Amendment E, Rural Communities and the Family Farm

by

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AMENDMENT E, RURAL COMMUNITIES AND THE FAMILY FARM

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I. INTRODUCTION

There is no doubt that rural communities in the Great Plains are continuing to experience a dramatic loss of population, a loss of infrastructure and a loss of services. Studies focused on this series of losses have offered a variety of solutions, but have mainly concurred about one explanation as to why these losses are occurring. The health of rural communities is suffering due to the loss of the small to mid-sized family farms that surround them.

The connection between rural towns and family farms is not new. In the 1940s, Walter Goldschmidt's famous study, *As You Reap . . .*, was the first to present evidence of this link. He concluded that the viability and the sustainability of rural communities are directly connected to the form of agriculture which surrounds them. While rural communities with a family-farm base demonstrated a healthy local economy, rural communities with a large-scale corporate farm base demonstrated a greater loss of local dollars. Rural communities with a family farm base demonstrated a high rate of local civic participation and support for local services, those without showed little and inconsistent local participation and support. Family farm-based rural communities had less economic and social stratification, large-scale and corporate farm based communities had greater numbers of both poor and rich and a reduced middle class.

Due mostly to controversy over its methodology, the Goldschmidt Hypothesis—as the study has come to be known—has been replicated and refined multiple times in the past 60 years, particularly in the past 10 years given ongoing rural community deterioration.[1] The end result of these years of study guide us back to Goldschmidt's original findings—the health of rural communities is dependent on a family farm base.[2]

Buoyed by the strength of this evidence, beginning in the 1970s policy advocates and legislatures began anew to develop a series of policies designed to

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1. *See* Dr. Rick Welsh & Dr. Thomas A. Lyson, *Anti-Corporate Farming Laws, the "Goldschmidt Hypothesis" and Rural Community Welfare*, *available at* http://www.i300.org/anti_corp_farming.htm. *See also* DAVID PETERS, REVISITING THE GOLDSCHMIDT HYPOTHESIS: THE EFFECT OF ECONOMIC STRUCTURE ON SOCIOECONOMIC CONDITIONS IN THE RURAL MIDWEST, TECHNICAL PAPER P-0702-1, MISSOURI DEP'T OF ECON. DEV. 25-26 (July 2002).
2. *See generally* Welsh & Lyson, *supra* note 1.

limit the expansion of large-scale corporate agribusiness enterprises. These policies have recently come under legal attack in all nine states which enacted these policies into law. This article will present an overview of rural community development initiatives which have been forwarded to redress rural America's problems. Then the specifics of Amendment E and Initiative 300, as they apply to the social issues which they were intended to address, and the outcomes which they have demonstrated during the period of their enactment will be discussed.

II. RURAL DEVELOPMENT

The strain on rural communities and family farms remains beyond doubt. A brief look at census data in South Dakota reveals parallel drops in both rural community and farm populations, and their standard of living. Between 1973 and 1998, South Dakota lost 13,000 farms although the acreage in farming stayed almost steady during that same time period.[3] Between 1990 and 2000, twenty-nine farm counties in South Dakota showed population losses ranging from two percent to twenty percent.[4] The hardest hit counties are in the northern and western areas of the state. Harding County alone, for example, showed a net population loss of 18.9 percent from 1990 - 2000.[5]

In addition to the loss of people is the loss of income. As their population numbers fell, residents in Harding County also experienced a 17.5 percent drop in personal income.[6] They were not alone. Forty-four counties in South Dakota showed a net drop in employment in the civilian labor force ranging from .3 to 8.4 percent.[7] Four counties show a loss in private business establishments of over 20 percent from 1990 - 1998.[8] For the nonfarm jobs which remain in farm counties, the annual payroll varies from 42 percent to 68 percent of the national average per employee.[9] For many farm counties, the only numbers which have risen in the last decade are the percent change in individuals receiving social security, per capita payments of government funds and average size of farms.[10]

Many different policies and initiatives have been pursued to address the difficulties of rural communities over the past 20 years, and most of them have proven, at best, ineffective. These strategies can be encapsulated in three categories: 1) Economic development and enterprise zoning; 2) Cost-saving and consolidation of rural services and institutions; and 3) Agricultural

3. USDA - South Dakota Agricultural Statistics Service, *available at* http://www.nass.usda.gov/sd/sd-ftp/misc/state/no_farms.pdf (last visited April 21, 2004).

4. Dr. Marcey Moss & Dr. Jim Satterlee, *A Graphic Summary of South Dakota* (Sept. 2001) (Dep't of Rural Sociology, South Dakota State Univ.).

5. U.S. DEP'T OF COMMERCE, COUNTY AND CITY DATA BOOK: 2000 54 (2001).

6. *Id.*

7. *Id.* at 342.

8. *Id.*

9. *Id.*

10. *Id.* at 486, 630.

development.[11] Each of these strategies will be discussed.

Economic development initiatives in rural America have taken multiple forms. The most prominent in the late 1980s and into the 1990s was the promotion of rural manufacturing. Many rural towns created "enterprise zones"—zoned areas for outside development which were accompanied most often by a lessening of local and/or state taxes, environmental regulations and, on occasion, wage expectations. The goal of the enterprise zone structure was to bring in nonfarm industry to support the town population. Although some towns continue with this form of development today, most evidence establishes that it has not been successful, albeit for several reasons.[12] First, manufacturers were not drawn to rural areas where transportation costs could more than make up for any savings in wages, taxes, or environmental expenses. Second, as international trade agreements expanded, rural manufacturers moved their operations across national boundaries to locations with even lower wages and almost no environmental oversight. Rural American communities, and deep rural communities such as those found in South Dakota, simply could not compete. Third, continuing trade agreements have all decimated the manufacturing sector through the United States, and therefore offer little to no growth potential above and beyond the scattered sites which currently exist.

As manufacturing has faded, many rural communities were encouraged to pursue other industries which were purported to offer better alternatives, from call service centers to high technology assembly.[13] While these businesses have been steadier in the offer of job opportunities, none have shown to stem the loss of population. The jobs offered are generally minimum-wage and part-time, which ensures no company cost for employee benefits. The impact of these jobs is seen as the drop of real wages in nonfarm job sectors as noted at the outset of this section.[14]

The second drive in rural development has been for the communities to focus on consolidation of institutions and services as a cost-saving measure, and thereby balancing the precarious local economy. This solution has clearly served the opposite ends.[15] Rather than shoring up rural communities, the process of consolidation has accelerated their losses. This outcome, too, is apparent in the continuous population drop cited to open this section.

The third focus for rural development has been an emphasis on increasing agricultural scale, forms of production and the introduction of externally owned value-added processing. Although one of the newest forms introduced in the Great Plains region, initiatives for increased agriculture, including opening of

11. *See* OSHA GRAY DAVIDSON, BROKEN HEARTLAND: THE RISE OF AMERICA'S RURAL GHETTO 139-70 (University of Iowa Press 1996).

12. *Id.* at 150.

13. *Id.* at 139–41.

14. *See supra* notes 6–10 and accompanying text.

15. DAVIDSON, *supra* note 11.

agricultural land ownership and investment to absentee and/or corporate owners, has already shown not to be the solution, as is evident in census data for the past ten years. Areas which have experienced a longer presence of industrialized or corporate agriculture in the United States, such as California and the South, have ever increasing evidence of income inequality and environmental damage, which are, as Davidson argues, increased costs to the communities and which place them in even more precarious positions.[16]

In addition, there is evidence that in this development context, the Goldschmidt Hypothesis is once again integral to identifying productive change. For example, Peters' 2002 technical paper highlights several factors connected with change in rural economies which impact quality of life through a study of socio-economic measures of children-at-risk.[17] A key hypothesis in his paper addresses the impact of family farm proprietorship on outcomes of socioeconomic conditions for children. He found that "areas with greater concentrations of owner-operated farms produce better socioeconomic conditions for children."[18] Further, he directly hypothesized that "areas with greater concentrations of industrial agriculture produce worse socioeconomic conditions for children" and this hypothesis too was supported by his data.[19]

Given these results, it is a common conclusion in rural sociological and community development circles that rural communities need better care and protection than what they have previously experienced. In particular, the recent focus has been on implementing policy—whether directly addressing economic development or not—which strengthens the traditional base of rural communities and encourages a local economy. It is in that context, recently, that policy such as Amendment E has emerged.

III. FAMILY FARMS IN THE LAW

The nation's first anti-corporate farming law was placed into the Oklahoma state constitution in 1907.[20] The latest was placed into the South Dakota constitution in 1998.[21] In the intervening time and among additional states, additional laws were produced, existing laws were altered, and legal challenges were made, while the essential objective and identified need have remained virtually constant throughout. Anti-corporate farming laws presently exist in the states of Oklahoma,[22] North Dakota,[23] Minnesota,[24] Wisconsin,[25] Kansas,[26]

16. *Id.* at 153–70.
17. PETERS, *supra* note 1, at 22.
18. *Id.* at 24.
19. *Id.* at 25.
20. OKLA. CONST. art. XXII, § 2
21. S.D. CONST. art. XVII, § 22.
22. OKLA. STAT. ANN. tit. 18, § 951 & § 955 (West 2004).
23. N.D. CENT. CODE § 10-06.1-01 (2003).
24. MINN. STAT. § 500.24 (2004).
25. WIS. STAT. ANN. § 182.001 (West 2003).

Missouri,[27] Iowa,[28] Nebraska,[29] and South Dakota.[30]

Various degrees of changes have been made to these laws, ranging from the outright removal of Oklahoma's constitutional provision in 1969 to the unaltered status of Nebraska's dating back to its 1982 origin. There are varying elements between the state laws, but there are also basic characteristics shared by many in determining what corporations are allowed to own farm land and engage in farming.

Many of the common criteria can be found in the nation's current oldest law, North Dakota's statute, originally passed in 1932.[31] Its requirements that shareholders must be natural persons and that the total number of shareholders in the corporation or LLC must be limited are present in some form in most other state laws.[32] The stipulation that a certain percentage of total income of allowed corporations must come from farming is also shared by many states (i.e. Missouri 2/3 of total income;[33] Oklahoma 35 percent of total income;[34] and Iowa 60 percent of total income over three consecutive years[35]). Also, most require all shareholders or controlling shareholders be related by blood, often within the fourth degree of kinship, and that some or all of the shareholders live or work on the farm or ranch. Additional exemptions often found include those for corporations that owned land or engaged in farming prior to passage of the law, for corporations engaged in research or experimentation, and for non-profit corporations.

It is of course understandable that there would be great similarities in the laws, considering not only the tendency for lawmakers to utilize language that already exists and has defeated challenges elsewhere, but because the forces which drove the enactment were also shared. Whether in North Dakota where it was Depression-era foreclosures moving agricultural land into corporate hands, or in Nebraska where the state's large insurance companies were buying up land as profit-seeking investments, or in South Dakota where corporate encroachment took the form of previously independent farmers assuming the responsibility and risk of raising corporate-owned livestock, in each of the different time periods family farmers were confronted with what was deemed as unfair competition.

IV. DRAWING DISTINCTIONS WITH POLICY

Amendment E, like the anti-corporate farming laws in eight other states,

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26. KANS. STAT. ANN. § 17-5904 (2003).
27. MO. REV. STAT. § 350.015 (2001).
28. IOWA CODE ANN. §9H.4 (West 2003).
29. NEB. CONST. art. XII, § 8.
30. S.D. CONST. art. XVII, §§ 21-24.
31. N.D. CENT. CODE § 10-06.1 (2003).
32. *Id.* at § 10-06.1-12 (2003).
33. MO. REV. STAT. § 350.010 (2001).
34. OKLA. STAT. ANN. tit. 18 § 951 (West 2004).
35. IOWA CODE ANN. § 9H.1(9)(C) (West 2004).

sought to isolate the specific elements that differentiate corporate farming from family farming. To do so, it looked to Nebraska's Initiative 300 which had withstood legal challenges up to the level of the United States Supreme Court. Although it contains some differences that affect application, Amendment E is a very close replica of Nebraska's constitutional law.

Purposes for anti-corporate farming law, according to proponents, include leveling the competitive playing field between financially powerful corporations and independent producers of lesser means, maintaining the condition where profit from agricultural production is gained by those who directly face the risk, and preventing the detrimental impacts on communities from the industrial model of farming.

As stated by Dean MacCannell in his 1983 report to Congress on agribusiness and the small community:

> Everyone who has done careful research on farm size, residency of agricultural land owners and social conditions in the rural community finds the same relationship: as farm size and absentee ownership increases, social conditions in the local community deteriorate. In our own studies, we have found depressed median family incomes, high levels of poverty, low education levels, social and economic inequality between ethnic groups, etc., associated with land and capital concentration in agriculture.[36]

MacCannell further summarized his findings: "Communities that are surrounded by farms that are larger than can be operated by a family unit have a bi-modal income distribution with a few wealthy elites, a majority of poor laborers, and virtually no middle class."[37] To address these negative impacts on rural communities from absentee and risk-shielded corporate land owners, Initiative 300 identified in policy the criteria that could best delineate corporate farming from family farming.

First, corporate control of farm and ranch operations was subjected to family, or blood relative, requirements.[38] As stated in Article XII, Section 8 (A), a family farm corporation means "the majority of the voting stock is held by members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses . . . ."[39] South Dakota's Constitution in Article 17, Section 22 (1) states that "the majority of the partnership interests, shares, stock, or other ownership interests are held by members of a family or a trust created for the benefit of a member of that family."[40]

Second, the policy seeks to prevent the division between "wealthy elites"

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36. Dean MacCannell, Agribusiness and the Small Community 7 (1983) (unpublished manuscript, on file with author).
37. *Id.*
38. *See, e.g.* NEB. CONST. art. XII, § 8 cl. 1(A).
39. *Id.*
40. S.D. CONST. art. XVII, § 22 cl. 1.

and "poor laborers." This is achieved through residency, labor and management requirements. Nebraska requires that one member of the family "is a person residing on or actively engaged in the day to day labor and management of the farm or ranch . . . ." [41] South Dakota's Constitution further states "[d]ay to day labor and management shall require both daily or routine substantial physical exertion and administration."[42]

V. MEETING OBJECTIVES

The relative success of Nebraska and South Dakota's provisions is on one level answered solely by whether or not corporations continue to own agricultural land and engage in agricultural production. Since the establishment of Nebraska's law, there have been actions taken by the Attorney General's office and citizens against corporate operations within the state that have led business cessation or the restructuring of business. There is some debate as to whether an enforcement effort has been undertaken in South Dakota due to the legal challenges present to that state's provision.

A second approach used in judging the success of anti-corporate farming law is to assess the conditions in states with such laws as compared to states without comparable statutes. Such an assessment was undertaken by Dr. Rick Welsh of Clarkson University and Dr. Tom Lyson of Cornell University.[43] Their 2001 report, *Anti-Corporate Farming Laws, the "Goldschmidt Hypothesis" and Rural Community Welfare*, examined the 433 counties in the United States which meet the definition of agriculturally dependant counties over ten years.[44] By comparing the counties within the nine states nationwide that have anti-corporate farming laws to counties in states without such laws, they found lower poverty levels, lower unemployment, and higher percentage of farms showing cash gains in those communities located in states with anti-corporate farming laws.[45] In fact, when examining only the nine states with anti-corporate farming laws, and comparing those with more restrictive laws such as Nebraska's to those with less, communities in the more-restrictive law states have not only lower unemployment but also have a greater percentage of farms with cash gains.[46]

Additionally, in using an economic basis, according to the 2003 report from Nebraska's state department of agriculture, *The Agricultural Economy in Nebraska: Making Nebraska the Agricultural Leader of the 21st Century*:

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41. NEB. CONST. art. XII, § 8 cl. 1(A).

42. S.D. CONST. art. XVII, § 22 cl. 1.

43. *See* Welsh & Lyson, *supra* note 1. It is interesting to note that this report has been cited as evidence to support the loosening of the state's law, even as its survey found that four out of five farmers and ranchers interviewed rejected the premise that Initiative 300 is harmful to agriculture, and not one of the corporations surveyed asserted that initiative 300 be eliminated or relaxed.

44. *Id.* at 6.

45. *Id.* at 10.

46. *Id.* at 11.

> [Nebraska] is currently the #3 corn producer in the U.S., the #5 soybean producer, the #3 livestock producer, and the largest red meat producer and livestock slaughterer. In total, Nebraska produces more agricultural value than all but three states in the U.S., and it has increased its position in each of the above categories over the past decade.[47]

The social and economic outcomes of the predecessor of Amendment E, Nebraska's I-300, are powerful evidence for the important of this legislation. Indeed, the outcomes demonstrate not only continued agricultural productivity, but more secure rural communities in states where such protections exist. In this way, perhaps we would be better served by approaching Amendment E as a development plan, rather than perceiving it as a market restriction.

VI. CONCLUSION

Rural communities have been the object of multiple forms of development in the recent past, and industrialized agriculture is only the most recent to be encouraged, despite mounting evidence of overall harm. The connection between rural communities and family farms is both clear and common sense. Rural communities, for their survival, require a solid base, a local economy in which income circulates through many hands in the community, and an economy where profit remains in place. An industrialized agriculture economy thrives on an economy where money is extracted from place and returned to centralized investment and control. That is not to say that industrialized agriculture is not a profitable business, but where does the profit go? Can rural communities continue to export not only their people, but also their economy?

Cornelia Flora commented during the 1980s farm crisis that "Agriculture is not the problem. Agriculture is doing just fine. It is the people who are having the problems."[48] And the people are still having problems. It is these problems that Amendment E was intended to address. Ironically, it appears to be the only effective rural development policy to do so.

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47. DECISION ANALYST, INC., THE AGRICULTURAL ECONOMY IN NEBRASKA: MAKING NEBRASKA THE AGRICULTURAL LEADER OF THE 21ST CENTURY – FINAL REPORT 38 (2003).

48. DAVIDSON, *supra* note 11, at 13 (quoting Cornelia Butler Flora, Rural Sociologist).