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Laying a Foundation for a Local Food System in California: A Survey of Policy and Legal Impacts

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I. Context: Consolidation

A. Farming and Food System

1. Decrease in Small Farms and Farmers

Over the last few decades, farming and agriculture in the U.S. have changed tremendously. The most drastic and noticeable change is in the number of farms and farmers. From 1954 to 2001, the number of farms in the U.S. plummeted from more than five million to just over two million.¹ During approximately the same period, U.S. farmer population has fallen from thirty million to less than five million.²

2. Rise of the Corporate Farm

The decline stems from a consolidation of the farming and food retail industry. Large corporate farms now dominate the farming and food industry. In the beef industry, for example, four corporations account for 81% of all U.S. beef sales.³ This consolidation phenomenon exists for nearly all agricultural products. With their economies of scale, these corporate farms are essentially squeezing the American small farmer into extinction.

3. Rise of Corporate Grocers

Along with farm consolidation, fewer and fewer grocers control food distribution channels. In the United States, five corporations, account for 38% of all grocery sales.⁴ Furthermore, corporate supermarkets, rather than farmers, sell 93% of all food in the U.S.⁵ Moreover, the consolidation of grocers is not a national, but global trend.⁶

4. Negative Effects of Corporate Consolidation

The trend in the food industry, as in many other industries, is clearly moving towards more control by fewer entities. This consolidation is causing a crisis in many rural, farming communities. For example, in 1990, U.S. farmers were twice as likely as the general population to live in poverty.⁷ Farmers are not the only group feeling the pinch from corporate consolidation. Local economies also suffer from the effects of consolidation.⁸ Furthermore, many have argued, with substantial evidence to back their case, that corporate consolidation also negatively effects the environment and health.⁹

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B. Description of California's Farming and Food System

1. Size and Importance of California's Economy and Agricultural/Food Retailing Sector

If it stood as its own nation, California's economy would be the fifth largest economy in the entire world.¹⁰ In 2002, California's agricultural industry produced more than \$27.5 billion in net value.¹¹ Because of its size and variety, California's agricultural and food related industry is very important not only for its own citizens, but for the nation and world.

California's food retailing industry is also large. The USDA has broken down the food retailing industry by region and form of consumption. In the Pacific region, which consists of the states of Alaska, Washington, Oregon, Hawaii and California, the dollars per capita spent on food was \$2,333 in 1992. From that, \$1,580 was spent on food "at home," that is, food bought to be consumed at home, \$375 was spent on restaurant food and the final \$322 was spent on fast food.¹² If multiplied by the total population of these states during that time, the total number of dollars spent on food would have been approximately \$91.5 billion in 1992.¹³ Considering California's population accounts for nearly 76% of this pacific region, it is safe to say that California's food retailing industry accounts for tens of billions of dollars.

2. Consolidation in California

As has been shown, the annual value of California's food producing and retailing industries combined likely approaches \$100 billion. Important for the purposes of this paper, however, is the fact that California's food industry is following the overall industry trend of consolidation. On the agricultural side, 1% of California's farmers supply 38% of the state's food.¹⁴ On the retail side, 3 retailers dominate 57% of California's food retail market.¹⁵

3. Macro-Economic Inefficiencies of California's Food System

Large multinational corporations may seem to be necessary in today's world of global economics. However, in many instances, the global economy can be counterintuitive and inefficient. For example, despite being the largest agricultural producing economy in the world, California is actually a net importer of food, with 67 million tons shipped in and only 37 million tons shipped out.¹⁶ One might cite comparative advantage as the reason for the trade deficit. However, a large portion of the deficit stems from inefficiency due to redundancy in trade. For example, consider the strawberry industry. Despite being a major strawberry producer in the global economy, California imports \$50 million worth of fresh strawberries each year. The majority of these imported strawberries pass through California's ports during the height of California's own strawberry season.¹⁷

4. Micro-Economic and Social Problems

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Consolidation's most negative effects, however, are experienced not at a macro-economic level, but at a micro-economic and social level. For example, consolidation may contribute to poor health in local areas: Farm workers on California's corporate farms are 59 to 70% more likely to develop various forms of cancer than the rest of the population.¹⁸ Corporate farming also appears to negatively effects local environments. The mass use of pesticides, fertilizers, and livestock by California's corporate farms has damaged many of California's water supplies. Specifically, one study shows that these substances have helped damage "81% of the state's lake area, 75% of its estuary and wetland area, and 23% of [California's] rivers."¹⁹ These facts provide a solid rationale for decentralizing California's food industry.

C. From Consolidation to Community

1. Proposing local food systems

Establishing local food systems could solve many of the problems caused by corporate consolidation. A local food system is defined as one that circulates, to the extent possible, dollars regionally between locally owned and operated food producers, manufacturers, retailers, restaurateurs, eaters and all other supporting businesses. This article will describe the benefits of establishing a local food system. It will also lay-out laws and policies that may impede or promote efforts to establish such a system. Barriers stem come from international trade law, federal anti-trust law, and state policies and laws, including laws governing state agricultural cooperatives, and local ordinances and initiatives. The paper will then touch on some government laws and programs as well as some private actions that serve as example components of a local food system. Finally, the paper will conclude with recommendations for developing a model local food system. While reading this article, the reader must understand that it is by no means a complete analysis of the situation and does not cover all issues in establishing a local food system. For example, the paper does not address food processors, a critical actor in the food industry.

2. Benefits of Local Food Systems

Establishing local food systems in California would have many positive effects. If a mere 10% of California's food expenditures were redirected toward food produced within the state, an estimated \$848 million in additional income would flow to the state's farmers²⁰, and approximately \$1.38 billion would be injected into California's overall economy.²¹ From this new revenue, approximately \$188 million in tax revenue would be generated for both state and local governments. Finally, an estimated 5,565 jobs would be created.²²

There would also be positive social implications to a stronger local food industry. Local food systems would improve the state's environment by encouraging small-scale diversified farms, negating the various negative ecological impacts such as chemical use, soil erosion and water degradation of large scale farming.²³

Local food systems would also improve the overall health of Californians by providing fresher food, reducing chemicals, processing, and transportation, often sources of food

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born disease. Finally, local food systems would ensure greater food security for California.

If the public knew more about the negative aspects of corporate farms and benefits of a local food system, it is possible they would push laws and policies supporting establishment of the latter. However, before formulating a policy proposal and starting a public campaign, local food system advocates and supporters should understand some of the legal issues which may impede success.

III. Barriers to Local Control

A. Introduction

In forming a local food system, one must consider the legal and policy barriers and incentives that exist both from an agricultural producer's standpoint, as well a food retailer's. This analysis is complicated by the wide ranging sources of such barriers. This section will attempt to provide an overview of these legal and policy barriers, including international trade law, federal law and policy, and state law and policy. Within those sources, this overview will address issues such as the regulations of the World Trade Organization, federal anti-trust law, local anti-corporate laws, and state farming cooperative law. Again, this paper provides an overview and explanation of legal and policy barriers; it is not a comprehensive analysis.

B. International Trade Law

1. WTO Introduction

The World Trade Organization's (WTO) Uruguay Round Agreement on Agriculture (URAA) contains some possible legal barriers to establishing a local food system. The URAA provides disciplines within which national trade policies can operate. Compliance with those disciplines remains a matter of domestic law.²⁴ For local food system advocates, the relevant URAA sections are those covering market access and domestic support.²⁵

2. Market Access

The URAA's market access regulations cover various forms of import restrictions placed on agricultural products.²⁶ The URAA market access rule is, basically, a "tariffs only" one. Prior to the Uruguay Round when trade was regulated solely by the General Agreement on Tariffs and Trade (GATT), some agricultural imports were restricted by quotas and other non-tariff measures.²⁷ Article 4 of the URAA, however, prohibits member states from initiating such policies. Prohibited non-trade barriers include quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, and voluntary export restraints.²⁸ Thus, national and state agricultural policies cannot contain such non-tariff trade barriers. Accordingly, when forming a local food system,

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the use of protectionist, import-restricting measures would probably violate article 4 of the URAA.

Non-tariff trade barriers may be permitted under Article 20 of GATT, which allows governments to act on trade in order to protect human, animal or plant life or health, so long as those protections are not disguised protectionism. Two specific WTO agreements also exist which deal with food, animal and plant health and safety, and also with product standards. An in depth analysis of these provisions is beyond the scope of this paper; however, considering the concern over the safety of food products entering this country, these provisions may provide some opportunity to protect against the adverse effects of food entering local communities via international trade.

3. Domestic Support

The most relevant section of the URAA for the formation of a local food system is its regulation on domestic support. Part IV of the URAA establishes three separate types of domestic support. This section will discuss two of the three types of domestic support: "amber" and "green" box payments.

"Amber box" payments constitute domestic programs that "stimulate production and trade directly."²⁹ Amber box payments would include subsidy programs such as price supports, per-unit payments, or input subsidies. Since the amber box payments contain domestic policies that most affect trade and production, they are the most heavily regulated support under the URAA. Specifically, amber box payments are quantified under the URAA's complex aggregate measurement of support (AMS). A detailed description of the AMS is unnecessary. However, because the URAA places limits on amber box payments, member-states are hesitant to provide programs that would be considered amber-box payments.

The second category of domestic support is labeled "green box" payments. These payments, according to the URAA, must have "no, or at most minimal, trade distorting effects or effects on production."³⁰ Programs accepted under the URAA's "green box" payment criterion include general service policies, which provide services or benefits for agriculture and the rural community, provided those programs do not include direct payments to producers or processors.³¹ The URAA's "green box" payments provisions also contain numerous programs designed to aid poor countries and communities.³²

The URAA places no limits on green box subsidies. Thus, countries prefer and encourage the use of such aid. For example, U.S. federal green box payments include general service programs such as research, pest and disease control, extension and cooperative services, inspection and marketing, and conservation operations. Also included are the Food Security Commodity Reserve³³, various environmental quality programs,³⁴ certain farm loans and livestock/crop disaster payments.³⁵ Local food groups need to understand the differences between "amber" and "green" box subsidies; designing a system which, if necessary, utilizes "green" box subsidies would be highly advantageous.

The final type of domestic support is "blue box" payments. These payments include direct payments under certain programs, which would otherwise be amber box, that limit agricultural production.³⁶ Negotiated by the U.S. and EU states to benefit their local farmers, direct payments are generally allowed to compensate producers for income lost

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when production is reduced, thus reducing a surplus.³⁷ The most important facet of blue box payments is that they are not subject to the URAA commitment to reduce payments and thus, are not penalized under the URAA.³⁸

The URAA's preamble states a commitment to regard non-trade concerns, "including food security and the need to protect the environment."³⁹ In fact, according to the preamble of the Marrakesh Agreement establishing the WTO, environmental and sustainability concerns should be an underlying concern in all forms of international trade. Specifically, the text states that WTO members recognize

their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living ... while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.⁴⁰

The WTO and URAA's commitment to food security and the environment coincide with many of the goals sought in establishing a local food system. Thus, if local food system advocates pursue public support with these goals in mind, they may comply with the regulations established by the WTO's international trade regulations.

C. Federal Laws

Federal law presents numerous barriers to encouraging local control of food systems. Anti-trust, "dormant commerce", and federal preemption are a few issues which may affect the establishment of local food systems. This section will briefly explain these possible barriers and how they may affect the effort to create local food systems.

1. The Farm Security and Rural Investment Act of 2002

Since the 1930s the U.S. government has passed various farm bills aimed at supporting the agricultural industry. The latest of these bills, passed in May of 2002, was named the "Farm Security and Rural Investment Act" (FSRI).⁴¹ This section will layout the content of this Act and then seek to determine how the Act might be analyzed under the URAA section on domestic payments.

The FSRI establishes the structure and procedure for domestic commodity payment programs. Specifically, the FSRI provides payment programs for the production of the commodities of wheat, corn, grain sorghum, barley, oats, upland cotton, rice, soybeans, and other oils.⁴² Under the FSRI, there are three types of payments: (1) direct payments; (2) countercyclical payments; and (3) loan deficiency payments and marketing loan gains. The FSRI also contains provisions establishing the Conservation Security Program (CSP). This program promises payments to farmers who practice environmental stewardship. However, the FSRI's main focus is on providing domestic subsidies.

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Many argue that the FSRI does little to nothing for small, rural farmers.⁴³ Under the FSRI, most payments go directly to farmers, arguably mostly corporate farmers, while little money goes to small, rural farmers or for the development of rural economies.⁴⁴ Thus, the effectiveness of the FSRI in developing the U.S. agricultural economy has been called into serious question.

Another issue surrounding the FSRI is how it will be analyzed under the URAA of the WTO and the impact of the current WTO agricultural trade talks. Currently, WTO members are considering making the amber box language more restrictive. If this occurs, many Farm Bill programs, including its counter-cyclical payments, will be penalized more heavily. This may lead to changes in the Farm Bill budget.

Although the outcome of the current URAA negotiations is unclear, the possibility of Farm Bill cuts is real. These changes could be either beneficial or detrimental depending on where they are made. There's no question, however, that in the present budget climate, if amber box payments are made more stringent, there will be cuts in Farm Bill programs. Cuts could be made in Commodities (Title 1), Food Stamps (Nutrition title) or conservation programs, since these three titles account for essentially all of the Farm Bill's spending. Obviously, the logical area to make cuts would be the Commodity provisions since that is the section which would violate the URAA. If this were the case, more federal dollars could be allocated toward green box programs, possibly boosting support of local food systems and environmentally healthy practices.

2. Antitrust Law

Two Acts regulate anti-trust issues in the United States: the Sherman Act⁴⁵ and the Clayton Act.⁴⁶ The Sherman Act prohibits contracts and conspiracies in restraint of trade among U.S. states or with foreign nations and forms the essential foundation of all U.S. antitrust law. It also makes it illegal for any business to monopolize, or attempt to monopolize, trade or commerce. The Clayton Act elaborates on the Sherman Act and prohibits such activities as: price discrimination—selling the same commodity to different buyers at different prices; exclusive dealing—holding a retailer or wholesaler to a single supplier on the understanding that no other distributor will receive supplies in a given area; interlocking directorates—holding by an individual of directorships in two or more competing companies; and companies holding competitors' stocks. It also prohibits mergers and acquisitions where the effect is to lessen competition or to tend toward monopoly. It gives the U.S. Justice Department and the FTC authority to block any merger that would violate antitrust laws.

a. Agricultural Cooperatives under U.S. Anti-Trust Law

Federal anti-trust statutes largely exempt agricultural cooperatives. The Clayton and Capper-Volstead Acts conditionally exempt agricultural cooperatives from their provisions.⁴⁷ The Clayton Act's conditions for cooperative exemption are (1) that the cooperative is instituted for the mutual help of its members and (2) that the organization carries out the legitimate objects of an agricultural cooperative.⁴⁸ When passed, the Capper-Volstead Act allowed a cooperative to issue capital stock (something prohibited under the Clayton Act's exemption).⁴⁹ The Capper-Volstead Act also identified the "legitimate objects" of such an agricultural cooperative as "collectively processing, handling, and marketing products for the mutual benefit of members."⁵⁰ However, the Capper-Volstead Act requires (1) that no member of the association be allowed more

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than one vote despite the amount of stock or membership capital he may own therein; (2) that the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum; and (3) that the association is prohibited from dealing in the products of nonmembers to an amount greater in value than such as are handled by it for members.⁵¹

Along with the statutory language, courts have further defined the requirements for exempting agricultural cooperatives. In *Maryland and Virginia Milk Producers Ass'n v. United States* (1960), the Supreme Court (Court) held that the Clayton and Capper-Volstead Acts' cooperative exemption are not absolute.⁵² The court held that the "lawful and legitimate purposes" of agricultural cooperatives did not include predatory trade practices.⁵³ The court then held that Maryland and Virginia Milk Producers Association engaged in predatory practices, first, by acquiring its main competitors' assets, (eliminating the largest non-cooperative milk purchaser in the Washington D.C. market), and second, by placing a ten-year "do-not-compete clause" in the purchase contract.⁵⁴

In *Case Swayne v. Sunkist Growers, Inc.* (1968) the Court held that the Capper-Volstead Act's cooperative exemption applied only to producers of agricultural products.⁵⁵ Thus, the Court ruled that the Sunkist Growers Cooperative was not an agricultural cooperative under the Copper-Volstead's exemption provision because it included a relatively small amount of non-producers (approximately 5%) of the total membership) in its membership.⁵⁶ Thus, the *Case Swayne* case appears to prohibit the agriculture cooperative entity to have outside investors.

The Supreme Court has broadly interpreted some rights of agricultural coops. In *Sunkist Growers, Inc. v. Winkler & Smith Citrus Products*, the Court held that agricultural cooperatives may establish subsidiary organizations.⁵⁷ This case involved Sunkist, Inc., an agricultural cooperative made up of 12,000 citrus growers.⁵⁸ In an effort to diversify, Sunkist formed two subsidiary organizations designed to process by-products of both lemons and oranges.⁵⁹ Once processed, the parent company, Sunkist, Inc., marketed and distributed these products.⁶⁰ Respondent, Winkler Smith Citrus Products claimed that Sunkist, Inc. violated Anti-trust law by conspiring and combining with these subsidiary companies, to restrain and monopolize interstate trade and commerce in the processing and sale of citrus juices.⁶¹ The Court disagreed with Winkler, explaining that:

"... [T]he 12,000 growers here involved are in practical effect and in contemplation of the statutes one 'organization' or 'association' even though they have formally organized themselves into three separate legal entities."⁶²

The Court's reason for recognizing these three entities as one under the statutory exemption was their common membership and that they "banded together for processing and marketing purposes within the purview of the Clayton and Capper-Volstead Acts."⁶³ By recognizing these entities as one "Sunkist" entity, there could be no conspiracy or combination between multiple entities. Finally, the court found that since the subsidiary entities were engaged in an activity permitted under the Capper-Volstead Act's cooperative exemption, their actions were not restraining trade in violation of the anti-trust statutes.⁶⁴

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Legislators formed the agricultural cooperative exemptions with the underlying rationale of giving individual farmer-producers “the same unified competitive advantage—and responsibility—available to businessmen acting through corporations as entities.”⁶⁵ As shown by the case law, if agricultural cooperatives comply with the aforementioned conditions of exemption, they can enjoy its competitive advantages.⁶⁶ Such advantages, as seen, are the ability to pool assets for permitted purposes such as collective marketing and collective price-fixing. Also, pursuant to *Sunkist Growers, Inc. v. Winkler*, cooperatives can create separate legal entities to complete some of these permitted purposes. This may permit more effective and specialized management for these respective tasks. As will be discussed, agricultural cooperatives are limited, especially because of the difficulty attracting outside capital. However, because of their advantages, those advocating local food systems should consider using this entity as a strategic tool. Well-organized and managed agricultural cooperatives can help producers compete with large vertically integrated corporate entities. Along with agriculture cooperatives, producers can use direct farm marketing, farmers’ markets, and other competitive tools, which will be discussed in greater detail.

b. Retailer Cooperatives and Organizations

Unlike agricultural cooperatives, retail and grocer organizations are not exempt from federal antitrust laws. This article does not provide a detailed analysis of anti-trust law as it pertains to food retailers. However, one particular Supreme Court decision, *United States v. Topco Associates* (hereinafter *Topco*) (1972) directly relates to competition between large grocer organizations and smaller, independent grocers.⁶⁷

Topco was a cooperative buying association of approximately 25 small and medium-sized regional supermarket chains that operated stores in approximately 33 U.S. states.⁶⁸ Each of the members of the cooperative operated independently, meaning no pooling of earnings, profits, capital, management, or advertising resources.⁶⁹ In forming the cooperative, the members sought to obtain high quality merchandise under private labels to compete more effectively with larger national and regional chains.⁷⁰ Thus, *Topco*’s basic function was to serve as a purchasing agent for its members - procuring and distributing more than 1,000 food and related nonfood items, most of which were distributed under brand names owned by *Topco*, to its members.⁷¹ In 1968, the United State government (U.S.) charged *Topco* with combining and conspiring with its members in violation of section 1 of the Sherman Act. The U.S. claimed that there existed:

“a continuing agreement, understanding and concert of action among co-conspirator member firms acting through *Topco*, [to] sell *Topco*-controlled brands only within the marketing territory allocated to it, and ... refrain from selling *Topco*-controlled brands outside such marketing territory.”⁷²

The division of marketing territories devised by *Topco* included an elaborate membership approval system. The most relevant aspect to the membership approval scheme was the increase in percentage needed to obtain membership (from 75% to 85%) when any member whose operations were located within 100 miles of the applicant voted against membership.⁷³ The record also indicated that in this membership approval agreement, existing members would make accommodations for other members.⁷⁴ Once

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the membership was approved, new members signed a mandatory licensing agreement designating the territory in which that member could sell Topco-brand products.⁷⁵ Violation of this agreement constituted membership termination.⁷⁶

The U.S maintained that agreements which divide markets violate the Sherman Act because they prohibit competition among member grocery retail chains.⁷⁷ Responding to these charges, Topco asserted that territorial agreements between small and medium sized independent grocers were necessary to develop a valid private brand label.⁷⁸ Topco further contended that these agreements actually increased competition by enabling members to compete successfully with larger regional and national chains.⁷⁹

In an opinion written by Justice Marshall, the Court disagreed with Topco's assertions. In its analysis, the Court stated that these agreements constituted naked restraints on trade.⁸⁰ The Court also consistently rejected Topco's argument that the agreements should be valid because they actually increased competition. Specifically, the court stated that:

"Topco has no authority under the Sherman Act to determine the respective values of competition in various sectors of the economy. On the contrary, the Sherman Act gives to each Topco member and ... prospective member the right to ascertain for itself whether or not competition with other supermarket chains is more desirable than competition in the sale of Topco-brand products. Without territorial restrictions, Topco members may indeed (cut) each other's throats."⁸¹

It appears that *Topco* does not preclude independent grocer organizations from creating a separate cooperative entity. Rather, the opinion seems to preclude members of the cooperative from conspiring and combining (both through written or verbal agreement) to restrict competition among themselves. Also, the Court declared that the fact that Topco claimed that the agreements dealt with its private labels was immaterial to the finding of an antitrust violation.⁸²

The court's rejection of Topco's argument (that the agreements permitted smaller retail chains to compete with larger chains) is concerning to those wishing to develop a local food system. In rejecting this argument, the court adhered to the U.S. antitrust policy that horizontal restraints (such as territorial restraints or price-fixing) are per se illegal regardless of whether those restraints may actually increase competition.

However, *Topco* does not preclude independent grocers from pooling their assets into one overarching cooperative entity such as Topco itself. If local food advocates were to form a cooperative entity of local, independent retailers, nothing in that entity's structure or contractual relations could restrain competition among the independent grocer members. Despite this prohibition, such an overarching entity could still provide smaller grocers some competitive advantages in competing with large retail chains.

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D. State Laws

State and local law may affect local food systems in various ways. This section will discuss three distinct sets of laws which have a direct affect on establishing local food systems: (1) state anti-corporate farming laws; (2) statewide laws banning local control of food supplies; and (3) state agricultural cooperative law.

1. State-wide Anti-Corporate Farming Laws

Although California has not enacted such a law, many Midwest states have passed various anti-corporate farming laws. These laws seek to prevent large corporate conglomerates from vertically integrating their assets within a state. These laws limit or prohibit corporate entities from engaging in a myriad of activities from owning farm land to owning livestock.⁸³ This type of law may be a powerful policy tool for local food system advocates. First, enacting such a law would make it more difficult for large retailers to vertically integrate in close geographical proximity. This would serve to drive up prices for those entities through increased transportation and shipping costs. The law would then serve to preserve state agricultural land for small farmers.

Despite these advantages for small farmers, however, the constitutionality of these corporate farming laws has been questioned. In the past, many courts, including the United States Supreme Court, addressed the issue of whether states' anti-corporate farming laws violated the U.S. Constitution's Equal Protection Clause, Privileges and Immunities Clause and Contract Clause.⁸⁴ In all previous cases, no court has struck down the constitutionality of the challenged law.⁸⁵

Two recent cases, however, ended the precedent of upholding anti-corporate farming laws. First, in *South Dakota Farm Bureau v. Hazeltine* (hereinafter *Hazeltine I*), the Eighth Circuit Court of Appeals held that a South Dakota anti-corporate farming law was unconstitutional because it violated the dormant commerce clause.⁸⁶ Then, the United States District Court for the Southwest District of Iowa held in *Smithfield Foods v. Miller* (hereinafter *Smithfield I*) that an Iowa corporate farming law also violated the same clause.⁸⁷ Although the precedent established by these cases does not affect any jurisdiction in California, courts may look to their reasoning for guidance in any future cases with similar facts.⁸⁸

Articles addressing the Eighth circuit court's opinion have come to various conclusions. Some contend that if other courts adopt the eighth circuit courts analysis, which concentrated on evidence in the record revealing a discriminatory purpose, future corporate farming laws would likely also be held in violation of the dormant commerce clause.⁸⁹ Others argue that the Eighth circuit court's analysis itself is flawed.⁹⁰ They argue that the United States Supreme Court's dormant commerce clause precedent has upheld similar anti-corporate laws seeking to prevent vertical integration by large corporations.⁹¹ These authors also cite Supreme Court precedent stating that states have legitimate interests in regulating both local economies and the operation of corporations in their jurisdiction. They further argue that the Supreme Court has stated that, as part of this legitimate interest, a state would have the power to exclude out-of-state or foreign corporations, or to limit the nature of the business a foreign corporation may conduct within the state.

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Whatever the correct analysis, based on dormant commerce clause jurisprudence, those seeking to pass similar corporate farming laws would be well-served to keep the record clean of references to anti-corporate motivation. Rather, proponents of such laws should concentrate on these laws' positive effects on local communities such as the positive economic and environmental impacts of local farming practices. The same holds true for those advocating a local food system. If local food system advocates were to include an anti-corporate bill in their policy proposal package, the entire policy proposal, including the rationale for the corporate farming law, must be to "benefit the local community."

2. State-Wide Law Controlling Local Food Supply

One current issue affecting the ability to establish a local food system includes statewide laws banning local control of seed and plant supplies. In an effort to prevent the use of genetically modified organisms (GMOs), county and local governments, nationwide, have passed laws prohibiting the use of genetically modified seeds. However, in many states these local regulations have been or are in jeopardy of being preempted by state law.⁹² In California, Senate Bill 1056, if passed, would prohibit any political subdivision, other than the state government from regulating "the registration, labeling, sale, storage, transportation, distribution, notification of use, and use of field crops."⁹³ This law would effectively preempt any local ordinance from regulating its field crops.

Since these state preemption laws deal exclusively with seeds and plants, they may not directly affect local food systems. However, if passed, these laws may establish a legislative precedent for making food policy a state government rather than a local government issue.⁹⁴ Further cause for concern is the fact that powerful lobbying groups representing corporate farming interests are pushing these state preemption laws.⁹⁵

Historical precedent is on the side of local control of food source and supply policy. However, to further combat these preemption laws, local food system advocates must engage in a coordinated lobbying effort armed with meritorious arguments. These arguments should emphasize the positive impact and practicality of local governments controlling their own food supply. Together with the lobbying efforts, local food advocates should seek to educate the public about this issue. If the public were made aware of the issues, they would probably feel strongly about keeping local control of food supply.

3. State-Wide Cooperative Laws

All states have different policies and laws regarding agricultural cooperatives. Some states adhere to the federal model established in the Capper-Volstead Act. However, other states have enacted laws which expand the definition and rights of agricultural cooperatives. While these cooperative models would provide agricultural producers and local food system advocates with many important tools, there are questions as to their legality under the previously discussed anti-trust law exemptions.

One of the newest cooperative models comes from Minnesota.⁹⁶ The distinctive characteristic of the Minnesota cooperative model is that it allows members who previously were not allowed membership rights, specifically mere investors, to have voting rights.⁹⁷ The goal of this cooperative model is to attract more capital investment in

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capital-intensive processing procedures.⁹⁸ Although any type of business may use the Minnesota cooperative model, its characteristics present an interesting model for agricultural producers. By attracting more capital, farmers would be able to engage in activities other than merely producing and marketing products and thus would be able to be more competitive with large vertically integrated food retailers. These other activities include advanced product marketing, processing, production and creation and protection of intellectual property. If farmers owned their products and name brands, they could theoretically compete with larger corporate farms through differentiation and vertical integration.

While the Minnesota model presents great opportunities, it also faces significant legal barriers. As discussed, federal antitrust law conditionally exempts agricultural cooperatives based on established criteria. The Minnesota model, however, does not appear to meet the criteria for exemption. The following characteristics of the Minnesota model conflict with the federal antitrust, agricultural exemption: the model (1) permits non-producer investors; (2) allows some members to have more than one vote and also (3) provides for some members to receive a return of more than eight percent.⁹⁹ The Minnesota model would also fail to meet federal tax and security law exemption for generally the same reasons.¹⁰⁰

Along with legal barriers, the Minnesota cooperative model has been criticized for its potential effectiveness. One critic has stated his belief that the Minnesota cooperative model would serve to actually reduce the benefits to and flexibility of those members for whom the cooperative is formed—agricultural producers.¹⁰¹ Nevertheless, despite the legal and perhaps practical barriers of the Minnesota model, it does present a potential entity form to consider in the development of local food systems. However, for California producers seeking a model to follow, the Minnesota type of investor-friendly cooperative entity does not currently exist under California law.¹⁰²

4. Local Zoning Laws

Local zoning laws may provide another legal option for local food system advocates. In some communities, local zoning laws have prohibited large corporate entities from entering into local markets.¹⁰³ In most states, including California, local governments control land use and zoning laws. Thus, although zoning laws may provide an opportunity, their use would require a large amount of research and perhaps some lobbying and litigation at the local level. This section will describe one successful example, from Vermont, of how land use laws prevented Wal-Mart from entering the local community. It will then briefly describe California's land use regulations and provide a very brief analysis of the possibility of using land use laws as a tool in establishing local food systems.

The case of *In re Wal-Mart Stores, Inc.* is an example of land use laws preventing a large corporate entity from entering a local community.¹⁰⁴ In that case, Wal-Mart sought to build a store in the town of St. Albans, Vermont.¹⁰⁵ Organized members of the St. Alban community opposed Wal-Mart's plans and appealed the local land use Commission's decision to grant Wal-Mart a building permit.¹⁰⁶

The appellate body, Vermont's Environmental Board (Board), rejected the permit application pursuant to Vermont's Act 250, a state-wide Act, the purpose of which is to

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regulate growth and protect the environment. Specifically, the Board found that the construction of Wal-Mart would accelerate urban growth in the surrounding area.¹⁰⁷ This acceleration, reasoned the Board, would increase the cost of municipal services more than any tax revenue it might produce.¹⁰⁸ Finally, the Board found that “competition from the proposed project would cause losses in property tax revenue, and those losses would adversely affect St. Alban’s downtown.”¹⁰⁹ On appeal, the Supreme Court of Vermont affirmed the Board’s decision, concluding that the Board had properly considered all the relevant issues, including the store’s adverse effects on local businesses and the potential rise in costs of municipal services.¹¹⁰

The Vermont Supreme Court’s affirmation of the Board’s decision symbolized an important break from a well-established principle of zoning law: “control of competition is not a proper zoning law purpose.”¹¹¹ While the primary reason for the Board’s decision to deny a building permit was not the competitive impact on existing local businesses, the Board considered this impact in its analysis, nonetheless. The main question, however, is whether the argument and reasoning in this Vermont case could be used in California

Vermont’s land use system is controlled concurrently by both state and local government. In California, however, local governments regulate land use. In general, Courts have upheld zoning restrictions that incidentally affect competition so long as those restrictions achieve other legitimate interests. Pursuant to due process clause jurisprudence, these interests must “serve the public health, safety, morals, and general welfare.”¹¹² A claim based on competition alone, however, would likely fail.¹¹³

Claims against a zoning or building permit may be based upon local or state-wide land-use plans or regulations. Although California’s land use system is governed locally, the state requires all cities to develop a “general plan” laying out the future of a city’s development: a set of policy statements through which all decisions flow.¹¹⁴ Furthermore, cities must consider certain elements when drafting this general plan. These elements includes: (1) Land use—Deals with matters such as population density, building intensity and distribution of land uses within a city or county; (2) Circulation element — Deals with all major transportation improvements; (3) Housing element — must assess the need for housing for all income groups and lay out a program to meet those needs; (4) Conservation element — deals with flood control, water and air pollution, and the need to conserve natural resources such as agricultural land and endangered species (5) Open-space element — provides a plan for the long-term conservation of open space in the community (6) Noise element — identifies noise problems in the community and suggest measures for noise abatement (7) Safety element — identifies seismic, geologic, flood, and wildfire hazards, and establish policies to protect the community.¹¹⁵

These elements of a general plan provide a guideline for any potential claim against a zoning decision. A successful challenge to a zoning decision must argue that the decision violates a local zoning regulation and that the regulation itself serves an interest in protecting the health, safety, moral and general welfare of the community.

Much of the progress for local food systems that could be achieved through land use and zoning is via litigation. However, local food system advocates should also be aware of opportunities to influence the actual formulation of a community’s land use and zoning plan. Favorable regulations written in local zoning plans would increase the likelihood of success in any potential lawsuit.

IV. Examples and Recommendations for Establishing a Local Food System.

A. Public Policies for Agriculture

Many of the examples cited in this section come from articles written by Professor Neil Hamilton, the Ellis and Nelle Levitt Distinguished Professor of Law and Director of the Agricultural Law Center at Drake University Law School. Professor Hamilton's articles provide preliminary descriptions and citations which the author used to conduct further research.

1. State Promotion Programs and Campaigns

Almost every state, including California, has a state marketing and promotional campaign.¹¹⁶ In California, this program is known as "California Grown," and includes a distinct license granted by the California government as well as various marketing programs.¹¹⁷ In California, the license fees collected from members serve to promote various "California Grown" programs.

Many state promotional programs are designed to market state agricultural products to out-of-state consumers. For the development of a local food system, these promotion programs must focus on local consumers.

2. State Institutional Purchasing Programs

Stemming from the state-based marketing programs are state institutional purchase programs, which encourage or mandate state public institutions to purchase locally grown foods.¹¹⁸ According to Hamilton, two types of purchasing programs exist. The first type is a program that merely encourages public institutions to purchase locally grown food. For example, a Minnesota law entitled "Agricultural Food Products Grown in State," provides that the state's Commissioner of Agriculture "shall encourage and make a reasonable attempt to identify and purchase food products grown in this state."¹¹⁹ The second type of institutional purchasing program is one that mandates public institutions to purchase locally grown food. California's legislature passed such a bill during its 2001 – 02 legislative session.¹²⁰

These programs make sense from the standpoint of providing local farmers a dependable consumer base and by keeping money in the state and local economy. Despite these virtues, however, the Minnesota and California examples have both been eliminated. The Minnesota law was repealed while former California Governor Grey Davis vetoed the California bill. In vetoing the bill Governor Davis cited "significant costs to state and local governments" and possible "retaliatory actions by our domestic trading partners."

The idea of state development of an institutional purchasing program is not yet dead, however. In 2001, the Governor of Iowa, upon a request from the Iowa Food Policy

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Council, established a task force to study opportunities to increase institutional use of locally grown food.¹²¹

Another related food policy is the “farm-to-school” program. This program includes school purchase of local food, but also seeks to educate youth about local agriculture and its effects on the everyday lives of those in the community.¹²² In 2001, a New Mexico state bill creating a “farm-to-school” program was signed into law,¹²³ although the California statewide farm-to-school program was vetoed by the governor. Examples do exist, however, on a local level. The Santa Monica-Malibu Unified School district has successfully implemented a farm-to-school program. Named the “Farmer’s Market Salad Bar,” local schools purchase produce and other agricultural supplies from local farmers.¹²⁴ This example indicates that implementation of farm to school programs on a local level may be more successful, bypassing the difficulties of dealing with state government. Forming such programs at the local level also helps to avoid pitfalls, such as negative international and intra-national trade implications which may exist at the state level.

Institutional purchasing programs create an important direct link between local growers and local institutions. Local food system advocates should continue to lobby the state government to adopt a program similar to that which was vetoed by Governor Davis. However, currently, purchasing programs seem most successful at the local level and advocates should push for development of programs at that level.

3. Direct Farm Marketing Policies

Direct farm marketing is the process of creating opportunities for farmers to have personal contact with consumers for the purpose of selling food and other products on the farm.¹²⁵ California’s Code of Food and Agricultural contains many provisions related to direct farm marketing.¹²⁶ With detailed provisions for farmers’ market certification and other forms of direct farm marketing, California is recognized as having the country’s “strongest laws on direct farm marketing.

Direct farm marketing has many benefits both from a producer and consumer standpoint. For producers, direct farm marketing programs successfully develop alternative consumer bases, increase profits and decrease dependence on large retailers (who possess more and more bargaining power.)¹²⁷ Direct farm marketing also satisfies consumer demand for fresh and locally grown foods.¹²⁸ For these reasons, a strong direct farm marketing programs is a vital part of a successful local food system.¹²⁹

4. Food Policy Councils

A food policy council is “an officially sanctioned body of representatives from various segments of a state and local food system, and selected public officials, asked to examine the operation of a local food system and provide ideas or recommendations for how it can be improved.”¹³⁰ By bringing together members from all components of the food system—consumers, farmers, grocers, chefs, food processors, distributors, educators, and government—these councils are able to effectively examine how the food system works and how it can be improved. These councils can be created in various ways:

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through government action,¹³¹ administered by a non-profit or educational institution as an advisory body,¹³² or as a hybrid of both.¹³³

The Toronto Food Policy Council provides some successful example programs and initiatives. Established in 1991 by the city of Toronto, the Council's mission is to establish "a food system that fosters equitable food access, nutrition, community development and environmental health."¹³⁴ The council has established many programs designed to build local food systems. In the area of land use and urban planning, the Council has consulted and advised land use planning and zoning agencies on measures to preserve local farmland. The Council has also established programs of economic development including a "Buy Ontario" program which includes an institutional purchasing program between local farmers and local hospitals. The Council has also developed "community gardens" in which neighborhoods combine to grow their own food.¹³⁵ Food Policy Councils, such as the Toronto example, can serve as a catalyst for many programs serving local agriculture.

For the purposes of developing a local food system, the main objective of a Food Policy Council should be to establish a connection between local growers and local producers. This objective should be written into the Council's charter and by-laws. The council should seek to establish direct farm marketing policies such as those adopted by the Toronto Food Policy Council. As mentioned, California has strong laws on direct farm marketing that may serve as a foundation for community oriented public policies carried out by local food policy councils.

5. Federal Programs

The United State Department of Agriculture (USDA) provides many of the programs described above. For a complete description and contact information regarding these federal programs, visit the USDA website.¹³⁶ The website also provides links and contact information to programs described as "best practices."

6. Green-Box Subsidies

As mentioned, the current WTO talk surrounding agriculture may conclude with a decision to create more stringent regulations regarding amber-box domestic subsidies. These stringent regulations may penalize the current U.S. Farm Bill's payment programs. If this is the case, it may be possible to convince the federal government to allocate the domestic payment dollars (penalized under the new URAA) toward "green box" payments which help rural communities and environmental efforts. Advocates of local food systems should be aware of the status of the Farm Bill and prepare to lobby the federal government for funds.

B. Strategies and Examples in the Private Sector

Effective planning and organization in the private sector can have an immense impact on creating a complete and successful local food system. This section lays out some private sector examples and strategies for developing a local food system. The section is by no means comprehensive on the subject, but is intended as a starting point for further

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discussion and debate. First, it will address agricultural producers, and then it will briefly address food retailers.

1. Agricultural Producers

a. Choosing a Business Entity For Agricultural Producers

In reality, it would be extremely difficult to change our nation's antitrust policies and laws. The best strategy is to work around these laws through careful analysis and planning. On the agricultural side, this means either deciding to work within the cooperative structure with its benefits and limitations, or choosing another entity form. However, because of its antitrust exemptions, the agricultural cooperative appears to be the best entity to establish a strong agricultural side to a local food system. Some of the reasons for choosing the cooperative structure include the advantages of collective marketing, processing and pricing, together with the ability to specialize functions via subsidiary cooperative entities. Despite the advantages of the cooperative entity, competition will still be fierce. To compete with the consolidated food corporations, these agricultural cooperatives must form a sound legal and business strategy that allows them to differentiate themselves. Making this task even more difficult is the fact that current cooperative law, both federal and state, limits the ability of farmers to attract large capital investment. This limitation severely hampers the ability of cooperatives to compete through expansion and R&D. Thus, cooperatives must seek to compete not by economies-of-scale but rather efficiency and quality, obtained by exploiting their geographic location.¹³⁷

b. Cooperative Structure which Enhances Local Differentiation.

Cooperatives can differentiate and gain a competitive advantage in the areas of quality and localization. These two strategic points go hand in hand. A locality-based cooperative, serving local consumers, should be able to provide higher quality goods because of the proximity of its crops. The ability to bring to market a greater selection of fresher, more environmentally friendly, healthier goods will help local cooperatives achieve a competitive advantage through quality. Furthermore, through marketing and brand development, these local cooperatives may be able to impart a sense of connection to, and pride in, these local growers. Beyond local consumers, the development of regional recognition of certain products or qualities would also be an advantage to a local cooperative. (Think, for example, of the champagnes of France). It is imperative, however, to establish a business entity designed to enhance these areas of competitive advantages.

In her article, Therese Tuttle states that three characteristics are necessary to capture the potential value of locally-based cooperatives: (1) closed membership, which would allow the cooperative to better control product quality and value; (2) transferable delivery rights which may serve to increase capital investment, (but may also remove the cooperative from the exemptions under anti-trust, tax, and security laws); and (3) promotion of local production, probably the most important of the characteristics.

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CROPP (Cooperative Regions of Producer Pools) is an example of a successful cooperative that has adopted many of Tuttle's recommendations. CROPP has a closed membership (limited number of shares) and transferable delivery rights. CROPP also requires farmers to invest significant money up front to buy shares in the business. Each purchased share allows and obligates a producer to deliver a set quantity of raw product to the co-op. Another large part of CROPP's success is its brand name "Organic Valley", which the cooperative has skillfully marketed and protected.¹³⁸ However, as is often the case with the cooperative structure, CROPP also struggles with generating sufficient capital to compete with larger, corporate entities.¹³⁹

IV. Conclusion: A Model Local Food System

This article attempted to explain some of the important legal and policy issues surrounding local food systems. Developing a local food system, especially in a state with an economic base as large as California's, is a daunting task that must encompass government cooperation as well as innovative maneuvers in the private sector. Legal and policy incentives and barriers at all levels, from international trade law, federal law, state law, down to local law must be comprehensively researched and analyzed. Moreover, laying the foundation for a local food system must also consider corporate legal strategies, which would align business entity interests, both in the agricultural and retail sector, with the interests of the entire local food system.

Ideally, this article will serve as a starting point for further analysis and discussion regarding legal and policy ramifications of a local food system. Along with a more comprehensive analysis of those areas already addressed, other areas of law and policy directly relate to this issue must be considered. These areas include:

- establishing a comprehensive, federal marketing order system or intellectual property system related to agricultural products;
- establishing effective corporate governance for agricultural and retail entities interested in enhancing local food systems;
- conducting further analysis on how land zoning and real estate law could effect local food system;
- understanding how corporate mergers and acquisition law may effect private entity strategies in the context of building a local food industry market.

It is obvious that much research still needs to be done. Advocates must remember, however, all the potential benefits of a local food system. They should also recognize that many of the components of a local food system already exist and can be implemented, especially in the areas of agricultural and rural development. Thus, advocates can and should adopt a strategy of phased implementation and research. With cooperation and initiative at all levels, the ideal of a local food system benefiting both the food consumers and the food suppliers can be realized.

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Endnotes

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- ⁵ U.S. Census Bureau (1999 August). *1997 California Economic Census*, www.census.gov/prod/ec97/97r44-ca.pdf
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- ⁸ Davidson, *supra* note 2 at 57.
- ⁹ *Ibid.* at 48.
- ¹⁰ Cal Facts, California Legislative Analysts Office, December 2002 www.lao.ca.gov/2002/cal_facts/econ.html
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³⁹ URAA, Preamble, § 6

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⁵² 362 U.S. 458 (1960) (hereinafter *Milk Producers Ass'n*)

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⁵⁷ See generally *Sunkist Growers, Inc. v. Winkler & Smith Citrus Products*, 370 U.S. 19 (1962) (hereinafter *Sunkist Growers*).

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⁵⁹ Ibid. at 21-22.

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⁶¹ *Sunkist Growers, Inc.*, 389 U.S. at 23.

⁶² Ibid. at 29.

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⁶⁵ H.R.Rep. No. 24, 67th Cong. 1st Sess. 2 (1921)

⁶⁶ Ibid. At 13.

⁶⁷ *United States v. Topco Associates, Inc.*, 405 U.S. 596 (1972) (hereinafter *Topco*)

⁶⁸ Topco was not an agricultural cooperative, but rather, was a cooperative composed of 23 chains of supermarket retailers and two retailer-owned cooperative wholesalers.

⁶⁹ *Topco*, 405 U.S. 596, 597.

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⁷¹ Ibid. at 600.

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⁷³ Ibid. at 602.

⁷⁴ *Topco*, 405 U.S. at 602.

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⁷⁶ Ibid.

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⁷⁸ Ibid. at 605.

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⁸³ For a compilation of state corporate farming laws, see Harrison Pittman, *The Constitutionality of Corporate Farming Laws in the Eighth Circuit*, National Agricultural Law Center Research Article, at note 1 (June 14, 2004), www.nationalaglawcenter.org/assets/articles/pittman_corporatefarming.pdf.

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⁸⁸ Harrison Pittman, *The Constitutionality of Corporate Farming Laws in the Eighth Circuit*, National Agricultural Law Center Research Article, at 2 (stating that "it is probable that other court, namely court within the Seventh and Tenth Circuits, would look to Eighth Circuit case law on this issue in considering whether a corporate farming law violates the dormant commerce clause).

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⁹⁰ Christy Anderson Brekken, *South Dakota Farm Bureau, Inc. v. Hazeltine: The Eight Circuit Abandons Federalism, Precedent, and Family Farmers*, 22 Law & Ineq 347 (Summer 2004).

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⁹² For a complete list of passed or pending bills which ban some form of control of GMAs in the local food system see, www.environmentalcommons.org/gmo-tracker.html.

⁹³ To see the current status and amended version of California Senate Bill 1056 see http://info.sen.ca.gov/cgi-bin/postquery?bill_number=sb_1056&sess=CUR&house=B&site=sen (last visited August 9, 2005).

⁹⁴ For a more detailed article and explanation of the concerns over these state preemption laws see *Background: Industry Aims to Strip Local Control of Food Supply*, www.environmentalcommons.org/seedlawbackgrounder.html

⁹⁵ Ibid.

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¹⁰³ Sherry Keymer Dreisewerd, *Staving off the Pillage of the Village: Does In Re Wal-Mart Stores, Inc. Offer Hope to Small Merchants Struggling For Economic Survival Against Box Retailers?*, 54 Wash. U. J. Urb. And Contemp. L. 323 (Summer 1998).

¹⁰⁴ *In re Wal-Mart Stores, Inc.*, 702 A.2d 397 (Vt. 1997).

¹⁰⁵ See Sally Johnson, *Vermonters are Up Against the Wal-Mart*, INSIGHT MAG., Jan. 10, 1994, at 12.

¹⁰⁶ *In Re Wal-Mart, Inc.*, 702 A.2d at 400.

¹⁰⁷ See *In Re St. Albans Group*, 1994 WL 739724 at 12.

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¹⁰⁸ Ibid. at 12–13

¹⁰⁹ Ibid. at 13–14

¹¹⁰ See *In re Wal-Mart Stores, Inc.*, 702 A.2d 397 (Vt. 1997).

¹¹¹ Dreisewer *supra* note 101 at 324-5.

¹¹² Ibid. at 340 citing DANIEL R. MANDELKER, LAND USE § 2.39 (4th ed. 1997).

¹¹³ Ibid. at 340 citing, *Circle Lounge and Grill, Inc. v. Board of Appeal*, 86 NE2d 920 (1949)

¹¹⁴ California Codes, Government Code § 65350 (2004).

¹¹⁵ See California Code, Government Code §§ 65350-65362; See also Brandee Freeman, Paul Shigley and William Fulton, A 'constitution' for the future of a community, www.facsnet.org/tools/env_luse/Calif4.php3

¹¹⁶ Neil D. Hamilton. *Putting a Face on Our Food: How State and Local Food Policies Can Promote the New Agriculture*, 7 Drake J. Agric. L. 407, 424 (Summer 2002).

¹¹⁷ California Code of Food and Agriculture § 43100; See www.californiagrown.org/default.asp

¹¹⁸ Hamilton, *supra* note 114 at 424

¹¹⁹ Minn. Stat. Ann. § 16B.103(1) (REPEALED)

¹²⁰ California Bill, A.B. 801, 2001 Leg. 2001 – 02 Sess. (Cal. 2001)

¹²¹ Hamilton, *supra* note 114 at 426 citing Exec. Order No. 19, 23 Iowa Admin. Bull. 1940–41 (June 13, 2001).

¹²² Hamilton, *supra* note 114 at 426.

¹²³ H.Jt. Mem'l 34, 45th Leg. 1st Sess. (N.M. 2001).

¹²⁴ Gail Feenstra, *Farm to School: Institutional Marketing*, UC Sustainable Agriculture Research & Education Program, www.agofthemiddle.org/pubs/farmschool.pdf

¹²⁵ Hamilton, *supra* note 114 at 427.

¹²⁶ Cal. Food & Agric. Code § 47000 (2005).

¹²⁷ Paul W. Dobson, *Exploiting Buyer Power: Lessons from the British Grocery Trade*, 72 Antitrust L.J. 529 (2005).

¹²⁸ Hamilton, *supra* note 114 at 431; N.Y. Agric. & Mkts Law § 281 (2005)

¹²⁹ For in-depth analysis and legal guidance on direct farm marketing programs, see, Neil D. Hamilton, *The Legal Guide for Direct Farm Marketing*, Drake University Agricultural Law Center, (1999).

¹³⁰ Hamilton, *supra* note 114 at 442.

¹³¹ Hamilton, *supra* note 114 at 446 (North Carolina and Utah's councils function as bodies of the state departments of agriculture.

¹³² Ibid. (Connecticut's council is administered by the council in cooperation with the state department of agriculture).

¹³³ Ibid. (Iowa's council is administered by the Agricultural Law Center at Drake University in conjunction with the Office of the Governor.)

¹³⁴ www.city.toronto.on.ca/health/tfpc_index.htm

¹³⁵ Ibid.

¹³⁶ www.usda.gov/wps/portal/lut/p/_s.7_0_A/7_0_10B?navtype=SU&navid=RURAL_DEVELOPMENT

¹³⁷ See Generally Therese C. Tuttle, *Champagne vs. Grape Juice: Defending, Adding Value, or Discovering Value at the Farm Gate: New Strategies for the California Cooperative*, 5 Drake J. Agric. L. 193.

¹³⁸ See Maria Powell and Greg Lawless, *CROPP Cooperative: A Case Study*, Funded by an Initiative for the Future Agricultural and Food Systems, A Program of the United States Department of Agriculture, www.agofthemiddle.org/pubs/cropp.pdf

¹³⁹ Ibid. at 9.