id.*

³³ *Id.*

³⁴ See Peters, *supra* note 1, at 231.

³⁵ See U.S. Env't'l Prot. Agency, Major Crops Grown In The United States, EPA.gov, <http://www.epa.gov/agriculture/ag101/cropmajor.html> (last visited January 19, 2015).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Public Citizen, *Food Imports to United States Soar under WTO-NAFTA Model, Threatening American Farmers and Safety*, CITIZEN.ORG (June 2014), <http://www.citizen.org/documents/food-under-nafta-wto.pdf> (last visited January 19, 2015).

³⁹ See U.S. Env't'l. Prot. Agency, *supra* note 35.

⁴⁰ See Peters, *supra* 1, at 247.

⁴¹ See Civita, *supra* note 8.

C. The Urban Economy and the Inherent Risks of Food Insecurity

Trends in urban development are demonstrative of the problematic nature of food production in the U.S.⁴² Urban development today is focused on improving the land surrounding cities and funding even more infrastructure, such as roads for commuting.⁴³ The result of this urban sprawl is that economic activity has, for the most part, left the urban areas and placed these communities into a state of decline.⁴⁴ Many who remain in urban areas do so not by preference, but because they cannot afford to leave.⁴⁵ In the future, food shortages are likely to further exacerbate the situation for those living in urban areas.⁴⁶ Inflated food prices are likely to result in even greater disparity between those individuals who are economically unable to leave urban neighborhoods and those of greater financial means.⁴⁷ The ability to grow food at home helps to ensure there is fresh and healthy food available to even those with the most modest means.⁴⁸

The availability of food in the U.S. has been a topic of public concern for several decades now.⁴⁹ In 1968, during President Lyndon B. Johnson's War on Poverty, one in twenty Americans was "hungry."⁵⁰ Today, the term "hungry" has been replaced by the more inclusive term "food insecurity," so that it now encompasses not just those who are literally starving, but also those who struggle to stay fed.⁵¹ Previously, the term hungry was applied only to those who had physical symptoms, whereas an individual may qualify as "food insecure" if they have simply missed meals or worry about doing so.⁵² The idea that being food insecure means being homeless or

⁴² See Peters, *supra* note 1, at 212.

⁴³ *Id.*

⁴⁴ *Id.* at 213.

⁴⁵ *Id.*

⁴⁶ *Id.* at 214.

⁴⁷ *Id.* at 227.

⁴⁸ See Civita, *supra* note 8.

⁴⁹ See Tracie McMillan, *Shift to 'Food Insecurity' Creates Startling New Picture of Hunger in America: Millions of Working Americans are "Food Insecure."*

NATIONALGEOGRAPHIC.COM (July 16, 2014),

<http://news.nationalgeographic.com/news/2014/07/140716-hunger-america-food-poverty-nutrition-diet/>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

unemployed is a mistaken belief held by many.⁵³ To the contrary, the food insecure are usually employed, with sixty-percent of them belonging to households that have at least one person who is employed full-time.⁵⁴ In contrast to the common perception of hungry persons as homeless and unemployed, the food insecure today may not be completely destitute.⁵⁵ This is a familiar scene at one soup kitchen in the Bronx where over one-third of the community are food insecure.⁵⁶ Food insecure residents of the Bronx, and similar communities, generally do not own their own homes with large lots and are the most susceptible to land use restrictions.⁵⁷ These restrictions prevent them from growing food for themselves and their neighbors.⁵⁸

III. OBSTACLES TO GROWING FOOD IN THE LEGAL LANDSCAPE

There are two primary obstructions faced by homeowners wishing to make use of their land for agricultural purposes, the first of which is restrictive covenants that are enforced by a homeowner association.⁵⁹ Homeowners may be similarly affected by zoning codes or ordinances implemented by local governments that designate what uses may be made of land within a particular zone on a map.⁶⁰ While courts may refuse to enforce a restrictive covenant that is contrary to public policy, there has not yet been a clear manifestation that the ability to grow food in urban areas is of any public concern.⁶¹ There have, however, been attempts at legislation, both at the federal and state levels that would have implicated urban agriculture as a public policy concern had they been enacted.⁶²

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See Civita, *supra* note 8 (describing how residents who live on smaller lots have not been afforded the opportunity to grow food as have those who have “ample acreage”).

⁵⁸ *Id.*

⁵⁹ See Sustainable Economics Law Center, *Homeowners Associations and Urban Ag*, URBANAGLAW.ORG, <http://www.urbanaglaw.org/homeowners-associations/#Evidence> (last visited January 19, 2015).

⁶⁰ See Sustainable Economics Law Center, *Planning and Zoning*, URBANAGLAW.ORG, <http://www.urbanaglaw.org/planning-and-zoning/> (last visited Jan. 19, 2015).

⁶¹ See discussion *infra* Part A.1.

⁶² See discussion *infra* Part IV.A.

Zoning ordinances or planning codes provide local governments with a means to prevent land use that is determined to be unsuited for the existing use of the land, such as keeping industry out of residential neighborhoods.⁶³ The problem with zoning ordinances, as they relate to urban agriculture, is that the bulk of them were implemented in the early twentieth century, at a time when agriculture was viewed strictly as a rural activity.⁶⁴ The implication here is that many zoning ordinances may have outlived their usefulness,⁶⁵ just as restrictive covenants that are imposed under one set of circumstances and with one purpose may be found to be no longer enforceable in cases where it is unreasonable to do so as a result of changed circumstances.⁶⁶

A. *What Purpose Do Common Interest Developments Serve?*

The first notions of common interest developments can be traced back to the writings of Ebenezer Howard in the late nineteenth century.⁶⁷ He expressed his desire for a “new civilization based on service to the community and not on self-interest.”⁶⁸ The communities he envisioned were self-contained and self-sustaining “garden cities” that would include industry, agriculture, housing, and open space.⁶⁹ These communities would be efficient enough to maintain their agricultural independence.⁷⁰ During this same period of time, common interest communities, with a different set of foundational purposes, were being developed in order to establish exclusive environments for wealthy residents.⁷¹ The developers of these communities used deeds to attach restrictive covenants to the land.⁷² Homeowner associations were then organized to ensure that these covenants were enforced and that the communities maintained their exclusivity.⁷³

⁶³ See Sustainable Economics Law Center, *supra* note 60.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See Sustainable Economics Law Center, *supra* note 59.

⁶⁷ JULIA LAVE JOHNSTON & KIMBERLY JOHNSTON-DODDS, CALIFORNIA RESEARCH BUREAU, COMMON INTEREST DEVELOPMENTS: HOUSING AT RISK? 9 (California State Library, 2002), available at <http://www.library.ca.gov/crb/02/12/02-012.pdf>.

⁶⁸ See *id.* (quoting EVAN MCKENZIE, *PRIVATOPIA: HOMEOWNER ASSOCIATIONS AND THE RISE OF RESIDENTIAL PRIVATE GOVERNMENT* (Yale University Press, 1994)).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

Restrictive covenants may include rules against conducting business or civic activities on the property, prohibitions on agricultural uses of the land, and may provide standards for the appearance of yards.⁷⁴ In 1985, all of the California statutes, which relate to common interest developments, were consolidated under the umbrella of the Davis-Stirling Act.⁷⁵ Under the Davis-Stirling Act, when an interest in a property is conveyed along with an unconnected interest in a common area, the result is a common interest development.⁷⁶ Today, an estimated nine million California residents reside in common interest developments and, thus, are subjected to these types of restrictions on their use of the land.⁷⁷

Formerly there had been an abundance of land and the need to compromise one's ownership interest in a property, as with a common interest development, did not exist.⁷⁸ In 1804, the French Civil Code became both the first authority to recognize shared ownership and the first statutory means of separating the things on the land from the land itself, for ownership purposes.⁷⁹ This concept of shared ownership first gained meaningful acceptance in the U.S. with the passage of the National Housing Act of 1961, which provided mortgage insurance to encourage condominium purchases.⁸⁰ For many today, common interest developments provide affordable housing and the benefit of the association being responsible for maintaining the common areas.⁸¹

The passage of Proposition 13 in California in 1978 severely limited the amount of property tax that could be collected and jeopardized the fiscal stability of local governments, so that California cities became dependent upon private residential governments to provide many of the municipal services that city governments previously provided.⁸² This arrangement allowed city governments to utilize their limited

⁷⁴ See Sustainable Economics Law Center, *supra* note 59.

⁷⁵ *Nahrstedt v. Lakeside Village Condominium Ass'n, Inc.* 878 P.2d 1275 at 1284 (Cal. 1994).

⁷⁶ *Id.*

⁷⁷ See Ctr. for Cal. Homeowner Ass'n Law, *Mission Statement*, CALHOMELAW.ORG, <http://www.calhomelaw.org/doc.asp?id=410> (last visited Apr. 7, 2015).

⁷⁸ See generally Charles W. Pittman, Note, *Land Without Earth-The Condominium*, 15 U. Fla. L. Rev. 203 at 206 (1963) (describing the benefits of multifamily dwelling as a means of preserving land).

⁷⁹ *Nahrstedt v. Lakeside Village Condominium Ass'n, Inc.* 878 P.2d 1275 at 1280 (Cal. 1994).

⁸⁰ *Id.*

⁸¹ See Johnston & Dodds, California Research Bureau, *supra* note 67, at 11.

⁸² *Id.*

resources for continued expansion, while homeowner associations carried the burden of managing new recreational facilities such as parks and pools.⁸³ The Davis-Stirling Act is applicable upon the creation of any common interest development and requires that these developments be managed by homeowner associations,⁸⁴ who make the rules governing community activities and enforce any restrictive covenants.⁸⁵

1. The Courts' Deference to Restrictive Covenants and Homeowner Association Rules

Membership in a homeowner association is an unavoidable occurrence triggered by the purchase of a property within a common interest development.⁸⁶ California courts have articulated the role of the homeowner association as such:

Upon analysis of the association's functions, one clearly sees the association as a quasi-governmental entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government. As a 'mini-government,' the association provides to its members, in almost every case, utility services, road maintenance, street and common areal lighting, and refuse removal. In many cases, it also provides security services and various forms of communication within the community. There is, moreover, a clear analogy to the municipal police and public safety functions⁸⁷

Any restrictions on an owner's property use are contained in a common interest development declaration,⁸⁸ which the board of directors of the homeowner association enforces.⁸⁹ Additional rules may also be enacted to further govern the use of the property.⁹⁰ Courts have generally upheld the decisions of the boards of directors where

⁸³ *See id.*

⁸⁴ Cal. Civ. Code §6580 (West 2014) (formerly cited as CA Civil §1352).

⁸⁵ *See Villa De Las Palmas Homeowners Ass'n v. Terifaj* 90 P.3d 1223 at 1226 (Cal. 2004).

⁸⁶ *See State of Cal. Dep't of Real Estate, Living in a Common Interest Development* at 2, (August 2002), <http://www.dre.ca.gov/files/pdf/re39.pdf>.

⁸⁷ *Chantiles v. Lake Forest II Master Homeowners Ass'n* 45 Cal.Rptr.2d 1, at 5 (Cal. Ct. App. 1995).

⁸⁸ *Nahrstedt v. Lakeside Village Condominium Ass'n, Inc.* 878 P.2d 1275 at 1284-5 (Cal. 1994).

⁸⁹ *See Villa De Las Palmas Homeowners Ass'n v. Terifaj* 90 P.3d 1223 at 1226 (Cal. 2004).

⁹⁰ *Id.* at 1227.

they were made in good faith, were believed to be in the best interest of the common interest development, and were consistent with both the development's system of government and with public policy.⁹¹ The means by which a homeowner association accomplishes its ends must be reasonable.⁹² This concept of reasonableness has been the focal point of a majority of the litigation pertaining to homeowner associations.⁹³

The authority of a homeowner association may range from very limited to far reaching,⁹⁴ and as such, is subject to abuse. However, given the relatively few conflicts between homeowners and their governing associations, scant precedent exists to guide courts in future disputes arising from controversies between homeowner associations and their members.⁹⁵

2. *Enforceability of Restrictive Covenants*

The California Supreme Court determined the test for enforceability of use restrictions, which qualify as covenants running with the land in *Nahrstedt v. Lakeside Village Condominium Assn.*, 878 P.2d 1275 (Cal. 1994).⁹⁶ In *Nahrstedt*, a woman brought suit to prevent her homeowner association from enforcing a prohibition against pets contained in the association's covenants, conditions, and restrictions.⁹⁷ In resolving the dispute, the court cited numerous authorities supportive of the proposition that

[A] restriction is contained in the declaration of the common interest development and is recorded with the county recorder, the restriction is presumed to be reasonable and will be enforced uniformly against all residents of the common interest development unless the restriction is arbitrary, imposes burdens on the use of lands it affects that substantially outweigh the restriction's benefits to the developments residents, or it violates a fundamental public policy⁹⁸

⁹¹ See Robert G. Natelson, Article, *Consent, Coercion, and "Reasonableness"* In *Private Law: The Special Case of the Property Owners Association*, 51 OHIO ST. L.J. 41, 43 (1990).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 48.

⁹⁵ *Id.* at 48-49.

⁹⁶ See *Nahrstedt v. Lakeside Village Condominium Ass'n, Inc.* 878 P.2d 1275 at 1290 (Cal. 1994).

⁹⁷ *Id.* at 1277.

⁹⁸ *Id.* at 1290.

The court deferred to the legislature who determined use restrictions of common interest developments would be “enforceable . . . unless unreasonable”⁹⁹ and found that the pet restriction was reasonably related to “health, sanitation, and noise concerns.”¹⁰⁰

It should come as no surprise that the California legislature would determine that the use restrictions of common interest developments be presumed of reasonable¹⁰¹ given the nature of the relationship between city governments and homeowner associations that has emerged in the wake of Proposition 13.¹⁰² Homeowner associations have enabled city governments to utilize the resources limited by Proposition 13 for expansion, while the associations have relieved cities of the burden of managing newer recreation facilities.¹⁰³ The amount of influence that local governments wield over state legislatures is evident by local government associations’ ability to prevent state legislation.¹⁰⁴ However, recent policy enactments by both the Governor and the Legislature of California indicate that the tide may be turning against enforcement of restrictive covenants, particularly when they stand in opposition to sustainability.¹⁰⁵ This may open the door to increased legal challenges by individuals seeking to make use of their yards in a manner that violates established association norms.¹⁰⁶

A prime example of the little consideration homeowner associations have given to environmental sustainability and economic concerns is a

⁹⁹ *Id.* at 1292.

¹⁰⁰ *Id.* at 1290.

¹⁰¹ *Id.* at 1292.

¹⁰² See Johnston & Dodds, California Research Bureau, *supra* note 67 at 11 (describing the popularity of CIDs with local elected officials following the passage of Proposition 13, which saw local revenues decrease).

¹⁰³ See *id.*

¹⁰⁴ See Georgia Organics, 2012 Georgia General Assembly Recesses for Year, GEORGIAORGANICS.ORG, <https://georgiaorganics.org/advocacy/general-assembly> (last visited Apr. 7, 2015).

¹⁰⁵ See *Lawn Removal in Parched California Draws Fine*, SAN JOSE MERCURY NEWS, (Aug. 22, 2014, 11:21 a.m.), http://www.mercurynews.com/science/ci_26387604/lawn-removal-parched-california-draws-fine.

¹⁰⁶ See *Nahrstedt v. Lakeside Village Condominium Ass’n, Inc.* 878 P.2d 1275 at 1290 (Cal. 1994) (describing how restrictions placed on homeowners in common interest developments will be enforced unless they violate a “fundamental public policy”). See also *id.* (describing policy enactments that favor water conservation efforts and food production over lawns that serve a purely aesthetic purpose).

fifty dollar per month fine imposed by one association on a member who removed her lawn and replaced it with drought-tolerant landscaping before seeking approval from her homeowner association.¹⁰⁷ To say that the actions of this homeowner association run contrary to public policy would be an understatement since local utility companies are incentivizing such conservation efforts and the state of California has enabled local authorities to impose fines of up to five hundred dollars for individual water waste.¹⁰⁸

California's governor previously declared an emergency related to the drought, which would protect association members from being penalized for their efforts to conserve water, and a bill has been introduced to prohibit such penalties.¹⁰⁹ There would seem to be a growing consensus, which favors sustainability over the aesthetically pleasing lawns so often associated with common interest developments.¹¹⁰ One California Assemblywoman was quoted as saying, "It is time for people to wake up and realize we need water in California to put food on the table rather than to grow lush lawns."¹¹¹

The California Supreme Court took up the question of enforceability of restrictions contained in amended declarations in *Villa De Palmas Homeowners Ass'n v. Terifaj*, 90 P.3d 1223 (2004).¹¹² In *Villa De Palmas Homeowners Ass'n* a homeowner association amended its declaration to provide a prohibition against pets by residents and sought to have it enforced against a resident who had acquired her interest prior to the amendment's adoption.¹¹³ The court again deferred to the legislature and held that additional use restrictions in an amended declaration were enforceable against current homeowners as well as subsequent purchasers.¹¹⁴ The court in *Villa De Palmas Homeowners* reasoned that limiting the application of an amended declaration would defeat the purpose of the restriction, particularly when such restrictions must be applied even handedly so that all members of the association are burdened or benefitted in the same

¹⁰⁷ See *Lawn Removal in Parched California Draws Fine*, *supra*, note 105.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See *id.*

¹¹¹ *Id.*

¹¹² See *Villa De Las Palmas Homeowners Ass'n v. Terifaj* 90 P.3d 1223 at 1224 (Cal. 2004).

¹¹³ *Id.* at 1225-26.

¹¹⁴ *Id.* at 1226-29.

way.¹¹⁵ The deference shown by the legislature regarding use restrictions imposed by homeowner associations has not exactly provided a wealth of foundational case law on the subject and poses no small difficulty in bringing legal challenges to such restrictions where prohibitions against agricultural activities are in place.¹¹⁶

3. *Are Restrictions on Urban Agriculture Commensurate With Public Policy?*

Applying the standard of “enforceable unless . . . unreasonable” to instances where urban agriculture may run afoul of an existing restrictive covenant¹¹⁷ or of an amended declaration,¹¹⁸ requires that a determination be made as to whether the restriction “imposes burdens on the use of lands it effects that substantially outweigh the restriction’s benefits to the developments residents.”¹¹⁹ In other words, do the burdens imposed by restrictive covenants, which prohibit urban residents from growing food when as many as one-third of the residents in some communities suffer from “food insecurity” substantially outweigh the benefits to the development’s residents of an aesthetically pleasing lawn, particularly in a time of drought?¹²⁰ The California Governor’s emergency declaration and the State’s legislative efforts to protect homeowners from being penalized for implementing water conservation methods suggest that public policy may not always favor well manicured lawns when issues of greater significance arise.¹²¹ While the failure of both federal and state legislation aimed at promoting urban agriculture may not attest to its importance as a public policy concern,¹²² recent legislation in

¹¹⁵ *Id.* at 1228.

¹¹⁶ *See* Natelson, *supra*, note 91 at 48.

¹¹⁷ *See* Nahrstedt v. Lakeside Village Condominium Ass’n, Inc. 878 P.2d 1275 at 1292 (Cal. 1994).

¹¹⁸ *See* Villa De Las Palmas Homeowners Ass’n v. Terifaj 90 P.3d 1223 at 1227 (Cal. 2004).

¹¹⁹ *See* Nahrstedt v. Lakeside Village Condominium Ass’n, Inc. 878 P.2d 1275 at 1290 (Cal. 1994).

¹²⁰ McMillan, *supra* note 56. Sustainable Economics Law Center, *supra* note 59. *See Lawn Removal in parched California Draws Fine*, *supra* note 105 (describing the dilemma faced by some California residents in trying to utilize water conservation efforts in keeping with public policy while not running afoul of Homeowner Associations’ emphasis on maintaining lawns).

¹²¹ *See Lawn removal in parched California draws fine*, *supra* note 105.

¹²² *See* discussion *infra* Part IV.A.

Colorado¹²³ and California are evidence of a growing awareness of the benefits to communities who do engage in such activities.¹²⁴

B. Zoning

In addition to restrictive covenants, zoning laws similarly impose limitations on land use.¹²⁵ Public health concerns provided the early impetus for zoning codes during the urbanization that occurred in the later part of the nineteenth and early part of the twentieth centuries.¹²⁶ California first enabled zoning with a law passed in 1863 authorizing the City of San Francisco to “make all regulations which may be necessary or expedient for the preservation of the public health and the prevention of contagious diseases.”¹²⁷ One of California’s first zoning laws was later declared unconstitutional because its prohibition on laundry facilities in specific areas had the effect of excluding Chinese residents from employment.¹²⁸

While public health may have been the focus of early zoning codes, the emphasis of zoning today is primarily concerned with maintaining property values and has had adverse effects on lower income communities.¹²⁹ A correlation between poverty, race, and environmental factors with the occurrence of chronic disease has been shown by research.¹³⁰ Poverty stricken or minority neighborhoods tend to have less access to grocery stores than they do to fast food and liquor stores, which contributes to increased rates of disease associated with diet, such as diabetes.¹³¹ However, legislation has been introduced at the federal, state, and local level aimed at promoting urban agriculture and remedying these conditions.¹³²

¹²³ See Elisa Cohen, *Community building through home produce*, NORTH DENVER TRIBUNE, August 24, 2014, <http://www.northdenvertribune.com/2014/08/community-building-through-home-produce/>.

¹²⁴ See *Personal Agriculture: Restrictions in Residential Property: Hearing on Assemb. B. 2561 Before the Assemb. Comm. on Judiciary*, 2014 Leg., 2013-14 Reg. Sess. (Cal. 2014).

¹²⁵ See Sustainable Economics Law Center, *supra* note 60.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² See discussion *infra* Parts IV.A, IV.B, IV.C.

IV. BUILDING A CONSENSUS TOWARDS NEW AND SUSTAINABLE POLICIES

A. Attempts To Facilitate A More Sustainable Agriculture Model

The Greening Food Deserts Act¹³³, introduced in 2010, was a broad federal proposal that included the creation of an Office of Urban Agriculture to function in the capacity of the USDA for urban agriculture activities.¹³⁴ The Office of Urban Agriculture would have served a similar function to that of the Urban Agriculture Department established in Cuba in response to that country's food shortage.¹³⁵ Additionally, the Greening Food Deserts Act would have funded the USDA's efforts to assist in activities related to conservation and home gardening.¹³⁶ The bill died in committee and was never presented for a vote.¹³⁷ Federal legislation of this scope is likely to be viewed as overreaching if it fails to incentivize urban agriculture, since the regulation of land use is a function of local and state governments.¹³⁸ By incentivizing urban agriculture, federal law may encourage individual participation, at least to the extent that state and local laws allow them to, without encroaching on state authority.¹³⁹

In 2010, a bill similar to the Greening Food Deserts Act was introduced on the state level in Georgia.¹⁴⁰ This bill was appropriately called the Georgia Right to Grow Act.¹⁴¹ The law was proposed to "protect the right to grow food crops and raise small animals on private property so long as such crops and animals are used for human consumption by the occupants, gardeners, or raisers and their

¹³³ See The Greening Food Deserts Act H.R. 4971, 111th Cong. (2010)

¹³⁴ See Sarah Scott, *Urban Agriculture in Atlanta – Saving Grace or Pipe Dream?*, URB. AND L. AND POL'Y SERIES GEORGIA. STATE UNIVERSITY (2010), https://laws.gsu.edu/resources/centers/Metro_Papers_1210scott.pdf.

¹³⁵ See Peters, *supra* note 1, at 232-233.

¹³⁶ See Scott, *supra* note 134.

¹³⁷ See *H.R. 4971 (111th): Greening Food Deserts Act*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/111/hr4971> (Last Visited on December 15, 2014).

¹³⁸ See Scott, *supra* note 134.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Georgia Right to Grow Act H.B. 842, 2009-2010 Reg. Sess. (Ga. 2010).

households and not for commercial purposes.”¹⁴² The bill was not as broad as the Greening Food Deserts Act in that it did not provide incentives for Georgia residents to participate in urban agriculture.¹⁴³ The Right to Grow Act provided in part that:

(N)o county, municipality, consolidated government, or local government authority shall prohibit or require any permit for the growing or raising of food crops, rabbits, honeybees or chickens, with the exception of roosters, in home gardens, fully covered pens, hives, or fully covered pens on residential property so long as such food crops, animals, or honeybees, or the products thereof are used for human consumption by the occupant thereof and members of his or her household and not for commercial purposes.¹⁴⁴

Opponents of the legislation characterized it as “a bill that allows residential barnyards.”¹⁴⁵ In fact, the objections of local government associations are credited with preventing the bill’s passage.¹⁴⁶ Local government’s opposition to the bill stemmed from the limitations that it would place on city and county governments’ zoning authorities.¹⁴⁷

B. Denver’s Zoning Code

The City of Denver recently amended its Zoning Code to facilitate urban agriculture activities.¹⁴⁸ The change in Denver’s zoning was due, in part, to the recommendations of the Denver Sustainable Food Policy Council, a group that was publicly endorsed by the city’s mayor.¹⁴⁹ A Denver City Councilwoman described the ordinance as a “chance to help one family earn a little extra cash and another to eat healthy food, without having to leave your neighborhood.”¹⁵⁰ Denver residents, who have taken advantage of the amendments, have called

¹⁴² See Scott, *supra* note 134 (quoting Georgia Right to Grow Act H.B. 842, 2009-2010 Reg. Sess. (Ga. 2010)).

¹⁴³ See Scott, *supra* note 134.

¹⁴⁴ Georgia Right to Grow Act H.B. 842, 2009-2010 Reg. Sess. (Ga. 2010).

¹⁴⁵ See Ashley Fielding, *Georgia Right to Grow Stalls in House: Bill Would bar Local Government from Limiting Residential Agriculture*, GAINSEVILLETIMES.COM (February 20, 2012, 12:34 AM), <http://www.gainesvilletimes.com/archives/63548/>.

¹⁴⁶ See Georgia Organics, *supra* note 104.

¹⁴⁷ See Fielding, *supra* note 145.

¹⁴⁸ See Cohen, *supra* note 123.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

the experience gratifying and see it as an opportunity for community building through urban farming.¹⁵¹

The Mayor of Denver expressed an expectation shortly after the amendment passed that the change would increase access to fresh food and provide new economic opportunities.¹⁵² Shortly after passage of the amendment city gardening did in fact take off with considerable success and it has been a satisfying experience for those involved.¹⁵³ The Denver law likely owes its success to the fact that it is a city ordinance rather than a federal or state law, which would have limited the ability of city and county governments to determine what is in the best interests of their communities.¹⁵⁴

C. *The Neighborhood Food Act*

The non-profit Sustainable Economies Law Center (“SELC”) successfully advocated the passage of a cottage law in California, the Homemade Food Act in 2012.¹⁵⁵ This law went into effect in January of 2013 and forbade city and county governments from prohibiting cottage food operations and enabled the sale of homemade food products.¹⁵⁶ Following that success, SELC sponsored AB 2561, the Neighborhood Food Act (“the Act”), which was introduced in 2014.¹⁵⁷ This legislation sought to ensure that Californians living in common interest developments and certain rental properties would be able to engage in agricultural activities at home.¹⁵⁸ Under the proposed law, individuals were granted the right to grow and, in some cases, sell the fruits of their labors, so long as those products were in compliance with relevant laws regarding the sale of produce.¹⁵⁹ The bill addressed the rights of tenants by ensuring their ability to engage in agriculture, provided it did not interfere with the use of the property by other tenants.¹⁶⁰ Landlords would be permitted to increase the amount of a

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *See id.*

¹⁵⁴ *See* Scott, *supra* note 134.

¹⁵⁵ *See* Civita, *supra* note 8.

¹⁵⁶ *Id.* (describing the success of the sustainable economics law center in lobbying for passage of the home made food act).

¹⁵⁷ *See* Assemb. B. 2561, 2014 Leg., 2013-14 Regular Sess. (Cal. 2014).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *See id.*

security deposit in consideration of the costs associated with landscape restoration.¹⁶¹ The bill similarly addressed the rights of members of a homeowner association by voiding the association's authority to prohibit the growing of food on unshared property privately owned by the member.¹⁶² SELC was joined in its support of the Act by a number of organizations¹⁶³ representing community markets, backyard gardens, and programs for the promotion of urban farming.¹⁶⁴ Opposition to the bill was represented by a larger group of apartment and community associations.¹⁶⁵

The arguments in support of the bill were stated as follows:

(This bill) will increase access to fresh produce for all Californians regardless of their place of residence and socioeconomic limitations. Allowing small-scale local food production will also reduce the carbon footprint of our food system by shortening the distance between produce and consumer. The bill also promotes efficient, fruitful use of water and land resources, empowering Californians to prioritize food cultivation over ornamental lawns and vacant lots.¹⁶⁶

The apartment and community associations who opposed the Neighborhood Food Act did not dispute that a more nutritious diet was desirable.¹⁶⁷ Nor did they dispute that homegrown vegetables might offer a partial solution to drought and health care issues, at the very least.¹⁶⁸ The objections to the Neighborhood Food Act were not primarily related to the objectives of the bill, but to its methods, which challengers called "heavy-handed."¹⁶⁹ The bill's opponents expressed concern that the bill undermined the promotion and preservation of the quiet enjoyment of other development residents and the protection of the properties in question against damage.¹⁷⁰ One of these opponents, the Educational Community of Homeowners ("ECHO"), stated that

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ See Personal Agriculture: Restrictions in Residential Property: Hearing on Assemb. B. 2561 Before the Assemb. Comm. on Judiciary, *supra* note 124.

¹⁶⁴ See City Slicker Farms, *Mission And History*, CITYSLICKERFARMS.ORG, <http://www.cityslickerfarms.org/mission-and-history> (last visited February 1, 2015).

¹⁶⁵ See Personal Agriculture: Restrictions in Residential Property: Hearing on Assemb. B. 2561 Before the Assemb. Comm. on Judiciary, *supra* note 124.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

the consequences of the bill's passage would be to void community landscaping rules that serve a purely aesthetic function and to permit business activities related to the growing and selling of produce.¹⁷¹ ECHO's concerns regarding the aesthetic qualities of the land lacked the utilitarian concepts envisioned by Howard's "garden cities" and were more an expression of the concepts that promoted common interest developments as a means of preserving exclusivity for wealthy residents.¹⁷²

Local government associations expressed concern with the language of the Act.¹⁷³ A number of these associations, including the League of California Cities, an association of city officials in California, declared their opposition to the Act unless it was amended.¹⁷⁴ There was concern that the language authorizing community, entrepreneurial, and personal agriculture specifically permitted these activities "by right."¹⁷⁵ The concern was that activities permitted by right would not necessarily be known of by city and county governments who in turn could not provide consumer protections.¹⁷⁶ To make the Neighborhood Food Act more palatable, amendments were introduced eliminating the bill's provisions related to an individual's ability to sell homegrown produce.¹⁷⁷ The amendments would also limit home agriculture to rental properties that were either one or two units, and require agricultural activities to be confined to the outdoor areas exclusive to the tenant's use.¹⁷⁸

The Act as written would have had the additional effect of overturning local zoning ordinances, which were prohibitive of agricultural activities in the front yard as well.¹⁷⁹ This language was

¹⁷¹ See ECHO, *AB 2561 – Voiding Landscaping Rules*, ECHO-CA.ORG, <http://www.echo-ca.org/hoa-advocacy/ab-2561-voiding-hoa-landscaping-rules> (last visited March 31, 2015).

¹⁷² See Johnston & Dodds, California Research Bureau, *supra* note 67, at 9.

¹⁷³ See *Personal and Entrepreneurial Agriculture: Restrictions: Hearing on Assemb. B. 2561 Before the Assemb. Comm. On Local Gov't*, 2013-14 Leg., Reg. Sess. (Cal. 2014).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ See Neil Thapar, *Governor Brown Signs the Neighborhood Food Act!*, THESEL.C.ORG (September 26, 2014), http://www.theselc.org/governor_brown_signs_the_neighborhood_food_act.

removed from the Act as a result of lobbying by local governments.¹⁸⁰ California Governor Jerry Brown signed the Neighborhood Food Act into law in September of 2014, giving homeowner association members and tenants the right to “grow food for personal consumption” at home.¹⁸¹ Under the law, tenants in single-family residences or duplexes are now able to grow food in portable containers in backyards only.¹⁸² As it exists, the law permits landlords to determine the placement of these containers and to form agreements regarding waste and water use with their tenants.¹⁸³ Given the judicial deference shown to various land use restrictions imposed by city ordinances or restrictive covenants imposed by homeowner associations,¹⁸⁴ it is imperative that steps be taken to emphasize the importance of facilitating a more sustainable and resilient food system as a concern of public policy.¹⁸⁵ This is of particular importance in the urban areas most affected by these restrictions in order to reconcile judicial standards or review¹⁸⁶ with the legitimate concerns for the health and well being of urban communities.¹⁸⁷

V. RECOMMENDATIONS FOR REDUCING OR REMOVING THE OBSTACLES TO URBAN AGRICULTURE

In recent years, cottage food laws have been enacted in dozens of states to allow individuals to sell homemade food products.¹⁸⁸ These laws are meant to provide entrepreneurs opportunities for product development and to build their business while supplementing their incomes without having to pursue a purely commercial enterprise rife with risk and expenditures.¹⁸⁹ These laws have provided various “public and private benefits.”¹⁹⁰ Furthermore, they do not supersede the government interest in ensuring that these homemade food

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *See* Nahrstedt v. Lakeside Village Condominium Ass’n, Inc. 878 P.2d 1275 at 1292 (Cal. 1994).

¹⁸⁵ *See* Peters, *supra* note 1, at 247.

¹⁸⁶ *See* Nahrstedt v. Lakeside Village Condominium Ass’n, Inc. 878 P.2d 1275 at 1290 (Cal. 1994).

¹⁸⁷ *See* Peters, *supra* note 1, at 215.

¹⁸⁸ *See* Civita, *supra* note 8.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

products are as safe for consumption as commercially produced foods.¹⁹¹ While cottage food laws are beneficial, they are limited in their scope to the production and sale of processed food products.¹⁹² What cottage food laws fail to do is provide the opportunity to grow food at home.¹⁹³

There is good reason to believe the benefits of cottage food laws would be similarly realized through the enactment of legislation that facilitates the practice of home-based agriculture by permitting personal and entrepreneurial agriculture on land that occupies a square area of not more than five thousand feet.¹⁹⁴ Legislation aimed at reducing and removing the obstacles faced by residents of common interest developments is essential for long-term economic and environmental sustainability.¹⁹⁵ Such legislation would also provide a number of additional benefits in the interim to include additional income, increased access to fresh fruits and vegetables, and increased economic activity in localized communities.¹⁹⁶

The failure of the Neighborhood Food Act to fully realize the vision of its authors does not necessarily mean that the effort was a complete loss.¹⁹⁷ As concerns stemming from the California drought begin to move public policy in a direction more favorable to sustainability,¹⁹⁸ the success of Denver's amended Zoning Code and its implications for sustainable food production are demonstrative of the benefits to be received from the enactment of such policies.¹⁹⁹ Future legislative attempts to overturn zoning ordinances would likely be more impactful if carefully crafted and proposed at the local level, rather than the federal or state level, as this would seem to be a less "heavy handed" approach.²⁰⁰ Additionally, as awareness grows regarding the need for a

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ See Peters, *supra* note 1, at 247.

¹⁹⁶ See Civita, *supra* note 8.

¹⁹⁷ See generally *Lawn Removal in Parched California Draws Fire*, *supra* note 105 (describing how the realities of drought have brought about a heightened awareness of the problems faced by members of homeowner associations in the use that they make of their yard indicating a change in public policy similar to those sought to be enacted by the Neighborhood Food Act).

¹⁹⁸ See *id.*

¹⁹⁹ See Cohen, *supra* note 123.

²⁰⁰ See Personal Agriculture: Restrictions: Hearing On Assemb. B. 2561 Before the Comm. On Judiciary, 2013-14 Leg., Reg. Sess. (Cal. 2014).

more sustainable food system and the importance of access to fresh, healthy food for those who live in urban areas,²⁰¹ it will become more difficult for courts to interpret restrictive covenants as either reasonable or in line with public policy.²⁰²

VI. CONCLUSION

The oft-quoted statement of Mark Twain, “Buy land, they’re not making it anymore” has never been more relevant than it is now.²⁰³ Urban sprawl is consuming much-needed farmland and the farmland that is available is largely used to grow commodities instead of crops for consumption.²⁰⁴ The disproportionate amount of commodities grown as compared to the food for actual consumption grown in the U.S., and the country’s consequent reliance on foreign imports, subject the U.S. food supply to the uncertainties of world events in much the same way that Cuba was prior to the collapse of the Soviet Union.²⁰⁵ Homegrown food could help to avert a catastrophe such as that which Cuba experienced²⁰⁶ and would do much to ensure that healthy and fresh foods are made available to the residents of urban areas.²⁰⁷ Of more immediate concern is that one in six Americans is “food insecure”²⁰⁸ and access to fresh food from within the community could do much to alleviate that.²⁰⁹ Additionally, this increase in access to fresh foods could lead to a decrease in the occurrence of diabetes and other diet related diseases common to lower income neighborhoods.²¹⁰

Since courts typically show a high degree of deference to legislatures in enforcing restrictions on land use imposed by homeowner associations, it is necessary to pass legislation that will raise awareness

²⁰¹ See Civita, *supra* note 8.

²⁰² See *Nahrstedt v. Lakeside Village Condominium Ass’n, Inc.* 878 P.2d 1275 at 1290 (Cal. 1994).

²⁰³ See Douglas A. McIntyre, *Memo To Congress: “Buy Land, They Ain’t Making Any More Of It”*, TIME, Jan. 28, 2009, <http://content.time.com/time/business/article/0,8599,1874407,00.html>.

²⁰⁴ See Peters, *supra* note 1, at 213.

²⁰⁵ See *id.* at 209.

²⁰⁶ See Peters, *supra* note 14 at 214.

²⁰⁷ See Civita, *supra* note 8.

²⁰⁸ See McMillan, *supra* note 49.

²⁰⁹ See Civita, *supra* note 8.

²¹⁰ See James A. Levine, *Poverty and Obesity in the U.S.*, AMERICAN DIABETES ASSOCIATION, November 2011, <http://diabetes.diabetesjournals.org/content/60/11/2667.full>.

of the problem with our current food system and facilitate the use of urban land for agricultural purposes.²¹¹ Given the objections of local governments to such legislation on a state level, the appropriate venue for such legislation would necessarily be at the city and county level by those who are better informed of the needs of their communities.²¹² Simply changing zoning ordinances that have been in place for the last century²¹³ will not, in and of itself, bring about a change in state law regarding use restrictions imposed by homeowner associations. It will, however, have the effect of demonstrating a change in public policy and provide the courts with a viable argument against enforceability of restrictive covenants, which are prohibitive of home gardening.²¹⁴

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²¹¹ See *Nahrstedt v. Lakeside Village Condominium Ass'n, Inc.* 878 P.2d 1275 at 1292 (Cal. 1994).

²¹² See *Scott*, *supra* note 134.

²¹³ See Sustainable Economies Law Center, *supra* note 60.

²¹⁴ See *Nahrstedt v. Lakeside Village Condominium Ass'n, Inc.* 878 P.2d 1275 at 1290 (Cal. 1994).

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