

Tim Steller's column: Tucson restaurateur takes risk by fighting cage-free egg rules
Arizona Daily Star
By Tim Steller
November 17, 2024

It's not about the chickens, Grant Krueger insists. It's the principle of the matter. It's a question of how much power a state agency can wield on its own.

The hens laying the eggs we eat may well live in rows of tight cages that don't let them even turn around. They may well benefit from living in at least one square foot of cage-free space. But their wellbeing is not the point — it just happens to be the subject of an agency rule that affects Krueger and others.

"There's a reason that hundreds of thousands of dollars in attorneys fees are being spent on this, and it has to do particularly with the limitation of gubernatorial or agency powers, far more than it has to do with just eggs," Krueger told me in an interview at his Union Public House.

It's a question of just how much power a state agency can assert without a specific legislative vote. But, in truth, it's also about laying hens — and specifically, whether they must get a measly minimum of 144 square inches to live out their lives and also get cage-free conditions.

Krueger, who owns three restaurants and a bar in the Tucson area, is sticking his neck out again in a political debate of some sensitivity. The 48-year-old has become politically outspoken in recent years, winning a lawsuit against pandemic curfews, decrying the negative effects of homeless addicts on Fox News, and advocating for a new subminimum wage for tipped workers in the election just ended.

While most of the public stances he's taken can be associated with the political right, he also supported in-state tuition for DACA recipients, as proposed in Prop. 308, which passed narrowly in 2022. Campaign finance records show Krueger, a registered independent, has donated to a couple of Democrats along with about a dozen Republicans.

Now he's suing over egg regulations — trying to get a judge to decide that a state agency, the Agriculture Department, can't mandate cage-free conditions and minimum space for laying hens without the Legislature voting on it. The Goldwater Institute and Pacific Legal Foundation represent him and have a longstanding interest in restricting what Steve Bannon calls "the administrative state."

The question, important for Krueger's reputation and for his restaurants' continued success, is whether the public will separate the dry procedural issue from the hot-button subject it deals with.

“I’ve been criticized for being insensitive to animal husbandry issues, and I think that that’s unfair, not only because, quite frankly, both caged and the cage-free egg processes are both giant agro business, but also, even if you agree with the end result of an action, can you do something that’s illegal to get there?”

Legal to regulate hens’ conditions?

The issue of legality is, of course, is undecided and is the subject of the suit. A Maricopa County judge has ruled Krueger has standing to sue over the rule, by virtue of the high-end estimate of \$3,380-per-year his businesses may have to pay for eggs as a result of the rule. (The rest of us, by the way, are projected to average around \$3 to \$9 per year in added cost.)

There are other parties with interests — notably the hens themselves, who are not represented in the suit. Those laying hens are at the center of a debate that gained strength about five years ago.

A group called World Animal Protection was preparing a ballot initiative that would have mandated cage-free egg production in Arizona and made it illegal to sell eggs produced by caged hens. A political deal ended that pursuit.

“While we were in the process of mobilizing to gather signatures in support of our proposed initiative, the Humane Society of the United States reached out to us letting us know that they were in positive discussions with legislators and regulators in the state working on cage-free egg statutes as well,” said Cameron Harsh, U.S. programs director of World Animal Protection, via email.

A 2020 bill that would have required a minimum of one square foot of floor space for egg laying hens, in or out of cages, beginning in 2021. The same bill would have required that all egg operations with more than 20,000 hens convert to cage-free systems by Jan. 1, 2025. There are just two of those, Rose Acres and Hickman’s Egg Ranch, in Arizona.

It passed the state House but ran into opposition from the Arizona Farm Bureau Federation in the Senate. Still, the issue was not dead. Instead, Hickman’s owners agreed to ask the agriculture department to regulate them through a new rule, in a slightly less stringent way than the initiative would have.

“We wrote to the lead legislators drafting a bill stating that if they gave us some assurance that an initiative that included banning the sale of eggs from caged hens in Arizona was progressing either through the legislature or through agency rulemaking, we would withdraw our more strongly framed ballot measure, which we ended up doing when a proposed rulemaking was issued for notice and comment,” Harsh said.

This rule, supported by the main producer it would regulate, is set to go into effect Jan. 1 and is what Krueger is contesting. It was a deal struck between egg producers, state officials and animal-welfare advocates but left out the restaurant operators and other consumers.

At least it represented, to some extent, the interests of laying hens. Cage-free living is no paradise for them: It's the same industrial-scale production as caged, but without the confinement. That can cause some problems from hens hurting each other, but broadly it's likely to be a less painful life than being caged, studies have shown.

Pandemic-produced politics

Krueger moved to Tucson from Detroit in January 1995 to attend the University of Arizona. After graduating from the UA, he spent years in San Carlos, Sonora running a pub called the Marina Cantina. It was in San Carlos that he got to know the owner of St. Phillip's Plaza, Dr. Robert Selby, Krueger said.

After opening Union Public House there in 2011, he has opened Reforma Modern Mexican and Proof Artisanal Pizza and Pasta and encompassed the whole plaza. His entry into political issues was inspired by pandemic-era rules, he said, though he understands it's risky for a business owner.

"Anytime anything happens politically, in the restaurant world you've always got to be cautious, because I'm not in the business of upsetting 51 or 49% of my customers by any means," he said.

In this case, he suspects the public misunderstands that "cage-free" eggs are not free-range or pasture-raised. Probably true. But when I asked him if he would support a future bill that might go through the Legislature and mandate a square foot of space and cage-free conditions, he was equivocal.

"I'd like to see a law created where all 30 legislative districts got to be part of the process," he said. When I asked him if he would like to run for office, Krueger didn't say no, but he referred back to that 51-49 problem.

"The time commitment associated with restaurants is so heavy that it would be difficult to do so," he said. "I also truthfully don't want to upset 51 or 49% of my customers."

It might also require more sensitivity to public perception: Even if your legal fight is formally about rulemaking authority, you have to realize there may be hens living caged in less than one square foot as a result — and a segment of the public that won't forgive you for your procedural stand.