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## Food Localization: Empowering Community Food Systems Through the Farm Bill

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# Food Localization: Empowering Community Food Systems through the Farm Bill

Brian Albert Fink,\* Alexandra Oakley Schluntz,\*\* Joshua Ulan Galperin\*\*\*

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*"It seeks for agriculture a normal income measured, not in money but in exchange value—in real human satisfactions. Because it has recognized this principle, the [Farm Bill] may be justly termed a Magna Carta for the American Farmer."*<sup>1</sup>

### Introduction

The 2014 Farm Bill felt somehow different from the sixteen previous Farm Bills.<sup>2</sup> In the few years leading up to its passage, local-foods advocates across the United States seemed suddenly called to action. The Seattle City Council convened community leaders and quickly adopted Resolution 31296, official guidance called the "Seattle Farm Bill Principles" that instructed the city's federal lobbyists to advocate for enumerated policy goals designed to turn the upcoming Farm Bill into a tool of localized reform.<sup>3</sup> Soon after, Seattle took its new Farm Bill platform to the National League of Cities, who adopted it as NLC Resolution #2012-16.<sup>4</sup> Across the country, cities rushed to adopt their own local platforms: Santa Monica, Philadelphia, Minneapolis, Duluth, Salt Lake City, and New York City.<sup>5</sup> Months later, the United States Department of Agriculture unveiled its own local-foods platform, the Know Your Farmer, Know Your Food Compass.<sup>6</sup> With the

<sup>1</sup> GEORGE N. PEEK, RECOVERY FROM THE GRASS ROOTS, U.S. DEP'T OF AGRIC. AGRIC. ADJUSTMENT ADMIN. 7 (Feb. 1934) (referring to the Agricultural Adjustment Act of 1933, the first iteration of the Farm Bill).

<sup>2</sup> For a list of the seventeen iterations of the Farm Bill, see *United States Farm Bills*, NAT'L AGRIC. LAW CTR., <http://nationalaglawcenter.org/farmbills> (last visited May 15, 2018).

<sup>3</sup> See Seattle, Wash., Resolution 31,296 (May 16, 2011).

<sup>4</sup> NATIONAL LEAGUE OF CITIES, NATIONAL MUNICIPAL POLICY AND RESOLUTIONS 66–67 (2011), <http://www.onehealthinitiative.com/publications/nlc-national-municipal-policy-book-2012.pdf>; *Seattle Farm Bill Principles Adopted by Council, to Go Before National League of Cities*, COUNCIL CONNECTION (June 14, 2011), <http://council.seattle.gov/2011/06/14/seattle-farm-bill-principles-adopted-by-council-to-go-before-national-league-of-cities>.

<sup>5</sup> DAN IMHOFF, FOOD FIGHT: THE CITIZEN'S GUIDE TO THE NEXT FOOD AND FARM BILL 192 (2d ed. 2012); Letter from Dean Kubani, Director of the Office of Sustainability and the Environment, to Mayor of Santa Monica & City Council of Santa Monica (May 8, 2012), <https://www.smgov.net/departments/council/agendas/2012/20120508/s2012050803-D.htm>.

<sup>6</sup> Tim Vilsack & Kathleen Merrigan, *Introducing . . . . The Know Your Farmer, Know Your Food Compass*, U.S. DEP'T OF AGRIC. BLOG (Feb. 29,

goal of supporting local and regional food systems, the Compass helped all sorts of food-system stakeholders navigate agency programs and resources, learn about changes going on in their own communities, and read stories of the individuals transforming their own local food systems.<sup>7</sup>

For the first time, it looked like communities of all types had come together, empowered, to use federal legislation and federal agency actions to transform their local food systems. How long it would last, nobody could say. No doubt, though, the surge had not been sudden at all. By the time Michael Pollan began researching for his food-policy best-seller, *The Omnivore's Dilemma*,<sup>8</sup> he thought he may have been too late. "Something about the public's attitude toward food and farming was already shifting underfoot," he wrote in the *Washington Post*, "and I became convinced my book was going to be dated on arrival."<sup>9</sup> Thankfully for Pollan, he was wrong. Now, it is impossible to imagine a discussion about food policy without acknowledging the tremendous influence of *The Omnivore's Dilemma*.<sup>10</sup> But,

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2012), <https://www.usda.gov/media/blog/2012/02/29/introducing-know-your-farmer-know-your-food-compass>.

<sup>7</sup> *Id.*

<sup>8</sup> MICHAEL POLLAN, *THE OMNIVORE'S DILEMMA: A NATURAL HISTORY OF FOUR MEALS* (2006).

<sup>9</sup> Michael Pollan, *A Decade After "The Omnivore's Dilemma," Michael Pollan Sees Signs of Hope*, WASH. POST (June 6, 2016), [https://www.washingtonpost.com/lifestyle/food/a-decade-after-the-omnivores-dilemma-michael-pollan-sees-signs-of-hope/2016/06/06/85cdadfe-2c0a-11e6-9b37-42985f6a265c\\_story.html](https://www.washingtonpost.com/lifestyle/food/a-decade-after-the-omnivores-dilemma-michael-pollan-sees-signs-of-hope/2016/06/06/85cdadfe-2c0a-11e6-9b37-42985f6a265c_story.html).

<sup>10</sup> Blake Hurst, *Michael Pollan and His Faddish Foodie Followers, Ten Years After The Omnivore's Dilemma*, NAT'L REV. (Aug. 1, 2016), <http://www.nationalreview.com/article/438548/michael-pollans-omnivores-dilemma-tenth-anniversary-edition-marks-decade-anti-science> ("Ten years on, it is hard to think of a book that has influenced the public conversation on food more . . ."); Susan A. Schneider, *Reconnecting Consumers and Producers: On the Path Toward a Sustainable Food and Agriculture Policy*, 14 DRAKE J. AGRIC. L. 75, 79 (2009). The book's impact on the legal literature in food law and policy is also noteworthy. See, e.g., Rebecca L. Goldberg, *Administering Real Food: How the Eat-Food Movement Should—and Should Not—Approach Government Regulation*, 38 ECO. L.Q. 773, 775 (2012) ("This Article represents an attempt to take one step toward bridging the gap between the large and complex regulatory structure that governs food production and sale of food in the United States, on the one hand, and the fast growing and highly influential food movement [made by popular by, most notably, Michael Pollan] . . . on the other."); Michael T. Roberts, *The Beginnings of the Journal of Food Law &*

what Pollan was reflecting on in 2016, two years after the latest iteration of the Farm Bill became law, were “some remarkable changes [that] have taken place in the food and farming landscape since the book was published in 2006.”<sup>11</sup> Namely, the American food system has begun an unprecedented process of self-determination.

Today, the Seattle Farm Bill Principles are a civic relic, the platform’s website no longer accessible, and the Know Your Farmer, Know Your Food Compass seems to have vanished under Secretary of Agriculture Sonny Perdue.<sup>12</sup> Nevertheless, as we attempt to show in this article, the seeds of food democracy have already been sown and are beginning to sprout, and, as we show, it is through the Farm Bill that these seeds are broadcasted. These seeds, however, are scattered across a vast landscape. Although Congress has shown its interest in promoting diverse representation in American food systems, the methods to demonstrate that interest are piecemeal, lopsided, and often temporary. Local-foods advocates and others concerned with transforming their community food systems may look ahead brightly to future Farm Bills, but more must be done to systematize the innovations and advances made in localizing the Farm Bill. In this article, we propose various methods Congress can use to focus its efforts in localizing food systems by promoting diverse representation in various Farm Bill programs and initiatives.

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*Policy*, 11 J. FOOD L. & POL’Y 1, 1 (2015) (“The nascent, social food movement, popularized in literature, media, and progressive circles, was just starting. For example, Michael Pollan’s best-seller, *The Omnivore’s Dilemma: A Natural History of Four Meals*, which galvanized tremendous interest food policy and food studies, was published in 2006, one year following the *Journal*’s inaugural edition. In short, the *Journal* was a novel, specialty law journal attempting to lead the way of a food law and policy movement that was just inching off the starting block.”).

<sup>11</sup> Pollan, *supra* note 12.

<sup>12</sup> The website that formerly hosted this program—<https://www.usda.gov/kyfcompass>—no longer exists. Additionally, the USDA Center for Nutrition and Policy used to provide access to this program at <https://www.cnpp.usda.gov/KnowYourFarmer>. That website, too, no longer exists. The USDA archives the program, though, which is apparently only accessible through a search engine. See U.S. DEP’T OF AGRIC., KNOW YOUR FARMER KNOW YOUR FOOD, <https://www.usda.gov/sites/default/files/documents/KYFCompass.pdf>.

Our intent in this Article is not to delineate foods that are local or not local, nor is it to lionize one agricultural production method over another. Rather, we hope to build on the literature that for many decades has documented how local communities have emerged as influential actors on the American food system through establishing control over local supply chains often alongside national and global supply chains. Such a community food system are those “a collaborative network that integrates sustainable food production, processing, distribution, consumption and waste management in order to enhance the environmental, economic, and social health of a particular place.”<sup>13</sup> In this network, farmers, consumers, and other community members “partner to create a more locally based, self-reliant food economy.”<sup>14</sup> Thus, when we discuss food localization—that is, the so-called localization of the food system, local food systems, and local foods generally—we are discussing all at once community food systems.

We begin with Part I, which explores how some food-system scholars have conceptualized how these democratic changes are occurring. We look to Thomas Lyson’s concept of civic agriculture, which attempts to move corporation-oriented communities away from the model of industrial agriculture and toward a model in which individuals are locally empowered in the land and marketplace. We also review Neil D. Hamilton’s concept of food democracy, which, like civic agriculture, acts as a set of alternative choices to the industrial food system and allows for more localized control of the food supply chain. Afterward, we attempt to connect two seemingly unrelated case studies to demonstrate what a food system influenced by Lyson and Hamilton could look like and how it could empower local communities.

Next, in Part II, we turn to federal local-food policy.

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<sup>13</sup> Sustainable Agriculture Research and Education Program, *Defining Sustainable Community Food Systems*, U.C. DAVIS AGRIC. SUSTAINABILITY INST., <http://asi.ucdavis.edu/programs/sarep/research-initiatives/fs/sfs/defining-sustainable-community-food-systems>.

<sup>14</sup> *Id.*

We discuss why laws promoting local food systems are proxies for laws democratizing our food system, and we then review a selection of federal legislation, often originating in the Farm Bill, that promote localization of the food system.

In Part III, we explore deliberative democracy, a political framework that encourages the sort of participation and representation conceptualized in food democracy and civic agriculture. We then summarize the work of contemporary schools who have identified how deliberative democracy has been crafted by food-system participants. We highlight examples from the American political process to demonstrate their current existence in the food system. Afterward, we observe more deeply how deliberative democracy has grounded federal agriculture policy.

Finally, in Part IV, influenced by past Farm Bills and historical agricultural policy, we propose various mechanisms Congress can implement in future Farm Bills to further legitimize its actions to promote localized food systems, as well as to provide structure to the democratization efforts it continues to support. Specifically, we propose various ways Congress can increase diverse representation in the food system and federal agricultural programs, which, through expanded access to decision-making and the strengthening of self-determination among an array of individuals, provide for further and enhanced food localization.

### **I. Democratizing the Food System**

The food movement comprises countless individual actors and independent groups, as well as coalitions and federations, advocating for myriad issues, ranging from increased food safety to greater concern for environmental effects of agriculture to demands for more sustainably sourced crops.<sup>15</sup> The collective consequences of this advocacy has resulted in a remarkable transformation of the food system, noteworthy for its substitution of the dominant industrial food system. Scholars Thomas

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<sup>15</sup> Joshua Ulan Galperin, *Value Hypocrisy and Policy Sincerity: A Food Law Case Study*, 42 VT. L. REV. 345, 355–56 (2017).



Lyson and Neil D. Hamilton have conceptualized models of these changes, both as attempts to understand the changes and as visions of how these changes may further innovate the food system. At the heart of their models—civic agriculture and food democracy, respectively—is the self-determined, diverse community exercising sovereignty over decision-making in the food system.

*A. Conceptualizing Localized Food Systems: Civic Agriculture and Food Democracy*

Two years before Pollan published *The Omnivore's Dilemma*, professors Thomas A. Lyson and Neil D. Hamilton separately published their own descriptions of the shifts in attitude toward American food and agriculture. Lyson termed these changes “civic agriculture,” which referred to “the emergence and growth of community-based agriculture and food production activities that not only meet consumer demands for fresh, safe, and locally produced foods but create jobs, encourage entrepreneurship, and strengthen community identity.”<sup>16</sup> Meanwhile, Hamilton termed his own observations “food democracy,” a social movement that encompasses (1) citizen participation in all aspects of the food system; (2) the availability of information about the food system with citizens making choices based on such information; (3) a proliferation of choices for consumers, growers, manufacturers, processors, and others in the food system; and (4) strong local community engagement alongside robust federal food policy.<sup>17</sup>

i. Civic Agriculture

Professor Thomas A. Lyson presents civic agriculture as an alternative model to the industrial model that largely dominates the American food system (and, thus, the global supply chain) today. For Lyson, this industrial model, which he

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<sup>16</sup> THOMAS A. LYSON, CIVIC AGRICULTURE: RECONNECTING FARM, FOOD, AND COMMUNITY 2 (2004).

<sup>17</sup> Neil D. Hamilton, *Essay—Food Democracy and the Future of American Values*, 9 DRAKE J. AGRIC. L. 9, 21–24 (2004).

estimates began to replace small-scale family farming with the passage of the Morrill Act of 1862<sup>18</sup> and the growing influence of “scientific agriculture,”<sup>19</sup> has resulted in an artificial emphasis on agricultural inputs and outputs, favoring “commodities that can be ‘mass-produced’ in accordance with the precepts put forth by the neoclassical production function and that articulate with standardized mass markets” and leaving behind “[n]onstandard varieties or commodities that have not achieved ‘economies of scale’ because they are too embedded in household or community relations to get an ‘economically unencumbered’ reading . . . .”<sup>20</sup> In other words, the industrial model of the food system “is framed in terms of well-defined markets and constructed categories of land, labor, capital, and management, which are organized to fit the production function.”<sup>21</sup>

Condensing the food system into this industrial model, Lyson believes, fails to account for the “community and household relations that can and do structure everyday economic activities.”<sup>22</sup> This community-centered economy is what Lyson calls the “civic economy” of urban and rural populations, “a richly textured set of intertwined household, community, and economic relations” that are evidenced especially by countless community gardens, farmers’ markets, community supported agriculture operations, community kitchens, and U-Pick operations.<sup>23</sup>

Industrial agriculture and civic agriculture may be in philosophical opposition with each other, but for Lyson their co-existence is essential. Industrial agriculture comprises “large-scale, well-managed, capital-intensive, technologically sophisticated, industrial-like operations” that produce “large quantities of highly standardized bulk commodities” by a “network of national and global food producers” who will generate the

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<sup>18</sup> Pub. L. 37-130, 12 Stat. 503 (1862) (codified as amended at 7 U.S.C. § 3001).

<sup>19</sup> LYSON, *supra* note 19, at 15-16.

<sup>20</sup> *Id.* at 22-23.

<sup>21</sup> *Id.* at 23.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 26-28.

majority of gross agricultural sales.<sup>24</sup> Civic agriculture, however, includes “smaller-scale, locally oriented, flexibly organized farms and food producers” who “will fill the geographic and economic spaces that have been passed over or ignored by large-scale, industrial producers” and “articulate with consumers demand for locally produced and processed foods.”<sup>25</sup>

Civic agriculture, therefore, is an embedded local food system—local agriculture and local food processing—that not only provides income to the civic agriculture enterprises, but improves the “health and vitality of communities in a variety of social, economic, political, and cultural” forms that industrial agriculture is fundamentally ill-equipped to account for.<sup>26</sup> Accordingly, because of its community-centered focus, the food system viewed under civic agriculture embodies the “civic concept.”<sup>27</sup> Such manifestations may include direct marketing, integration into local networks of food processing, local producer and marketing cooperatives, regional trade associations, and community-based farm and food organizations.<sup>28</sup> The supply chain here is not concerned with global influence, unlike its industrial counterpart; instead, the supply chain is controlled by and for the benefit of the local community.

## ii. Food Democracy

Law professor Neil D. Hamilton synthesizes his own observations of the changing food system through political participation.<sup>29</sup> For Hamilton, “[t]he medium is food, but the theme is democracy.”<sup>30</sup> Food democracy, as Hamilton

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<sup>24</sup> *Id.* at 61.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 62.

<sup>27</sup> *Id.* at 63.

<sup>28</sup> *Id.*

<sup>29</sup> Hamilton began writing about food-system alternatives and the move toward local decision-making in the food system as early as 1996. See Neil D. Hamilton, *Tending the Seeds: The Emergence of a New Agriculture in the United States*, 1 *DRAKE J. AGRIC. L.* 7 (1996).

<sup>30</sup> Hamilton, *supra* note 20, at 15.

searchingly calls his food-system model, refers to the collective effort of communities to promote democratic ideals through food and agriculture.<sup>31</sup> In other words, it “is a framework for making food more responsive to citizens’ needs (health, access, quality) and decentralizing control of production.”<sup>32</sup> Such attempts at embodying these democratic values are seen in the growth of farmers’ markets and CSA memberships, the rise of chefs as much famous for their dishes of food as for their dishes of social justice, the proliferation of process-oriented food labels, the emergence of buy-local campaigns, and the increase in farmers and consumers engaging in direct commerce and community building.<sup>33</sup>

Food democracy comprises four essential traits. First, because the success of democracy relies on citizens participating in the democratic process and on their representation in making decisions, food democracy requires that all stakeholders within the food system participate in decision-making and have their interests represented. Such stakeholders would include consumers, food processors, farmers, food markets, workers, and regulators. The interests of these stakeholders might consist

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<sup>31</sup> *Id.* at 16. As Baylen Linnekin points out, Hamilton “does not proffer a succinct definition of the term . . . .” Baylen J. Linnekin, *The “California Effect” & the Future of American Food: How California’s Growing Crackdown on Food & Agriculture Harms the State & the Nation*, 13 CHAP. L. REV. 357, 380 n.205 (2010). Despite this, the term “food democracy” was also popularized by Tim Lang, who, believing that “food is both a symptom and a symbol of how we organize ourselves and our societies,” wrote that the term referred to “the demand for greater access and collective benefit from the food system.” Tim Lang, *Food Policy for the 21st Century: Can It Be Both Radical and Reasonable?*, in FOR HUNGER-PROOF CITIES: SUSTAINABLE URBAN FOOD SYSTEMS 218 (Mustafa Koc et al., eds. 1999). See also Neva Hassanein, *Practicing Food Democracy: A Pragmatic Politics of Transformation*, 19 J. RURAL STUDIES 77, 79 (2003) (“At the core of [Lang’s] food democracy is the idea that people can and should be actively participating in shaping the food system, rather than remaining passive spectators on the sidelines. In other words, food democracy is about citizens having the power to determine agro-food policies and practices locally, regionally, nationally, and globally.”). Because of the strong similarity between Hamilton’s and Lang’s food democracies—notably, both rely explicitly on alternatives and democratic participation—we interchangeably cite literature referring to either author or term.

<sup>32</sup> Laurie Ristino, *Back to the New: Millennials and the Sustainable Food Movement*, 15 VT. J. ENVTL. L. 1, 19 (2013).

<sup>33</sup> Hamilton, *supra* note 20, at 16.

of financial viability of small farmers, the workers' wages, or consumer preferences. "This means a food democracy seeks ways to broaden the involvement and representation of all segments of the food system in decisions."<sup>34</sup>

Second, since democratic participation demands the availability of information and the ability of citizens to make informed choices using that information, food democracy thrives when stakeholders, especially consumers, question their food-system choices, uncover the reality of those choices, and adjust those choices according to what they learn. Ideally, consumers "have dozens of votes to cast for the food [they] buy [from] dozens of polling places," like grocery stores and farmers' markets, ideally favoring candidates "providing information and education to the voters involved . . . ."<sup>35</sup>

Third, in order for a citizen to properly compare and contrast the various voting choices, a democracy necessitates that the voter have alternatives to choose from. Similar to Lyson's civic agriculture, Hamilton's food democracy exists as an alternative to the predominant industrial model of production and consumption.<sup>36</sup> But for Hamilton, the existence of alternatives is essential to the success of his model, and the greater the choice of alternatives, the more vibrant and democratic the food system. This means that a robust food democracy includes not only various choices of food, but of markets, farms, food processors, and consumer education, as well.<sup>37</sup>

Fourth, food democracy exists on various levels, from inside the home to national institutions. This means that citizens of a food democracy—food democrats—make decisions regarding local farms and local markets, school cafeteria criteria, national food labels, the impact of their food choices on distant reaches of the globe, and so on. Although food democracy is built on local food systems, it comprises myriad levels of democracy and

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<sup>34</sup> *Id.* at 21.

<sup>35</sup> *Id.* at 21–22.

<sup>36</sup> *Id.* at 9–10.

<sup>37</sup> *Id.* at 22.

varying localized civic efforts.<sup>38</sup>

Just as industrial agriculture stands as antithesis to Lyson's civic agriculture, so does Big Food stand as antithesis to Hamilton's food democracy. For Hamilton, Big Food constitutes the businesses and institutions that currently dominate the food system.<sup>39</sup> Big Food's behemoth industrial model, Hamilton argues, is "in many ways anti-democratic" and thus anti-food-democracy.<sup>40</sup> In an essay published a year after his first essay on Food Democracy, he tells the story of the American public's reaction to mad cow disease in 2003 and 2004 as an example of this argument.<sup>41</sup> According to Hamilton, the shock of realizing that bovine spongiform encephalopathy (BSE), known colloquially and notoriously as mad cow disease, could originate in American beef surprised the American public in no fewer than six ways: (1) "downer" cows, regarded as carriers of BSE, were regularly processed at slaughterhouses for human consumption; (2) the number of downer cows actually tested for BSE by USDA was, at best, minuscule in comparison to the actual number processed; (3) luck, rather than reliable methods, led to the initial discovery of BSE; (4) animals suspected of containing BSE are nonetheless carried through processing because of inadequate storage facilities; (5) the meat Americans consumed often traveled halfway across the nation to reach their dinner plates; and (6) pet food was often made of the most detestable bits of "droppage" that no human would dare touch.<sup>42</sup> Had mad cow not swept the American media, the public may not have been so surprised; after all, Big Food, specifically Big Meat and Big Food Regulator, preferred to keep these revelations concealed.<sup>43</sup> Enlightened,

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<sup>38</sup> *Id.* at 22–23.

<sup>39</sup> *Id.* at 19.

<sup>40</sup> *Id.* at 25.

<sup>41</sup> See Neil D. Hamilton, *Food Democracy II: Revolution or Restoration?*, 1 J. FOOD L. & POL'Y 13, 18–24 (2005).

<sup>42</sup> *Id.* at 19–21.

<sup>43</sup> Hamilton, *supra* note 20, at 25 ("Much of the economic and political agenda of Big Food is designed to limit the information and choices available to consumers, to restrict the availability of alternative products and markets, and

however, the American public would soon force the USDA and some large meat processors to shift their practices based on the new available information.<sup>44</sup>

Fundamentally, Big Food and food democracy are at odds with each other in three significant and irremediable ways. The first is that Big Food opposes the consumer's "right to know more about food," as seen in the mad cow episode.<sup>45</sup> The second is that Big Food's products lack any sense of place or origin, which is at the heart of local foods and local markets.<sup>46</sup> And the third concerns how food exists as an idea: Big Food regards food as a definition *for* a product, but food democracy regards it as a set of values or traits *of* the product.<sup>47</sup> Unlike civic agriculture, which requires industrial agriculture for its co-existence, food democracy competes against Big Food for the preferred food-system model; Big Food is "threatened" by values that perpetuate food democracy.<sup>48</sup>

Regardless of the actual potential for civic agriculture or food democracy to flourish, both Lyson and Hamilton present their models in conjunction with their observations of what has already transpired. For Lyson and Hamilton, the localization of the food system was already underway, and the time had come, as Pollan also realized, to begin asking questions about how the food system was being transformed and how local efforts were steering its evolution.

### *B. Democratic Food Systems in Action: Two Case Studies*

Both Lyson and Hamilton developed their models for more democratic food systems in relation to a dominant paradigm that, in many ways, is antithetical to democracy. Curiosity of and concern with the effects of the industrial model's erosion of

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to assure consumers there is no reason for concern about our food.").

<sup>44</sup> Hamilton, *supra* note 44, 19, 22–24.

<sup>45</sup> *Id.* at 34.

<sup>46</sup> *Id.* at 34–35.

<sup>47</sup> *Id.* at 35.

<sup>48</sup> Hamilton, *supra* note 20, at 25.

local decision-making and participation within the food system has motivated others to determine whether models like civic agriculture and food democracy ought to be given a chance in rural communities or how rural communities might begin shifting toward a more democratic food system. In this section, we discuss how the unrelated studies of Walter Goldschmidt, an anthropologist who studied the agriculture and economies of two rural California towns in the 1940s, and Allyson Hayes-Conroy, a twenty-first-century sociologist who attempted to introduce civic agriculture to a small New Jersey town, illustrate the practical consequences of implementing these models in specific communities.

i. The Goldschmidt Study: Arvin and Dinuba

In the 1940s, Walter Goldschmidt was an anthropologist at the USDA Bureau of Economics when the Bureau took the lead in researching the economic problems and potential social consequences arising from a federal law designed to promote family farming in the West.<sup>49</sup> Pertaining primarily to the Western United States, this law held that water, developed through projects of the U.S. Department of Interior's Bureau of Reclamation, would be made available to those holding 160 or fewer acres; meanwhile, those with larger tracts had to take additional steps to claim some of that water.<sup>50</sup>

Goldschmidt premised his investigation on a single question: "Within the framework of American tradition, what effect does scale of farm operations have upon the character of the rural community?"<sup>51</sup> To determine the answer to this, he and his team analyzed the social, civic, political, and economic conditions of two rural California towns, Arvin and Dinuba, that

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<sup>49</sup> Walter Goldschmidt, *Agribusiness and Political Power*, in *AS YOU SOW: THREE STUDIES IN THE SOCIAL CONSEQUENCES OF AGRIBUSINESS* 455–56 (1978).

<sup>50</sup> *Id.* at 456.

<sup>51</sup> Walter Goldschmidt, *Agribusiness and the Rural Community*, in *AS YOU SOW: THREE STUDIES IN THE SOCIAL CONSEQUENCES OF AGRIBUSINESS* 392 (1978).



shared similar qualities, including geography, size, population, proximity to major roads, variety of crops grown, total value of production, and more.<sup>52</sup>

Despite these similarities, certain differences existed, twelve of which Goldschmidt found noteworthy. Namely, compared to residents in Dinuba, residents of Arvin tended to be dependent on wages; have generally lower standards of living; experience less population stability; dwell in houses and on streets of general poorer appearance and condition; have less access to community social services; possess poorer schools, parks, and facilities; engage less often in community organizations; choose from fewer religious institutions; express a lesser degree of community loyalty; make fewer decisions on community affairs; live in a greater degree of social segregation and greater social distance between various groups; and shop at fewer retail and other businesses in a marketplace.<sup>53</sup>

Goldschmidt began to address his question by scrutinizing various social aspects of community life between Arvin and Dinuba. For example, he concluded that a town's incorporation and quality of civic government "are important to this analysis not only because they affect the lives of citizens, but because they are indicative of the spirit and motivation of the community."<sup>54</sup> While Dinuba had robust civic engagement, Arvin had never incorporated, which "undoubtedly finds its root cause in the lack of any real civic unity."<sup>55</sup> As another example, he looked at the recognized civic leaders of the two towns: In Dinuba, not only was the school superintendent recognized as a leader at social gatherings, but other teachers also served as leaders, such as by starting a civic organization, youth services, or other community improvements; yet, "lack of this type of leadership is constantly made evident in Arvin. School and community functions suffer from an inadequate number of public-minded and trained citizens

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<sup>52</sup> *Id.* at 287–91.

<sup>53</sup> *Id.* at 394–95.

<sup>54</sup> *Id.* at 344.

<sup>55</sup> *Id.*

to supervise such affairs.”<sup>56</sup>

After cataloguing these several social and economic differences between Arvin and Dinuba, Goldschmidt set out to discover their cause. He looked especially at cultural and demographic factors. In Arvin, eight out of ten families depended on wages; but, in Dinuba, only five out of ten were wage earners.<sup>57</sup> “These workers, especially those who are agricultural workers,” Goldschmidt observed, “have little economic or social investment in the community. Furthermore, they do not supply the leadership for social activities, which almost without exception comes from farmers and white-collar workers.”<sup>58</sup> This discrepancy in the pool of potential civic leaders is remarkable, because it influences the cultural, civic, and demographic development of the community.<sup>59</sup> At its core, though, this difference is “very largely a direct result of farm size—a simple arithmetic certainty. For the number of farmers that can be supported by a given resource base is a direct function of the amount of resources each one controls.”<sup>60</sup> In Arvin, the large-scale of agricultural operations that developed there “had one clear and direct effect upon the community: It skewed the occupation structure so that the majority of the population could only subsist by working as wage labor for others.”<sup>61</sup> As a result, this occupation structure, “with a great majority of wage workers and very few persons independently employed and the latter generally persons of considerable means, has had a series of direct effects upon the social conditions in the community.”<sup>62</sup> These direct effects, according to Goldschmidt, are reluctance among residents to engage socially or economically with their town and little incentive to motivate them to do so.<sup>63</sup> “The

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<sup>56</sup> *Id.* at 351.

<sup>57</sup> *Id.* at 401.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 401–02.

<sup>60</sup> *Id.* at 402.

<sup>61</sup> *Id.* at 415.

<sup>62</sup> *Id.* at 415–16.

<sup>63</sup> *Id.* at 416.

laboring population does not take leadership in general civic action and rarely supports organizations that exist, out of a usually well substantiated feeling of ostracism that results from the large differences in economic status.”<sup>64</sup> In other words, it is the very structure of agriculture in Arvin—large scale farming operations, absentee landowners, low-paid migrant workers, and clear class distinctions—that contributed to the town’s social, economic, and political nature. Consequently, the town’s social institutions and retail trade are impoverished, and it is difficult for entrepreneurs to become independently employed.<sup>65</sup>

The answer to Goldschmidt’s question—*What effect does scale of farm operations have upon the character of the rural community?*—resulted in what is today known as the Goldschmidt Hypothesis.<sup>66</sup> Based on his observations and conclusions, Goldschmidt hypothesized that large-scale farming bore the major responsibility for the social differences between Arvin and Dinuba for several reasons. First, and most importantly, it created the social conditions giving rise to social, civic, and economic impoverishment.<sup>67</sup> Additionally, large-scale agricultural operations that dominate towns tend to produce company towns, in which the communities depend almost entirely on that business, and the conditions at the operations can directly affect the conditions of the community.<sup>68</sup> Finally, similar conclusions by previous researchers in other California towns and a cursory review of other California towns support these conclusions.<sup>69</sup>

Although Goldschmidt’s research was controversial as

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 416–17.

<sup>66</sup> See Linda M. Lobao, Michael D. Schulman & Louis E. Swanson, *Still Going: Recent Debates on the Goldschmidt Hypothesis*, 58 RURAL SOCIOLOGY 277 (1993).

<sup>67</sup> Walter Goldschmidt, *Agribusiness and the Rural Community*, in AS YOU SOW: THREE STUDIES IN THE SOCIAL CONSEQUENCES OF AGRIBUSINESS 421 (1978).

<sup>68</sup> *Id.* at 421. Goldschmidt points out that Arvin is not entirely dominated by large-scale agriculture, since it maintains “a small nucleus of working farmers” whose land would likely be held in large farms in their absence. *Id.*

<sup>69</sup> *Id.* at 421–23.

soon his project became public, his basic premise has remained relevant.<sup>70</sup> The differences between Arvin and Dinuba roughly correspond to the differences that Lyson and Hamilton have long observed. While neither town fully embodies one model or its antithesis, Goldschmidt's study has illustrated the practical consequences of how a community's food system is controlled, designed, and incorporated civically and economically.

ii. An Attempt to Introduce Civic Agriculture to a New Jersey Community

Inspired, in part, by the Goldschmidt Hypothesis and Lyson's work, Allison Hayes-Conroy, a professor of critical food studies and geography, conducted a study in Burlington County, New Jersey, to determine the extent to which a rural community was willing to adopt a stronger community food system.<sup>71</sup>

Hayes-Conroy conducted her study in two phases. The first was in a case study, wherein she gathered county educators and administrators and used civic agriculture as a "guideline for discussion" to determine individual perceptions of actualizing such an agricultural system.<sup>72</sup> Her respondent group consisted of 30 individuals, comprising equal parts men and women, most of whom were in their 40s or 50s, and representing professors, nonformal educators, educational administrators, and county administrators.<sup>73</sup> Through these dialogues, Hayes-Conroy hoped to ascertain what the respondents thought about such "a transformation, a movement in a different direction in regard to the overall way people think, society functions, and land figures on the horizon."<sup>74</sup>

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<sup>70</sup> For a summary of the backlash Goldschmidt faced and the attempt by various individuals and groups to prevent the study's publication, see Walter Goldschmidt, *Agribusiness and Political Power*, in *AS YOU SOW: THREE STUDIES IN THE SOCIAL CONSEQUENCES OF AGRIBUSINESS* 482–87 (1978).

<sup>71</sup> ALLISON HAYES-CONROY, *RECONNECTING LIVES TO THE LAND: AN AGENDA FOR CRITICAL DIALOGUE* 49 (2007) (discussing the Goldschmidt Hypothesis); *id.* at 125–50 (summarizing her case study and discussion study).

<sup>72</sup> *Id.* at 126.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 125.

She made six separate inquiries. First, she asked about the degree to which community members might notice ecological activities, which she termed “place-based perceptual ecology.”<sup>75</sup> She asked respondents to judge the ability of individuals in South Burlington to “notice, comprehend, and identify with the complexities of surrounding human systems and ecosystems.”<sup>76</sup> The majority of respondents, although diverse in their individual responses, generally agreed that Burlington County was “deficient” in “attentiveness to human and natural systems, including agriculture,” and many wondered whether collective action could really make a difference to that deficiency.<sup>77</sup>

Second, she asked about the extent to which the attitudes and passions of community members were affected by the seasons.<sup>78</sup> The responses to this inquiry suggested to Hayes-Conroy that “the seasons will be an effective way to locate attentiveness precisely because everyone must be aware of seasonal change on some level. Furthermore in Burlington County many educators do tend to conflate seasonal change with phases in the agricultural calendar.”<sup>79</sup>

Third, she inquired into the possibility of adjusting the specific professions of her respondents by proposing whether agriculture could be taught widely across the curriculum; that is, whether “agricultural seasonal rounds can affect what is taught in classroom and in outreach programs.”<sup>80</sup> Hayes-Conroy admitted that many of the respondents saw no connection between agriculture and their curriculum, but a majority were interested in discovering how their areas of expertise could fit with agriculture; moreover, Hayes-Conroy found a few respondents were inspired to “think holistically” about incorporating agriculture into the

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<sup>75</sup> *Id.* at 126.

<sup>76</sup> *Id.* at 127.

<sup>77</sup> *Id.* at 128.

<sup>78</sup> *Id.* at 128–29 (referring to “seasonal rounds”).

<sup>79</sup> *Id.* at 129.

<sup>80</sup> *Id.* at 130.

range of their work.<sup>81</sup>

Fourth, inspired by Wendell Berry, Hayes-Conroy sought to measure how aware Burlington County residents were of linkages between the natural world and the act of eating food.<sup>82</sup> Most respondents concluded that the community was “culturally inattentive” to these linkages, but several were personally inspired, after making the link themselves, to consider how much the term “agriculture” encompassed.<sup>83</sup>

Fifth, she asked educators about “localism through food”—what they thought about “the potential effect of the whole agricultural experience,” the combination of the changing landscapes throughout the year, the act of cultivation, and the purchasing of and eating of food.<sup>84</sup> Hayes-Conroy found that this issue was “quite contested” such that those involved in local planning believed localism through food and farm already had momentum, but those with less direct experience in farming and no similar experience in local planning believed more cultural awareness of local food and farm issues had “the potential to affect sense of place or belonging, but that they have never given it much thought . . . .”<sup>85</sup> Moreover, all respondents were skeptical that agriculture could be “culturally significant enough to substantially affect those outside the farming community.”<sup>86</sup>

Lastly, Hayes-Conroy asked the educators and administrators to consider “cultural reflection” of the ideas and its significance to the community and its issues of “land and landscape.”<sup>87</sup> Overall, this inquiry exposed the most difficult obstacle to “transformational learning” in the community—that is, shifting cultural attitudes about agriculture and the food

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<sup>81</sup> *Id.* at 132.

<sup>82</sup> *Id.* at 133.

<sup>83</sup> *Id.* at 133–34.

<sup>84</sup> *Id.* at 134.

<sup>85</sup> *Id.* at 135.

<sup>86</sup> *Id.* at 135–36.

<sup>87</sup> *Id.* at 136.

system.<sup>88</sup> Several of the respondents appeared open to this wider view of agriculture in light of cultural reflection, while others voiced various obstacles "to furthered perceptual expansion in this direction."<sup>89</sup>

This first case study involving the preceding six inquiries revealed three broad barriers to transforming a community into one that adopts civic agriculture. These barriers are all rooted in attitudes of individuals: (1) the attitude that social change is too difficult; (2) the attitude that it is not one's duty (for example, as an educator or administrator) to work for transformation; and (3) the attitude that agriculture and any of its potential ecological or social effects is simply not important.<sup>90</sup>

Despite these attitudes, Hayes-Conroy found that respondents were enthusiastic about thinking through her agriculture-based questions, and many expressed an interest in thinking critically about and reflecting on the cultural issues implicated in them.<sup>91</sup> Most of the educators, she found, believed that interest in local land, landscape, and ecology existed among residents, and that this interest could give the necessary support to advance a community-wide dialogue on civic agriculture or its values.<sup>92</sup> For instance, pride in local food or locally grown produce, appreciation of or nostalgia for local agriculture, and the seasonal habits of purchasing and decorating could motivate residents to take up such discussions.<sup>93</sup>

The necessity to bring together a representative sample of the community, including antagonists and neutrals, to begin that discussion process encouraged Hayes-Conroy to conduct her second study.<sup>94</sup> With support from a local community college, donations, and volunteers, she organized a community forum

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<sup>88</sup> *Id.* at 136–37.

<sup>89</sup> *Id.* at 139.

<sup>90</sup> *Id.* at 139–40.

<sup>91</sup> *Id.* at 140–41.

<sup>92</sup> *Id.* at 141.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 141–42.

centered around the theme of adopting civic agriculture.<sup>95</sup> Open to farmers, educators, landowners, business people, planners, naturalists, politicians, students, and others, the community forum included five break-out sessions, a keynote speaker to ground the various issues into a common theme of transformation, lunch with locally grown food, panel discussions, an open-floor Q&A, and an optional end-of-day field trip to a historical farming site.<sup>96</sup> The topics were similar to those presented to the educators and administrators from the first study—seasonal awareness, farming in the suburbs, agriculture across the curriculum, eating as an agricultural act, and food security.<sup>97</sup>

More than 100 individuals attended, from the “progressive Roman Catholic and conservative religious right, the struggling horse farmer and the concerned college student, the electrician and the professor, all side-by-side bringing up points that the rest may not have otherwise considered.”<sup>98</sup> Noticeably, though, there were limitations in diversity and some “lifestyle” demographics were missing.<sup>99</sup>

Overall, Hayes-Conroy found the responses positive. Motivated attendees felt a “sense of inspiration” and they planned “further programs on issues of agriculture and reconnection to the land for the local area.”<sup>100</sup> Additionally, the forum generally recognized the importance of “wholeness” in the community and in agriculture—“the need to include *all* voices was stressed quite firmly at the forum; if a dialogue is to be ‘whole,’ in any sense of the word, it must actively seek out ways to be inclusive.”<sup>101</sup> According to early responses, stressing inclusion and wholeness prompted a “sense of belonging in individuals from divergent groups” and left “them with a sense of responsibility for land and

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<sup>95</sup> *Id.* at 143–46.

<sup>96</sup> *Id.* at 144–147.

<sup>97</sup> *Id.* at 144.

<sup>98</sup> *Id.* at 147.

<sup>99</sup> *Id.* at 149–50.

<sup>100</sup> *Id.* at 148.

<sup>101</sup> *Id.* at 148–49.



place.”<sup>102</sup> In other words, assuring individuals in a community that their opinions and decisions matter with respect to the local food system may negate the attitudes otherwise preventing a shift toward civic agriculture.

Goldschmidt’s study illustrates the potential economic and civic benefits of communities composed primarily of small farms owned and operated by community residents, especially in relation to towns dominated by large agricultural producers. Hayes-Conroy’s study identifies social barriers to transforming a community into one in which civic agriculture may prevail, but it also identifies how empowering individuals through inclusive and democratic discussion and decision-making may reduce those barriers. Taken together, these two studies illuminate how communities can work together to localize their food system and why doing so benefits them as individuals and as a civic body.

## **II. Legislating Local Food Systems: Federal Policies that Localize Food**

In Part I, we saw the theories that motivate communities to localize their food systems and empirical examples of those theories in practice. In Part II, we turn to how the federal government has incentivized these community-centered food systems, particularly through the various iterations of the Farm Bill.

As much as they are prescriptive models toward which sectors of the food system may evolve, civic agriculture and food democracy are also normative explanations of how the food system has been changing toward conceptual food inversion.<sup>103</sup> Both Lyson and Hamilton explain that their models follow the natural tendencies they had been observing for years. Since first presenting their models of localizing the food system, the

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<sup>102</sup> *Id.* at 149.

<sup>103</sup> At least one case study has been developed to analyze the practicability of implementing a model of food democracy. See Neva Hassanein, *Locating Food Democracy: Theoretical and Practical Ingredients*, 3 J. HUNGER & ENVTL. NUTRITION 286, 290–304 (2008).

tendencies they witnessed and were inspired by continue to unfold in dramatic fashion.<sup>104</sup> While civic agriculture and food democracy might be dismissed or explained away by myriad arguments, the trends the two professors witnessed have remained remarkably resilient.<sup>105</sup>

The flourishing localization of the food system has been captured not only in the marketplace—seen around the United States in farmers’ markets, community supported agriculture and aquaculture, and public and private buy-local campaigns, to name a few—but in every link of the supply chain. Much has been written about the localization innovations in production,

<sup>104</sup> Hamilton notes as much more than a half-decade after publishing his first essay on food democracy. See Neil D. Hamilton, *Moving Toward Food Democracy: Better Food, New Farmers, and the Myth of Feeding the World*, 16 DRAKE J. AGRIC. L. 117, 118–19 (2011) (“The goal of this essay is to consider some of the current developments in the U.S. food system with an emphasis on sustainability and its connection to food, farming and the land. Much has happened on the American food and agriculture scene since I first about the idea of food democracy seven years ago.”). See also Susan A. Schneider, *Moving in Opposite Directions? Exploring Trends in Consumer Demand and Agricultural Production*, 43 MITCHELL HAMLINE L. REV. 400, 408 (2017) (“As the food movement has taken shape in recent years, Hamilton’s prediction of an ‘emerging food democracy’ has begun.”); Neil D. Hamilton, *Harvesting the Law: Personal Reflections on Thirty Years of Change in Agricultural Legislation*, 46 CREIGHTON L. REV. 563, 573 (2013) (“In many ways, the ‘new farmers’ of tomorrow, the people I wrote about in the ‘New Agrarians,’ and the issues of food access and informed choice (e.g., ‘food democracy’), are the focus of today’s activists.”).

<sup>105</sup> For theoretical and practical arguments against civic agriculture, see Carrie A. Scrufari, *Tackling the Tenure Problem: Promoting Land Access for New Farmers as Part of a Climate Change Solution*, 42 COLUM. J. ENVTL. L. 497, 501–03 (2017) (arguing that obstacles to land access among new and small farmers make civic agriculture a near-impossible model to realize); Laura B. DeLind & Jim Bingen, *Place and Civic Culture: Re-Thinking the Context for Local Agriculture*, 21 J. AGRIC. & ENVTL. ETHICS 127, 128–30 (2007) (presenting several arguments related to the conflation of “local” and “civic” among some proponents of civic agriculture); Morgan L. Holcomb, *Our Agriculture Policy Dilemma: The Omnivore’s Dilemma: A Natural History of Four Meals*, by Michael Pollan, 8 MINN. J. L. SCI. & TECH. 249, 274–75 (2007) (arguing against the practicability of a large-scale implementation of civic agriculture and doubting whether small-scale farms are any more environmentally sound than their large-scale counterparts). And for those against food democracy, see Stephen Carpenter, *A New Higher Calling in Agricultural Law*, 18 DRAKE J. AGRIC. L. 13, 34–35 (2013) (noting that the pursuit of food activists “to be more egalitarian than the mainstream food industry” may, on closer inspection, reveal uneven accomplishments rooted in elitism); Hassanein, *supra* note 34, at 80 (summarizing arguments that food democracy has no singular unifying focus).

processing, distribution, marketing, as well as developments among minority and urban populations. Such changes have come to embody the current food system.

As Lyson and others point out, however, for longer-lasting structural changes to occur, the American public must reckon with its governmental policies that help perpetuate the status quo. Cities and local municipalities have played increasing roles in developing and promulgating policies that promote the localization of the food system.<sup>106</sup> The federal government, however, has the most potential to alter the national structure of the food system toward more localizing policies. In recent years, the federal government, especially through the 2008 and 2014 Farm Bills,<sup>107</sup> has taken recent steps to encourage its citizens to take more local control of the food system. Specifically, it has done this through creating programs that promote local food.

#### *A. Local Food as a Framework for Measuring Representation in the Food System*

Local food, as useful shorthand for a rich and thematic conceptual framework of community food systems, lacks any uniform legal definition.<sup>108</sup> When advocates, consumers, scholars, legislators and rule-makers, and other food-system stakeholders use the term, they often refer to distance or geography, but the term encapsulates numerous other attributes, as well, including who produced the food, how the food was processed, and other meaningful characteristics related to the supply chain.<sup>109</sup> Since we consider community food systems synonymous with local

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<sup>106</sup> MARTHA H. CHUMBLER, ET AL., URBAN AGRICULTURE: POLICY, LAW, STRATEGY, AND IMPLEMENTATION 232 (2015).

<sup>107</sup> See, e.g., RENÉE JOHNSON & TADLOCK COWAN, CONG. RESEARCH SERV., LOCAL FOOD SYSTEMS: SELECTED FARM BILL AND OTHER FEDERAL PROGRAMS 1 (2016), <https://fas.org/sgp/crs/misc/R43950.pdf>.

<sup>108</sup> SUSAN A. SCHNEIDER, FOOD, FARMING, AND SUSTAINABILITY 684 (2d ed. 2016); *Local Foods: Overview*, U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., <https://www.ers.usda.gov/topics/food-markets-prices/local-foods> (last updated Oct. 10, 2017).

<sup>109</sup> SCHNEIDER, *supra* note 111, at 684–85; Marne Coit, *Jumping on the Next Bandwagon: An Overview of the Policy and Legal Aspects of the Local Food Movement*, 4 J. FOOD L. & POL'Y 45, 47 (2008).

foods, local food systems, and the localization of the food system, we also consider policies promoting local foods as policies that promote community food systems. Specifically, this localization of the food systems refers to local participation in the community food system and local decision-making in the food supply chain.

While localizing the food system constitutes an array of attributes related to agriculture, economics, democratic participation, personal identity, and community problem-solving, it is helpful to look at the developments in local-food policy to understand the trends Lyson, Hamilton, and others witnessed and wrote about. Given the numerous ways to delineate local from non-local foods, or even “local foods” from “locality foods,”<sup>110</sup> clarity can be fleeting. Nevertheless, the USDA Economic Research Service (ERS) has identified at least four broad iterations of local food: (1) distance traveled, (2) marketing outlet, (3) perceived attributes, and (4) potential to address food deserts.<sup>111</sup>

First, local food as distance traveled refers to how far the food had to be transported to arrive at the consumer’s plate. This may, for example, refer to a specific number of miles, such as those in the 100-mile diet.<sup>112</sup> It can, of course, be much more or much less than that. The ERS found a range of instances in distance-qualifying local foods, from as little as twenty-five miles from the originating location to as far away as 350 miles from it.<sup>113</sup> Congress also relies on distance in the two instances it has defined local foods.<sup>114</sup> In the first instance, the 2008 Farm Bill<sup>115</sup> defined a “locally or regionally produced agricultural food product” for the purposes of a USDA loan program as food traveling fewer

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<sup>110</sup> See SCHNEIDER, *supra* note 111, at 685.

<sup>111</sup> See RENÉE JOHNSON, CONG. RESEARCH SERV., THE ROLE OF LOCAL AND REGIONAL FOOD SYSTEMS IN U.S. FARM POLICY 2–11 (2016), <https://fas.org/sgp/crs/misc/R44390.pdf>.

<sup>112</sup> See generally ALISA SMITH & J.B. MACKINNON, PLENTY: EATING LOCALLY ON THE 100-MILE DIET (2008); ALISA SMITH & J.B. MACKINNON, THE 100-MILE DIET: A YEAR OF LOCAL EATING (2007)

<sup>113</sup> JOHNSON, *supra* note 114, at 3.

<sup>114</sup> See MICHAEL T. ROBERTS, FOOD LAW IN THE UNITED STATES 387 (2016).

<sup>115</sup> Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, 122 Stat. 1651.

than 400 miles.<sup>116</sup> The second instance, the Food Safety and Modernization Act (FSMA)<sup>117</sup> defined a “qualified end-user” as a restaurant or retail food establishment located in the same state in which the food was produced or “not more than 275 miles from such farm.”<sup>118</sup> Although this is not an explicit reference to local food, FSMA exempts certain small-scale farms from the Preventative Controls Rule and the Produce Safety Rule based on amount of sales to qualified-end users, and these transactions are often entirely local in nature.<sup>119</sup> More than a mere measurement of how far the crow might fly, distance can also refer to a specific region, such as within the boundaries of a state<sup>120</sup> or some of other “geographical indicator,” which describes not only the place where the food comes from, but also the processes used to grow or manufacture that food; often, a geographical indicator informs the consumer of perceived quality, such as Washington apples, Florida oranges, or Napa Valley wines.<sup>121</sup>

Second, local food as marketing outlet refers to the sorts of marketing channels farmers use to distribute the food they produced or manufactured to consumers.<sup>122</sup> These channels include (1) direct-to-consumer outlets, such as farmers’ markets,

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<sup>116</sup> 7 U.S.C. § 1932(g)(9) (2012) (defining a local food as food produced within a state’s border or “the total distance that the product is transported is less than 400 miles from the origin of the product”).

<sup>117</sup> Pub. L. No. 111-353, 124 Stat. 3885 (2011).

<sup>118</sup> 21 U.S.C. §§ 350g(l)(4)(B), 350h(f)(4)(A).

<sup>119</sup> 21 U.S.C. §§ 350g(l)(1), 350g(l)(2) (exempting a “qualified facility” from the Preventative Controls Rule); 21 U.S.C. 350h(f) (exempting certain small-scale farms from the Produce Safety Rule); Gregory M. Schieber, Note, *The Food Safety Modernization Act’s Tester Amendment: Useful Safe Harbor for Small Farmers and Food Facilities or Weak Attempt at Scale-Appropriate Farm and Food Regulations?*, 18 DRAKE J. AGRIC. L. 239, 252–53 (2013) (discussing motivation for these exemptions as arising from congressional concerns about FSMA’s regulatory burden on local-food systems).

<sup>120</sup> See, e.g., 7 U.S.C. § 1931(g)(9)(A)(i)(II); *CT Grown Program*, CONN. DEP’T OF AGRIC., <http://www.ct.gov/doag/cwp/view.asp?a=3243&q=398984> (last visited May 15, 2018) (stating that, with farmers and producers meeting certain conditions, “[f]arm products grown or produced in Connecticut may be advertised or sold in Connecticut as . . . ‘Local’ or ‘Locally-Grown’”). Nearly all states have their own “state-grown” programs. JOHNSON, *supra* note 114, at 4.

<sup>121</sup> *Id.* at 4.

<sup>122</sup> *Id.* at 5.

roadside farm-stands, on-farm stores, and community-supported agriculture; and (2) intermediated outlets, such as grocery stores, restaurants, and regional distributors.<sup>123</sup> As part of the agricultural census, the USDA collects sales information related to some of these local-food marketing channels, particularly direct-to-consumer models.<sup>124</sup> The so-called Locavore Index, which ranks states based on local-food sales and consumption, is based, almost in whole, on these direct and intermediate marketing outlets and, in part, on the USDA's data collection related to them.<sup>125</sup> For many consumers, the economic support of regional agriculture and the community is the primary motivation for using these channels.<sup>126</sup>

Third, local food as perceived attributes refers to various social or supply-chain characteristics in the food's production that consumers deem desirable.<sup>127</sup> Such perceptions are based on the type of farm, the methods of production, the simplification of the supply chain, the financial and social support of local communities, the fairness of the food system, and, as Lyson and Hamilton show, alternatives to the predominant industrial model of food production. More concretely, these attributes might include whether the food originated at a small or urban

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<sup>123</sup> *Id.* at 5–6.

<sup>124</sup> See, e.g., U.S. DEP'T OF AGRIC., 2012 U.S. AGRICULTURAL CENSUS, TABLE 2: MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD INCLUDING LANDLORD'S SHARE AND DIRECT SALES: 2012 AND 2007 9 (2014), [https://www.agcensus.usda.gov/Publications/2012/Full\\_Report/Volume\\_1\\_Chapter\\_1\\_US/st99\\_1\\_002\\_002.pdf](https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1_Chapter_1_US/st99_1_002_002.pdf) (“Value of agricultural products sold directly to individuals for human consumption”); U.S. DEP'T OF AGRIC., 2007 U.S. AGRICULTURAL CENSUS, TABLE 2: MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD INCLUDING LANDLORD'S SHARE AND DIRECT SALES: 2007 AND 2002 9 (2009), [https://www.agcensus.usda.gov/Publications/2007/Full\\_Report/Volume\\_1\\_Chapter\\_1\\_US/st99\\_1\\_002\\_002.pdf](https://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1_Chapter_1_US/st99_1_002_002.pdf) (same). See also *Direct Farm Sales of Food: Results from the 2015 Local Food Marketing Practices Survey*, U.S. DEP'T OF AGRIC., NAT'L AGRIC. STAT. SERV. (2016) (supplementing 2015 direct-marketing survey with Census of Agriculture data).

<sup>125</sup> *How Locavore Is Your State?: Strolling of the Heifers 2017 Locavore Index ranks states on local food commitment*, STROLLING OF THE HEIFERS (May 15, 2017), <https://www.strollingoftheheifers.com/locavorei>.

<sup>126</sup> JOHNSON, *supra* note 114, at 7–8.

<sup>127</sup> *Id.* at 9.

farm or with sustainable practices; others might mean support of the local economy, farmland preservation, minimal harm to the environment, use of alternative fertilizer and pest-control methods, and products that provide fairer wages to farm workers.<sup>128</sup>

Finally, local food as potential to address food deserts refers less to criteria delineating local from non-local food and more to the advocacy for an increase role of local foods in addressing concerns about access to healthy food in some low-income or otherwise underserved community (so-called food deserts).<sup>129</sup> While this may mean passing tax incentives to attract more food-retail outlets, improving already-existing food-retail outlets by encouraging stocking fresh foods, or diverting from the waste-stream to the supply chain, it may also mean promoting programs that encourage these communities to become active producers in urban agriculture or community gardening.<sup>130</sup> Many local food policy councils prioritize local food production and consumption in addressing community hunger issues.<sup>131</sup>

Although “local food” lacks a formal definition, these four categories demonstrate, at the very least, that local food is rooted in a community’s identity of land, economics, political and social values, and unified problem-solving.<sup>132</sup> Although these

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<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 10.

<sup>130</sup> *Id.*; PHILIP ACKERMAN-LEIST, REBUILDING THE FOODSHED: HOW TO CREATE LOCAL, SUSTAINABLE, AND SECURE FOOD SYSTEMS 111–13 (2013).

<sup>131</sup> See, e.g., DETROIT FOOD POL’Y COUNCIL, CREATING A FOOD SECURE DETROIT: POLICY REVIEW AND UPDATE 8 (2017), <http://detroitfoodpolicycouncil.net/sites/default/files/images/DFPC%20Food%20Policy%20Document%20021317%20%281%29.pdf>; MARIN FOOD POL’Y COUNCIL, EQUITABLE ACCESS TO HEALTHY AND LOCAL FOOD IN MARIN COUNTY: PRELIMINARY REPORT ON POLICY PRIORITIES TO THE BOARD OF SUPERVISORS 2–3 (2015), <http://www.ucanr.edu/sites/MarinFoodPolicyCouncil/files/223505.pdf>; *Getting Food*, SANTA FE FOOD POL’Y COUNCIL, <https://www.santafefoodpolicy.org/food-plan/getting-food> (last visited May 15, 2018). The Los Angeles Food Policy Council has developed an innovative strategy to encourage owners of corner liquor shops to stock their shelves with fresh produce. See *Healthy Neighborhood Market Network*, L.A. FOOD POL’Y COUNCIL (2018), <http://goodfoodla.org/policymaking/healthy-neighborhood-market-network> (last visited May 15, 2018).

<sup>132</sup> See ROBERTS, *supra* note 117, at 386 (identifying ten related objectives of the local-food movement).

communities are not easily defined, their cohesion often seems bound by the voluntary participation of producers, distributors, retailers, consumers, advocates, and other members of the public in coming together to transact and exchange information. At its essence, then, local food is a proxy for the determination of a community to govern its food system, to set the goals that its food system should achieve, to design the infrastructure to support its food system, and to strive for self-reliance in its food system.

*B. Federal Policies Localizing the Food System*

Since at least the 1930s, during President Franklin Roosevelt's sweeping New Deal reforms, the USDA has experimented with encouraging more diverse participation in local and regional food systems, notably in the face of more established agricultural interests, primarily in attempts to alleviate rural poverty.<sup>133</sup> Not until the last decades, however, has the conceptual structure of a local-food system emerged as a part of federal action to increase participation in agriculture policy. Below is a brief summary of the various actions the federal government has taken to promote such a food system.

Federal policies and programs that support local foods often do not specifically limit themselves to or target local foods; instead, their breadth covers a wide range of food-system issues, including those associated with local foods.<sup>134</sup> Increasingly, however, Congress and the USDA are carving out policies to particularly support the localization of food systems. This section identifies examples of both sorts. Because of the capacity of many federal laws to attract local foods into their purview, this is not an exhaustive list.

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<sup>133</sup> See GRANT MCCONNELL, *THE DECLINE OF AGRARIAN DEMOCRACY* 88–95 (1953) (discussing the work of the USDA Farm Security Agency in addressing rural poverty through programs designed to make impoverished families more self-sufficient, including promoting marketing and purchasing cooperatives, increased farm ownership, and overall community development, as well as focusing on bringing more Southern black farmers out of dire economic distress).

<sup>134</sup> JOHNSON, *supra* note 114, at 28; Coit, *supra* note 112, at 63.



i. Promotion of Localized Food-System Transactions

Federal statutes regulating the marketing of agricultural products, such as through commodity-specific price controls and marketing orders, have been in place since the early twentieth century, but this focus on transactions began to widen in the century's latter half.<sup>135</sup> In 1976, when Congress passed the Farmer-to-Consumer Direct Marketing Act (Direct Marketing Act), federal agricultural-marketing legislation veered away from principally regulating commodities markets and expanded into the broader category of local foods.<sup>136</sup> The purpose of this law was to "promote, through appropriate means and on an economically sustainable basis, the development and expansion of direct marketing of agricultural commodities from farmers to consumers."<sup>137</sup> Additionally, through this new law, Congress empowered the Secretary of Agriculture to create and maintain a program "designed to facilitate direct marketing from farmers to consumers for the mutual benefit of consumers and farmers."<sup>138</sup> The Direct Marketing Act effectuated this program by directing the Secretary of Agriculture to coordinate with state departments of agriculture and local Extension Service offices for the development of direct-to-consumer activities most needed in the particular states.<sup>139</sup> The activities could include, among other things, (1) sponsoring related conferences, (2) identifying state and local laws pertinent to direct-marketing and advocating for improved legislation, or (3) providing technical assistance to deepen understanding of direct marketing.<sup>140</sup>

The Direct Marketing Act is remarkable not only for its authorization of \$3,000,000 for these collaborative and local programs, but it is an early example of Congress' willingness

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<sup>135</sup> See, e.g., Agricultural Adjustment Act of 1933, Pub. L. No. 73-10, 48 Stat. 31; Agricultural Marketing Act of 1938, 7 U.S.C. § 1282 (2006).

<sup>136</sup> Farmer-to-Consumer Direct Marketing Act of 1976, Pub. L. No. 94-463, 90 Stat. 1982 (codified as amended at 7 U.S.C. § 3001).

<sup>137</sup> *Id.* § 2.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* § 5.

<sup>140</sup> *Id.*

to encourage the activities of community food systems.<sup>141</sup> In defining “direct marketing from farmers to consumers,” Congress noted several examples where such transactions occurred—roadside stands, city markets, house-to-house marketing—which existed “to lower the cost and increase the quality of food to such consumers while providing increased financial returns to the farmers.”<sup>142</sup> To the modern locavore, these examples resemble the current picture of local-food marketplaces, comprising farm-stands, farmers’ markets, and CSA subscriptions. At a time when direct marketing among farmers and consumers was widely viewed as “a step backward into inefficiency,”<sup>143</sup> the Direct Marketing Act’s empowerment of the USDA to assist local communities in localizing their food system, especially as an alternative to the increasingly industrial food supply, began to legitimize the importance of community-controlled local-food economics and policies.<sup>144</sup>

In the years that followed, the American farmers’ markets never succumbed to their alleged inefficiencies, and by 1992, as they continued to flourish, Congress passed the WIC Farmers’ Market Nutrition Act, which amended the Child Nutrition Act of 1966,<sup>145</sup> and created the WIC Farmers’ Market Nutrition Program (WIC Nutrition Program) to both expand the public’s awareness for farmers’ markets and “provide resources to women, infants, and children who are nutritionally at risk in the form of fresh nutritious unprepared foods (such as fruits and vegetables), from

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<sup>141</sup> Farmer-to-Consumer Direct Marketing Act of 1976, Pub. L. No. 94-463, § 7(b), 90 Stat. 1982, 1984 (authorizing \$1,500,000 “for each of the fiscal years ending” in 1977 and 1978).

<sup>142</sup> *Id.* § 3.

<sup>143</sup> Allison Brown, *Counting Farmers Markets*, 91 GEOGRAPHICAL R. 655, 669 (2001).

<sup>144</sup> For an excellent analysis of the role of farmers’ markets across the United States during the period leading up to the passage of the Farmer-to-Consumer Direct Marketing Act and speculation about their demise in the face of the industrialized food-supply chain, see Jane Pyle, *Farmers’ Markets in the United States: Functional Anachronisms*, 61 GEOGRAPHICAL R. 167 (1971).

<sup>145</sup> WIC Farmers’ Market Nutrition Act of 1992, Pub. L. No. 102-314, 106 Stat. 280.

farmers' markets . . . ."<sup>146</sup> Specifically, Congress authorized funding for grants that states could use, in coordination with the USDA, to create programs in which qualified beneficiaries could exchange coupons for locally grown food.<sup>147</sup> States could only use these grants, however, if they agreed to contribute their own dollars to fund the programs.<sup>148</sup> In 1998, Congress reauthorized the WIC Nutrition Program, thus solidifying its role in supporting local-food systems.<sup>149</sup> With the passage of the WIC Farmers' Market Nutrition Act, Congress now found itself as a direct funder of local-foods system.

Also, in 1998, the USDA National Commission on Small Farms recognized the significance of locally grown food on local communities, and it developed a thorough policy vision to promote local-food systems. Specifically, it urged the USDA "to develop an interagency initiative to promote and foster local and regional food systems featuring farmers markets, community gardens, Community Supported Agriculture, and direct marketing to school lunch programs."<sup>150</sup> Among the principles guiding these policies were developing relationships between farmers and consumers, strengthening rural communities, fostering sustainable farming practices, creating diverse market outlets, and expanding opportunities to all Americans to engage in farming.<sup>151</sup>

Just four years later, Congress amended the Direct Marketing Act through the 2002 Farm Bill<sup>152</sup> and created the Farmers Market Promotion Program (FMPP). The FMPP was added to the Direct Marketing Act to "develop . . . new farmers' markets, roadside stands, community-supported agriculture

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<sup>146</sup> *Id.* § 2.

<sup>147</sup> *Id.* § 3.

<sup>148</sup> *Id.*

<sup>149</sup> William F. Goodling Child Nutrition Reauthorization Act of 1998, Pub. L. 105-336, § 203(o), 112 Stat. 3143, 3163-64.

<sup>150</sup> U.S. DEP'T OF AGRIC. NAT'L COMM'N ON SMALL FARMS, A TIME TO ACT: A REPORT OF THE USDA NATIONAL COMMISSION ON SMALL FARMS (1998), [https://www.iatp.org/files/258\\_2\\_106175.pdf](https://www.iatp.org/files/258_2_106175.pdf) (the report is not paginated).

<sup>151</sup> *Id.* (search for "Guiding Principles for Federal Farm Policy").

<sup>152</sup> Farm Security and Rural Adjustment Act of 2002, Pub. L. 107-171, 116 Stat. 134.

programs, and other direct-to-consumer infrastructure.”<sup>153</sup> The grants created to put the program into force could be awarded to a variety of entities, such as local governments, nonprofit organizations, an agricultural cooperative, or an economic development corporation.<sup>154</sup> Moreover, it instructed the Secretary of Agriculture to work with states to train farmers’ market managers, assist local Extension Service office in developing marketing techniques, and to help local producers develop farmers’ markets.<sup>155</sup> Congress gave the Secretary of Agriculture discretion to establish the guidelines and criteria of the FMPP.<sup>156</sup> Initially, Congress authorized that the FMPP be funded from 2002 through 2006; however, the program did not receive funds until Congress provided \$1 million in 2005.<sup>157</sup> It continued to reauthorize funding for the FMPP in the 2008 and 2014 Farm Bills, as well.<sup>158</sup>

In addition to establishing and funding the FMPP, the 2002 Farm Bill also created the Senior Farmers’ Market Nutrition Program (Senior Nutrition Program). The Senior Nutrition Program, like the FMPP, amended the Direct Marketing Act.<sup>159</sup> The purposes of the Senior Nutrition Program were numerous; some reiterated the desire to expand local direct-to-consumer marketplaces, while another explicitly promoted local foods, specifically to “provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs” at these marketplaces.<sup>160</sup> Congress authorized \$5,000,000 in 2002 and \$15,000,000 each year from 2003 to 2007 to support this nutrition

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<sup>153</sup> 7 U.S.C. § 3005(b)(1)(B) (2002).

<sup>154</sup> *Id.* § 3005(c).

<sup>155</sup> *Id.* § 3004(b).

<sup>156</sup> *Id.* § 3005(d).

<sup>157</sup> U.S. DEP’T OF AGRIC. AGRIC. MARKETING SERV., FARMERS MARKET PROMOTION PROGRAM: 2016 REPORT 2 (2017).

<sup>158</sup> Agricultural Act of 2014, Pub. L. 113-79, § 10003, 128 Stat. 649, 940-41; Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, § 10106, 122 Stat. 1651, 2098-99.

<sup>159</sup> See 7 U.S.C. § 3007 (2002).

<sup>160</sup> *Id.* § 3007(b).

program.<sup>161</sup> As with the FMPP, it was up to the USDA to figure out how this program would work.<sup>162</sup> In December 2006, the USDA Food and Nutrition Service finalized its rule, just in time to begin its operation at the start of 2007.<sup>163</sup> The 2008 Farm Bill<sup>164</sup> not only reauthorized funding for this program with \$20,600,000 for each year through 2012,<sup>165</sup> but it provided tax benefits, as well: purchases of qualifying food would not be subject to state or local sales taxes, and the economic benefits conferred on senior individuals would not be subject to local, state, or federal income tax.<sup>166</sup> One small, but noteworthy amendment also included the addition of honey as a qualifying food.<sup>167</sup> By adding honey, Congress once again recognized the actual activities occurring within local-food systems: in the face of honeybee colony collapse, many communities supported the sweet pay-offs of their local apiarists at their weekly farmers markets.<sup>168</sup>

The 2002 Farm Bill also looped in the WIC Nutrition Program by providing it mandatory funding.<sup>169</sup> With an eye toward expanding the program and supporting local communities addressing hunger issues through local foods, Congress directed the USDA to examine the potential of food-stamps funded transactions at farmers' markets, by way of the electronic benefits transfer (EBT) systems.<sup>170</sup> This instruction came as the USDA

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<sup>161</sup> *Id.* § 3007(a).

<sup>162</sup> *Id.* § 3007(c).

<sup>163</sup> See Senior Farmers' Market Nutrition Program Regulations: Final Rule, 71 Fed. Reg. 74,618, 74,618 (Dec. 12, 2006) (codified at 7 C.F.R. pt. 249).

<sup>164</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, 122 Stat. 923.

<sup>165</sup> 7 U.S.C. § 3007(a) (2008).

<sup>166</sup> *Id.* § 3001(c), (d).

<sup>167</sup> *Id.* § 3001(b)(1).

<sup>168</sup> See, e.g., MJ Paul Espinoza, *The Honey Ladies: Saving Bay Area Bees One Swarm at a Time*, CTR. FOR URBAN EDUC. ABOUT SUSTAINABLE AGRIC. (June 16, 2017), <https://cuesa.org/article/honey-ladies-saving-bay-area-bees-one-swarm-time>; Emily Sunblade, *Local Beekeeper Saving Bees, Serving Honey at Farmers Market*, PATCH MEDIA (last updated Aug. 9, 2011), <https://patch.com/illinois/bolingbrook/thousands-of-ladies-one-beekeeper>.

<sup>169</sup> Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, § 4307, 116 Stat. 134, 332; 42 U.S.C. § 1786(m)(9)(A) (2002).

<sup>170</sup> Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, § 4111(b)

was shifting away from paper coupons and toward the paperless EBT platform.<sup>171</sup> Two years later, the Child Nutrition and WIC Reauthorization Act of 2004 extended this mandatory funding through fiscal year 2009, thus ensuring federal support of local-food systems for several years to come.<sup>172</sup> While the 2008 Farm Bill reauthorized the Senior Nutrition Program, it did not touch the WIC Nutrition Program; rather, the WIC Nutrition Program would not receive an extension until two years later through the Healthy, Hunger-Free Kids Act of 2010.<sup>173</sup> Under the 2010 law, Congress made funds available for the program through fiscal year 2015.<sup>174</sup>

The 2014 Farm Bill extended funding for the Senior Nutrition Program, it did not do the same for the WIC Nutrition Program.<sup>175</sup> At the same time, the 2014 Farm Bill amended the 2008 Farm Bill to create the Food Insecurity Nutrition Incentive (FINI).<sup>176</sup> FINI is a grant program that “supports projects to increase the purchase of fruits and vegetables among low-income consumers participating in the Supplemental Nutrition Assistance Program (SNAP) by providing incentives at the point of purchase.”<sup>177</sup> Grantees eligible for the millions of dollars in funding include farmers’ markets and community-supported

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(3)(A), 116 Stat. 134, 309.

<sup>171</sup> U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV., NUTRITION ASSISTANCE IN FARMERS MARKETS: UNDERSTANDING CURRENT OPERATIONS: FINAL REPORT 2 (2013), <https://fns-prod.azureedge.net/sites/default/files/FarmersMarketsOps.pdf>.

<sup>172</sup> 42 U.S.C. § 1786 (m)(9)(A) (2004).

<sup>173</sup> Healthy, Hungry-Free Kids Act of 2010, Pub. L. 111-296, 124 Stat. 3183.

<sup>174</sup> *Id.* § 424; 42 U.S.C. § 1786(m)(9)(A) (2010).

<sup>175</sup> Agricultural Act of 2014, Pub. L. 113-79, § 4203, 128 Stat. 649, 822-23 (codified as amended at 7 U.S.C. § 3007(a) (2014)).

<sup>176</sup> Agricultural Act of 2014, Pub. L. 113-79, § 4208, 128 Stat. 649, 826 (codified as amended at 7 U.S.C. § 7517 (2014)).

<sup>177</sup> *Food Insecurity Nutrition Incentive (FINI) Grant Program*, U.S. DEP’T OF AGRIC. NAT’L INST. OF FOOD & AGRIC., <https://nifa.usda.gov/program/food-insecurity-nutrition-incentive-fini-grant-program> (last visited May 16, 2018). Congress changed the name of food stamps to SNAP in the 2008 Farm Bill. *Supplemental Nutrition Assistance Program (SNAP)*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/snap/short-history-snap> (last updated Nov. 28, 2017).

agriculture programs.<sup>178</sup> The USDA coordinates the dispensing of FINI funds through cooperation with state agencies responsible for administering SNAP.<sup>179</sup> Since its inception, FINI has supported local efforts across the United States to promote and expand use of SNAP benefits at farmers' markets; these programs target not only beneficiaries of the Senior Nutrition Program and WIC Nutrition Program, but of all SNAP beneficiaries.<sup>180</sup>

Although with modest roots, the federal support of farmers' markets and direct-to-consumer markets has greatly expanded through the most recent Farm Bills. The Senior Nutrition Program and the WIC Nutrition Program merited particular attention. So strong is federal support for these two programs that they are regarded as the "single most important federal or state program[s] relating to farmers markets"<sup>181</sup> Not only is this federal support more than forty years old, but it is diverse, manifesting as stated purposes of support, direct funding of market transactions, and various grants designed to promote and expand direct-to-consumer marketplaces.

#### ii. Promotion of Participation Among Traditionally Underrepresented Food-System Stakeholders

An essential characteristic of the localization of a food system is the ability of representatives of the entire community to participate in decision-making, market transactions, and goal-setting. Accordingly, policies and programs that encourage and incentivize groups traditionally under-represented in these processes to more equitably access them should be regarded as

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<sup>178</sup> U.S. DEP'T OF AGRIC. NAT'L INST. OF FOOD & AGRIC., FOOD INSECURITY INCENTIVE (FINI) GRANT PROGRAM: 2018 REQUEST FOR APPLICATIONS (RFA) 19 (2017), [https://nifa.usda.gov/sites/default/files/rfa/FY%202018%20FINI\\_Final.pdf](https://nifa.usda.gov/sites/default/files/rfa/FY%202018%20FINI_Final.pdf).

<sup>179</sup> *Food Insecurity Nutrition Incentive (FINI) Grant Program*, *supra* note 180.

<sup>180</sup> See *NIFA Programs Support Farmers Markets Nationally*, U.S. DEP'T OF AGRIC., NAT'L INST. OF FOOD & AGRIC. (Aug. 3, 2016), <https://nifa.usda.gov/announcement/nifa-programs-support-farmers-markets-nationally>.

<sup>181</sup> NEIL D. HAMILTON, FARMERS MARKET POLICY: AN INVENTORY OF FEDERAL, STATE, AND LOCAL EXAMPLES 7 (Oct. 26, 2005)

efforts to localize food systems.<sup>182</sup> This is especially exemplified among those laws targeting beginning and socially disadvantaged farmers and ranchers.

### *1. Beginning Farmers*

Through the Beginning Farmer and Rancher Development Program, the 2002 Farm Bill introduced the concept of “the beginning farmer” to federal legislation. In creating the Beginning Farmer and Rancher Development Program, the bill defined a “beginning farmer or rancher” as a person who, on top of other conditions set by the USDA, has either (a) never operated a farm or ranch or (b) who has operated a farm or ranch for fewer than ten years.<sup>183</sup> This program gave the USDA a means of providing training, education, outreach, and technical assistance for this group.<sup>184</sup> Specifically, beginning farmers or ranchers could compete for federal grants in numerous subject areas of farm ownership and operation, such as mentoring and apprenticeships, farmland transfers, marketing strategies, conservation, and financial management.<sup>185</sup> Only collaborative projects involving various entities would be eligible for these grants, some of which would be required to match the federal funds.<sup>186</sup> In rolling out this program, the USDA was tasked with undertaking a democratic survey based on input from a wide array of food-system stakeholders.<sup>187</sup> In his first publicized vision of the 2018 Farm

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<sup>182</sup> It is important to note that in the history of American agriculture, and perhaps today in some circles, “localization,” “democracy,” and “grassroots” participation were effectively, and often intentionally, proxies for race-based exclusion. See generally Nathan A. Rosenberg, *The Butz Stops Here: Why the Food Movement Needs to Rethink Agricultural Policy*, 13 J. FOOD L. & POL’Y 12 (2017). It is our hope and expectation that with a clear focus on *entire* communities and specific efforts to overcome the lasting impacts of racial discrimination in particular, the concept of local and democratic participation in agriculture can overcome its past.

<sup>183</sup> Farm Security and Rural Adjustment Act of 2002, Pub. L. 107-171, § 7405, 116 Stat. 134, 458–61.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* (describing the process for soliciting “Stakeholder Input”).



Bill, Secretary of Agriculture Sonny Perdue noted his support of providing resources to beginning, veteran, and underrepresented farmers, particularly in the areas of access to land and capital, as well as strengthening the USDA management to better serve these groups.<sup>188</sup> This program remains a central force for carrying out that vision.

To effectively bring new federal programs and conduct other outreach efforts among beginning farmers, the 2008 Farm Bill created the USDA Office of Advocacy and Outreach.<sup>189</sup> Congress created the Office to ensure that beginning farmers or ranchers, as well as socially disadvantaged farmers or ranchers, had access to and equitable participation in USDA program services.<sup>190</sup> It did this through goal-setting, self-assessments, outreach, intra-agency coordination, analysis of program outcomes, and recommendations to the Secretary of Agriculture to further the Office's objectives.<sup>191</sup> As part of the Office, Congress created the Small Farms and Beginning Farmers and Ranchers Group, which would work with the USDA National Institute of Food and Agriculture to administer the Beginning Farmer and Rancher Development Program, as well as perform other duties to promote the Office's policies among beginning farmers.<sup>192</sup> Congress authorized the Office through 2012,<sup>193</sup> and the 2014 Farm Bill subsequently reauthorized it through 2018.<sup>194</sup>

Meanwhile, Congress expanded USDA loan funding to beginning farmers. Although Congress had mandated reserving loan funds for beginning farmers and ranchers several years

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<sup>188</sup> U.S. DEP'T OF AGRIC., 2018 FARM BILL & LEGISLATIVE PRINCIPLES 2, 4 (2018), <https://www.usda.gov/sites/default/files/documents/2018-farm-bill-and-legislative-principles.pdf>.

<sup>189</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, § 14013, 122 Stat. 923, 1450. *See also Office of Advocacy and Outreach (OAO)*, U.S. DEP'T OF AGRIC., <https://www.outreach.usda.gov> (last visited May 16, 2018).

<sup>190</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, § 14013, 122 Stat. 923, 1450.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> Agricultural Act of 2014, Pub. L. 113-79, § 12202, 128 Stat. 649, 984.

before, the 1996 Farm Bill established an entire subsection of the Consolidated Farm and Rural Development Act dedicated to ensuring this group had access to federal funds.<sup>195</sup> The new subsection increased reserved funding for beginning farmers from both the direct loan and guaranteed loan programs.<sup>196</sup> The 2002 Farm Bill maintained these same levels of reserved funding and reauthorized the program through 2007.<sup>197</sup> The 2008 Farm Bill further increased the amount of reserved funding for beginning farmers and reauthorized the program through 2012.<sup>198</sup> Finally, the 2014 Farm Bill maintained these same increased reservations and reauthorized the program through 2018.<sup>199</sup> Congress authorized funds to be appropriated for carrying out this program through 2007.<sup>200</sup> The 2008 Farm Bill subsequently reauthorized the program through 2012,<sup>201</sup> and the 2014 Farm Bill, extending the funds to related farm-to-school programs, reauthorized the program through 2018.<sup>202</sup>

The 2002 Farm Bill also amended the Consolidated Farm and Rural Development Act to create the Beginning Farmer Land Contract Development Program.<sup>203</sup> This program provided the USDA the means of launching a pilot program, in no fewer than five states, which encouraged private farmland or ranchland sales to beginning farmers or ranchers. It did this by guaranteeing loans used by qualifying beginning farmers or ranchers to purchase

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<sup>195</sup> Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104-127, § 641, 110 Stat. 888, 1098–1102.

<sup>196</sup> Compare 7 U.S.C. § 1994(b) (1996) with 7 U.S.C. § 1994(b) (1995).

<sup>197</sup> Farm Security and Rural Adjustment Act of 2002, Pub. L. 107-171, § 5312, 116 Stat. 134, 347.

<sup>198</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, § 5302, 122 Stat. 923, 1151-52 (amending 7 U.S.C. § 1994(b)(2)).

<sup>199</sup> Agricultural Act of 2014, Pub. L. 113-79, § 5305, 128 Stat. 649, 840.

<sup>200</sup> Farm Security and Rural Adjustment Act of 2002, Pub. L. 107-171, § 7405, 116 Stat. 134, 458–61.

<sup>201</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, § 7410, 122 Stat. 923, 1254–55.

<sup>202</sup> Agricultural Act of 2014, Pub. L. 113-79, § 7409, 128 Stat. 649, 898–99.

<sup>203</sup> Farm Security and Rural Adjustment Act of 2002, Pub. L. 107-171, § 5006, 116 Stat. 134, 432.

land from private sellers.<sup>204</sup> The 2008 Farm Bill made permanent the structure of this pilot project and called the new program the Beginning Farmer or Rancher and Socially Disadvantaged Farmer or Rancher Contract Land Sales Program.<sup>205</sup> The 2008 update greatly expanded access to the USDA's loan guarantee, but it set limits on receipt of it, including requiring the beginning farmer or rancher to invest at least a 5-percent down-payment into the acquired land.<sup>206</sup> The 2014 Farm Bill reauthorized funding for the program through 2018.<sup>207</sup>

In addition to the expansion of loan funding and loan guarantee program, Congress also expanded the Federal Crop Insurance program to better service beginning farmers. Federal Crop Insurance emerged in 1938 as farmers were devastated by the Great Depression and the Dust Bowl, and over the twentieth century, the program, increasingly vital to the agricultural economy, underwent substantial changes, especially with its expansion in the Federal Crop Insurance Act of 1980<sup>208</sup> and the Federal Crop Insurance Reform Act of 1994.<sup>209</sup> At the turn of the next century, Congress passed the Agricultural Risk Protection Act, which increased the amount premium subsidies to eligible farmers.<sup>210</sup> Not until 2008, however, did Congress begin targeting beginning farmers as potential beneficiaries for these insurance assistance programs. Through an amendment to the Federal Crop Insurance Act of 1980, the 2008 Farm Bill created a risk-management program, which instructed the USDA to focus energy on educating, reaching out to, and otherwise training beginning farmers and ranchers, as well as socially disadvantaged farmers

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<sup>204</sup> *Id.*

<sup>205</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, § 5005, 122 Stat. 923, 1145.

<sup>206</sup> *Id.*

<sup>207</sup> Agricultural Act of 2014, Pub. L. 113-79, § 5305, 128 Stat. 649, 840.

<sup>208</sup> Federal Crop Insurance Act of 1980, Pub. L. 96-365, 94 Stat. 1312.

<sup>209</sup> Erik O'Donoghue, *The Importance of Federal Crop Insurance Premium Subsidies*, U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV. (Oct. 20, 2014), <https://www.ers.usda.gov/amber-waves/2014/october/the-importance-of-federal-crop-insurance-premium-subsidies>.

<sup>210</sup> *Id.*

and ranchers, about managing financial risks on their farms.<sup>211</sup>

But it was the 2014 Farm Bill, through another amendment to the Federal Crop Insurance Act, that brought actual savings to the new group. The 2014 Farm Bill created provisions incentivizing beginning farmers to purchase crop insurance, specifically subsidized premiums for the federal crop-insurance policies, a similar benefit many farmers had long been enjoying.<sup>212</sup> An additional financial incentive included a waiver of administrative fees for “limited resource” beginning farmers and ranchers.<sup>213</sup>

The new law also roped beginning farming and ranching operations into the insurance program’s crop-yield determinations, although the benefit seems only calculated to make quantifying loss more streamlined with the rest of the program.<sup>214</sup> A beginning farmer enrolled in the federal crop insurance program could, in instances of catastrophic loss or other covered losses, record a loss based on the actual loss incurred by the previous farmer of the farmland or simply use the option available to other enrolled farmers who could not prove actual loss, whichever is higher.<sup>215</sup> This move for efficiency, rather than for encouraging underrepresented stakeholders to participate more in the food system, is evidenced by the definition of “beginning farmer or rancher,” which differed from that established by the Beginning Farmer or Rancher Development Program.<sup>216</sup> The amendment defined a beginning farmer or rancher as “a farmer or rancher who has not actively operated and managed a farm or ranch with a bona fide insurable interest in a crop or livestock as an owner-operator, landlord, tenant, or sharecropper for more than 5 crop years, as determined by the Secretary.”<sup>217</sup> The five-year threshold

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<sup>211</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, § 12026, 122 Stat. 923, 1390.

<sup>212</sup> Agricultural Act of 2014, Pub. L. 113-79, § 11016, 128 Stat. 649, 963–64.

<sup>213</sup> *Id.*; 7 U.S.C. § 1508 (b)(5)(E) (2014).

<sup>214</sup> *Id.* § 1508(g)(2)(B).

<sup>215</sup> *Id.* § 1508(b).

<sup>216</sup> Agricultural Act of 2014, Pub. L. 113-79, § 11016, 128 Stat. 649, 963–64.

<sup>217</sup> *Id.* Congress also used a five-year minimum as part of eligibility for farm-

is likely tied to the provision requiring farmers or ranchers to show five years of actual production to prove loss.<sup>218</sup>

Nevertheless, beginning farmers and ranchers did catch a small break in one narrow circumstance regarding transitional yields. Each crop year, the Federal Crop Insurance Corporation—a sub-agency of the USDA charged with administering the Federal Crop Insurance program<sup>219</sup>—assigns a maximum average production per acre to each crop. This is called the transitional yield.<sup>220</sup> The transitional yield is used when the farmer or rancher does not provide acceptable proof of actual loss of a crop or livestock.<sup>221</sup> In other words, the transitional yield is the USDA's best guess at how much crop a farmer loses when the farmer is unable to prove how much he or she actually lost. When a farmer tries to prove actual loss, the transitional yield is used if the value of that crop lost, based on the current or one of the previous years, falls below 60 percent of the applicable transitional yield.<sup>222</sup> Thus, if a farmer records 59 lost crops, but the transitional yield says the farmer should have lost 100 crops, then the Federal Crop Insurance Corporation will use the transitional yield. Generally, farmers may recover 60 percent of the transitional yield.<sup>223</sup> However, the 2014 Farm Bill allowed beginning farmers and ranchers to recover 80 percent of it.<sup>224</sup>

In a similar vein, the 2008 Farm Bill amended the 1985 Farm Bill to incentivize limited-resource beginning farmers or socially disadvantaged farmers and ranchers to use the Environmental Quality Incentives Program (EQIP) by providing

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operating loans in the Agriculture Risk Protection Act of 2000, Pub. L. 106-224, § 255, 114 Stat. 358, 424.

<sup>218</sup> See 7 U.S.C. § 1508(g)(2)(A) (requiring present year plus four previous years of recorded losses).

<sup>219</sup> *Id.* § 1503.

<sup>220</sup> *Id.* § 1502(b)(11).

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* § 1508(g)(4)(B).

<sup>223</sup> 7 U.S.C. § 1508(g)(4)(B)(iii) (2014).

<sup>224</sup> *Id.* § 1508(e)(2)(E).

them payments higher than the standard set for others.<sup>225</sup> EQIP is a competitively-awarded, voluntary conservation program administered by the USDA Natural Resource Conservation Service that provides farmers and ranchers with federal funds in exchange for implementing efforts to conserve natural resources, like water, and air.<sup>226</sup> The 2008 Farm Bill allowed beginning farmers of limited resources to receive payments above the statutory limit for other producers.<sup>227</sup> By providing limited resource farmers and ranchers greater access to EQIP, Congress formally recognized that many beginning farmers had been seeking to or practicing conservation agricultural programs, undoubtedly a product of community food systems, in which communities seek to improve the health of themselves and their environment.<sup>228</sup> The 2014 Farm Bill expanded this program to veterans and reauthorized its funding through 2018.<sup>229</sup>

The gains for beginning farmers and ranchers under the Federal Crop Insurance Program and EQIP may be small, but Congress including them in these programs is a first step in giving these underrepresented stakeholders a foothold in economic stability and, thus, greater access to local food-system engagement.

One last program of note is the Beginning Farmer and Rancher Individual Development Account Pilot Program. In an effort to help low-income beginning farmers and ranchers save enough money to invest in farmland, Congress created the Beginning Farmer and Rancher Individual Development Account

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<sup>225</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, § 2503, 122 Stat. 1651 (June 18, 2008).

<sup>226</sup> *Environmental Quality Incentives Program*, U.S. DEP'T OF AGRIC. NATURAL RESOURCES CONSERVATION SERV. (last accessed February 3, 2018), <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/eqip>.

<sup>227</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, § 2503, 122 Stat. 1651 (June 18, 2008).

<sup>228</sup> For more on limited resource farmers and ranchers, see *Limited Resource Program Definition*, U.S. Dep't of Agric. Natural Resources Cons. Serv. (last updated Oct. 17, 2017), [https://lrftool.sc.egov.usda.gov/LRP\\_Definition.aspx](https://lrftool.sc.egov.usda.gov/LRP_Definition.aspx).

<sup>229</sup> Agricultural Act of 2014, Pub. L. 113-79, § 2203, 128 Stat. 729 (Feb. 7, 2014).

Pilot Program in the 2008 Farm Bill.<sup>230</sup> This Farm Bill addition required the Secretary of Agriculture to create the New Farmer Individual Development Accounts Pilot Program in coordination with the Farm Service Agency.<sup>231</sup> The pilot program would allow qualified low-income farmers and ranchers to set up a savings account with a qualified entity, and the USDA would match 50 percent of the individual contributions to that account.<sup>232</sup> The money thus earned could be used by the farmer or rancher to purchase farmland, crops, or other related expenditures.<sup>233</sup> The 2014 Farm Bill reauthorized funding for this program through 2018.<sup>234</sup> Despite the reauthorization, Congress has not yet appropriated funds for this program, and the absence of the grants in the 2018 USDA Budget Report suggests the Secretary of Agriculture has stopped requesting money to launch it.<sup>235</sup> With seemingly mixed messages, the USDA National Institute of Food and Agriculture remains committed through 2018 to requesting applications from the public for grants that fund education about this nonfunctional program.<sup>236</sup>

## *2. Socially Disadvantaged Farmers*

Many of the programs and benefits for beginning farmers discussed in the previous section also apply to socially disadvantaged farmers and ranchers (SDFRs), but the Farm Bill has also created programs specifically for this group of agricultural

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<sup>230</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, § 5301, 122 Stat. 923, 1147.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> Agricultural Act of 2014, Pub. L. 113-79, § 5301, 128 Stat. 649, 839.

<sup>235</sup> See U.S. DEP'T OF AGRIC., FY 2018 BUDGET SUMMARY 10, <https://www.obpa.usda.gov/budsum/fy18budsum.pdf>. On the other hand, the 2017 Budget Summary itemized the Development Fund. See U.S. DEP'T OF AGRIC., FY 2017 BUDGET SUMMARY 16, <https://www.obpa.usda.gov/budsum/fy17budsum.pdf> ("Individual Development Grants").

<sup>236</sup> U.S. DEP'T OF AGRIC., NAT'L INST. OF FOOD & AGRIC., BEGINNING FARMER AND RANCHER DEVELOPMENT PROGRAM: FISCAL YEAR (FY) 2018 REQUEST FOR APPLICATIONS (RFA) 7 (2018), <https://nifa.usda.gov/sites/default/files/rfa/FY18-BFRDP-RFA-FINAL.pdf>.

producers. Socially disadvantaged groups made their appearance in federal agricultural policy with the passage of the 1990 Farm Bill.<sup>237</sup> Congress defined a “socially disadvantaged farmer or rancher” as a member belonging to a “socially disadvantaged group.”<sup>238</sup> This group was defined as one “whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.”<sup>239</sup> Today, the USDA Office of Advocacy and Outreach uses this same definition and provides examples of such recognized groups—African Americans, Native Americans, Alaskan Natives, Hispanics, Asians, and Pacific Islanders—as well as provides the Secretary of Agriculture to determine whether additional groups qualify under this definition.<sup>240</sup>

Congress’ biggest statement of support for SDFRs is the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers (“2501 Program”). The 1990 Farm Bill created the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers, also called the 2501 Program in reference to the Farm Bill section under which the program fell.<sup>241</sup> Congress created the 2501 Program to encourage and assist SDFRs, and later veteran farmers and ranchers, with farm ownership and equitable participation in USDA programs.<sup>242</sup> Congress mandated that the USDA be responsible for administering this program, and it permitted the USDA to make grants to and enter into contracts with eligible entities able to carry out these outreach, education,

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<sup>237</sup> Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101-624, 104 Stat. 3359.

<sup>238</sup> *Id.* § 2501(e)(2).

<sup>239</sup> *Id.* § 2501(e)(1).

<sup>240</sup> *Definitions*, U.S. DEP’T OF AGRIC., OFF. OF ADVOCACY & OUTREACH, <https://www.outreach.usda.gov/grants/oasdfr/definitions.htm> (last visited May 16, 2018).

<sup>241</sup> Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101-624, § 2501, 104 Stat. 3359, 4062–65. *See also Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program*, U.S. DEP’T OF AGRIC., OFF. OF ADVOCACY & OUTREACH, <https://www.outreach.usda.gov/sdfr/index.htm> (last visited May 16, 2018).

<sup>242</sup> Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101-624, § 2501(a)(1), 104 Stat. 3359, 4062.



and technical assistance efforts.<sup>243</sup> Congress authorized funding for the 2501 Program through 2018.<sup>244</sup> The 2014 Farm Bill extended this program to veteran farmers and ranchers.<sup>245</sup> The 2501 Section remains “the only farm bill program dedicated to addressing the needs of family farmers and ranchers of color.”<sup>246</sup>

SDFRs did not reappear again in the Farm Bill until 2002, when Congress allocated certain funds for them. In that year’s Farm Bill, Congress amended a subsection of the Consolidated Farm and Rural Development Act dealing with the target participation rates of federal loans.<sup>247</sup> This small amendment affected funds related to farm-operating loans. Specifically, federal funds are made available to states in order to help the states reach their target participation rates among SDFRs in the farm-operating loan programs. These target rates are supposed to be proportionate to the number of SDFRs in each of the state’s counties.<sup>248</sup> Before Congress passed this amendment, unused funds reserved to states to help them implement this loan program were reallocated to the states.<sup>249</sup> The amendment, however, instructed the Secretary of Agriculture to keep those unused funds, instead, and use them to satisfy pending applications before reallocating the money to the states.<sup>250</sup> Although a slight modification, this amendment prioritized SDFRs by using already existing funds to further support the 2501 Program’s mission of providing SDFRs equitable access to USDA programs.<sup>251</sup>

But in 2008, with the creation of the Office of Advocacy

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<sup>243</sup> *Id.* § 2501(a)(3).

<sup>244</sup> *Id.* § 2501(a)(4).

<sup>245</sup> Agricultural Act of 2014, Pub. L. 113-79, § 12201, 128 Stat. 64, 983–84.

<sup>246</sup> *Funding Available to Support Outreach to Underserved Farmers*, NAT’L SUSTAINABLE AGRIC. COAL. (June 27, 2016), <http://sustainableagriculture.net/blog/2501-funding-available>.

<sup>247</sup> Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, § 5315, 116 Stat. 134, 384.

<sup>248</sup> 7 U.S.C. § 2003(c)(2).

<sup>249</sup> *Id.*

<sup>250</sup> Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, § 5315, 116 Stat. 134, 384.

<sup>251</sup> *See id.*

and Outreach, Congress once again made a bold statement of support for SDFRs. When the 2008 Farm Bill created the Office of Advocacy and Outreach, it created not only the Small Farms and Beginning Farmers and Ranchers Group, discussed above, but it also created the Socially Disadvantaged Farmers Group.<sup>252</sup> Congress created this group to carry out the 2501 Program and gave it power to oversee and implement other programs related to the 2501 Program's purpose.<sup>253</sup>

Another statement of support came through the establishment of the Socially Disadvantaged Farmers and Ranchers Policy Research Center. The 2014 Farm Bill created the center through an amendment to the 1990 Farm Bill.<sup>254</sup> Congress authorized one grant to an eligible college or university—so-called 1890 Institutions<sup>255</sup>—to establish the policy research center for the purpose of “developing policy recommendations for the protection and promotion of the interests of socially disadvantaged farmers and ranchers.”<sup>256</sup> The USDA subsequently awarded that grant to Alcorn State University.<sup>257</sup>

Together with several of the programs and displays of support of beginning farmers and ranchers, these SDFRs-exclusive programs show how Congress has continued to localize food systems by encouraging and incentivizing more diverse representation among agricultural producers. Often, these producers were excluded from such robust participation because of race, a lack of wealth, or shallow or nonexistent agricultural networks. Encouraging these groups to again become agricultural producers also supports community food systems, since these

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<sup>252</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-264, § 1403, 122 Stat. 923, 981–82.

<sup>253</sup> *Id.*

<sup>254</sup> Agricultural Act of 2014, Pub. L. 113-79, § 12203, 128 Stat. 649, 984.

<sup>255</sup> See *1890 Land-Grant Institution Programs*, U.S. DEPT OF AGRIC., NAT'L INST. OF FOOD & AGRIC., <https://nifa.usda.gov/program/1890-land-grant-institutions-programs> (last visited May 16, 2018).

<sup>256</sup> Agricultural Act of 2014, Pub. L. 113-79, § 12203, 128 Stat. 649, 984.

<sup>257</sup> *Socially Disadvantaged Farmers and Ranchers*, ALCORN, <https://www.alcorn.edu/discover-alcorn/socially-disadvantaged-farmers-and-ranchers> (May 16, 2018).

producers generally operate outside of Lyson's industrial agriculture or Hamilton's Big Food, and they are thus likely to search for markets in their local food supply chains.

### iii. Promotion of Local-Food System Infrastructure

The federal government's support of local-food-system infrastructure is characterized less by large and continuous programs, as its support of direct-to-consumer transactions and farmers' market is, and more by hodgepodge policy decisions to support various aspects of local decision-making. Accordingly, this section is organized based on the law or program, rather than presented as a chronology of evolution.

The most direct federal support of local-food system infrastructure is in the form of grants, awarded on a competitive basis by the USDA. Because so many grants potentially support the localization of food systems, this not a comprehensive list.<sup>258</sup> Rather, this comprises the most explicit programs.

Through an amendment to the Food Stamp Act of 1977,<sup>259</sup> the 1996 Farm Bill established Community Food Projects for the purposes of helping low-income people meet their food needs, increasing the self-reliance of local communities providing their own food, and promoting "comprehensive responses to local food, farm, and nutrition issues."<sup>260</sup> Congress funded these programs to private nonprofit organizations with grants, administered by the USDA, through 2002,<sup>261</sup> and it prioritized projects that connected different sectors of the food system, including links between

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<sup>258</sup> For comprehensive overviews of federal grants supporting local and regional food systems, see OFFICE OF U.S. SENATOR KIRSTEN E. GILLIBRAND, A GUIDE TO FUNDING OPPORTUNITIES AND INCENTIVES FOR FOOD HUBS AND FOOD SYSTEMS: HOW TO NAVIGATE THE FUNDING PROCESS (2014), <https://www.gillibrand.senate.gov/download/food-hub-and-food-systems-grant-guide&download=1>; KATE FITZGERALD ET AL., THE NATIONAL SUSTAINABLE AGRICULTURE COALITION'S GUIDE TO USDA FUNDING FOR LOCAL AND REGIONAL FOOD SYSTEMS (2010), <http://sustainableagriculture.net/wp-content/uploads/2010/06/6.18-FINAL-Food-System-Funding-Guide2.pdf>.

<sup>259</sup> Food and Agriculture Act of 1977, Pub. L. 95-113, 91 Stat. 913.

<sup>260</sup> Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104-127, § 25, 110 Stat. 888, 1027.

<sup>261</sup> *Id.*

nonprofit and for-profit sectors, supported entrepreneurial projects, and encouraged long-term planning projects and multi-system approaches to problem-solving.<sup>262</sup> Each Community Food Project received a one-time grant, and Congress expected each project to thereafter become self-sustaining.<sup>263</sup>

The 2002 Farm Bill reauthorized funding for the Community Food Projects program through 2007 and expanded its scope.<sup>264</sup> For example, it specified the sorts of “comprehensive responses” the program was intended to support: infrastructure improvements and developments, plans for long-term solutions, and “innovative marketing activities that mutually benefit agricultural producers and low-income consumers.”<sup>265</sup> Additionally, the 2002 Farm Bill provided examples of the multi-system projects that deserved priority: “long-term planning activities, and multisystem, interagency approaches with multi-stakeholder collaborations, that build the long-term capacity of communities to address the food and agricultural problems of the communities, such as food policy councils and food planning associations.”<sup>266</sup> Finally, the 2002 Farm Bill added a provision for programs that could innovatively address community problems, including loss of farms and ranches, rural poverty, welfare dependency, hunger, the need for job training, and the need for self-sufficiency by individuals and communities.<sup>267</sup>

Between 2005 and 2009, the USDA funded 307 Community Food Projects in thirty-nine states.<sup>268</sup> During this five-year period, these projects formed nearly forty food policy councils

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<sup>262</sup> *See id.*

<sup>263</sup> *See id.*

<sup>264</sup> Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, § 4125, 116 Stat. 134, 326–27.

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> MICHELLE KOBAYASHI ET AL., U.S. DEP’T OF AGRIC., THE ACTIVITIES AND IMPACTS OF COMMUNITY FOOD PROJECTS 2005-2009 3 (2010), [http://www.hungerfreecomunities.org/wp-content/uploads/2011/09/CPF\\_Activities\\_Impacts\\_2005-09.pdf](http://www.hungerfreecomunities.org/wp-content/uploads/2011/09/CPF_Activities_Impacts_2005-09.pdf).

and network, representing a quarter of all program funding.<sup>269</sup> In these councils, more than 560 organizations were represented, comprising more than 700 individuals.<sup>270</sup> Collectively, these food policy councils implemented 183 policies, introduced or produced 383 policies, and began to develop 422 policies.<sup>271</sup> The topics of these policies were diverse, covering market and economic development, consumer access, local-food-system infrastructure, communication improvements between local regulating agencies, and much more.<sup>272</sup>

Following the trend set by the previous legislation, the 2008 Farm Bill reauthorized funding for the Community Food Projects program through 2012 and expanded its purview to urban areas.<sup>273</sup> Specifically, it reserved funding for a Healthy Urban Food Enterprise Development Center, a nonprofit organization, individual, school, or other qualifying entity, with a purpose to increase underserved-community access to healthy and affordable foods, including local foods.<sup>274</sup> The Center was required to give priority to projects that benefited underserved communities and developed market opportunities for small and mid-sized farms and ranches.<sup>275</sup> Finally, the 2014 Farm Bill reauthorized funding for the Community Food Projects program, strengthened its commitment to address hunger, and expanded its reach to tackle food waste.<sup>276</sup>

Thus, over the span of eighteen years, Congress created and maintained a grant program that directly funded community

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<sup>269</sup> *Id.* at 3.

<sup>270</sup> *Id.* at 18.

<sup>271</sup> *Id.* at 19.

<sup>272</sup> *Id.*

<sup>273</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, § 4402, 122 Stat. 923, 1135–37. The 2008 Farm Bill also changed the name of the Food Stamp Act of 1977 to the Food and Nutrition Act of 2008, thus moving the Community Food Projects program into it. See *Supplemental Nutrition Assistance Program (SNAP)*, *supra* note 180.

<sup>274</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, § 4402, 122 Stat. 923, 1135–37.

<sup>275</sup> *Id.*

<sup>276</sup> Agricultural Act of 2014, Pub. L. 113-79, § 4026, 128 Stat. 649, 810–12.

efforts to solve local problems. Notably, with each iteration of the Farm Bill, Congress expanded the scope of the Community Food Projects program, so that by 2014, local communities could apply for federal funding to organize democratic food policy councils, build local-food infrastructure, develop marketplaces for local-food producers and manufacturers, innovate strategies to fight hunger and food waste, and coordinate these projects with local and state agencies.

In addition to Community Food Projects, Congress established the Local Food Promotion Program (LFPP). The 2014 Farm Bill expanded the FMPP by creating the LFPP, a grant program dedicated to supporting local food systems.<sup>277</sup> The purposes of the LFPP is to increase domestic consumption of and access to local foods and to expand market opportunities for farmers and ranchers serving local consumers.<sup>278</sup> The LFPP is administered by the USDA Agricultural Marketing Service, and that agency awards two types of grants in furtherance of it: Planning Grants and Implementation Grants.<sup>279</sup> Either grant may be awarded, through a competitive process, to agricultural businesses or cooperatives, producer networks and associations, farmers' market authorities, community supported agriculture networks, and others.<sup>280</sup> Often bundled with the FMPP, the LFPP is distinguished by the USDA based on the food supply chain: the LFPP involves non-direct-to-consumer supply chain, and the FMPP involves direct-to-consumer marketing.<sup>281</sup> Another difference between the two programs relates to financing. Unlike the FMPP, the LFPP requires the entity awarded the grant to

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<sup>277</sup> *Id.* § 10003.

<sup>278</sup> *Id.*

<sup>279</sup> *Local Food Promotion Program*, U.S. DEP'T OF AGRIC., AGRIC. MARKETING SERV., [HTTPS://WWW.AMS.USDA.GOV/SERVICES/GRANTS/LFPP](https://www.ams.usda.gov/services/grants/lfpp) (last visited May 16, 2018).

<sup>280</sup> *Id.*

<sup>281</sup> *See What AMS Grant Is Right For Me?*, U.S. DEP'T OF AGRIC., AGRIC. MARKETING SERV., <https://www.ams.usda.gov/sites/default/files/media/Combined%20Grants%20Decision%20Trees.pdf>.

match 25 percent of the grant's value.<sup>282</sup> In its first year, the LFPP funded 184 projects, with grant awards ranging from around \$25,000 to up to \$100,000.<sup>283</sup> These figures remained consistent through 2017, and they will likely remain so in 2018.

Although less explicit than Community Food Projects and the LFPP, farm-to-school programs are hugely important to the localization of the food system. Congress expanded local-food-system infrastructure into schools in 2004 with the passage of the Child Nutrition and WIC Reauthorization Act of 2004.<sup>284</sup> This Act amended Section 18 of the Richard B. Russell National School Lunch Act by adding a provision that expanded access to local foods at schools and promoted school gardens.<sup>285</sup> Specifically, it permitted the Secretary of Agriculture to award grants and provide technical assistance to schools and nonprofit organizations for projects that, among other things, (1) improved access to local foods in schools and other eligible entities, such as through farm-to-cafeteria or school garden projects; (2) were designed to procure local foods from small and mid-sized farms for school meals and support school garden programs; and (3) supported farm-based experiential education in local food and agriculture.<sup>286</sup> The Healthy, Hunger-Free Kids Act of 2010 reauthorized this program through 2015 and continued its mission of connecting schools and other institutions to local-food systems.<sup>287</sup>

As part of this broad farm-to-school effort, the 2008 Farm Bill also amended the Richard B. Russell National School Lunch Act to create an agenda that made it easier for schools and other institutions covered by the Act, as well as those covered by the

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<sup>282</sup> Agricultural Act of 2014, Pub. L. 113-79, § 10003, 128 Stat. 649, 940–41.

<sup>283</sup> See *LFPP 2014 Final Performance Reports*, U.S. DEP'T OF AGRIC., AGRIC. MARKETING SERV., <https://www.ams.usda.gov/services/grants/lfpp/reports/2014-reports> (last visited May 16, 2018).

<sup>284</sup> Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. 108-265, § 122, 118 Stat. 729, 759.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> Healthy, Hunger-Free Kids Act of 2010, Pub. L. 111-296, § 243, 124 Stat. 2183, 3203.

Child Nutrition Act of 1966, to procure “unprocessed agricultural products, both locally grown and locally raised, to the maximum extent practicable and appropriate” and “use a geographic preference for the procurement” of these products.<sup>288</sup>

Building on this stated farm-to-institution language, the 2014 Farm Bill launched a pilot project for the procurement of unprocessed fruits and vegetables to provide participating states, among other reasons, flexibility in their local-food purchases by allowing “geographic preference, if desired, in the procurement of the products under this pilot project.”<sup>289</sup> The Secretary of Agriculture was tasked with determining which eight states would participate in this pilot, and priority was based, in part, on the amount and variety of local growers and the demonstrated commitment of statewide farm-to-school program efforts.<sup>290</sup>

Additionally, the 2014 Farm Bill created the Food and Agriculture Service Learning Program, which instructed the Secretary of Agriculture, working through the Director of the National Institute of Food and Agriculture and in coordination with other federal agencies, to competitively award \$25,000,000 in grants to eligible entities that “increase knowledge of agriculture and improve the nutritional health of children.”<sup>291</sup> The purposes of this program included increasing food, garden, and nutrition education within the host organizations or at schools; adding to the momentum of the farm-to-school programs implemented under section 18(g) of the Richard B. Russell National School Lunch Act; and fostering higher levels of community engagement and volunteering opportunities.<sup>292</sup> The Secretary of Agriculture was directed to give priority to, among others, those entities that facilitated a connection between schools and local and regional

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<sup>288</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, § 4302, 122 Stat. 923, 1126.

<sup>289</sup> Agricultural Act of 2014, Pub. L. 113-79, § 4202, 128 Stat. 649, 822.

<sup>290</sup> *Id.*

<sup>291</sup> *Id.* § 4209.

<sup>292</sup> *Id.*



farmers and ranchers.<sup>293</sup> In other words, the Food and Agriculture Service Learning Program explicitly promoted and directly funded local-food education, local-food-system engagement, and community empowerment across the nation.

Another important structural contribution is Congress' definition of local foods. The 2008 Farm Bill amended the Consolidated Farm and Rural Development Act to create USDA loans and loan guarantees for locally or regionally produced agricultural food products.<sup>294</sup> For the first time, Congress attempted to delineate local from non-local food by defining "locally or regionally produced agricultural food products" as:

[A]ny agricultural food product that is raised, produced, and distributed in . . . the locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or . . . the State in which the product is produced.<sup>295</sup>

The Secretary of Agriculture was required to reserve at least 5 percent of available funds for this program through 2012.<sup>296</sup> The 2014 Farm Bill reauthorized this program through 2018 and affirmed Congress' support of promoting community food systems.<sup>297</sup>

The final important structural contribution is the Local Food Production and Program Evaluation program. While Congress places various reporting and evaluation requirements on the USDA for many of the programs mentioned in this article, the 2014 Farm Bill specifically created the Local Food Production

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<sup>293</sup> *Id.*

<sup>294</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, § 6015, 122 Stat. 923, 1167-68.

<sup>295</sup> *Id.* See also Marne Coit, *Support for Local Food in the 2014 Farm Bill*, 20 DRAKE J. AGRIC. L. 1, 2-3 (2015) ("[T]he first federal definition of 'local food' was provided by the federal government in the text of the 2008 Farm Bill.").

<sup>296</sup> Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, § 6015, 122 Stat. 923, 1167-68.

<sup>297</sup> Agricultural Act of 2014, Pub. L. 113-79, § 6014, 128 Stat. 649, 845.

and Program Evaluation program.<sup>298</sup> This standalone research program directed the Secretary of Agriculture to collect data on (1) production and marketing of locally or regionally produced agricultural food products; and (2) direct and indirect regulatory compliance costs that affect the production and marketing of these products.<sup>299</sup> Congressional concern with the burden of forcing small and mid-sized farms to comply with some costly requirements of the Food Safety Modernization Act, and thus disrupting the local-food-system efforts developing across the country, led to the so-called Tester-Hagan Amendment, which exempts qualifying farms from produce-safety standards and preventative-controls standards.<sup>300</sup> Besides collecting data, the 2014 Farm Bill directed the Secretary to monitor the effectiveness of programs designed to promote local-food systems and barriers to this promotion because of federal regulations of small-scale production.<sup>301</sup> Finally, the Secretary was tasked with evaluating how local-food systems contribute to improving community food security and help communities increase access to food.<sup>302</sup> This comprehensive report came with various reporting requirements, including annual updates to Congress on the progress of the report.<sup>303</sup> In other words, Congress appeared to take this report very seriously and fully expected the USDA to zealously write it. The USDA published its report in February 2016.<sup>304</sup>

As these programs show, with Congress' support communities have become better funded to localize their food systems. Combined, these several programs and benefits to local food system transactions, local food system representation,

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<sup>298</sup> *Id.* § 10016.

<sup>299</sup> *Id.*

<sup>300</sup> For the efforts of local-food advocates in encouraging Congress to pass this amendment, see Schieber, *supra* note 122, at 247–55; Peter Anderson, Comment, *Empowering Local and Sustainable Food: Does the Food Safety Modernization Act's Tester-Hagan Amendment Remove Enough Barriers?*, 9 J.L. ECON. & POL'Y 145, 155–57 (2012).

<sup>301</sup> Agricultural Act of 2014, Pub. L. 113-79, § 10016, 128 Stat. 649, 952–53.

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> See JOHNSON, *supra* note 114.

and local food system infrastructure show clear support by the federal government to incentivize and legitimize individuals and organizations determined to govern their local food supply chains. But even though these various programs acknowledge some of the localization momentum occurring through American communities, the bill still “fails to adequately address the needs of our modern food system,”<sup>305</sup> and that modern food system is increasingly being shaped at the local level. These changes have undoubtedly come about bit-by-bit, with small adjustments to existing programs and quiet additions to existing titles. By doing this, however, Congress has shown a clear willingness to provide communities with the funds and framework for developing their own community food systems. With support for transactions and marketplaces, traditionally underrepresented stakeholders, and necessary infrastructure, future Farm Bills are poised to bring about further systemic reform to local food systems, especially with respect to policy self-governance and more inclusive decision-making mechanisms—the very fiber of community food systems.

### **III. Toward Deliberative Food Democracy: Framework and Federal Agricultural Policies**

In Part I, we showed how communities are localizing their food systems with a conceptual framework that guides these efforts and why such conceptual frameworks have real-world and measurable benefits for communities. In Part II, we discussed how laws promoting local foods are essentially laws promoting community self-governance within their local food systems, followed by many examples of how the Farm Bill has brought a systematic order to such laws. Having identified how the Farm Bill has contributed to structural and financial support of community food systems, we turn in Part III to the democratic spirit of these laws and examine how the Farm Bill’s programs, implicating deliberative democracy, can advance the goal of

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<sup>305</sup> D. Lee Miller, *A Seat at the Table: New Voices Urge Farm Bill Reform*, 127 YALE L. J. FORUM 395, 398 (2017).

increasing diverse representation and local decision-making in the food system.

The policy ideal, effectively, if not intentionally, underpinning the Farm Bill programs in Part II is diverse and equitable participation. Promoting direct-to-consumer transactions allows consumers greater decision-making in their purchasing options and allows producers to choose how and where to market their food products. Promoting the participation among food-system stakeholders traditionally underserved by decision-making directly contributes to more equitable representation in the food-system. Promoting local-food programs in a variety of forms eventually empowers individuals and communities to remodel their own food systems. Democracy, however, requires mechanisms. In order to promote legislation that edifies the localization of food systems, these mechanisms must be flexible enough to adapt to diverse communities by providing the structure for direct participation in decision-making. Deliberative democracy is that political process.

#### *A. Deliberative Democracy*

Deliberative democratic theory is an approach to public governance that grounds the legitimacy of political decision-making in, unsurprisingly, deliberation.<sup>306</sup> Some traditional conceptions of democracy assert that legitimacy arises out of vote aggregating, while more modern ideals, often called neo-liberalism, identify legitimacy in the aggregate signals of private economic activity.<sup>307</sup> Deliberative democracy, however, promotes conversation, discussion, communication, and other forms of reflective decision-making as the source of, or best argument for, democratic legitimacy.<sup>308</sup>

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<sup>306</sup> See HK Perna, *Deliberate Future Visioning: Utilizing the Deliberative Democracy Theory & Practice in Futures Research*, 5 EUROPEAN JOURNAL OF FUTURES RESEARCH 13, 13 (2017).

<sup>307</sup> Simone Chambers, *Deliberative Democratic Theory*, 6 ANN. REV. POL. SCI. 307, 308 (2003).

<sup>308</sup> *Id.* at 308–09; Melissa Mortazavi, *Tort as Democracy: Lessons from the Food Wars*, 57 ARIZ. L. REV. 929, 935 (2015).

According to Professor Simone Chambers, in deliberative democracy, “[t]alk-centric democratic theory replaces voting-centric democratic theory. Voting-centric views see democracy as the arena in which fixed preferences and interests compete via fair mechanisms of aggregation. In contrast, deliberative democracy focuses on the communicative process of opinion and will-formation that precede voting.”<sup>309</sup> Despite describing this as a replacement, one could also view deliberative democracy as both a normative theory that argues for more deliberation as well as a positive description of how the public forms opinions about the issues on which it eventually votes. The identification of deliberation as a source of ideas and opinions then lends itself to the normative calls for increasing deliberation through new or better intuitions. Professor Chambers agrees that “deliberative democracy is not usually thought of as an alternative to representative democracy.”<sup>310</sup> Deliberative democracy, rather than a challenge to other views, is a way to—among other important benefits—increase satisfaction with the political process.

Although the formal idea of deliberative democracy post-dated his work, John Dewey’s philosophical pragmatism dealt with some of the same features.<sup>311</sup> Dewey’s philosophy called for moving away from absolutist assertions in forming government policy.<sup>312</sup> Instead of absolutism, Dewey championed a communicative process to generate, mold, and settle on public goals.<sup>313</sup> Like deliberative democracy theorists today, Dewey did not expect consensus, but he did expect that the very process of communication and reflection would produce, at least, more

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<sup>309</sup> Chambers, *supra* note 310, at 308.

<sup>310</sup> *Id.* at 309.

<sup>311</sup> See, e.g., James Bohman, *The Coming of Age of Deliberative Democracy*, 6 J. OF POL. PHIL. 400, 400 (1998) (stating that the idea of deliberative democracy can be traced back to John Dewey).

<sup>312</sup> Joshua Ulan Galperin, *Trust Me, I’m a Pragmatist: A Partially Pragmatic Critique of Pragmatic Activism*, 42 COLUM. J. ENV. L. 425, 436–439 (2017).

<sup>313</sup> See JOHN DEWEY, *THE PUBLIC AND ITS PROBLEMS: AN ESSAY IN POLITICAL INQUIRY* 118 (Melvin L. Rogers ed., Penn State Press 2012).

satisfying results.<sup>314</sup> At base, the ideal of deliberation is not merely to shape somehow objectively better public opinions, or public opinions on which political decisionmakers can more confidently rely. Instead, the ideal is to develop a system of governance that produces more satisfaction, despite individual outcomes.<sup>315</sup>

In aiming for satisfaction in a pluralist system, deliberative democracy is a natural fit for food policy decision-making. The Food Movement itself is an immensely diverse category, to say nothing of the larger population of American eaters. The Movement includes “sustainability, equity, access, economic development, fair labor, animal health, food security, human health through prevention of foodborne illness and obesity or other diet-related illness, hunger relief, environmental protection, farm security (in terms of economic resilience), energy efficiency and conservation, and more.”<sup>316</sup> A goal, therefore, is to fashion food policy that can account for this diversity while still producing meaningful and satisfying outcomes. Some legal scholars have already begun to merge the concepts of deliberative democracy and food policy, focusing primarily on a comparison of broad legal regimes such as common law versus administrative law.<sup>317</sup> In this Section, however, we focus not on general principals, but on specific strategies and opportunities.

### *B. Deliberative Democracy in Food Policy*

As the several laws summarized in Part II show, various iterations of the Farm Bill have strengthened local food systems and community decision-making and participation in food systems through grants, loans, research initiatives, outreach efforts, and agency programs. The expansion of these programs and benefits through decades of various congressional bodies highlights the non-partisan nature of these issues and the realistic opportunity of future farm bills to take up these issues with even greater vigor.

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<sup>314</sup> *Id.* at 158–60.

<sup>315</sup> *Id.*

<sup>316</sup> Galperin, *supra* note 18, at 356.

<sup>317</sup> Mortazavi, *supra* note 311, at 929; Galperin, *supra* note 18, at 356.

Many of these policies began as victories earned by the lobbying efforts of the so-called Food Movement—a coalition of groups and individuals competing against the Farm Bloc and Hunger Lobby to convince Congress to pay more attention to sustainability and social issues in the food system.<sup>318</sup> With new bills promoting and expanding these policies currently before Congress, the Food Movement, as a political coalition, appears to retain its place in the fight to gain access to congressional offices. Consequently, it has made the issue of supporting community food systems an established and expected one among Congress and the public.

While these and other policies discussed in this Article have brought legitimacy to the Food Movement's political influence, they have also created, shaped, and broadened political processes that allow more dynamic public participation in the food system. This comes at a pivotal time in the broader food movement because "[a]lthough the need for public participation in food policy is clearly recognized, there is limited consensus on the appropriate mechanisms for promoting it."<sup>319</sup>

Deliberative democracy is becoming a component of those appropriate political mechanisms. In the last decade or so, scholars have begun identifying various approaches of deliberative democracy taking shape in food policy throughout the world.<sup>320</sup>

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<sup>318</sup> See CHRISTOPHER BOSSO, FRAMING THE FARM BILL: INTERESTS, IDEOLOGY, AND THE AGRICULTURAL ACT OF 2014 63–66 (2017) (detailing four broad coalitions who influenced policy decisions in the 2014 Farm Bill); Jennifer Steinhauer, *Farm Bill Reflects American Menu and a Senator's Persistent Tilling*, N.Y. TIMES (Mar. 8, 2014), <https://www.nytimes.com/2014/03/09/us/politics/farm-bill-reflects-shifting-american-menu-and-a-senators-persistent-tilling.html> (mentioning that the 2014 Farm Bill emphasizes "locally grown, healthful food" and noting the political popularity of "farm-to-table . . . national figures[.]" including the National Sustainable Agriculture Coalition).

<sup>319</sup> Rachel A. Ankeny, *Inviting Everyone to the Table: Strategies for More Effective and Legitimate Food Policy via Deliberative Democracy*, 47 J. SOCIAL PHILOSOPHY 10, 10 (2016).

<sup>320</sup> See, e.g., Mortazavi, *supra* note 311, at 936–38; Jeannette M. Blackmar, *Deliberative Democracy, Civic Engagement and Food Policy Councils*, 2 RIVISTA DI STUDI SULLA SOSTENIBILITÀ 43 (2014) (food policy councils); Julie Henderson et al., *Evaluating the Use of Citizens' Juries in Food Policy: A Case Study of Food Regulation*, 13 BMC PUB. HEALTH 596 (2013) (citizen juries); G.C. Barker et al., *Can a Participatory Approach Contribute to Food Chain Risk Analysis?*, 30 RISK ANALYSIS 766 (2010) (general stakeholder

These approaches include (1) soliciting public feedback through form submissions; (2) consensus conferences; (3) citizens' juries; and (4) local food planning.<sup>321</sup>

Soliciting public feedback through form submissions, or consultation by submission, refers to governmental bodies and regulating agencies using the Internet to ask members of the public for their views on a specific issue.<sup>322</sup> The U.S. Food and Drug Administration (FDA) regularly solicits the public's comments on the agency's proposed rules—the so-called notice and comment rulemaking process.<sup>323</sup> This form of democratic participation in the rulemaking process is highly structured. For example, the FDA sought public comments on the agency's regulation of the term “natural” on food labels.<sup>324</sup> In its solicitation, the FDA provided the public with a comprehensive summary of the issue followed by specific questions for which it sought answers.<sup>325</sup> While the comment period was open, the FDA received 7,690 public comments, from concerned individuals to large food-retail companies.<sup>326</sup> The ability of any person to submit a comment to the FDA is, at least in theory, a political mechanism to allow wider participation in the decision-making process of food-system rules. It is unclear, however, to what extent the FDA actually

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participation in otherwise technical decision-making); Gary E. Merchant, *GM Foods: Potential Public Consultation and Participation Mechanisms*, 44 JURIMETRICS 99 (2003) (applying public participation to GM-foods policies); Ankeny, *supra* note 322.

<sup>321</sup> *Id.* at 13–17.

<sup>322</sup> *Id.* at 13.

<sup>323</sup> *What is the Difference Between the Federal Food, Drug, and Cosmetic Act (FD&C Act), FDA Regulations, and FDA Guidance?*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/AboutFDA/Transparency/Basics/ucm194909.htm> (last visited May 16, 2018).

<sup>324</sup> “Natural” on Food Labeling, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm456090.htm> (last visited May 16, 2018).

<sup>325</sup> *Use of the Term “Natural” in the Labeling of Human Food Products; Request for Information and Comments*, U.S. FOOD & DRUG ADMIN. (Feb. 10, 2016), <https://www.regulations.gov/document?D=FDA-2014-N-1207-0001>.

<sup>326</sup> *See User of the Term “Natural” in the Labeling of Human Food Products*, U.S. FOOD & DRUG ADMIN., <https://www.regulations.gov/docket?D=FDA-2014-N-1207> (last visited May 16, 2018) (click “View all documents and comments in this Docket”).



relies on this input. Back to the “natural” example: the FDA has tried numerous times to seek public comment on its regulation of the term on food labels.<sup>327</sup> After again receiving thousands of public comments, the FDA ultimately appeared unresponsive to this input and left its rule unchanged and maintained its lax enforcement status quo. This deliberative democratic approach, if it can be called that, therefore, suffers from at least three serious limitations: the rule-maker narrowly sets the agenda, its use of the public input is entirely opaque, and it is free to downplay any and all putative consultation it solicits.<sup>328</sup> This does not mean the democratic value of soliciting public feedback is minimal. Just as torts provide both individual relief and promote policy goals, the process here allows the individual to voice his or her own concerns, but also allows public access to the catalog, thereby providing knowledge-building among the public and government agencies, providing accountability of the regulating agency, and building a record for judicial review, all of which it accomplishes by allowing the public to see what others think.<sup>329</sup>

Consensus conferences typically comprise a small group of non-experts brought together to discuss a controversial issue or policy proposal.<sup>330</sup> Like consultation by submission, these conferences are arranged by one party seeking input from another party, such as in 2013, when the FDA convened several groups of various stakeholders before finalizing the Produce Safety Rule, mandated by the Food Safety Modernization Act (FSMA).<sup>331</sup> This was in addition to the legally required notice and comment period associated with the proposed rulemaking process. Specifically, the FDA FSMA implementation team met with affected stakeholders,

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<sup>327</sup> For a brief overview of the 1991 establishment of the term and FDA’s subsequent lax enforcement of its misuse, see *Janney v. Mills*, 944 F. Supp. 2d 806, 811–14 (N.D. Cal. 2013).

<sup>328</sup> See Ankeny, *supra* note 322, at 13–14.

<sup>329</sup> See Galperin, *supra* note 18, at 374–90; Mortazavi, *supra* note 311, at 936–38 (2015).

<sup>330</sup> Ankeny, *supra* note 322, at 14–15.

<sup>331</sup> Michael R. Taylor, *Let’s Keep Talking—and Listening—About Food Safety*, U.S. FOOD & DRUG ADMIN. (May 6, 2013), <https://blogs.fda.gov/fdavoices/index.php/2013/05/lets-keep-talking-and-listening-about-food-safety>.

especially farmers, to discuss the proposed rules, solicit feedback on how to improve those rules, and answer questions.<sup>332</sup> The conferences ranged from small-group meetings to large public forums, in which the FDA “learned that a broad cross-section of our industry and consumer stakeholders are eager to push forward and look with us to successfully complete this crucial rule-writing step in FSMA implementation.”<sup>333</sup> Consensus conferences have the advantage of bringing together laypeople to share their personal insight into the effects of otherwise impersonal technical policies. But the advantage is only so influential; after all, the public has no actual leverage over how the policies are made and its influence is thus limited to what decision-makers choose to be persuaded by.<sup>334</sup>

Citizens’ juries are similar to consensus conferences, but take on the structure of trial juries, including random jury selection, cross-examination with a different perspective, and compulsory verdict selection.<sup>335</sup> These have been used throughout the world to explore public attitudes toward genetically modified foods (United Kingdom, France, and South Korea), policies aimed at reducing childhood obesity (Australia), and consumer attitudes toward “organic” food labeling (United Kingdom).<sup>336</sup> Unlike consensus conferences, which rely on volunteers to form a group, the randomization of the citizens’ jury pool is a method of creating a diverse group of apparently average citizens; as a result, any self-selection bias that affects randomization in consensus conferences is absent here.<sup>337</sup> Moreover, urging jury members to inform themselves, deliberate, and make a decision is a simple and strong example of deliberative democracy in action.<sup>338</sup> However, given the time- and resource-intensive

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<sup>332</sup> *Id.*

<sup>333</sup> *Id.*

<sup>334</sup> Ankeny, *supra* note 322, at 15.

<sup>335</sup> *Id.*

<sup>336</sup> *Id.*

<sup>337</sup> *See id.* at 14–16.

<sup>338</sup> *Id.* 16.

nature of creating and administering citizens' juries, their model is difficult to implement on a routine basis, and, like consensus conferences, there is no mechanism for transferring participation into policymaking.<sup>339</sup> They apparently have not been used in the United States.

Local food planning, which is the diverse participation of a community in creating a local food plan, has become the approach most favored by grassroots organizations and community leaders, particularly in the form of food policy councils.<sup>340</sup> Each food policy council is free to adopt its own mechanisms for engagement, but typical formats assign chairpersons or facilitators who guide meetings, gather people into informal groups, provide information on key policy issues, and assemble the goals of the group based on council input.<sup>341</sup> Importantly, these representatives are not favored as so-called experts.<sup>342</sup> Often, participants represent different communities who are stakeholders in the food system and thus have interests in certain policy goals, and this especially includes stakeholders traditionally underrepresented in decision-making.<sup>343</sup> In 2016, the United States had at least 262 verified food policy councils, of which 214 were active, 29 were in development, and 19 were in transition.<sup>344</sup> At the time of this Article's print, the total number of food policy councils had apparently reached 359.<sup>345</sup>

As Part II mentions, the majority of these councils found support for their existence in the Farm Bill. Their popularity demonstrates, in part, their capacity to be adopted flexibly among different communities. While some cities or municipalities

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<sup>339</sup> *Id.* at 16.

<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> LILY SUSSMAN & KAREN BASSRAB, JOHNS HOPKINS CENTER FOR A LIVABLE FUTURE, FOOD POLICY COUNCIL REPORT 2016 7 (2017), [https://assets.jhsph.edu/clf/mod\\_clfResource/doc/FPC%20Report%202016\\_Final.pdf](https://assets.jhsph.edu/clf/mod_clfResource/doc/FPC%20Report%202016_Final.pdf).

<sup>345</sup> *Food Policy Council Directory*, JOHNS HOPKINS CTR. FOR A LIVABLE FUTURE, <http://www.foodpolicynetworks.org/directory/online/> (last visited May. 24, 2018).

officially sanction the activities of food policy councils, often they are formed outside of governmental activities and comprise volunteers. Thus, they may be formed without the direction of an agenda-setter. Their limitation, however, tends to appear in the deliberations, whether officially sanctioned or not. The organization participants usually have “predetermined agendas” that “often are opposed to industrialized food in any form . . . .”<sup>346</sup>

Though these approaches are not the only available structures to deliberative democracy in the food system, they are the ones most widely experimented with. Of these, two approaches have prevailed in the United States: governmental bodies must use consultation by submission as embodied in the notice and comment process, for certain policymaking and local communities have drifted toward local food planning, evidenced by their independently creating hundreds of food policy councils. Congress has decidedly taken the latter approach in the latest iterations of the Farm Bill, favoring the inclusiveness and self-empowerment that local food planning offers. While the USDA is now beginning to assist individuals and communities begin to democratize their food systems, their experience in doing so is not at all new to them.

### *C. Roots of Deliberative Democracy in Federal Agricultural Policy*

Although apparently long forgotten, deliberative democracy once held a preferred position among influential program administrators at the USDA. This is embodied in the work of agricultural economist and USDA undersecretary M.L. Wilson. In 1935, with the blessing of Secretary of Agriculture Henry Wallace, Wilson established the Program Study and Discussion (PSD) under authority of the Agricultural Adjustment Act of 1933—the first iteration of the Farm Bill.<sup>347</sup> The PSD primarily consisted of two programs: group discussions for

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<sup>346</sup> Ankeny, *supra* note 322, at 17.

<sup>347</sup> JESS GILBERT, *PLANNING DEMOCRACY: AGRARIAN INTELLECTUALS AND THE INTENDED NEW DEAL* 105 (Yale Univ. Press 2015).

farmers and schools of philosophy for Cooperative Extension workers.<sup>348</sup>

The discussion groups “emphasized broad social issues of agriculture and public policy.”<sup>349</sup> In collaboration with state Extension workers, farmers in these groups discussed not only specifics of various USDA programs, but they spoke about the policy choices of the federal government and about systemic issues facing agriculture.<sup>350</sup> The schools of philosophy, organized by USDA staff, brought together Extension workers (and later local planning leaders) at four-day conferences to discuss democracy in rural societies and agriculture, although the USDA encouraged participants to speak about topics beyond just those outlined in the government pamphlets.<sup>351</sup> Even within the parameters of official discussion topics, the USDA encouraged attendees to question federal policy decisions and vocalize their criticism.<sup>352</sup> The USDA held more than 150 such conferences, and the dominant question invoking discussion—*What is a desirable agricultural program?*—was one the USDA knew it could not answer on its own.<sup>353</sup> Under the direction of Wilson’s former philosophy professor, Carl F. Taeusch, the PSD programs ultimately comprised more than 3 million rural men and women in the discussion groups, tens of thousands of whom were trained as discussion leaders, as well as more than 50,000 Extension workers and other rural community leaders who attended the Schools of Philosophy for Extension Workers.<sup>354</sup>

Wilson’s emphasis on education was a deliberate one. Similar to John Dewey, Wilson believed that democracy was

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<sup>348</sup> *Id.*; see CARL F. TAEUSCH, *Schools of Philosophy for Farmers*, in FARMERS IN A CHANGING WORLD: THE YEARBOOK OF AGRICULTURE 1940 1112-19 (U.S. Dep’t of Agric. ed. 1940).

<sup>349</sup> GILBERT, *supra* note 350, at 105.

<sup>350</sup> *Id.* at 105–06.

<sup>351</sup> *Id.* at 106; Timothy J. Shaffer, *What Should You and I Do? Lessons for Civic Studies from Deliberative Politics in the New Deal*, 22 THE GOOD SOCIETY 137, 141 (2013).

<sup>352</sup> GILBERT, *supra* note 350, at 106.

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*; Shaffer, *supra* note 354, at 141.

more akin to a way of life, rather than a rigidly structured political process.<sup>355</sup> In the penumbra of the Progressive Era, when federal policymakers seemed to rely as much on experts as ordinary citizens, Wilson “hoped for a renaissance” across the country “in which people would ‘search their souls for the deeper, more fundamental philosophical meanings’ and create new models of democratic processes.”<sup>356</sup> For Wilson, the belief in democracy as a successful way of life was based on three assumptions. First, its adherents must believe that the average person was capable of making informed decisions; second, democracy requires participation by citizens who, in turn, learn the democratic process through that participation; and, third, the first two assumptions are primarily driven by educational processes.<sup>357</sup> For Wilson, “[d]emocracy required participation—and informed participation was based on education.”<sup>358</sup> The PSD, therefore, with its educational discussion groups and schools of philosophy, were ultimately Wilson’s method of reshaping a political institution to encourage his vision of a deliberative democracy.

Despite the apparent widespread success of the program, the PSD’s eventual demise in 1943 was part of a larger effort among established farm organizations to narrow the role of the USDA in American agriculture during a time that has been called “the bleakest in the history of agricultural politics.”<sup>359</sup> When the PSD folded, it did so because of pressure from the American Farm Bureau Federation and some staff of the land-grant schools, all of whom believed the PSD’s democracy-strengthening programs in rural America deviated from the USDA’s traditional role of simply providing statistical and scientific data to farmers.<sup>360</sup> But this ostensible realignment of the USDA with its traditional role

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<sup>355</sup> *Id.* at 143.

<sup>356</sup> *Id.* (quoting M.L. Wilson, *Facets of County Planning: I. On Using Democracy*, 1 LAND POL’Y REV. 2, 2 (1939)).

<sup>357</sup> *Id.* at 144.

<sup>358</sup> *Id.* at 143.

<sup>359</sup> McCONNELL, *supra* note 136, at 97.

<sup>360</sup> Shaffer, *supra* note 354, at 143.

may not tell the whole story. By this time, the Farm Bureau had already launched attacks against outgrowths of the New Deal it could not heavily influence, specifically the Farm Security Administration.<sup>361</sup>

During the years preceding the Great Depression, agricultural policy largely centered on prices, and as the economic crisis worsened, farm credit was a common subject among farm leaders, educators, and administrators.<sup>362</sup> Meanwhile, public policy was primarily concerned with discovering more efficient methods of agriculture and sharing those methods with farmers, although tenancy, corporate farming, and soil conservation occasionally entered public discussions.<sup>363</sup> Nevertheless, the established agricultural organizations were principally interested in policy that addressed prices, and the Farm Bureau did what it could to control agricultural policymaking.<sup>364</sup>

When President Franklin D. Roosevelt took office, the USDA was not generally recognized as being organized to address rural poverty, despite the Extension Service's "long arm of the department going out to nearly all the farming counties of the nation, in touch with the problems of farmers everywhere and ready to help in all their troubles."<sup>365</sup> Yet, rural poverty was a rampant problem, like urban poverty, that had to be solved. Since the USDA appeared to be the inappropriate agency to tackle that problem, that challenge fell on the Federal Emergency Relief Administration.<sup>366</sup> In addition to fixing rural poverty, the New Deal programs sought to support the back-to-the-farm movement occurring at the time through a subsistence-homestead scheme.<sup>367</sup> Spearheaded by Wilson, the undersecretary who created the PSD and who had played a key role in developing the Extension

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<sup>361</sup> See McCONNELL, *supra* note 136, at 97–111.

<sup>362</sup> *Id.* at 84.

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> *Id.* at 85.

<sup>367</sup> *Id.* at 86.

Service, this scheme became the subject of public policy.<sup>368</sup> Soon, the National Industrial Recovery Act codified this policy and authorized President Roosevelt to turn this scheme into action.<sup>369</sup>

Rather than focusing almost exclusively on prices, federal agricultural policy began to address social issues, specifically rural poverty and subsistence homesteads. By 1935, as the PSD was formed, these two programs came under the purview of the Resettlement Administration, separate from the USDA, though former agricultural undersecretary Rexford Tugwell headed it.<sup>370</sup> Within a couple of years, however, the Resettlement Administration merged into the USDA and the controversial Tugwell, in order to save his program, resigned.<sup>371</sup> As this transition was underway, Congress passed the Bankhead-Jones Farm Tenant Act of 1937, which primarily assisted farm tenants with becoming landowners.<sup>372</sup> As a result of this legislation, the Secretary of Agriculture dissolved the Resettlement Administration and created the Farm Security Administration.<sup>373</sup>

Eventually, the Farm Security Administration far outgrew its predecessor and had become its own “poor man’s Department of Agriculture.”<sup>374</sup> Through its rural rehabilitation efforts, it became an advocate for small farmers planting diversified crops, and it resisted foisting on these farmers the efficiency methods favored by larger producers.<sup>375</sup> It installed loan and grant programs that targeted some of these farmers, and the Farm Security Administration provided assistance in helping this new group of farmers formulate and execute their farm plans.<sup>376</sup> Although facing enormous practical and social challenges, the

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<sup>368</sup> *Id.*

<sup>369</sup> National Recovery Act of 1933, Pub. L. 73-67, § 208, 48 Stat. 195, 205–06.

<sup>370</sup> McCONNELL, *supra* note 136, at 86.

<sup>371</sup> *Id.* at 88.

<sup>372</sup> *Id.*

<sup>373</sup> *Id.*

<sup>374</sup> *Id.* at 89.

<sup>375</sup> *Id.* at 90.

<sup>376</sup> *Id.* at 90–91.



Farm Security Administration persevered and advocated for farm ownership among small-scale farmers.<sup>377</sup>

Because the programs from the Resettlement Administration originated outside of the USDA, farm organizations were unable to influence them as they had been able to influence other agricultural programs. In 1941, the Farm Bureau began its attacks, and by 1943, vice-president of the Farm Bureau Edward O'Neal insisted that the Farm Security Administration clients should stop receiving any federal help because "2,000,000 smallest farms consumed on the average about one-half of the production of these farms and sent only \$100 worth of products to market. This group produced only about 3 per cent of the marketed crops. They do not have the land, facilities, or labor to produce large quantities of food."<sup>378</sup> Through this argument and prompting investigations into alleged program waste and violations, the Farm Bureau sought to put an end to the agricultural policies it had no voice in shaping.<sup>379</sup> By 1946, the Farm Security Administration formally ended, and whatever was left of it fell under the Farmers' Home Administration, primarily a veterans' agency at the time.<sup>380</sup>

The life of these two major agricultural programs—the PSD and Farm Security Administration—demonstrate, first, that federal agricultural policy has long held multiple identities, and, second, one of those identities is the democratization of local and regional food systems through promoting self-empowerment among diverse stakeholders in agriculture, as well as funding economic and social programs to help farmers transition to owning small-scale, diversified farms, similar to those powering local-food efforts today. The back-to-the-farm movement of the early 20th Century might well have emerged as the farm-to-table movement of the early 21st Century. Regardless, it is clear that deliberative democracy has played a critical role in developing

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<sup>377</sup> *See id.* at 91; 93–94.

<sup>378</sup> *Id.* at 106.

<sup>379</sup> *Id.* at 106–10.

<sup>380</sup> *Id.* at 111.

federal agriculture policy and has been identified as critical to our food system.

#### **IV. Leveraging the Farm Bill to Support Food Localization**

As Part III shows, deliberative democracy is an effective policy basis for empowering communities to engage more directly and inclusively in their food system, and federal agricultural policy has a deep history of promoting the determination of individuals to participate democratically. Because of the Farm Bill's established role in promoting community food systems, this Part identifies ways in which future Farm Bills should support the movement toward localized food democracy.

First, Farm Bills should be utilized to ensure that a wide array of stakeholder groups have full access to participate in decision-making bodies. Both local and federal boards wield authority over issues that are of concern to a wide range of stakeholders, yet representation does not currently reflect the diverse interests of these stakeholders. The proposals included here would help amplify the voices of stakeholders, thus supporting food democracy. Second, Farm Bills should work towards increasing representation of traditionally underrepresented groups in Farm Bill programs and food governance. These groups have historically been excluded from full participation in the food system; efforts to localize the food system should include these marginalized groups so that the entire community is effectively represented. Finally, Farm Bills should continue to bolster local food authorities, enabling citizens to have greater direct influence over their local food systems. As discussed earlier, Food Policy Councils are multiplying as citizens take an interest in food governance. Future Farm Bills present opportunities to encourage the creation and maintenance of such entities.

##### *A. Diversifying Representation Among Agricultural Producer Stakeholders*

In order to be truly representative, the entities that make

decisions at each level of government must include all relevant stakeholders. A democratic food system requires that everyone have a voice at the table. The following recommendations aim to ensure that a diverse array of stakeholder interests are included in decision-making processes.

i. Increasing Organized Labor's Representation at the Federal Policy Level

The food system—including production, processing, distribution, retail, and service—employs roughly one-sixth of workers in the United States.<sup>381</sup> These workers face many challenges. Less than 15 percent of food workers earn a living wage,<sup>382</sup> despite the fact that 40 percent work more than 40 hours per week, and 11 percent work more than 60 hours per week.<sup>383</sup> Wage theft runs rampant,<sup>384</sup> and over half of workers do not have health care coverage of any kind.<sup>385</sup> In an unfortunate irony, almost one-third of food system workers experience food insecurity<sup>386</sup> and nearly 14 percent depend on food stamps, compared to 8.3 percent for the general workforce.<sup>387</sup> Given the various problems that food-chain workers endure, organized labor should have a voice in food policy decision-making processes. Of the dozens of advisory committees listed on USDA's website, though, not one focuses on labor issues.<sup>388</sup> This is a missed opportunity to directly address the interests of the 22 percent of food-system workers that are employed in production or processing—over four million

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<sup>381</sup> THE FOOD CHAIN WORKERS ALLIANCE, *THE HANDS THAT FEED US: CHALLENGES AND OPPORTUNITIES FOR WORKERS ALONG THE FOOD CHAIN 1* (2012), <https://foodchainworkers.org/wp-content/uploads/2012/06/Hands-That-Feed-Us-Report.pdf>.

<sup>382</sup> *Id.* at 4.

<sup>383</sup> *Id.*

<sup>384</sup> Thirty-six percent of food chain workers had experienced wage theft in the week previous to being surveyed. *Id.*

<sup>385</sup> *Id.*

<sup>386</sup> THE FOOD CHAIN WORKERS ALLIANCE, *supra* note 384, at 21.

<sup>387</sup> *Id.* at 68.

<sup>388</sup> See *USDA Advisory Committees*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/our-agency/staff-offices/office-executive-secretariat-oes/advisory-committees> (last visited May 16, 2018).

people<sup>389</sup>—and to consider the impacts that these segments of the food system have on workers further down the chain.

Creating a new labor advisory committee in the Farm Bill is just one potential way to include this group of stakeholders in policy making. Another possibility is to integrate representatives of organized labor into existing committees. This approach, which could supplement an independent committee, would help ensure that labor issues are not overlooked when discussing policies that could impact workers. For instance, the National Agriculture Research, Extension, Education, and Economics Advisory Board (NAREEEAB) would benefit from the representation of labor. NAREEEAB provides advice to the Secretary of Agriculture and to land-grant institutions regarding research, extension services, education, and economics.<sup>390</sup> The Board has twenty-five members, each representing a specific category of stakeholders as mandated by the 2008 Farm Bill.<sup>391</sup> Represented stakeholders include commodity producers, nutritional scientists, and consumers—but not labor.<sup>392</sup> The Farm Bill should be used as an opportunity to amend the membership requirements of NAREEEAB to include one additional member, from a non-profit representing labor interests in agriculture (for a total of twenty-six members).

Another area where federal policy stands to benefit from the representation of labor interests is in the National Organic Program (NOP). In 1990, the Organic Food Production Act (OFPA) established the National Organic Standards Board (NOSB) to act as a critical advisor to USDA regarding organic

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<sup>389</sup> THE FOOD CHAIN WORKERS ALLIANCE, *supra* note 384, at 17.

<sup>390</sup> See U.S. DEP'T AGRIC., NAT'L AGRIC. RESEARCH, EXTENSION, EDUC. & ECON. ADVISORY BD., <https://nareeeab.ree.usda.gov/> (last visited May 16, 2018).

<sup>391</sup> Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, § 7102, 122 Stat. 923, 1214 (amending Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977); *Membership Categories*, U.S. DEP'T AGRIC., NAT'L AGRIC. RESEARCH, EXTENSION, EDUC. & ECON. ADVISORY BD., [HTTPS://NAREEEAB.REE.USDA.GOV/MEMBERSHIP/MEMBERSHIP-CATEGORIES](https://nareeeab.ree.usda.gov/membership/membership-categories) (last visited May 16, 2018).

<sup>392</sup> *Id.* at 369.

policy.<sup>393</sup> The NOSB, composed of fifteen members, issues recommendations that serve as the basis for NOP policy.<sup>394</sup> The NOSB's responsibilities also include periodically reviewing the National List of Allowed and Prohibited Substances, which identifies the substances that may be used in organic food production, and making formal recommendations to USDA about its contents.<sup>395</sup>

Like NAREEEAB, the NOSB's composition is mandated by statute to include representatives of certain interest groups. For instance, three members must represent public interest or consumer groups, while two must own or operate organic handling operations. Under current law, no members are designated to represent labor interests. Fair labor practices are also not included as part of organic certification, as USDA claims that OFPA does not authorize the inclusion of labor-related standards in the NOP.<sup>396</sup> Yet, the NOSB's vision statement aims to "instill[] trust among consumers, producers, processors, retailers and other stakeholders."<sup>397</sup> Given that farmworkers constitute a key group of stakeholders, and that many commenters asked the NOP to develop fair labor standards as part of the program,<sup>398</sup> the Farm Bill should amend the OFPA to both clarify that labor-related standards may be included in the NOP and to incorporate labor representatives in the NOSB. Two chairs could be allocated for

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<sup>393</sup> Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, § 2119, 104 Stat. 3359, 3947-49.

<sup>394</sup> *Standards: The Groundwork Protecting Organic Integrity*, ORGANIC INTEGRITY Q. 2 (May 2016), U.S. DEP'T OF AGRIC., [HTTPS://WWW.AMS.USDA.GOV/SITES/DEFAULT/FILES/MEDIA/2016%20ORGANIC%20MAY%20NEWSLETTER.PDF](https://www.ams.usda.gov/sites/default/files/media/2016%20ORGANIC%20MAY%20NEWSLETTER.PDF).

<sup>395</sup> 7 U.S.C. § 6517(d); *National Organic Standards Board (NOSB)*, AGRIC. MARKETING SERV., U.S. DEP'T OF AGRIC., <https://www.ams.usda.gov/rules-regulations/organic/nosb>.

<sup>396</sup> National Organic Program, 65 Fed. Reg. 80,547, 80,556 (Dec. 21, 2000) (codified at 7 C.F.R. pt. 205).

<sup>397</sup> NAT'L ORGANIC STANDARDS BD., NOSB POLICY AND PROCEDURES MANUAL 4 (2016), <https://www.ams.usda.gov/sites/default/files/media/NOSB-PolicyManual.pdf>.

<sup>398</sup> National Organic Program, 65 Fed. Reg. 80,547, 80,556 (Dec. 21, 2000) (codified at 7 C.F.R. pt. 205).

representatives of labor: one from a union representing agricultural workers, and one from a non-profit focused on labor in agriculture. Such an amendment may either raise the total number of chairs to seventeen, or it may reduce by one each the number of organic farm owners and operators and the number of public interest and consumer representatives. Including labor representatives on the NOSB would encourage the Board to revisit labor issues and would ensure that workers are not excluded from reaping the benefits of the NOP.

ii. Improving Specialty Crops Representation at the Federal Policy Level

Over the last few decades, specialty crops—including fruits and vegetables—have gained prominence in federal agricultural policy.<sup>399</sup> Specialty crop production now generates roughly a quarter of the value of U.S. crop production, to the tune of \$60 billion per year.<sup>400</sup> To advise USDA on policy relating to this important area of agriculture, Congress created the Specialty Crop Committee (SCC). The SCC is tasked with studying issues that specifically affect the specialty crop industry. As a permanent subcommittee of NAREEEAB, representatives are appointed by the Board.<sup>401</sup> The only statutory requirement regarding membership is that it “shall reflect diversity in the specialty crops represented.”<sup>402</sup> This standard, while perhaps a worthy goal, is too vague to ensure that different groups of stakeholders are included in the democratic process.

Specialty crops are grown by a range of particularly diverse stakeholders, who may have unique viewpoints to contribute to

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<sup>399</sup> See generally FARM BILL LAW ENTERPRISE, TITLE X: HORTICULTURE & ORGANICS (2017), [HTTP://WWW.FARMBILLLAW.ORG/WP-CONTENT/UPLOADS/2017/10/TITLE-10-HORTICULTURE.PDF](http://www.farmbilllaw.org/wp-content/uploads/2017/10/TITLE-10-HORTICULTURE.PDF).

<sup>400</sup> RENÉE JOHNSON, CONG. RESEARCH SERV., FRUITS, VEGETABLES, AND OTHER SPECIALTY CROPS: SELECTED FARM BILL AND FEDERAL PROGRAMS I (2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R42771.pdf>.

<sup>401</sup> 7 U.S.C. § 3123(a)(1).

<sup>402</sup> *Id.*

policy development. For instance, small-scale farmers are more likely to produce specialty crops than commodity crops,<sup>403</sup> perhaps because the labor-intensive nature of specialty crop production is often not well suited to large-scale production.<sup>404</sup> The average size of all farms is 1.82 times greater than the average specialty crop farm, and over one-third of specialty crop farms have fewer than 15 acres.<sup>405</sup> In addition, minority farmers disproportionately produce specialty crops, as compared to commodities. For instance, in 2012, 63.6 percent of Asian American farmers grew fruits and vegetables, compared to just 8.5 percent of white farmers.<sup>406</sup> The particular issues that affect these groups, such as obstacles to accessing loans, therefore affect the specialty crops sector as a whole. However, of the ten members currently on the Committee, none specifically represent small-scale or minority growers.<sup>407</sup> The Farm Bill presents an opportunity to ensure that the SCC includes the voices of small-scale and minority farmers, who will be able to contribute their distinctive expertise to policy research and analysis.

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<sup>403</sup> Tamar Haspel, *Small vs. Large: Which Size Farm is Better for the Planet?*, WASH. POST (Sep. 2, 2014), [https://www.washingtonpost.com/lifestyle/food/small-vs-large-which-size-farm-is-better-for-the-planet/2014/08/29/ac2a3dc8-2e2d-11e4-994d-202962a9150c\\_story.html?utm\\_term=.5f60314c8255](https://www.washingtonpost.com/lifestyle/food/small-vs-large-which-size-farm-is-better-for-the-planet/2014/08/29/ac2a3dc8-2e2d-11e4-994d-202962a9150c_story.html?utm_term=.5f60314c8255); *Solutions: Expand Healthy Food Access*, UNION OF CONCERNED SCIENTISTS, <http://www.ucsusa.org/our-work/food-agriculture/solutions/expand-healthy-food-access#.WTmBRhPyvVo> (last visited May 16, 2018).

<sup>404</sup> HOSSEIN AYAZI & ELSADIG ELSHEIKH, HAAS INST. FOR A FAIR AND INCLUSIVE SOC. AT UNIV. OF CAL., BERKELEY, *THE U.S. FARM BILL: CORPORATE POWER AND STRUCTURAL RACIALIZATION IN THE U.S. FOOD SYSTEM* 58 (2015), [http://haasinstitute.berkeley.edu/sites/default/files/haasinstitutefarmbillreport\\_publish\\_0.pdf](http://haasinstitute.berkeley.edu/sites/default/files/haasinstitutefarmbillreport_publish_0.pdf).

<sup>405</sup> U.S. DEP'T AGRIC., NAT'L AGRIC. STATISTICS SERV., 2012 CENSUS OF AGRICULTURE: SPECIALTY CROPS 2 (2012); U.S. DEP'T AGRIC.: NAT'L AGRIC. STATISTICS SERV., 2012 CENSUS OF AGRICULTURE: UNITED STATES SUMMARY AND STATE DATA 7 (2012).

<sup>406</sup> AYAZI & ELSHEIKH, *supra* note 407, at 58.

<sup>407</sup> *Specialty Crops Subcommittee*, U.S. DEP'T AGRIC., NAT'L AGRIC. RESEARCH, EXTENSION, EDUC. & ECON. ADVISORY BD., <https://nareeeab.ree.usda.gov/subcommittees/specialty-crops-subcommittee> (last visited May 16, 2018).

iii. Creating Opportunities for Urban Agriculture to Be Represented at Federal Policy Level

The previous recommendations have all focused on improving committee representation of specific stakeholders, including workers, small-scale farmers, and minority farmers. Another way to enhance the democratic process is to ensure that specialized venues for specific substantive topics exist, such that appropriate forums are available for discussion. To that end, the USDA would benefit from the creation of an Urban Agriculture Advisory Committee.<sup>408</sup> As urban farming gains steam,<sup>409</sup> it is important to have democratic channels for information sharing and policy development dedicated to issues particular to the challenges of farming in cities.

In keeping with the previous recommendations, the membership of the suggested Urban Agriculture Advisory Committee should include a diverse range of stakeholders. For instance, membership categories could include urban agricultural producers, urban food aggregators, experts on farm-to-school programs, public health experts, city government representatives, urban planners, institutional buyers, and experts on farmers markets. This approach would facilitate deliberation regarding urban food policy and enhance food governance more generally. In turn, the long-term effect of the committee's efforts would contribute to the localization of food systems by providing communities participating in urban farming with additional resources to strengthen their work and enhance democratic engagement.

*B. Increasing Representation of Traditionally Underrepresented Groups*

Inherent in the idea of a democratic food system is an

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<sup>408</sup> See S.3420, 114th Cong. § 101 (2016).

<sup>409</sup> See, e.g., Elizabeth Royte, *Urban Farms Now Produce 1/5 of the World's Food*, GREENBIZ (May 5, 2015), <https://www.greenbiz.com/article/urban-farms-now-produce-15-worlds-food>; Betsy McKay, *A Farm Grows in the City*, WALL ST. J. (May 14, 2017), <https://www.wsj.com/articles/a-farm-grows-in-the-city-1494813900>.



understanding that a diverse cross section of the community will be able to participate in governance, production, and consumption.<sup>410</sup> The 2018 Farm Bill presents several opportunities to improve this aspect of our food system by fostering the inclusion of socially disadvantaged farmers and ranchers (SDFRs). Three proposals that would improve representation of underrepresented groups in the food system are detailed below.

i. Matching Representation to Appropriate Demographics

It is not just federal boards and committees that stand to benefit from including a more diverse range of stakeholders in decision-making processes; local governing bodies should also serve to amplify the voices of a variety of stakeholders. The importance of local participation in community food systems further underscores the need to ensure that local bodies are representative of their constituents. While the Farm Bill admittedly focuses on federal programs, it does still play a role in supporting local food systems, as Part II showed. The Farm Service Agency (FSA) oversees a county committee system, where members comprise a “critical component” of FSA operations.<sup>411</sup> These committees were first authorized by Congress in the 1930s in a push for local democracy, “allow[ing] for grassroots input and local administration” of federal agricultural programs.<sup>412</sup> Elected committee members help deliver FSA farm programs to their county and play a role in deciding which programs their counties will offer.<sup>413</sup>

Recognizing the need for fair representation, Congress in the 2002 Farm Bill mandated that county committees be “fairly representative” of producers within the area, and authorized the

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<sup>410</sup> See *supra* II.A.2.

<sup>411</sup> *County Committee Elections*, U.S. DEP’T OF AGRIC., FARM SERV. AGENCY, <https://www.fsa.usda.gov/news-room/county-committee-elections/> (last visited May 16, 2018).

<sup>412</sup> Selection and Function of Farm Service Agency State and County Committees, 78 Fed. Reg. 13,771, 13,771 (Mar. 1, 2013) (codified at 7 C.F.R. pt. 7).

<sup>413</sup> *Id.*

Secretary of Agriculture both to promulgate guidelines to “ensure fair representation of disadvantaged groups” and to insure their inclusion through the power of appointment.<sup>414</sup> Pursuant to that authority, the Secretary may appoint a socially disadvantaged (SDA)<sup>415</sup> farmer or rancher to committees where no SDA member was elected, and the demographics of the county are such that one is needed to ensure fair representation.<sup>416</sup> This regulation is an important first step to ensuring the inclusion in local democratic processes. Unfortunately, the method used to determine which counties qualify for an appointed member is flawed. The calculation of countywide demographics, for the purposes of the Secretary’s appointment power, is based on the eligible county committee voters—essentially, producers—rather than total population.<sup>417</sup> This approach fails to consider or correct the historical discrimination and inequities in agriculture that have impacted today’s demographic makeup of farmers.<sup>418</sup> Future Farm Bills could improve the existing rule by directing the Secretary to wield the appointment power based on demographics of the entire population of each county or even the entire state, thus ensuring that minorities and women are adequately represented on local committees even when they have been largely excluded from agriculture.

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<sup>414</sup> Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, § 10708(b), 116 Stat. 134, 522.

<sup>415</sup> SDA groups are defined as African Americans, American Indians, Alaska Natives, Hispanics, Asian Americans, Pacific Islanders and women. Selection and Function of Farm Service Agency State and County Committees, 78 Fed. Reg. at 13,772.

<sup>416</sup> Selection and Function of Farm Service Agency State and County Committees, 78 Fed. Reg. at 13,773.

<sup>417</sup> *Id.*; see also *COC Socially Disadvantaged (SDA) Voting Member and COC Advisor Appointments*, Notice AO-1673, U.S. DEP’T OF AGRIC., FARM SERV. AGENCY (Jan. 30, 2017), [https://www.fsa.usda.gov/Internet/FSA\\_Notice/ao\\_1673.pdf](https://www.fsa.usda.gov/Internet/FSA_Notice/ao_1673.pdf) (“An analysis by the National Office determined the counties in which the percentage of SDA *producers* indicates there is a need for increased SDA representation.” (emphasis added)).

<sup>418</sup> For instance, between 1920 and 1997 the population of African American farmers in the U.S. fell from 926,000 to fewer than 20,000—a decline that was 2.5 to 5 times steeper than that experienced by white farmers. See AYAZI & ELSHEIKH, *supra* note 407, at 54–60.

ii. Continuing and Expanding Outreach Programs to SDFRs

In 2013, in an effort to provide more a more flexible financing option, FSA created the Microloan program to “better serve the credit needs of several types of farmers: small, beginning, veteran, and/or from historically socially disadvantaged groups (women/minorities).”<sup>419</sup> Although FSA launched the program under their authority through the Direct Operating Loan Program, Congress permanently authorized the Microloan program in the 2014 Farm Bill.<sup>420</sup>

Following implementation of the Microloan program, ERS conducted a study to investigate program outcomes.<sup>421</sup> The study revealed that the number of new FSA direct loan borrowers receiving traditional operating loans fell after the Microloan program became available—indicating that the Microloan program may have attracted some of those applicants as well as additional new borrowers.<sup>422</sup> Based on the findings, ERS made two conclusions. First, new borrowers prefer microloans to traditional operating loans. Second, all else being equal, “at least some of the new borrowers who received Microloans would likely have applied for and received traditional [direct operating loans] if the Microloan program did not exist.”<sup>423</sup>

With this understanding, the ERS proceeded to examine the impact of the Microloan program on SDFRs. ERS found that white borrowers received 86 percent of microloans to new borrowers in the first two years of the program, although new black borrowers over that same period received 25 times more

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<sup>419</sup> *USDA Microloans for Farmers: Participation Patterns and Effects of Outreach*, U.S. DEP’T OF AGRIC. (last updated Dec. 30, 2016), <https://www.ers.usda.gov/publications/pub-details/?pubid=81870>.

<sup>420</sup> Agricultural Act of 2014, Pub. L. No. 113-79 § 5106(a), 128 Stat. 837 (2014), codified at 7 U.S.C. § 1943(c) (2018).

<sup>421</sup> U.S. DEP’T OF AGRIC., *USDA MICROLOANS FOR FARMERS: PARTICIPATION PATTERNS AND EFFECTS OF OUTREACH* (2016), <https://www.ers.usda.gov/webdocs/publications/81871/err-222.pdf?v=42761>.

<sup>422</sup> *Id.* at 15.

<sup>423</sup> *Id.* at 18.

Microloans than small traditional operating loans.<sup>424</sup> Eight percent of microloans to new borrowers went to black borrowers, and another 7 percent to other minorities. This represented a substantial increase over traditional operating loans of similar size from recent years.<sup>425</sup>

These findings seemed to indicate that the Microloan program's outreach efforts were initially successful. To examine the issue more closely, USDA conducted a controlled experiment designed to test the effectiveness of the agency's targeted messages to SDFRs about the Microloan program.<sup>426</sup> The results showed both that "the outreach increased interest in Microloans and the number of borrowers who received them" and that outreach "may have strong effects on some subgroups . . . and low effects on other subgroups."<sup>427</sup> The study also found that traditional direct operating loans are "still an important source of credit for targeted farmers."<sup>428</sup>

USDA's findings demonstrate the importance of outreach among SDFRs as it relates to loan and grant awareness. In addition, the study's results suggest that outreach may be useful in the context of other programs, as well. USDA should expand broader outreach among SDFRs to increase diversity within the food system, and it should consider launching a more comprehensive study regarding outreach to determine the most effective methods and to identify underserved subgroups that could benefit from targeted tools.

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<sup>424</sup> *Id.* at 19.

<sup>425</sup> *Id.* at 19

<sup>426</sup> U.S. DEP'T OF AGRIC., USDA MICROLOANS FOR FARMERS: PARTICIPATION PATTERNS AND EFFECTS OF OUTREACH 21–24 (2016), <https://www.ers.usda.gov/webdocs/publications/81871/err-222.pdf?v=42761>. Drawing from behavioral economics, USDA personalized each letter with the recipient's name, and a staff member personally signed each letter. USDA then sent these letters to approximately 144,924 operations in 1,848 ZIP codes. The agency found that farmers in ZIP codes receiving the letters expressed much more interest in the program than farmers in ZIP codes not receiving the letters. *Id.*

<sup>427</sup> *Id.* at 25.

<sup>428</sup> *Id.* at 12.

### iii. Including Native American Voices

It is undeniable that the Farm Bill greatly impacts Indian Country in the United States. More than 50 million acres of tribal lands are engaged in food production and agriculture;<sup>429</sup> Native American or Alaska Natives make up more than 30 percent of minority farmers in the country.<sup>430</sup> However, the Farm Bill leaves much to be desired in terms of supporting Native farmers and including Native voices in the democratic process.

In light of these deficiencies, Native advocates have been working towards a better Farm Bill that would include Native voices and open up opportunities for Native farmers. Last year, the Native Farm Bill Coalition published an impressively thorough report brimming with policy proposals that would result in a more fair and inclusive Farm Bill.<sup>431</sup> The Coalition aims to give Native Americans a united voice in advocating for changes to the next Farm Bill.<sup>432</sup> Stalwarts in this policy arena include the Intertribal Agriculture Council (IAC) and the National Congress of American Indians (NCAI), both of which are involved in the Coalition.<sup>433</sup>

As a result of these groups' research and advocacy, Congressional leaders are beginning to pay attention. Senator

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<sup>429</sup> U.S. DEP'T OF AGRIC. NAT'L AGRIC. STATISTICS SERVICE, 2012 CENSUS OF AGRICULTURE HIGHLIGHTS: AMERICAN INDIAN FARMERS (2014), [https://www.agcensus.usda.gov/Publications/2012/Online\\_Resources/Highlights/American\\_Indian\\_Farmers/Highlights\\_American\\_Indian\\_Farmers.pdf](https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/American_Indian_Farmers/Highlights_American_Indian_Farmers.pdf)

<sup>430</sup> Kim Baca, *Native Communities are Fighting for a More Inclusive Farm Bill*, CIVIL EATS (Feb. 26, 2018) <https://civileats.com/2018/02/26/native-communities-are-fighting-for-a-more-inclusive-farm-bill/>.

<sup>431</sup> Janie Simms Hipp & Colby D. Duren, *Regaining Our Future: An Assessment of Risks and Opportunities for Native Communities in the 2018 Farm Bill*, SHAKOPEE MDEWAKANTON SIOUX COMMUNITY (June 2017), [http://seedsofnativehealth.org/wp-content/uploads/2017/06/Farm-Bill-Report\\_WEB.pdf](http://seedsofnativehealth.org/wp-content/uploads/2017/06/Farm-Bill-Report_WEB.pdf).

<sup>432</sup> *Native Farm Bill Coalition*, SEEDS OF NATIVE HEALTH, <http://seedsofnativehealth.org/native-farm-bill-coalition/> (last visited Mar. 27, 2018).

<sup>433</sup> *Id.* ("The Native Farm Bill Coalition is a joint project of the Shakopee Mdewakanton Sioux Community's Seeds of Native Health campaign, the Intertribal Agriculture Council, the National Congress of American Indians, and the Indigenous Food and Agriculture Initiative to improve Native dietary health and food access.")

Udall (D-NM) has expressed his support for increased inclusion of tribal representatives in Farm Bill discussions,<sup>434</sup> while Senator Heitkamp (D-ND) recently introduced a bill that would permanently authorize a Rural Development Tribal Technical Assistance Office within USDA, among other things.<sup>435</sup>

Congress should take advantage of the upcoming opportunity to democratize our food system by ensuring that Indian Country is fully included in Farm Bill programs and administration. Many of the Coalition's recommendations would allow Native farmers and ranchers to participate more fully in the food system. For instance, the report recommends changing the Specialty Crop Block Grant Program to ensure that tribal departments of agriculture are eligible for funding and that tribal projects do not need to go through state agencies in order to receive support.<sup>436</sup> Other proposals in the report aim at a different goal: including Native voices in food governance and administration. These types of recommendations would address the structural exclusion of Native interests in decision-making processes. Examples include creating of an Interdepartmental Task Force on Indian Agriculture<sup>437</sup> and mandating tribal representation on USDA's numerous advisory committees.<sup>438</sup> Taken together, these recommendations would go a long way towards democratizing the Farm Bill.

### *C. Supporting Local Food System Governance Structures*

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<sup>434</sup> Baca, *supra* note 433.

<sup>435</sup> Press Releases: Heitkamp Introduces Legislation to Prioritize Native Issues in Next Farm Bill, OFFICE OF SENATOR HEIDI HEITKAMP (Mar. 1, 2018), <https://www.heitkamp.senate.gov/public/index.cfm/press-releases?ID=4C096269-910A-43A6-9D73-6425A0F283FA>. The Native Farm Bill Coalition has endorsed the bill. *Id.*

<sup>436</sup> Hipp & Duren, *supra* note 434, at 109.

<sup>437</sup> *Id.* at 131.

<sup>438</sup> *Id.* at 132.

i. Increasing Coordination Among and Between Federal and Local Organizations.

In order to enhance food governance, substantive areas—which, as suggested in the previous recommendation, may merit specialized attention—should not be entirely siloed. Food policy spans a range of issue areas, including agriculture, public health, labor, environment, and urban development. The multifaceted nature of food policy is evident in the Farm Bill itself, with roughly a dozen titles spanning topics from forestry to trade.<sup>439</sup> The USDA plays a major role in implementing agricultural policy, but many other agencies are also implicated in the Farm Bill, such as the Environmental Protection Agency, the Food & Drug Administration, the Department of Health and Human Services, the Department of Labor, and the Department of Energy. With so many actors involved, policies are often not crafted to complement one another. For instance, in its public health role, the USDA recommends that fruits and vegetables comprise half of an individual's daily diet.<sup>440</sup> Yet, a mere fraction of farm subsidies—less than 1 percent—is directed at specialty crop production.<sup>441</sup>

To overcome this coordination problem, the Farm Bill could establish a new interagency Food Policy Advisory Committee. Such a committee would facilitate communication and information sharing between relevant government agencies, and it would include (at a minimum) representatives from the agencies mentioned above. The committee should also have the authority to add participants on a temporary or permanent basis, as it finds necessary. Tasks would include studying and making recommendations regarding substantial policy proposals that

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<sup>439</sup> Agricultural Act of 2014, Pub. L. No. 113-79, 128 Stat. 649 (2014).

<sup>440</sup> Mark Bittman et al., *How a national food policy could save millions of American lives*, WASH. POST (Nov. 7, 2014), [https://www.washingtonpost.com/opinions/how-a-national-food-policy-could-save-millions-of-american-lives/2014/11/07/89c55e16-637f-11e4-836c-83bc4f26eb67\\_story.html?utm\\_term=.d6d51cae42b4](https://www.washingtonpost.com/opinions/how-a-national-food-policy-could-save-millions-of-american-lives/2014/11/07/89c55e16-637f-11e4-836c-83bc4f26eb67_story.html?utm_term=.d6d51cae42b4).

<sup>441</sup> *Id.* See also *Agriculture and Health Policies in Conflict*, PHYSICIANS COMMITTEE FOR RESPONSIBLE MEDICINE, <http://www.pcrm.org/health/reports/agriculture-and-health-policies-ag-versus-health>, (last visited April 18, 2018).

implicate multiple agencies. The committee could also tackle the development of a national food policy that would help guide agencies, resulting in a more coherent and consistent approach to food governance.<sup>442</sup>

Horizontal coordination between federal agencies is just one piece of the governance puzzle; vertical coordination between different levels of government is also crucial. Food policy is both important to the nation as a whole, yet particular to specific regions and locales. Local, state, and regional organizations play important roles in shaping agricultural systems, complementing the federal policy enacted by the Farm Bill. Local involvement in food policy is an excellent way to support community food systems—yet for local entities to truly have a voice, they must not be isolated from other decision-making bodies. Increased coordination would serve to strengthen local leadership and democracy, and it would capitalize on the wealth of localized knowledge that communities possess. Established methods of communication and exchanges of information should therefore exist between local, state, regional, and federal entities.

The Farm Bill can be used as a vehicle to ensure that coordination between levels of government takes place. Statutory language could mandate federal advisory boards and committees, such as NAREEEAB, the SCC, and the NOSB, to liaise with local, state, and regional entities, just as the FDA met with communities in consensus conferences across the country while it was developing its FSMA regulations.<sup>443</sup> For instance, the committees could be required to hold at least one meeting each year specifically for the purpose of hearing testimony from representatives of those entities. They could also be required to solicit input from such entities when considering policies that will impact local practices. These requirements, of course, would not solve the issue of vertical coordination; however, they form

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<sup>442</sup> See generally Mark Bittman et al., *A National Food Policy for the 21st Century*, MEDIUM (Oct. 2015), <https://medium.com/food-is-the-new-internet/a-national-food-policy-for-the-21st-century-7d323ee7c65f>.

<sup>443</sup> See *supra* III.B.



an important step toward localizing the food system. To further advance coordination, committees could additionally be directed to formulate recommendations to streamline the channels between levels of government.

ii. Incentivizing Creation and Maintenance of Food Policy Councils

Of course, coordination across levels of government can only take place if a robust network of local entities exists. Currently, food policy councils serve as the primary vehicle for local food democracy. Food policy councils come in a variety of forms, but they essentially serve as forums to deliberate over local and regional food issues.<sup>444</sup> As Part II showed, the Farm Bill has greatly bolstered the existence of these councils. There are hundreds of food councils currently in the United States.<sup>445</sup> Some were formed as part of government agencies, while others are independent grassroots networks; some comprise volunteers, while others operate on funding from foundations.<sup>446</sup> Food policy councils frequently coordinate with government officials; indeed, the most effective ones enjoy positive relationships with government.<sup>447</sup>

Legislators could use the Farm Bill to encourage the creation and maintenance of food policy councils, thus supporting and strengthening community food systems. Food policy councils often struggle to find sufficient funding.<sup>448</sup> To support these entities, then, the Farm Bill could include a program to provide

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<sup>444</sup> ALETHEA HARPER ET AL., INST. FOR FOOD & DEV. POL'Y, FOOD POLICY COUNCILS: LESSONS LEARNED 19 (2009), <https://foodfirst.org/wp-content/uploads/2014/01/DR21-Food-Policy-Councils-Lessons-Learned-.pdf>.

<sup>445</sup> *Directory*, FOOD POLICY NETWORKS, <http://www.foodpolicynetworks.org/directory/> (last visited May 16, 2018).

<sup>446</sup> HARPER ET AL., *supra* note 447, at 22–3.

<sup>447</sup> *Id.* at 24, 38.

<sup>448</sup> JOHNS HOPKINS CTR. FOR A LIVABLE FUTURE, STORIES FROM THE FIELD: THE ROLE OF LOCAL AND STATE FOOD POLICY COUNCILS IN FEDERAL POLICY MAKING IMPLEMENTATION 1 (2015), [https://assets.jhsph.edu/clf/mod\\_clfResource/doc/Engaging%20FPCs%20at%20Federal%20Level%20Draft%20Final.pdf](https://assets.jhsph.edu/clf/mod_clfResource/doc/Engaging%20FPCs%20at%20Federal%20Level%20Draft%20Final.pdf).

grants to food policy councils. This would be more than the Community Food Projects program,<sup>449</sup> which covers a range of issues; rather, this would specifically target food policy councils. The program could be modeled on similar programs authorized by the Farm Bill, such as the Beginning Farmer and Rancher Program,<sup>450</sup> which helps fund a variety of projects every year that train, provide technical assistance, and educate new farmers to ensure their businesses are viable and successful.<sup>451</sup> This program requires that recipients share the cost of their programs by contributing an amount equal to at least 25 percent of the awarded funds, and project grants are capped at \$600,000.<sup>452</sup> Similarly, a program to fund FPCs could include a matching condition and a cap, thus keeping the total cost low while boosting these crucial instruments of food democracy.

Like many existing Farm Bill programs that support food localization, our proposals are attempts to fill those gaps that civic agriculture and food democracy recognize as existing and being vital to democratization efforts. By promoting programs founded on deliberative democratic principles, our proposals not only follow the natural progression of one substantial strand of federal agricultural policy, but they provide a theoretical structure to many of the programs Congress has already promulgated and the USDA has spent countless resources administering.

### Conclusion

Increasingly, the Farm Bill is becoming a tool for the democratization of the food system as much as it is a tool for crop insurance, agricultural credit, nutrition programs, trade, and so forth. More than that, though, Congress has included within some of these programs democratic mechanisms that empower

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<sup>449</sup> See *supra* II.B.3.

<sup>450</sup> See *supra* II.B.2.a.

<sup>451</sup> *Beginning Farmer and Rancher Development Program (BFRDP)*, U.S. DEP'T OF AGRIC., NAT'L INST. OF FOOD & AG., <https://nifa.usda.gov/program/beginning-farmer-and-rancher-development-program-bfrdp> (last visited May 16, 2018).

<sup>452</sup> *Id.*

individuals and communities to make decisions about what the programs support. With this steady momentum, the future of the Farm Bill looks increasingly more democratic. And why shouldn't this be the case? Although deeply flawed by various forms of discrimination, the earliest Farm Bills quite explicitly sought greater democratic participation in federal farm programs. With this long view, the recent flirtations with democratization are a return to form rather than a radical departure.

It is, therefore, time that Congress begin taking these trends more seriously. By adopting some of our proposals founded on deliberative democracy, it will add legitimacy and structure to a policy that provides countless communities with the determination to make their own choices about how their food system should look—how the supply chain should function, which social issues to fund, and what aspects of the food system to experiment with. That policy is a deliberative food democracy. The Farm Bill, bolstered by the many efforts before it, should finally make that policy explicit.

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