

YOU CAN'T HAVE YOUR BEEF AND EAT IT TOO:  
THE STATUTORY EFFECT OF  
ANTI-CORPORATE FARMING ACTS ON  
FAMILY FARMS AND BEEF CORPORATIONS

Kaitlyn Trout\*

I. INTRODUCTION

In 1930, American painter Grant Wood created his most famous work, *American Gothic*, which is said to depict “rural American values.”<sup>1</sup> Yet, despite Wood being dead only half a century, the timeless painting is truly “hopelessly antiquated.”<sup>2</sup> Where red wooden barns and farmhouses once dotted the plains now stand “all-purpose metal buildings” that contain thousands of cattle packed in zero-vegetation corrals.<sup>3</sup> The farmer holding his pitchfork, demonstrating dedication to hard work and manual labor, has been replaced by automatic feeders.<sup>4</sup> Harder still to find would be a family-run farm. Despite there being “over 313,000,000 people living in the United States . . . less than 1% claim farming as an occupation.”<sup>5</sup> In the industrial, commercial age of the 21st century, should we be concerned about preserving the family farm, and if so, how is that to be done?

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\* Kaitlyn Trout is currently a student at Oklahoma City University School of Law and an Articles Editor for the Oklahoma City University Law Review. She would like to thank Professor Paula Dalley for advising this Note. She would also like to thank her husband, Andrew Salomon, for his support and always buying grass-finished beef.

1. WOOD ET AL., *THE ART INSTITUTE OF CHICAGO* 56 (2013).

2. KEN MIDKIFF, *THE MEAT YOU EAT: HOW CORPORATE FARMING HAS ENDANGERED AMERICA'S FOOD SUPPLY* 2 (2004).

3. *Id.*

4. *Id.*

5. *Demographics, AG 101*, U.S. ENVTL. PROTECTION AGENCY, <http://www.epa.gov/oecaagct/ag101/> (last updated Aug. 14, 2014).

Currently, eight midwest states have expressly prohibited corporations from specific agricultural endeavors.<sup>6</sup> These restrictions, found in Kansas, Minnesota, Missouri, North and South Dakota, Wisconsin, Iowa, and Oklahoma, are well known as “anti-corporate farming” or “family farm” statutes.<sup>7</sup> Historically, such legislation was implemented to protect the family farm’s rural lifestyle from economic development dominated by corporate monopolies.<sup>8</sup> Yet today’s corporations basically run the entire agricultural business “from semen to cellophane.”<sup>9</sup> In 2012, corporate feedlots and facilities produced 97% of beef processed in the United States: “Although modern livestock facilities are clearly based on an industrial model, in the eyes of state and federal agencies, they fit the legal definition of ‘farm.’”<sup>10</sup>

How do these anti-corporate farming statutes affect our 21st-century family ranchers who are no longer food-to-mouth, isolated operations but are instead unique and prosperous businesses? Do these antiquated statutes continue to shield family farms from destructive corporations, or are they instead restricting the family farmer’s growth? Additionally, how do these statutes affect corporations’ involvement in agriculture and ranching? This Note will take an overarching look at seven of the existing family farm acts, noting the differences and similarities of each. The Note will then look at the oldest family farm act, the Oklahoma statute.<sup>11</sup> By looking at Oklahoma’s agricultural history, it is apparent that the Oklahoma statute is antiquated, not only in its purpose of protecting family farmers against corporations but also in its attempt to restrict corporations.<sup>12</sup> This Note argues that the Oklahoma anti-corporate farming statute not only restricts a family farmer’s power to

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6. Brian F. Stayton, *A Legislative Experiment in Rural Culture: The Anti-Corporate Farming Statutes*, 59 UMKC L. REV., 679, 679 (1991). Nebraska’s constitutional amendment for family farms has been held unconstitutional. *See Jones v. Gale*, 470 F.3d 1261, 1267–68 (8th Cir. 2006).

7. Stayton, *supra* note 6, at 679 (internal quotation marks omitted).

8. *Id.* at 689.

9. MIDKIFF, *supra* note 2, at 6.

10. *Id.* at 7; Faith Mangan, *Health, The Drive for Grass-fed Beef*, FOX NEWS (Nov. 23, 2012), <http://www.foxnews.com/health/2012/11/23/drive-for-grass-fed-beef/#ixzz2Jal uihvZ>.

11. Cmty. Envtl. Legal Def. Fund, *Anti-Corporate Farming Laws in the Heartland*, COMMUNITY ENVTL. LEGAL DEF. FUND, <http://celdf.org/anti-corporate-farming-laws-in-the-heartland> (last visited Sept. 13, 2014).

12. *See* OKLA. STAT. tit. 18, §§ 951, 954 (2011) (OSCN through 2014 Leg. Sess.).

expand but also prohibits corporations from engaging in grass-finished beef.<sup>13</sup>

## II. THE RATIONALE BEHIND FAMILY FARM ACTS

The anti-corporate farming acts have their foundation in Thomas Jefferson's sociopolitical "agrarian philosophy."<sup>14</sup> His philosophy repeatedly emphasized the important connection between democracy and "independent, free-holding farmers" who provided "the soundest foundation" for a republic.<sup>15</sup> He believed that "the family farm should be self-contained and non-commercial, that farmers should be morally sound, politically free and not subject to the demands of the marketplace."<sup>16</sup> Jefferson's comments suggest that "the family farm was the most desirable farm system within the total economic picture."<sup>17</sup> Not surprisingly, this deep-rooted ideology remains ingrained in most Americans; that it also guided the creation of the anti-corporate farming acts is no surprise.<sup>18</sup>

Preserving the family farm and its unique "rural culture" forms the basis for these statutes.<sup>19</sup> For instance, Minnesota's statute seeks "to encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family."<sup>20</sup> Likewise, South Dakota linked "the family farm to the economic and moral stability of the state," establishing measures that would protect "the existence of the family farm . . . threatened by conglomerates in farming."<sup>21</sup> Similarly, Iowa meant "to preserve free and private enterprise, prevent monopoly, and also to protect consumers by regulating the balance of competitive

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13. Grass-finished cattle mature to slaughter age without being sent to a feedlot. Some grass-fed cattle might not be grass-finished but, in an effort "to hurry the process," transferred to feedlots and fed grain until slaughter. See Rebecca Eissenberg, Note, 45 WASH. U. J.L. & POL'Y 221, 223 & n.9 (2014).

14. Stayton, *supra* note 6, at 688.

15. *Id.* (quoting David A. Myers, *Farmland Preservation in a Democratic Society: Looking to the Future*, 3 AGRIC. L.J. 605, 606 (1982)).

16. James B. Wadley, *Small Farms: The USDA, Rural Communities and Urban Pressures*, 21 WASHBURN L.J. 478, 481 (1982).

17. *Id.*

18. Stayton, *supra* note 6, at 688–89.

19. *Id.* at 687.

20. MINN. STAT. § 500.24(1) (2012).

21. S.D. CODIFIED LAWS § 47-9A-1 (2007).

forces.”<sup>22</sup> Through these anti-corporate farming acts’ purposes, the Jeffersonian agrarian tradition continues.<sup>23</sup>

Originally, these eight midwestern states’ family farm acts succeeded in protecting the family farm.<sup>24</sup> However, this Note argues that despite these statutes still being in effect today, they no longer protect the family farm; instead, they hinder the development and success of family farms while simultaneously prohibiting corporate grass-fed beef enterprises. As the following sections demonstrate, these statutes remain in place either to protect a cultural relic or to protect some other unstated purpose, such as other economic interests. With a closer look at these provisions and a more thorough review of Oklahoma’s statute, this Note argues that states should modify their anti-corporate statutes to resemble Wisconsin’s more flexible focus on farm production.

### III. SUMMARY OF THE STATUTORY PROVISIONS

#### A. Family Farm Corporations

The eight anti-corporate farming laws each have three main parts. First, the laws prohibit corporations from engaging in certain activities.<sup>25</sup> Second, with regard to those restricted activities, the laws provide industry-specific exceptions.<sup>26</sup> Third, in addition to these exceptions, each state’s law provides certain qualified-entities exemptions.<sup>27</sup> While all eight anti-corporate statutes allow family farms to incorporate<sup>28</sup> if the shareholders are related family members,<sup>29</sup> each statute is unique in its exemptions.<sup>30</sup> Many of the statutes allow more than just the family farm

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22. IOWA CODE § 202B.101 (2014).

23. Stayton, *supra* note 6, at 689.

24. See, e.g., Matthew M. Harbur, *Anti-Corporate, Agricultural Cooperative Laws and the Family Farm*, 4 DRAKE J. AGRIC. L. 385, 389–91 (1999) (citing *Asbury Hosp. v. Cass Cnty.*, 326 U.S. 207 (1945); *MSM Farms, Inc. v. Spire*, 927 F.2d 330 (1991)) (discussing how the Supreme Court and the Eighth Circuit have construed state anti-corporate statutes in favor of family farms in North Dakota and Nebraska).

25. See, e.g., OKLA. STAT. tit. 18, § 951 (2011) (OSCN through 2014 Leg. Sess.).

26. *Id.* § 951(A)(1)–(3).

27. *Id.* § 954.

28. See, e.g., KAN. STAT. ANN. § 17-5904(a) (2013) (“No corporation . . . other than a family farm corporation . . . shall, either directly or indirectly, own acquire or otherwise obtain or lease any agricultural land in this state.”).

29. See, e.g., OKLA. STAT. tit. 18, § 951(A)(3).

30. Compare *id.* § 954(5), (7) (listing exemptions to include corporations that raise livestock for “fluid milk processing” and corporations that “engage[] in forestry”), with

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to engage in ranching and agriculture, such as corporations being able to obtain real estate for “a bona fide encumbrance taken for the purposes of security,”<sup>31</sup> for research or experiments,<sup>32</sup> or for seed growing.<sup>33</sup> Below are each state’s own peculiarities to its individual family farm act.<sup>34</sup>

## 1. Kansas

Kansas originally enacted a rigid corporate-farming prohibition<sup>35</sup> in 1941 as a result of the rise and fall of the Wheat Farm Company.<sup>36</sup> In 1981, the Kansas legislature repealed the former rigid statute, which stated “[t]hat no Kansas corporation . . . shall be given permission to do business in Kansas . . . [with the purpose of] engag[ing] in agricultural or horticultural business”<sup>37</sup> and replaced it with a more lenient standard, permitting incorporated family farms to engage in agricultural business.<sup>38</sup> Additionally, the Kansas statute has specific exceptions that allow corporate farming, including the following: land that “is necessary for the operation of a nonfarming business,”<sup>39</sup> “[a] municipal corporation,”<sup>40</sup> corporations involved in selling alfalfa,<sup>41</sup> or corporations “organized for coal mining purposes.”<sup>42</sup>

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MO. REV. STAT. § 350.15(5), (6) (2000) (including exemptions for corporations partaking in wine distillery and “alfalfa dehydration”).

31. KAN. STAT. ANN. § 17-5904(1). *See also* S.D. CODIFIED LAWS § 47-9A-6 (2007); MO. REV. STAT. § 350.015(1); MINN. STAT. § 500.24(x) (2012).

32. KAN. STAT. ANN. § 17-5904(10); S.D. CODIFIED LAWS § 47-9A-9; IOWA CODE § 9H.4(1)(b) (2014); MO. REV. STAT. § 350.015(4); MINN. STAT. § 500.24(p); WIS. STAT. § 182.001(2)(d) (2014).

33. KAN. STAT. ANN. § 17-5904(11); S.D. CODIFIED LAWS § 47-9A-10; MO. REV. STAT. § 350.010(5); MINN. STAT. § 500.24(q); WIS. STAT. § 182.001(2)(d).

34. Oklahoma’s family farm act will be discussed later in the Note.

35. KAN. STAT. ANN. § 17-5903(j) (defining family farm corporations as agricultural businesses where the “majority of the voting stock is held by” lineally related persons and where “at least one . . . stockholder[]” either lives on the farm or manages the farm production).

36. 6 NEIL E. HARL, *AGRICULTURAL LAW: AGRICULTURAL, ESTATE, TAX, AND BUSINESS PLANNING* § 51.04[1] (1991).

37. KAN. STAT. ANN. § 17-202(a) (1935); HARL, *supra* note 36, § 51.04[2][a][i].

38. *See* KAN. STAT. ANN. § 17-5904(a) (2013).

39. *Id.* § 17-5904(a)(3).

40. *Id.* § 17-5904(a)(5).

41. *Id.* § 17-5904(a)(11).

42. *Id.* § 17-5904(a)(13).

## 2. North Dakota

North Dakota's anti-corporate farming act<sup>43</sup> first appeared in 1931 and prohibited all corporations "from engaging in farming."<sup>44</sup> The statute provided that "[a]ll corporations . . . are hereby prohibited from engaging in the business of farming or agriculture."<sup>45</sup> Additionally, in the 1940s, the North Dakota Supreme Court reiterated the statute's strictness, holding that corporations could not acquire any real estate for farming or agriculture.<sup>46</sup> This rigid standard remained in effect until 1981, when the statute was amended to allow family farms to incorporate and retain agricultural lands.<sup>47</sup> Currently, North Dakota has the strictest anti-corporate farming act in the country: the act retains its original intention of prohibiting corporate ownership of agricultural lands.<sup>48</sup>

## 3. Minnesota, South Dakota, Missouri, and Iowa

Minnesota, South Dakota, Missouri, and Iowa are all significantly similar in that all their statutes contain the broadly stated anti-corporate farming provision prohibiting corporations from engaging in agricultural endeavors;<sup>49</sup> thus, for the purposes of this Note, they will be included in

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43. N.D. CENT. CODE § 10-06.1-12 (2003 & Supp. 2012). Family farms may incorporate if they have 15 or fewer shareholders that are related. The corporate officers and directors "must be shareholders" and be directly involved in the operation of the corporation. "At least one . . . shareholder[] must resid[e] on or operat[e] the farm." Finally, "at least sixty-five percent of the gross income" from the past five consecutive years must be "from farming or ranching operations." *Id.*

44. Cmty. Envtl. Legal Def. Fund, *supra* note 11.

45. N.D. CENT. CODE § 10-06-01 (repealed 1981).

46. *Asbury Hosp. v. Cass Cnty.*, 7 N.W. 438, 450–51 (1943) (holding that the statute was constitutional).

47. N.D. CENT. CODE § 10-06.1-12 (2003 & Supp. 2012). *See also* Cmty. Envtl. Legal Def. Fund, *supra* note 11.

48. *See generally* Cmty. Envtl. Legal Def. Fund, *supra* note 11.

49. In Minnesota, a family farm is a corporation where "the majority of the stock is held by" people and not corporations. The stockholders must be either owners of the land, spouses of the landowners, or "related to each other within the third degree of kindred." One of the shareholders must either live on the land or manage the corporation. MINN. STAT. § 500.24(2)(c) (2012). A family farm corporation in South Dakota is defined as "any corporation founded for the purpose of farming and the ownership of agricultural land" with residential and management requirements similar to Minnesota's except that corporations cannot be stockholders. S.D. CODIFIED LAWS § 47-9A-14 (2007). A Missouri family farm corporation's purpose must be farming with "at least one-half of stockholders" being members of the same family. A minimum of one stockholder must maintain the farm by either living on or cultivating the land. MO. REV. STAT. § 350.010(5)

one section. Minnesota adopted its anti-corporate farming act in 1973.<sup>50</sup> Shortly thereafter, South Dakota, Missouri, and Iowa enacted their statutes.<sup>51</sup> Despite all these statutes containing the anti-corporate farming provisions, each of the states has its own specific exceptions; Missouri's and Iowa's exceptions have been included in this Note due to their uniqueness.

The Missouri statute allows for corporate growing of "nursery plants, vegetables, grain or fruit used exclusively for brewing or winemaking or distilling purposes and not for resale."<sup>52</sup> Missouri also broadly grants corporations the right to acquire any interest in land for immediate or potential use in nonfarming purposes, allowing "such acreage as may be necessary to its nonfarm business operation."<sup>53</sup> Additionally, Missouri is the only state that has completely exempted the anti-corporate farming statute from applying to counties that finish swine and have between 3,000 and 4,000 inhabitants.<sup>54</sup>

Iowa has a unique organization of its anti-corporate farming statute. Instead of prohibiting corporations based on shareholders or total income, Iowa prohibits corporate involvement in multiple agricultural business sectors.<sup>55</sup> For example, Iowa would prohibit corporate ownership of both a feedlot and a slaughterhouse. Specifically for beef, Iowa prohibits any "person who alone or in conjunction with others directly or indirectly controls the manufacturing, processing, or preparation" of cattle for beef consumption.<sup>56</sup> This relates to Iowa's stated statutory purpose, which is to "preserve free and private enterprise [and] prevent monopoly."<sup>57</sup> By preventing vertical integration, Iowa attempts to keep the industry from being corporately dominated.<sup>58</sup> The

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(2000). Farming must constitute at least 60% of an Iowa family farm corporation's gross revenues from the last three years. All voting stock members must be actual persons related to one another. IOWA CODE § 9H.1(9) (2014).

50. Cmty. Envtl. Legal Def. Fund, *supra* note 11.

51. Nancy Thompson, Univ. of Neb.–Lincoln, *Anti-Corporate Farming Laws*, ENCYCLOPEDIA GREAT PLAINS (2011), <http://plainshumanities.unl.edu/encyclopedia/doc/egp.law.004>.

52. MO. REV. STAT. § 350.015(5) (2000).

53. *Id.* § 350.015(8).

54. *Id.* § 350.016.

55. IOWA CODE § 202B.201(1) (2014).

56. *Id.* § 202B.102(10).

57. *Id.* § 202B.101.

58. This is contrary to the poultry and swine business, which produces exclusively by vertical integration. See Jennifer Alyson, *Vertical Integration in the Beef Industry*, HOUSTON CHRON., <http://smallbusiness.chron.com/vertical-integration-beef-industry->

only additional steps of processing that a corporation may engage in are activities that “carry[] on legitimate research, or educational, or demonstration activities.”<sup>59</sup>

#### 4. Wisconsin

In 1973, Wisconsin created an anti-corporate farming act.<sup>60</sup> Unlike some of the more rigorous state statutes, Wisconsin has only one statute designed to protect family farms.<sup>61</sup> The Wisconsin act is unique because it regulates what the farm can produce rather than how the farm is structured.<sup>62</sup> This act prohibits corporate “production of wheat, field corn, barley, oats, rye, hay, pasture, soybeans, millet and sorghum.”<sup>63</sup> Additionally, Wisconsin is unique because it does not establish a time limit for agricultural corporations but rather allows them to incorporate as long as they do not expand their acreage “by more than 20% in any 5-year period.”<sup>64</sup>

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14614.html (last visited Aug. 29, 2014). Vertical integration occurs when “one company takes over multiple phases of production and distribution to create efficiencies and reduce costs.” *Id.* Thus, in the poultry business, one farm would be exclusively in control of a batch of chicks and raise them until ready for slaughter. In vertical integration, the producing company provides all supplies. The beef industry, however, has multiple companies handling the beef at different stages of production. *Id.* In addition to statutory bars, the beef industry’s lack of vertical integration is due to the nature of beef raising. CLEMENT E. WARD, VERTICAL INTEGRATION COMPARISON: BEEF, PORK, AND POULTRY 2 (1997). Because of cattle’s sheer size, it is argued that vertical integration cannot exist in the beef industry. For instance, while poultry production consists of only two stages for “hatching or birth and growing,” cattle undergo three stages—breeding, fattening, and slaughtering—that “increase[] the beef industry’s costs and require[] additional management expertise.” Alyson, *supra*. Finally, cattle take a much longer time to exhibit “favorable characteristics for eating” as compared to poultry, thereby creating longer time periods between production cycles. *Id.*

59. IOWA CODE § 202B.201(3).

60. Cmty. Envtl. Legal Def. Fund, *supra* note 11.

61. Wisconsin does not separate corporations between family farms or corporate farming entities. Instead, Wisconsin allows any corporation to engage in farming activities if it meets the following criteria: (1) a maximum of 15 shareholders, (2) only two types of stock, and (3) no corporate shareholders. WIS. STAT. § 182.001 (2014).

62. *See id.* § 182.001(3).

63. *Id.*

64. *Id.* § 182.001(2)(c)(2).



*B. Feedlots*

In addition to engaging in agriculture, corporations are also given the power to own feedlots, also known as confined feeding operations.<sup>65</sup> Feedlots are the biggest contributor to today's agricultural business; beef feedlots are responsible for feeding "14 million head of cattle per year."<sup>66</sup> The Environmental Protection Agency (EPA) defines Animal Feeding Operations (AFOs) as "agricultural operations where animals are kept and raised in confined situations. AFOs congregate animals, feed, manure and urine, dead animals, and production operations on a small land area."<sup>67</sup> Livestock in feedlots are different from grass-finished livestock because feedlot cattle receive their feed in confined spaces in large group troughs and do not graze.<sup>68</sup> Feedlot cattle usually spend around a year in the pasture before being "transported to a feedlot . . . [where they] usually spend around three to six months" before going to slaughter.<sup>69</sup> They gain, on average, "between 2.5 and 4 pounds per day."<sup>70</sup> They live in cramped spaces—"pens that house between 100 to 125 other cattle and allow about 125 to 250 square feet per animal."<sup>71</sup> This leaves each cow with only "1 foot of space at the feed" trough, where it is fed twice a day.<sup>72</sup> Feedlots are specifically categorized by a confined area that has "no grass or other vegetation . . . during the normal growing season."<sup>73</sup>

The majority of the states include a feedlot provision in their family farm or anti-corporate farming acts. In Kansas, Minnesota, South Dakota, and Missouri, the anti-corporate farming statute allows corporations to own agricultural land, if the land is acquired for the sole

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65. See, e.g., S.D. CODIFIED LAWS § 47-9A-11 (2007).

66. Frank Michael Mitlöhner, Behavioral and Environmental Management of Feedlot Cattle 1 (Aug. 2000) (unpublished Ph.D. dissertation, Texas Tech University), available at <https://repositories.tdl.org/ttu-ir/bitstream/handle/2346/19412/31295015734295.pdf?sequence=1>.

67. *What Is a CAFO?*, Region 7 Concentrated Animal Feeding Operations (CAFO), U.S. ENVTL. PROTECTION AGENCY, <http://www.epa.gov/Region7/water/cafo/index.htm> (last visited Nov. 4, 2013).

68. *Id.*

69. NAT'L CATTLEMEN'S BEEF ASS'N, FACT SHEET: FEEDLOT FINISHING CATTLE (2006), available at [http://www.beefusa.org/uDocs/Feedlot%20finishing%20fact%20sheet%20FINAL\\_4%2026%2006.pdf](http://www.beefusa.org/uDocs/Feedlot%20finishing%20fact%20sheet%20FINAL_4%2026%2006.pdf).

70. *Id.*

71. *Id.*

72. *Id.*

73. *What Is a CAFO?*, *supra* note 67.

purpose of a feedlot.<sup>74</sup> Iowa's statute expressly prohibits corporations from raising grass-finished livestock.<sup>75</sup> North Dakota's statute allows any corporation to own a feedlot if the proper forms and fees are satisfied.<sup>76</sup>

Wisconsin is the only state that recognizes feedlots as an agricultural business, and as such, expressly rejects corporate feedlots.<sup>77</sup> Uniquely, Wisconsin recognizes that feedlots are part of the agricultural industry—"Agricultural use" means . . . feedlots."<sup>78</sup> Thus, Wisconsin has stayed true to the family farm act's original intention.<sup>79</sup>

#### IV. OKLAHOMA

Oklahoma's family farm act is the oldest.<sup>80</sup> The state has restricted corporate real estate ownership since statehood in 1907,<sup>81</sup> choosing to

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74. See KAN. STAT. ANN. § 17-5904(8) (2013) (noting that Kansas allows corporations to own or lease agricultural land if it is being used for a feedlot or poultry confinement facility); MINN. STAT. § 500.24(2)(a) (2012) (noting that Minnesota excludes "the feeding and caring for livestock that are delivered to a corporation for slaughter or processing for up to 20 days before slaughter or processing" from its farming definition); S.D. CODIFIED LAWS § 47-9A-11 (2007) (noting that South Dakota's prohibition on corporate farming and agriculture does "not apply to agricultural lands acquired by a corporation solely for the purpose of feeding livestock"); MO. REV. STAT. § 350.010(6) (2000) (noting Missouri's family farm act allows corporations to engage in feedlots by not including it in the definition of farming).

75. IOWA CODE § 172D.1(6) (2014). Iowa is unique in that it is one of the only states that expressly allows two different types of feeding operations: confined and open feedlots. *Id.* § 459.102(14) (defining a "confinement feeding operation" . . . [as] an animal feeding operation in which animals are confined to areas which are totally roofed"). *Id.* § 459A.102(17) (defining "open feedlot operation" . . . [as] an unroofed or partially roofed animal feeding operation if crop, vegetation, or forage growth or residue cover is not maintained as part of the animal feeding operation during the period that animals are confined in the animal feeding operation").

76. N.D. CENT. CODE § 36-01-29 (Supp. 2014) ("Any person may . . . obtain a license for the feedlot upon filing an application with the commissioner and upon the payment of an annual fee of fifty dollars to the commissioner.").

77. WIS. STAT. § 182.001(3) (2014).

78. *Id.* § 30.40(1).

79. See *supra* Part II.

80. Cmty. Envtl. Legal Def. Fund, *supra* note 11. See OKLA. STAT. tit. 18, § 951(A)(1)–(3) (2011) (OSCN through 2014 Leg. Sess.) (stating that domestic corporations can engage in farming if (1) there are no corporate shareholders, (2) gross income from farming or ranching does not exceed 35%, and (3) "not . . . more than ten shareholders" own the farm unless they are related).

81. Cmty. Envtl. Legal Def. Fund, *supra* note 11.

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include such restrictions in a constitutional provision.<sup>82</sup> The Oklahoma Constitution states, “No corporation shall be created or licensed in this State for the purpose of buying, acquiring, trading or dealing in real estate other than real estate located in incorporated cities and towns.”<sup>83</sup>

#### A. Oklahoma Agricultural History

Pre-statehood Oklahoma residents recognized that their state would have a large agrarian economy: “agriculture is, and will be for years to come, if not forever, the leading industry in our State.”<sup>84</sup> The Land Run of April 22, 1889, brought “thousands of people . . . into the Unassigned Lands” to claim 160-acre lots.<sup>85</sup> In the last decade of the 19th century, “the number of farms increased from 8,826 to 108,000. By 1910 . . . the number had jumped to 190,192.”<sup>86</sup> During this time period, those who claimed land allotments were subsistence farmers.<sup>87</sup>

As a result of the paramount effect of agriculture and ranching on Oklahoma’s citizens and the economy, the state constitution crafted a section designed to protect these farmers’ livelihood.<sup>88</sup> At the time of the state’s constitutional drafting, newspaper articles demonstrated the popular public feeling of resentment against corporations: “[W]ith the growth of great private corporations . . . has come the necessity for . . . rigid enforcement of all the laws enacted to restrain the rich and powerful from encroaching upon the natural and legal rights of the poor and weak.”<sup>89</sup>

The public dislike was particularly strong against corporations that engaged in farming and ranching; therefore, corporations received “the

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82. Frank H. Greer, *The Oklahoma Constitution*, OKLA. ST. CAPITAL (Guthrie, Okla.), Apr. 2, 1907, at 7.

83. OKLA. CONST. art. XXII, § 2.

84. Gilbert C. Fite, Okla. Historical Soc’y, *Farming*, ENCYCLOPEDIA OKLA. HIST. & CULTURE, <http://digital.library.okstate.edu/encyclopedia/entries/F/FA019.html> (last visited Nov. 12, 2013) (quoting OKLA. STATE BD. OF AGRIC., REPORT—OKLAHOMA STATE BOARD OF AGRICULTURE: 1907–1908, at 1 (1908)).

85. *Id.*

86. *Id.*

87. *Id.*

88. See OKLA. STAT. tit. 18, § 951 (2011) (OSCN through 2014 Leg. Sess.).

89. John A. Johnson, *Johnson at Shiloh*, THE STATESMAN (Foyil, Okla.), Apr. 25, 1908. See also Tom B. Woosley, *The President’s Annual Message*, MULHALL ST. J. (Mulhall, Okla.), Dec. 7, 1906 (calling for greater restrictions on corporations because of their broad power exerted beyond state boundaries).

right to engage in any business or occupation, except agriculture.”<sup>90</sup> One of the central arguments against keeping corporations out of the agricultural industry was that corporations are perpetual:

Man is a creature endowed with some of the attributes of divinity, an endowment constantly enlarged by the process of civilization. He has hope, love, pity, compassion and remorse.

The corporation a (creation of man) [sic] has none of these, neither is a corporation limited in size, strength or length of days. However evil a man’s days may be, they will have an end. The corporation is immortal.<sup>91</sup>

By the first quarter of the 21st century, Oklahoma farms averaged 166 acres each, but even the largest farms—many over 260 acres—were family enterprises that predominantly used horses and plows.<sup>92</sup> The politics of the era similarly demonstrated a desire to protect these family enterprises.<sup>93</sup> In 1918, Oklahoma “[f]armers . . . joined the Nonpartisan League . . . and demanded that the state establish state-owned marketing facilities to help [family] farmers.”<sup>94</sup> In 1922, the farmers elected Jack Walton for governor, who belonged to the Oklahoma Farmer-Labor Reconstruction League.<sup>95</sup> He promised during his campaign to create state-owned enterprises, but once in office, “he was unable to push any of the league’s programs through the legislature and was eventually impeached.”<sup>96</sup>

With the onset of the Great Depression and the Dust Bowl, Oklahoma family farmers suffered severely.<sup>97</sup> Correspondence from discouraged family farmers demonstrates the hopelessness they felt: “They had tried to improve their position in the economy . . . by forming agricultural cooperatives” and “had appealed for state and federal help” but received no relief.<sup>98</sup> The only help they received was from the United

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90. Hess & Carr, *A Constitution of the People*, NORMAN DEMOCRAT–TOPIC (Norman, Okla.), Mar. 15, 1907 (internal quotation marks omitted).

91. O.S. Daws, *The People Still Speak: They Say They Will Rule*, FARMERS UNION ADVOCATE (Guthrie, Okla.), May 19, 1910, at 2.

92. Fite, *supra* note 84.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

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States Department of Agriculture (USDA), which suggested that family farmers “become more self-sufficient,” despite the farmers having already “lowered their standard of living ‘to an extent reminiscent of pioneer days.’”<sup>99</sup> The Great Depression and the Dust Bowl resulted in the loss of 71,079 farms between 1935 and 1950.<sup>100</sup>

The shift from family farms to corporate entities began with the economic boom of WWII; farming experienced a technological revolution that irreversibly and completely altered the farming and ranching industry.<sup>101</sup> With the economic boom,

tractors replaced mules and horses; so quickly, in fact, that [in 1959] the USDA census of agriculture stopped counting draft animals [completely because] there were so few. “Scientific advancements in seeds, animal genetics, fertilizers and agricultural chemicals that were developed . . . during World War II became widely accepted and implemented by farmers who . . . had the necessary capital.”<sup>102</sup>

But most family farmers did not have the necessary capital to survive, let alone purchase advanced equipment.<sup>103</sup> As a result, family farms sold out to corporations that would become the center of attention in the late 1960s.<sup>104</sup>

Although there were a variety of Oklahoma cases surrounding corporate farming, the most famous of these cases was *LeForce v. Bullard*.<sup>105</sup> In *LeForce*, the Oklahoma Court held that Article XXII, § 2, of the Oklahoma state constitution did not prohibit corporations from owning agricultural real estate.<sup>106</sup> Shortly after, the Oklahoma legislature enacted title 18, § 951, which prohibits all corporations from being engaged in ranching or farming.<sup>107</sup> Domestic corporations can

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99. *Id.*

100. *Id.*

101. Ryan Stockwell, *The Family Farm in the Post-World War II Era: Industrialization, the Cold War and Political Symbol*, at 1–2, 4 (Aug. 2008) (unpublished Ph.D. dissertation, University of Missouri—Columbia), available at <https://mospace.umsystem.edu/xmlui/bitstream/handle/10355/7196/research.pdf?sequence=3>.

102. *Id.* at 3.

103. *Id.* at 4–5.

104. *Id.*

105. *LeForce v. Bullard*, 454 P.2d 297, 304 (Okla. 1969).

106. *Id.* at 302–04.

107. OKLA. STAT. tit. 18, § 951 (2011) (OSCN through 2014 Leg. Sess.).

incorporate only if they qualify as family farms, which are characterized by limited numbers of shareholders and minimum percentages of gross total income coming from ranching or farming.<sup>108</sup> Yet § 954 includes a list of exemptions where § 951 does not apply.<sup>109</sup> The exempted activities allow corporations to engage in agricultural activities, including forestry,<sup>110</sup> fluid milk processing,<sup>111</sup> poultry<sup>112</sup> or pork<sup>113</sup> operations, research concerned with feeding of livestock,<sup>114</sup> and “the production and raising of livestock or poultry for sale.”<sup>115</sup>

### B. Oklahoma Feedlots

#### 1. Oklahoma Feedlots Today

Post *LeForce*, Oklahoma has done little to change its anti-corporate farming statutes.<sup>116</sup> To start, § 951 has not been challenged since its enactment after *LeForce* in 1969.<sup>117</sup> The Oklahoma legislature did modify the act in the early 1990s, but these modifications were not meant to favor family farmers.<sup>118</sup> Instead, they were intended “to accommodate the influx of corporate agricultural enterprises in[] the state.”<sup>119</sup> As a result, these amendments effected a “rapid influx of several large corporate farming enterprises, particularly in the western part of the state.”<sup>120</sup>

In April 2007, the Oklahoma legislature further extended corporate agricultural power by both proposing and approving significant

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108. *Id.*

109. *See id.* § 954.

110. *Id.* § 954(5).

111. *Id.* § 954(7).

112. *Id.* § 954(4).

113. *Id.* § 954(3).

114. *Id.* § 954(1).

115. *Id.* § 954(2).

116. *See* JAMES E. HORNE, KERR CTR. FOR SUSTAINABLE AGRIC., RURAL COMMUNITIES AND CAFOs: NEW IDEAS FOR RESOLVING CONFLICT 27–28 (2000), available at <http://www.kerrcenter.com/publications/CAFO.pdf> (noting that the statute was last updated in the 1990s and was later altered by additional exceptions allowing corporations to engage in other areas of agriculture).

117. *Id.* (summarizing all legislative activity without mention of any challenges made toward the statute).

118. OKLA. STAT. tit. 18, § 954 (1991) (adding paragraphs three and four, which added extensive exemptions for corporations).

119. HORNE, *supra* note 116, at 27.

120. *Id.*

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amendments and new laws for the Oklahoma Concentrated Animal Feeding Operation Act the same day.<sup>121</sup> Oklahoma defines feedlot as follows:

“Animal feeding operation” means a lot or facility where the following conditions are met:

- a. animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period, and
- b. crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.<sup>122</sup>

The EPA defines Concentrated Animal Feeding Operations (CAFOs) as a “congregat[ion of] animals, feed, manure and urine, dead animals, and production operations on a small land area. Feed is brought to the animals rather than the animals grazing or otherwise seeking feed in pastures, fields, or on rangeland.”<sup>123</sup> A CAFO has more livestock on the same amount of land than an AFO.<sup>124</sup> To qualify as a CAFO, the operation must first meet the definition of an AFO—where animals are confined “for at least 45 days in a 12-month period” with “no grass or other vegetation in the confinement area”—and then fall into one of the regulatory definitions of a large CAFO, medium CAFO, or small CAFO.<sup>125</sup> For beef, large CAFOs confine a minimum of 1,000 head of cattle at all times.<sup>126</sup> A medium CAFO has 300–999 head of cattle at all times and must have “a manmade ditch or pipe that carries manure or wastewater to surface water,” or the cattle must have surface water that is

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121. 2007 Okla. Sess. Laws 238–60 (amending the then-existing act to be applicable only to swine operations but creating new provisions that expand CAFO requirements).

122. OKLA. STAT. tit. 2, § 20-41(B)(2) (2011) (OSCN through 2014 Leg. Sess.).

123. *What Is a CAFO?*, *supra* note 67.

124. OKLA. STAT. tit. 2, § 20-41(11) (“‘Concentrated animal feeding operation’ means: (a) an animal feeding operation which meets the following criteria: (1) more than the number of animals specified in any of the following categories are confined: (a) 1,000 slaughter and feeder cattle, (b) 700 mature dairy cattle, whether milk or dry cows . . . or (i) 1,000 animal units, and (2) pollutants are discharged into waters of the state.”). The statute also lists other criteria for CAFOs that are not pertinent to this discussion. *See id.*

125. *What Is a CAFO?*, *supra* note 67.

126. REGULATORY DEFINITIONS OF LARGE CAFOs, MEDIUM CAFO, AND SMALL CAFOs, U.S. ENVTL. PROTECTION AGENCY, *available at* [http://www.epa.gov/npdes/pubs/sector\\_table.pdf](http://www.epa.gov/npdes/pubs/sector_table.pdf) (last visited on Jan. 3, 2014) [hereinafter REGULATORY DEFINITIONS OF CAFOs].

easily accessible in their confined area.<sup>127</sup> A small CAFO contains less than 300 head of cattle at all times and must be licensed as a CAFO for pollutant issues.<sup>128</sup> Under § 954(2), Oklahoma allows corporations to engage in CAFOs but not in agricultural or ranching businesses,<sup>129</sup> such as grass-fed beef.

Oklahoma has restricted feedlots only through environmental bills.<sup>130</sup> The most effective means of restricting corporate farming growth has come from “tightening the restrictions . . . [involving] environmental regulations, zoning efforts, and odor regulations.”<sup>131</sup> As a result, family ranchers have received no protections within the last 50 years.<sup>132</sup>

## 2. A Historical Perspective on Oklahoma Feedlot Development

Before corporate feedlots existed, most livestock was raised and fed on the family farm and slaughtered locally.<sup>133</sup> Cattle were usually left out to pasture eating only grass and grain and were not sent to feedlots.<sup>134</sup> Oklahomans obtained their meat by either slaughtering their own cattle or buying meat locally.<sup>135</sup> Even before statehood, Oklahoma had two corporate feedlots: Eufaula Oil Company and Chickasha Cottonseed Oil Company.<sup>136</sup> Opening in 1898, Eufaula Oil Company annually “fed up to one thousand head of cattle.”<sup>137</sup> Beginning in the early 1900s, local ranchers began to engage in “feedlots.”<sup>138</sup> At statehood, feedlots consisted of thousands of unfenced acres where cattle would roam and gain weight before slaughter.<sup>139</sup> By the 1930s, Oklahoma was nationally known for its grass-fed feedlots at Chapman Barnard Ranch in the Osage

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127. *Id.*

128. *Id.*

129. OKLA. STAT. tit. 18, § 954(2) (2011).

130. HORNE, *supra* note 116, at 27.

131. *Id.* at 28.

132. *Id.* at 27.

133. Donald R. Gill, Okla. Historical Soc’y, *Feedlots*, ENCYCLOPEDIA OKLA. HIST. & CULTURE, <http://digital.library.okstate.edu/encyclopedia/entries/F/FE006.html> (last visited Nov. 4, 2013).

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. Jim Hoy, Okla. Historical Soc’y, *Cattle Industry*, ENCYCLOPEDIA OKLA. HIST. & CULTURE, <http://digital.library.okstate.edu/encyclopedia/entries/C/CA077.html> (last visited Nov. 4, 2013).



Hills, a 100,000-acre ranch that would have 250 railroad stock cars full of cattle delivered every week to partake in the grass-fed feedlot.<sup>140</sup>

Additionally, many Oklahoma ranchers began to create feedlots for their own cattle, but once again it was a far cry from modern feedlots.<sup>141</sup> These feedlots were simply pastures, where the ranchers would separate the cattle by similar “age, weight . . . [and health] condition” in order to create the best quality of meat.<sup>142</sup> Separating the cattle like this kept them safe and healthy, thus producing a higher profit for the ranchers.<sup>143</sup> With the creation of these individual feedlots came an even greater sense of independence among local ranchers: “The man who feeds what he has raised on his own place . . . is the man who will buy his neighbor’s farm in the future; while the man who hauls all he raises to the elevator is the man who sooner or later will sell his farm.”<sup>144</sup>

By the 1920s, one of the most popular articles in Oklahoma newspapers was a blueprint on how to create your own feedlot.<sup>145</sup> The plan laid out multiple steps that took about 18 months to complete.<sup>146</sup> The first step was to separate the cattle by age.<sup>147</sup> The next step was to feed them in a 54-by-90-foot feedlot only twice a day, once in the morning and once in the afternoon.<sup>148</sup> When livestock were not being fed, they were to graze in pasture for the remainder of the day.<sup>149</sup> The feedlot rack was required to be “substantially built, possess good roofs . . . wind-proof on the exposed sides, and have earth floors [with]

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140. *Id.*

141. See generally Ray P. Speer, *Successful Plan of Farm Management*, NORMAN DEMOCRAT—TOPIC, Mar. 30, 1917, available at <http://gateway.okhistory.org/ark:/67531/metadcl20415/> (describing how to build a feed rack to be used by local ranchers, not multimillion-dollar corporations).

142. George Ellsworth, *Select Uniform Feeders*, NORMAN DEMOCRAT—TOPIC (Norman, Okla.), Sept. 28, 1917.

143. *Id.*

144. W.S. Smith, *Cattle Feeding Is Not Risky Business*, WAPANUCKA PRESS, Apr. 12, 1917, available at [http://gateway.okhistory.org/ark:/67531/metadc132749/m1/2/?q=the\\_wapanucka\\_press](http://gateway.okhistory.org/ark:/67531/metadc132749/m1/2/?q=the_wapanucka_press).

145. See Speer, *supra* note 141, reprinted in WAPANUCKA PRESS (Wapanucka, Okla.), Apr. 12, 1917; PRAGUE REC. (Prague, Okla.), Apr. 19, 1917, available at <http://gateway.okhistory.org/ark:/67531/metadc148162/>; BEAVER HERALD (Beaver, Okla.), June 14, 1917, available at <http://gateway.okhistory.org/ark:/67531.metadc69160/>.

146. Speer, *supra* note 141.

147. *Id.*

148. *Id.*

149. *Id.*

[g]ood ventilation.”<sup>150</sup> The sheds were to be “bedded at all times with straw” and fresh water continuously provided.<sup>151</sup> Finally, the feed troughs were to be cleaned twice a day and the feedlot cleaned every morning when the cattle were out to pasture.<sup>152</sup> One of the most important features was the quality of the food, not the quantity: “To obtain the best results . . . it is necessary to obtain a feed which will supply a maximum amount of nutritious forage.”<sup>153</sup> The goal of this feedlot process “[was] not to overfeed . . . [but] to give [the cattle] all that will be consumed.”<sup>154</sup>

Post-WWII, the agriculture industry significantly changed,<sup>155</sup> with one result being the development of large corporate feedlots. “The rapid growth of the federal highway system and the development of refrigerated trucks allowed meatpackers to move” into rural areas, which were cheaper than urban areas, and begin to mechanize the industry.<sup>156</sup> Feedlot cattle data was not available until 1958,<sup>157</sup> at which point the reports demonstrated the feedlot number in Oklahoma “increased more rapidly than in any other region of the nation” from 1958 to 1961.<sup>158</sup> The reports noted that despite the number of family ranchers dropping, the number of medium to large feedlots had “risen sharply,” with “ten . . . feedlots . . . provid[ing] nearly half of the state’s total feedlot capacity in 1960.”<sup>159</sup> By that time, “nearly half of . . . [the feedlot] cattle were accounted for by 19 custom feedlots.”<sup>160</sup>

The shift from community feedlots to corporate feedlots began when ranchers stopped selling their cattle at local markets and instead began selling them per pound to meatpackers.<sup>161</sup> Additionally, “44 percent[] of the cattle marketed from Oklahoma feedlots in 1960 were shipped to out-

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150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *FSIS History*, FOOD SAFETY & INSPECTION SERVICE (May 3, 2012), [www.fsis.usda.gov/wps/portal/informational/aboutfsis/history](http://www.fsis.usda.gov/wps/portal/informational/aboutfsis/history).

156. *Id.*

157. WILLARD F. WILLIAMS & JAMES MCDOWELL, DEP’T OF AGRIC. ECON., OKLA. STATE UNIV. PROCESSED SERIES P-418, CHARACTERISTICS AND GROWTH OF CATTLE FEEDLOT OPERATIONS IN OKLAHOMA 4 (1962).

158. *Id.* at i.

159. *Id.*

160. *Id.*

161. *Id.* at iii.

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of-state markets for slaughter.”<sup>162</sup> Furthermore, two-thirds of the state’s total poundage of meat was “sold directly to [corporate] packers” and not to consumers.<sup>163</sup> This marked the beginning of a competitive marketing strategy: having the weightiest meat in the area to ensure purchase by packers.<sup>164</sup>

Corporations began to buy feedlots and run them as investments, as opposed to agricultural businesses.<sup>165</sup> Under corporate management, the family farm dedication and commitment was lost and replaced by quick sells.<sup>166</sup> The cattle coming out of feedlots “were decidedly heavier than normally desired by Oklahoma packers and retailers . . . . Despite the relatively low average quality of . . . [cattle feed], highly satisfactory average daily gains generally were achieved.”<sup>167</sup> The quality of the meat was no longer the top priority; instead, poundage reigned supreme.

### *C. Today's Oklahoma Beef Industry*

#### 1. How Healthy Is Your Steak?

Because feedlots receive cattle from a variety of sources that travel long distance on various freights,<sup>168</sup> feedlots must over-vaccinate in hopes of maintaining the cattle’s health.<sup>169</sup> In fact, feedlot livestock are given “over 70 percent of [the] antibiotics manufactured” in the United States.<sup>170</sup> The most important vaccinations given to feedlot cattle combat clostridial diseases.<sup>171</sup> The majority of the remaining vaccinations are

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162. *Id.*

163. *Id.*

164. *Id.*; see also Gill, *supra* note 133.

165. WILLIAMS & MCDOWELL, *supra* note 157, at iv.

166. *Id.* (emphasizing weight gain as top priority without mentioning meat quality).

167. *Id.*

168. See Gill, *supra* note 133 (noting that cattle coming from different states would be penned up all together).

169. MIDKIFF, *supra* note 2, at 40.

170. *Id.*

171. LAWRENCE E. RICE, DIV. OF AGRIC. SCIS. & NATURAL RES., OKLA. STATE UNIV., OKLA. COOP. EXTENSION SERV. VTMD-9123, IMMUNIZATIONS FOR OKLAHOMA COW-CALF HERDS, at 9123-5, available at <http://osufacts.okstate.edu/docushare/dsweb/Get/Document-2008/VTMD-9123web.pdf>. (last visited Jan. 3, 2014) (noting that clostridial vaccination begins when calves are two months old). “Clostridial diseases are caused by bacteria that widely occur in . . . sewage, water and in the gut of animals.” A.J. OLIVIER, CLOSTRIDIAL DISEASES 1 (2005), available at <http://www.nda.agric.za/docs/Infopaks/Clostridial-ebook.pdf>. The main factors that can lead to the disease are: (1) “Changes from poor to good food” (e.g., when the diet of cattle raised on grass is

directed toward preventing respiratory diseases.<sup>172</sup> Thus, “[a]s much as 80% of all antibiotics consumed by farm animals are used at sub-therapeutic levels—that is, they are not used to treat animals that are sick.”<sup>173</sup>

Only a small number of “feedlots (less than 10 percent) use vaccines against potential food safety pathogens, including *Salmonella* . . . and *E. coli*,”<sup>174</sup> despite having over “20,000 infections and 200 deaths each year in the United States caused by *E. coli* 0157:H7” alone.<sup>175</sup> The *E. coli* 0157:H7 strand is found specifically in cattle’s stomachs and almost exclusively in feedlot cattle because substituting corn for grass in cattle’s daily diet changes the rumen bacteria.<sup>176</sup> This bacterium, which can survive stomach acid, has a higher chance of infecting those who ingest the meat.<sup>177</sup> The cattle receive the antibiotics not to ensure the safety of the meat but to ensure that they will survive long enough to get to slaughter.<sup>178</sup>

With 97% of all U.S. beef coming from CAFOs,<sup>179</sup> the demand for free-range or grass-finished beef has significantly increased.<sup>180</sup> Yet

suddenly changed to grain); (2) stress; or (3) “[a]nimals nibbling on carcasses or old bones, or drinking water, or eating feed contaminated by dead animals.” *Id.* See also SHEILA M. MCGUIRK, SCH. OF VETERINARY MED., UNIV. OF WIS., MANAGING CLOSTRIDIAL DISEASES IN CATTLE 1, available at <http://www.vetmed.wisc.edu/dms/fapm/fapmtools/7health/manage-clostridial.pdf> (last visited Jan. 3, 2014) (“Clostridial organisms are . . . normal flora of cattle and only become problematic with dietary stress, injury, [or] changes in management . . . that set up a favorable growth environment . . .”).

172. See U.S. DEP’T OF AGRIC., VACCINE USAGE IN U.S. FEEDLOTS (2013), available at [http://www.aphis.usda.gov/animal\\_health/nahms/feedlot/downloads/feedlot2011/Feed11\\_is\\_VaccineUsage.pdf](http://www.aphis.usda.gov/animal_health/nahms/feedlot/downloads/feedlot2011/Feed11_is_VaccineUsage.pdf).

173. Leana Stormont, *Detailed Discussion of Iowa Hog Farming Practices*, *Animal Legal & Historical Ctr.*, MICH. ST. U. (2014), <https://www.animallaw.info/article/detailed-discussion-iowa-hog-farming-practices> (last visited Jan. 15, 2014).

174. U.S. DEP’T OF AGRIC., *supra* note 172.

175. Bill Kurtis, *The E-Coli Solution: Grass Fed/Finished Beef*, TALLGRASS BEEF, [http://www.tallgrassbeef.com/e\\_coli\\_solution.html](http://www.tallgrassbeef.com/e_coli_solution.html) (last visited Jan. 10, 2014).

176. *Id.* The rumen is the first large compartment of the stomach. Its primary function is to digest grass and hay. R. Bowen, *Rumen Physiology and Rumination*, COLO. ST. U., <http://www.vivo.colostate.edu/hbooks/pathphys/digestion/herbivores/rumination.html> (last updated Nov. 2009).

177. Kurtis, *supra* note 175.

178. David A. Kessler, Op-Ed., *Antibiotics and the Meat We Eat*, *Opinion*, N.Y. TIMES (Mar. 27, 2013), [http://www.nytimes.com/2013/03/28/opinion/antibiotics-and-the-meat-we-eat.html?\\_r=0](http://www.nytimes.com/2013/03/28/opinion/antibiotics-and-the-meat-we-eat.html?_r=0) (“[R]ather than healing sick animals, these drugs are often fed to animals at low levels to make them grow faster and to suppress diseases that arise because they live in dangerously close quarters on top of one another’s waste.”).

179. See Mangan, *supra* note 10 and accompanying text.

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Oklahoma corporations are unable to partake in this alternative due to corporations being prohibited to engage in agricultural endeavors pursuant to title 18, § 951.<sup>181</sup> Additionally, family farms that choose to participate in grass-finished livestock must stay in the statutory confinements of a family farm.<sup>182</sup> While the family farm may never grow large enough to compete with agriculture corporations, corporations are not able to participate in the healthier alternative of grass-finished beef but must stay within the feedlot confinement.<sup>183</sup>

Due to the demand for organic products,<sup>184</sup> Oklahoma should begin to promote grass-finished livestock, especially since grass-finished beef is a healthier alternative for both the livestock and the consumer.<sup>185</sup> Grass-finished beef is not as marbled as feedlot beef, making it healthier for human consumption.<sup>186</sup> Additionally, because the cattle on grass-finished ranges are not confined to small spaces, they do not require the additional vaccinations that are common and necessary in feedlot cattle.<sup>187</sup>

## 2. "As Cheap as Possible"

The grass-fed alternative is much more expensive than feedlot beef. This price difference is due largely to the "limited . . . access to land and labor" and the effects of natural processes.<sup>188</sup> Grass-fed cattle take longer

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180. The organic industry has drastically expanded within the past two decades: in 1990, domestic sales in organic products trickled at \$1 billion but by 2011 skyrocketed to \$31.5 billion. Andrew Raridon, *Against the Grain: Collective Identity and the Grassfed Livestock Movement in Oklahoma* 7 (May 2013) (unpublished M.S. thesis, Oklahoma State University).

181. OKLA. STAT. tit. 18, § 951 (2011) (OSCN through 2014 Leg. Sess.).

182. *See id.* § 951(2).

183. *See id.* §§ 951, 954(2).

184. *See supra* text accompanying note 180.

185. *See Raridon, supra* note 180, at 34, 50–51.

186. John Comerford, Penn State Coll. of Agric. Sci., *Telling the Grass-Fed Beef Story*, PENN. S. EXTENSION, <http://extension.psu.edu/animals/beef/grass-fed-beef/articles/telling-the-grass-fed-beef-story> (last visited Sept. 5, 2014).

187. *See RICK MACHEN, TEX. A&M U., NATURAL, GRASS-FED, AND ORGANIC BEEF* (2010), available at <http://aggie-horticulture.tamu.edu/organic/files/2011/01/Rick-Machen-Niche-Market-Beef.pdf>; *Antibiotics in Beef Farming*, AGRICULTURED (Apr. 5, 2012), <http://agriculturedblog.wordpress.com/2012/04/05/antibiotics-in-beef-farming/>.

188. Raridon, *supra* note 180, at 11–12; *see also* IOWA STATE UNIV., A.S. LEAFLET R2684, GRASS-FED AND ORGANIC BEEF: PRODUCTION COSTS AND BREAKEVEN MARKET PRICES, 2008 AND 2009, at 1 (2012), available at [www.ans.iastate.edu/report/air/2012pdf/R2684.pdf](http://www.ans.iastate.edu/report/air/2012pdf/R2684.pdf).

to reach their slaughter weight, thus placing a longer wait on their ranchers.<sup>189</sup> On average, grass-finished cattle will take about “30 months to finish out,” while feedlot cattle only take 12 months, if that.<sup>190</sup> Additionally, because grass-finished cattle are raised entirely on pasture, the rancher must either keep the numbers low or obtain more acreage in order to maintain a larger herd.<sup>191</sup>

Grass-finished beef represents extra money Americans do not want to spend on food.<sup>192</sup> Accustomed to cheap, Americans do not want to spend more than 9.8% of their disposable income on food.<sup>193</sup> As one Oklahoma rancher complained, “we’ve gotten to the state where now everybody wants everything as cheap as possible, and they just don’t care what’s in the food or how it’s been produced.”<sup>194</sup> The average American eats over 100 pounds of red meat annually, with the vast majority of this percentage being beef.<sup>195</sup> Obviously, not enough grassland exists to sustain solely grass-finished beef as America’s only option.<sup>196</sup> However, creating better restrictions and regulations allows ranchers and corporations who want to engage in such practices to prosper.

Despite Oklahoma being the fifth largest feedlot beef-producing state,<sup>197</sup> Oklahoma does have some grass-finished beef family farms that are similar to traditional ranching and farming.<sup>198</sup> Oklahoma grass-fed

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189. Raridon, *supra* note 180, at 11.

190. *Id.* at 25.

191. Doris Lin, *What’s Wrong with Grass-Fed Beef?*, ABOUT.COM, <http://animalrights.about.com/od/animalsusedforfood/a/WrongGrassFedBeef.com> (last visited Sept. 20, 2014).

192. ANNETTE CLAUSON, ECON. RESEARCH SERV., U.S. DEP’T OF AGRIC., *DESPITE HIGHER FOOD PRICES, PERCENT OF U.S. INCOME SPENT ON FOOD REMAINS CONSTANT* (2008), available at <http://naldc.nal.usda.gov/download/20334/PDF> (noting that despite food prices increasing, Americans continue to spend the same percentage of income on food).

193. *Id.*

194. Raridon, *supra* note 180, at 32.

195. U.S. DEP’T OF AGRIC., *AGRICULTURE FACT BOOK 15 tbl.2-1* (2003), available at <http://www.usda.gov/factbook/chapter2.pdf>.

196. See *Meat Production Wastes Natural Resources*, PEOPLE FOR ETHICAL TREATMENT ANIMALS, <http://www.peta.org/issues/animals-used-for-food/meat-wastes-natural-resources> (last visited Sept. 19, 2014).

197. *Beef Industry Statistics*, NATIONAL CATTLEMEN’S BEEF ASS’N (Nov. 2012), <http://www.beefusa.org/beefindustrystatistics.aspx>.

198. *Pastured Products Directory—Oklahoma*, EATWILD: GETTING WILD NUTRITION FROM MODERN FOOD, [www.eatwild.com/products/oklahoma.html](http://www.eatwild.com/products/oklahoma.html) (last visited Sept. 13, 2014) (listing farms and ranches that meet certain “criteria for producing grassfed meat”).

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beef family farms describe themselves, for example, as “small family owned and operated farm,”<sup>199</sup> “5th generation ranch,”<sup>200</sup> and “chemical-free for 15 years.”<sup>201</sup> Because of the restrictions of the family farm act, many family ranchers are now incorporating into the feedlot industry.<sup>202</sup> Hitch Enterprises, Inc., is one such family-farm-turned-feedlot corporation.<sup>203</sup> Still held by fifth-generation family members, Hitch Enterprises now has “two feed yards with a onetime capacity of 111,000 head and a 30,000 acre farming and ranching operation.”<sup>204</sup> Oklahoma also has an extremely high number of CAFOs.<sup>205</sup> The 2013 USDA National Agricultural Statistic Services report recognized that Oklahoma had 345,000 total head in large CAFOs, but it did not comment on the small and medium feedlots across the state.<sup>206</sup>

Oklahoma has done little to challenge CAFO growth. Most implemented restrictions deal with hog feedlots—the most contested feedlots in right-to-farm and nuisance cases.<sup>207</sup> In 1998, there was a

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199. *Who We Are and What We Do, About*, AM. HERITAGE FAMILY FARM, <http://americanheritagefamilyfarm.locallygrown.net> (last visited Jan. 10, 2014).

200. Jay Clark, *Clark Ranch*, SIMPLE, GOOD, AND TASTY (2011), <http://simplegoodandtasty.com/directory/clark-ranch>.

201. *Pastured Products Directory—Oklahoma*, Description for Redbird Ranch, EATWILD: GETTING WILD NUTRITION FROM MODERN FOOD, <http://www.eatwild.com/products/oklahoma.html> (last visited Jan. 10, 2014). *See also About Our Family & Business*, REDBIRD RANCH FARE, <http://redbird-ranch-fare.myshopify.com/pages/about-us> (last visited Jan. 5, 2015) (“The soils and plants in one of our pastures is simply a part of our ranch; which is a part of our ecosystem; which is a part of our business; which is a part of our town; which is a part of our community.”).

202. *See* MICHAEL GALYEAN, ANIMAL SCIENCES, UNIV. OF ARIZ., THE FUTURE OF FEEDLOT BEEF PRODUCTION 59 (2010), *available at* [http://animal.cals.arizona.edu/swnmc/Proceedings/2010/06\\_Galyean\\_2010.pdf](http://animal.cals.arizona.edu/swnmc/Proceedings/2010/06_Galyean_2010.pdf).

203. *See About Us*, HITCH ENTERPRISES, INC., <https://hitchenterprises-public.sharepoint.com/about-us> (last visited Jan. 4, 2015).

204. *Home*, HITCH ENTERPRISES, INC., <https://hitchenterprises-public.sharepoint.com/> (last visited Sept. 18, 2014).

205. *Agricultural Environmental Management*, OKLA. DEP’T AGRIC., FOOD, & FORESTRY, <http://www.oda.state.ok.us/aems/> (last visited Jan. 4, 2015) (stating that Oklahoma “has approximately 266 licensed CAFO facilities”).

206. NAT’L AGRIC. STATISTICS SERV., U.S. DEP’T OF AGRIC., OKLAHOMA CATTLE ON FEED REPORT tbl. “Cattle on Feed: Number on Feed, Placements, Marketings and Disappearance 1,000+ Head Capacity Feedlots, Oklahoma and Selected States, 2012–2013” (2013), *available at* [http://www.nass.usda.gov/Publications/Todays\\_Reports/reports/cofd1213.pdf](http://www.nass.usda.gov/Publications/Todays_Reports/reports/cofd1213.pdf); REGULATORY DEFINITIONS OF CAFOs, *supra* note 126 (noting that the largest CAFOs contain 1,000 or more head of cattle).

207. HORNE, *supra* note 116, at 36–37.

moratorium on hog permits,<sup>208</sup> followed by a hog permit “increasing setbacks, requiring odor abatement plans, [and] increasing fines for violations.”<sup>209</sup> Also in 1998, Oklahoma passed a “poultry bill [that] required environmental training, waste management plans, [and] registration of all operations.”<sup>210</sup> Finally in 2000, Oklahoma attempted to pass the “contract grower bill [which] would ‘level the playing field’ between small agricultural producers and huge corporate farming giants, but the bill did not pass out of committee.”<sup>211</sup> The Oklahoma contract grower bill would have allowed poultry and swine farmers to implement a system already in place by poultry farmers throughout the country: direct contract negotiations with larger corporations.<sup>212</sup> Similar to many farmers’ relationship with Tyson, wherein the farmer receives all of the necessary items to raise Tyson chickens through multiple production phases,<sup>213</sup> ranchers in Oklahoma hoped to create a similar relationship; with the rejection of this bill, the state’s beef industry continues to lag behind other meat industries.<sup>214</sup>

This would have benefited family ranchers by affording them business opportunities with large corporations and eliminating some of the personal risk that comes with family farming.<sup>215</sup> Additionally, the larger corporations could have benefited from contracting out to family ranchers, allowing them to engage in organic or free-range beef production.<sup>216</sup> Yet the contract bill was coined a “socialistic bill” and struck down by the House.<sup>217</sup> While Oklahoma’s opposition to CAFOs has largely been within the hog industry, absolutely nothing has been done to regulate the state’s beef industry. Meanwhile, Oklahoma’s

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208. Mick Hinton, *Hog License Moratorium Backed in Lieu of Legislation*, NEWSOK (May 27, 1998), <http://newsok.com/hog-license-moratorium-backed-in-lieu-of-legislation/article/2614587>.

209. HORNE, *supra* note 116, at 36.

210. *Id.* at 37.

211. *Id.*

212. Associated Press, *House Votes Down “Fair Farming” Bill*, AMARILLO DAILY NEWS, Mar. 3, 1998, at 1A.

213. *See How to Become a Contract Grower*, GROW WITH TYSON, <http://www.growwithtyson.com/how-to-become-a-contract-grower/> (last visited Sept. 18, 2014).

214. Alyson, *supra* note 58.

215. *See id.*

216. *See id.*

217. Associated Press, *supra* note 212.



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legislature is widening the gap between family ranchers and corporate farming.<sup>218</sup>

### 3. Oklahoma's Statutory Catch-22

In 2008, the United States Department of Agriculture conducted its first, and so far only, organic survey.<sup>219</sup> The state with the largest number of grass-finished beef farms was Wisconsin.<sup>220</sup> While the other seven states with anti-corporate farming statutes did not have the lowest number of grass-finished farms, they were still well below average, with Oklahoma only having 14 grass-finished farms.<sup>221</sup> How can this disparity occur when both Oklahoma and Wisconsin have similar statutes designed to protect family farmers against agricultural corporations?<sup>222</sup>

The difference lies in how the states treat these two entities. Wisconsin lays out its family farm, corporate farm, and feedlot regulations in one statute.<sup>223</sup> Wisconsin statute § 182.001 simply states that “[n]o corporation or trust may own land on which to carry on farming operations” unless the following conditions are met: (1) it does not have more than 15 shareholders, with descendant holders “count[ing] collectively as one shareholder”,<sup>224</sup> (2) only two classes of shares at most,<sup>225</sup> and (3) “all . . . shareholders are . . . natural persons.”<sup>226</sup> Thus, under Wisconsin law, family farms are not restrained by the number of shareholders within the family, enabling them to find additional shareholders, although corporations may only expand to 15 shareholders.<sup>227</sup>

218. See Kathleen D. Kelsey et al., *Important Issues Facing Agriculture in Oklahoma: An Analysis of Agricultural Leaders' Perspectives*, 52 J.S. AGRIC. EDUC. RES. 52 (2002).

219. *Organic Production Survey*, [http://agcensus.usda.gov/Publications/Organic\\_Production\\_Survey](http://agcensus.usda.gov/Publications/Organic_Production_Survey) (last updated Feb. 3, 2012) (providing information from the 2008 survey with no updates).

220. Tom Vilsack, U.S. Dep't of Agric., *Organic Production Survey*, 3 CENSUS AGRIC., July 2010, at 1, 70 tbl.10 (noting that Wisconsin had 109 grass-finished farms).

221. Oklahoma had 14 grass-finished farms, Kansas had 7, Minnesota had 42, Missouri had 20, North Dakota had 17, South Dakota had 25, and Iowa had 44. *Id.*

222. Compare OKLA. STAT. tit. 18 §§ 951, 954 (2011) (OSCN through 2014 Leg. Sess.), with WIS. STAT. § 182.001 (2013). Oklahoma's § 954 lists exemptions exclusive to § 951 while Wisconsin's § 182.001 is the statute in its entirety.

223. WIS. STAT. § 182.001.

224. *Id.* § 182.001(1)(a).

225. *Id.* § 182.001(1)(b).

226. *Id.* § 182.001(1)(c)(1).

227. *Id.* § 182.001(1)(a).

Furthermore, corporations are not given any additional exceptions under Wisconsin law. The only exceptions that Wisconsin law allows are (1) “if the land is acquired by bequest or devise or . . . in the regular course of business . . . [by] satisfaction of any mortgage, lien or other encumbrance”;<sup>228</sup> (2) if a corporation owned land on June 5, 1974;<sup>229</sup> and (3) “farms engaged primarily in research.”<sup>230</sup> Wisconsin dedicates an entire subsection of its statute to explicitly delineating prohibited activities, which include “the production of cattle, hogs and sheep; and the production of wheat, field corn, barley, oats, rye, hay, pasture, soybeans, millet and sorghum.”<sup>231</sup> By not adding a feedlot exception to the corporate agricultural exclusion statute, Wisconsin leaves corporations free to engage in whatever feeding process they would like, including both feedlot or grass-finished without competition from factory feedlots.<sup>232</sup>

Oklahoma would benefit from a structure similar to Wisconsin’s statute. It still protects the family farm, which is important not only to Oklahoma’s farming community but also to the nation’s desire to preserve the family farm culture,<sup>233</sup> and would also equalize the playing field between family farms and corporations. This structure would replace Oklahoma’s confusing exemptions and exceptions with a simple, universal application.<sup>234</sup> Finally, Wisconsin’s statute prohibits large feedlot corporations.<sup>235</sup> This prohibition allows for two things to happen. First, it keeps the feedlot industry small by only allowing smaller corporations, with limited shareholders, to be involved. Second, it allows both family farms and corporations to involve themselves in other alternative agricultural industries, such as grass-finished beef. Oklahoma would flexibly augment the healthy grass-fed alternative to feedlots by amending §§ 951 and 954 to reflect a structure similar to Wisconsin’s § 182.001.

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228. *Id.* § 182.001(2)(a).

229. *Id.* § 182.001(2)(c).

230. *Id.* § 182.001(2)(d).

231. *Id.* § 182.001(3).

232. *Id.* § 182.001.

233. Stayton, *supra* note 6, at 687–89.

234. Compare WIS. STAT. § 182.001, with OKLA. STAT. tit. 18, §§ 951, 954 (2011) (OSCN through 2014 Leg. Sess.).

235. WIS. STAT. § 182.001(1).

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## V. CONCLUSION

In the 1970s, Oklahoma adopted its current anti-corporate farming statute with the purpose “to protect family farm[ers]” against large corporations similar to other such statutes in other states.<sup>236</sup> However, the plethora of exceptions, also evident in all the states that have enacted such statutes, overrides the act’s original purpose—protecting family farmers.<sup>237</sup> Oklahoma’s §§ 951 and 954 are arbitrary and fail to protect the family farms.<sup>238</sup> Instead, § 951 has imposed a low prosperity ceiling on family farmers, in stark contrast to the corporation-friendly exceptions in § 954.<sup>239</sup> As the demand for organic products continues,<sup>240</sup> Oklahoma should amend §§ 951 and 954 to mirror Wisconsin’s § 182.001. Adopting this similar statute structure would both protect Oklahoma’s family farms and allow them to compete with corporations as well as allow corporations to expand into grass-finished beef.

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236. HORNE, *supra* note 116, at 25.

237. *See* OKLA. STAT. tit. 18, §§ 951, 954.

238. *Id.*

239. *Id.* (specifically providing generous treatment toward corporations).

240. *See supra* text accompanying note 180.