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The Farmer In Chief: Obama's Local Food Legacy

Sarah J. Morath*

As criticism over America's food policy as grown,¹ many scholars have offered suggestions for reform.² Complementing this body of scholarship, *The Farmer In Chief* identifies and assesses recent changes to federal laws and policies as they affect 'local food' and describes local farmers' awareness of and reaction to these changes.³ These changes and the farmers' responses show greater recognition of local food by the President and federal government in three ways: increased inclusion of local food in legislation and policy discussions; increased awareness of the benefits of local food production and consumption; and increased consumer access to local food. But the farmers' responses also highlight areas where

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¹ Recently, Joseph Stiglitz, a professor of economics at Columbia University and a Nobel laureate, pointed out that America food policy is "crazy," suggesting ample room for reform. See Joseph E. Stiglitz, *Our Crazy Food Policy*, *The New York Times Sunday Review*, 4 (November 17, 2013). For a full version of the article see Joseph E. Stiglitz, *The Insanity of Our Food Policy*, *The New York Times Opinion Page*, (November 16, 2013) (available at http://opinionator.blogs.nytimes.com/2013/11/16/the-insanity-of-our-food-policy/?_php=true&_type=blogs&_r=0).

² See William S. Eubanks II, *The 2013 Farm Bill: An Opportunity for Change*, 28 *Nat. Res. & Env.* 30 (Fall 2013) (describing five areas of farm bill reform worthy of congressional consideration); William S. Eubanks II, *The Future of Federal Farm Policy: Steps for Achieving A More Sustainable Food System*, 37 *Vt. L. Rev.* 957 (2013); Emily M. Broad Leib, *All (Food) Politics Is Local: Increasing Food Access Through Local Government Action*, 7 *Harv. L. & Pol'y Rev.* 321 (2013); Emily Broad Leib, *The Forgotten Half of Food System Reform: Using Food and Agricultural Law to Foster Healthy Food Production*, 9 *J. Food L. & Pol'y* 17, 18 (2013) (describing various ways to increase the production of specialty crops as a way to reform the industrial food system); Allison Condra, *Food Sovereignty in the United States: Supporting Local and Regional Food Systems*, 8 *J. Food L. & Pol'y* 281, 283 (2012) (discussing ways state and federal governments can, and are, supporting local and regional agriculture); Jason J. Czarnecki, *Food, Law & the Environment: Informational and Structural Changes for A Sustainable Food System*, 31 *Utah Envtl. L. Rev.* 263, 265 (2011) (evaluating information and structural changes for a more sustainable food model); Mary Jane Angelo, *Corn, Carbon, and Conservation: Rethinking U.S. Agricultural Policy in A Changing Global Environment*, 17 *Geo. Mason L. Rev.* 593, 594 (2010) (exploring the regulatory and incentive based federal programs affecting which crops are grown and the manner in which they are grown); Susan Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 *Wm & Mary Envtl. L & Pol'y Rev.* 935 (2010) (arguing that "sustainable production and delivery of healthy food" should be the "central goal" of agricultural law its supporting policies).

³ While I recognize the important role that state and local governments play in assisting local farmers and local food production, a discussion of those efforts is beyond the scope of this article. 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, 414 (2002) (explaining the importance of state and local food policy to the local food movement).

improvements can be made. Specifically, farmers need to be better informed about funding opportunities and funding opportunities need to be available to a greater number of farmers.

I. Introduction

It might seem odd to suggest that a president can have a “food legacy,” particularly a *local* food legacy. After all, the President sets the agenda for seemingly more important matters such as economic or foreign policy, not the dinner menu. The federal government, however, has been influencing Americans’ diet through its agricultural policy for some time.⁴ Over the last thirty years, these policies have promoted the production of commodity crops like corn, which are produced in massive quantities, over the production of specialty crops (fruits and vegetables) grown at a smaller scale.⁵ Commodity crop corn is not the corn-on-the-cob found at a summer barbeque. Rather, the corn grown at an industrialized farm is typically refined, modified, and changed into corn starch, corn oil, and corn syrup, products that have been linked to a myriad of health problems including obesity, heart disease, and Type 2 diabetes.⁶

In part because of these growing health concerns, scholars have advocated for the federal government, including the President, to shift its focus away from agribusiness towards farming practices done in a smaller, sustainable manner.⁷ This would include the production and

⁴ Kelly D. Brownell, *Should the Government Tell You What to Eat?*, Yale Alumni Magazine, 30-31 (July/Aug. 2007) (available at <http://www.yaleruddcenter.org/resources/upload/docs/what/policy/YaleAlumniMag.pdf>.) (describing the government’s role in transforming the country from one of undernutrition to overnutrition); see also Lindsey Wiley, *The U.S. Department of Agriculture as a Public Health Agency? A “Health In All Policies Case Study*, 9 J. Food L. & Pol’y 61, 62 (2013) (“The U.S. Department of Agriculture (USDA) plays an enormously important role in shaping our nation’s food system--the food that’s available in stores, restaurants, schools, workplaces, and our homes; how it is produced and sold; how it is consumed and by whom.”).

⁵ See Mary Jane Angelo, *Corn, Carbon, and Conservation: Rethinking U.S. Agricultural Policy in A Changing Global Environment*, 17 Geo. Mason L. Rev. 593, 593-599 (2010).

⁶ *Id.* at 595-596; see also Brownell, *supra* n. 1.

⁷ See William S. Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 Stan. Envtl. L.J. 213, 297 (2009) (arguing for subsidizing sustainable agriculture as a way to address public health concerns). William Eubanks has also advocated for sustainable agriculture practices for environmental reasons. See William S. Eubanks II, *The Sustainable Farm Bill: A Proposal for Permanent*

consumption of local food.⁸ Federal support for local food policy could be exhibited through providing financial and programmatic support to local entities,⁹ expanding the scope of federal food policy discussions,¹⁰ and promoting the production and consumption of local food through federal legislation and programs.¹¹

Food advocates, too, have sought to engage national leaders, including the President, in food policy discussions. One such example is Michael Pollan, author of The New York Times best sellers, *The Omnivore's Dilemma* and *In Defense of Food*.¹² One month before the 2008 presidential election, *The New York Times Magazine* published Mr. Pollan's thirteen and one-half page letter to the yet-to-be-elected "Farmer In Chief."¹³ In this letter, Mr. Pollan points out to the future president that "among the issues that will occupy much of your time in the coming years is one you barely mentioned during the campaign: food."¹⁴ He warns that in order to address pressing issues like health care, energy independence, and climate change, "reformation to the entire food system [must be] one of the highest priorities of [the President's]

Environmental Change, 39 *Envtl. L. Rep. News & Analysis* 10493 (2009). Susan Schneider advocates for sustainable agriculture for primarily health but also environmental and economic reasons in *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 *William & Mary Env'tl. L. & Pol'y Rev.* 935 (2010).

⁸ See Eubanks [A Rotten System], *supra* n. 7 at 295-296 (noting that to produce food differently "it will necessarily have to be done more locally, at a smaller, finer scale..."); Schneider *supra* n. 7 at 954 (explaining that a "new food-focused agriculture should encourage a diverse and regionally based agriculture that is able to provide local food to customers and retail clients").

⁹ Emily M. Broad Leib, *All (Food) Politics Is Local: Increasing Food Access Through Local Government Action*, 7 *Harv. L. & Pol'y Rev.* 321, 329 (2013).

¹⁰ Margaret Sova McCabe, *Reconsidering Federalism and the Farm: Toward Including Local, State and Regional Voices in America's Food System*, 6 *J. Food L. & Pol'y* 151, 154 (2010).

¹¹ Emily Broad Leib, *The Forgotten Half of Food System Reform: Using Food and Agricultural Law to Foster Healthy Food Production*, 9 *J. Food L. & Pol'y* 17, 40 (2013); see also Nicholas R. Johnson & A. Bryan Endres, *Small Producers, Big Hurdles: Barriers Facing Producers of "Local Foods"*, 33 *Hamline J. Pub. L. & Pol'y* 49, 100 (2011) (describing exemptions for small farms to recent federal legislation).

¹² *The Omnivore's Dilemma*, published in 2006, and *In Defense of Food*, published in 2008, both received wide acclaim. *The Omnivore's Dilemma* was named one of *The New York Times Book Review's* Ten Best Books of the Year, while *In Defense of Food* claimed *The New York Times's* number one best seller spot.

¹³ Michael Pollan, *Farmer in Chief*, *N.Y. Times Mag.*, Oct. 12, 2008, <http://michaelpollan.com/articles-archive/farmer-in-chief/>.

¹⁴ *Id.*

administration.”¹⁵ Mr. Pollan recommends, among other things, that the future president appoint a White House Farmer to “tear out five prime south-facing acres of the White House lawn and plant in their place an organic fruit and vegetable garden.”¹⁶

Coincidentally, or not, five years later, the White House has a garden, but is there more to President Obama’s food legacy than a plot of land on the South Lawn? This Article seeks to answer this question in the context of the President’s *local* food legacy.¹⁷ Specifically, this Article analyzes enacted and proposed federal legislation and agency initiatives, as well as executive decisions from 2008-2013 related to local food policy. This Article also evaluates the responses of fifty-six local farmers to a detailed survey about these laws, initiatives, and decisions.

The Article begins by examining the local food movement as part of the larger food movement. This part describes how local food is defined and the growth of the local food movement. A description of the local farmer survey is also included in this part. The Article next provides a brief description of President Obama’s position on local food policies during the 2008 and 2012 election seasons as demonstrated in campaign speeches, interviews, and publications and compares these positions to those of his opponents. The Article then analyzes the acts, initiatives, and decisions during Obama’s presidency that have directly and indirectly promoted local food production and consumption. In particular, this part discusses, in tandem with the survey responses of local farmers, the enactment of the Healthy, Hunger Free Kids Act

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ I recognize that there are many individuals within the legislature and federal agencies doing the heavy lifting when it comes to food policy, but at the end of the day, it is the president who signs bills into law, appoints members to his administrative team, and selects the leaders of federal agencies. I am not the first to evaluate the effectiveness of a presidential agenda using this assumption. See Rona Kaufman Kitchen, *Off-Balance: Obama and the Work-Family Agenda*, 16 *Emp. Rts. & Emp. Pol’y J.* 211 (2012).

and the Food Safety and Modernization Act, the proposed 2013 farm bill, the selection of Tom Vilsack as Secretary of the United States Department of Agriculture (USDA), and several USDA grants and initiatives including the Know Your Farmer, Know Your Food campaign. In addition, this Article touches on the establishment of the White House Rural Council, the Healthy Food Financing Initiative, and Michelle Obama's Let's Move campaign. The Article ultimately concludes that the President has been successful at including local food in federal legislation and policy discussions involving nutrition, food safety, and economic development, increasing awareness of the benefits local food production and consumption, and increasing consumer access to local food.

Local food is no longer confined to discussions on agricultural policy. President Obama signed into law two pieces of legislation, one focused on nutrition and the other on food safety, that mention and describe 'local food.' The Secretary of the USDA boasts about and credits his agency with the increase in demand for local food. The 2014 farm bill includes a provision to promote 'local food.' Agencies, in addition to the USDA, are working collaboratively to increase access to 'local food' and more is being done to make information about local food programs available to the public. And, with the establishment of the White House garden, the first family is able to eat locally, too. Yet, the nation's agricultural policies, and its accompanying landscape, remain relatively unchanged, leaving local farmers frustrated by the lack of meaningful changes at the federal level. Many farmers were not aware of the legislation or policies that affect their businesses and were unfamiliar with grants available for their use. For those farmers familiar with federal farm legislation and policies, there is sense of interference rather than progress—a feeling that the federal government is still out of touch with the local farmer's needs and wants, suggesting further room and need for reform.

II. What is Local Food Policy

A. Defining Local Food

The phrase “food policy” encompasses those “set of laws and regulations that inform how, why, and when food is produced, transported, distributed, and consumed.”¹⁸ Local food policy is, therefore, those laws and regulations governing food that is *locally* produced, transported, distributed, and consumed. The *local* food movement is a part of the larger food movement, which supports laws and regulations for food that is locally produced, transported, distributed, and consumed.¹⁹ Scholars describe the local food movement as a “grassroots movement comprised of people who are interested, for various reasons, in obtaining food grown or produced where they live.”²⁰

Despite the seemingly straightforward definition of food policy and the food movement, local food does not have a single definition.²¹ Instead, qualities or characteristics are used to define local food. These characteristics, such as geography, market outlets, consumer perceptions, and farming operation, are characteristics which can also preserve our natural environment, improve human health, and promote economic development.²²

¹⁸ The Harvard Law School Food Law and Policy Clinic, *Good Laws, Good Food: Putting State Food Policy to Work For Our Communities* 1 (November 2012) (available at <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2012/12/FINAL-full-state-toolkit.pdf>).

¹⁹ The local food movement is one of several interrelated movements encompassing the “sustainable food movement” including the organic movement, the local food movement, the slow food movement, and the “new American” food movement.” See Stephanie Tai, *The Rise of the U.S. Food Sustainability Litigation*, 85 S. Cal. L. Rev. 1069, 1072 (2012); see also Jason J. Czarnecki, *Food, Law & The Environment: Informational and Structural Changes for a Sustainable Food System*, 31 Utah Envtl. L. Rev. 263, 265-66 (2011) (noting the different non-industrial agricultural models including “civic” agriculture, “alternative” agriculture, and “new agriculture”).

²⁰ Marne Coit, *Jumping on the Bandwagon: An Overview of the Policy and Legal Aspects of the Local Food Movement*, 4 J. Food L. & Pol’y 45, 46-47 (2006); see also Nicholas R. Johnson & A. Bryan Endres, *Small Producers, Big Hurdles: Barriers Facing Producers of “Local Foods”*, 33 Hamline J. Pub. L. & Pol’y 49, 56 (2011) (describing the local food movement as “a purposeful effort by consumers to buy food products from farmers and producers in the cities, regions, and states in which they live”).

²¹ See Derrick Braaten & Marne Coit, *Legal Issues in Local Food Systems*, 15 Drake J. Agric. L. 9, 10 (2010) (noting that “‘local food’ does not have one set definition, legal or otherwise. Local food currently has a variety of meanings, depending on the context and the party defining it. It is an evolving and often debated term.”)

²² See Renee Johnson, Tadlock Cowan, Randy Alison Aussenber, CONG. RESEARCH SERV., *The Role of Local Food Systems in U.S. Farm Policy*, 3-10 (2012) (defining “local” food based on geographic proximity, marketing

The most intuitive definition of local food is based on the geographic proximity of the farmer to the consumer. The number of “food miles,” or the distance food travels from farm to plate, by which to measure local food varies.²³ Some consider food to be local if the food is produced within 100 miles from where it is consumed.²⁴ The 2008 farm bill defines local food as food produced within 400 miles.²⁵ Still other sources consider food to be local if it is produced and then consumed within the same state or region.²⁶

Regardless of the distance, one argument for eating local food is that food produced locally has fewer food miles and therefore has a smaller carbon foot print. Advocates argue that locally produced food is the best choice for minimizing global warming and other pollutants.²⁷

In addition to benefiting environmental health, eating local foods can benefit human health. Certain foods - fresh fruits and vegetables especially - can lose nutritional value as supply chains grow longer, and common preservation methods like freezing and blanching can compound this nutrient loss.²⁸ Promoting the consumption of fresh produce instead of processed or refined foods has a center piece of the First Lady’s Let’s Move campaign, which

channels, and social or supply chain characteristics) (available at

http://fyi.uwex.edu/danefoodsystem/files/2012/01/CRS_LocalFood_FarmPolicy12Jan20-asp_x_.pdf).

²³ *Health Facts: How Far Your Food Travels Has Serious Consequences For Your Health and The Climate*, Natural Resources Defense Council (November 2007) (available at <http://food-hub.org/files/resources/Food%20Miles.pdf>).

²⁴ Alisa Smith & J.B. MacKinnon, *The 100-Mile Diet: A Year of Local Eating* 3 (2007).

²⁵ See Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, § 6015, 122 Stat. 923, 1167 (2008) (codified at 7 U.S.C. § 1932). An amendment to Section 6015 directs the Secretary of Agriculture to “make or guarantee loans to individuals businesses, and other entities to establish and facilitate enterprises that process, distribute, aggregate, store, and market locally or regionally produced agricultural food products to support community development and farm and ranch income.” It defines locally or regionally produced agricultural food products as:

[A]ny agricultural food product that is raised, produced, and distributed in— (I) the locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or (II) the State in which the product is produced.

²⁶ See Derrick Braaten & Marne Coit, *Legal Issues in Local Food Systems*, 15 Drake J. Agric. L. 9, 11 (2010) (for other mileage definitions of local).

²⁷ See *Health Notes*, *supra* note 20. <http://food-hub.org/files/resources/Food%20Miles.pdf>

²⁸ Nicholas R. Johnson & A. Bryan Endres, *Small Producers, Big Hurdles: Barriers Facing Producers of "Local Foods"*, 33 Hamline J. Pub. L. & Pol'y 49, 90 (2011).

focuses on preventing childhood obesity.²⁹ But in order to eat fresh produce, individuals must have access to this product. Limited access to fresh produce has been identified as contributing to the growing problem of childhood obesity.³⁰

Increasing the market outlets, another way to define local foods, used by local farmers is one solution to the issue of access. In general, local food can be found at two main types of market outlets: direct-to-consumer markets and intermediate markets.³¹ The direct-to-consumer market includes roadside stands, on-farm stores, farmers' markets, and community supported agriculture (CSAs).³² The intermediate market could be grocers, restaurants, or food hubs.³³

In addition to improving access to fresh produce, market outlets support the local economies in which they are situated. Purchasing and consuming foods from a local farmer or from a retail establishment which sells local produce can benefit the local economy through reinvestment and recirculation of the local dollar.³⁴ Recognizing that "a community-based food system approach may be the best path toward economic recovery and resilience because it builds health, wealth, connection, and capacity in the local economy and community,"³⁵ many states have explored expanding local food production. For example, an Illinois study reported that supporting local food could "trigger \$20 to \$30 billion in new economic activity each year."³⁶ Noting the increase in farmers' market by 635% over the past ten years, The Food Bank of North Alabama recommended the use of local foods in Alabama as an economic

²⁹ http://www.letsmove.gov/sites/letsmove.gov/files/TFCO_Access_to_Healthy_Affordable_Food.pdf

³⁰ *Id.* at 49-52.

³¹ See Johnson et al., *supra* note 20 at 5-6.

³² *Id.*

³³ *Id.*

³⁴ Matthew V. Bradshaw, *The Rise of Urban Agriculture: A Cautionary Tale – No Rules, Big Problems*, 4 WM. & MARY BUS. L. REV. 241 (2013), <http://scholarship.law.wm.edu/wmblr/vol4/iss1/8> (describing the economic benefits of urban agriculture); see also Kathryn A. Peters, *Creating a Sustainable Urban Agriculture Revolution*, 25(1) J. ENVTL. L. & LITIG. 203, 207 (2010)

³⁵ See *A Community-Based Food System: Building Health, Wealth, Connection, and Capacity as the Foundation of Our Economic Future* (May 2011) (available at <http://pubs.ext.vt.edu/3306/3306-9029/3306-9029-PDF.pdf>).

³⁶ <http://www.agr.state.il.us/newsrels/r0304091.html>

strategy.³⁷ A study conducted in northeast Ohio reported that if northeast Ohio's residents and businesses spent 25 percent of their food dollars on local farms and businesses, 27,500 new jobs could be created while increasing economic output by \$4.2 billion and generating \$126 million in local and state taxes.³⁸

Officials at state and local level, as well as the federal level, see local foods as a long-term driver of job and wealth creation. One report of the USDA's Economic Research Service (ERS) found that in 2008 "produce and nut growers selling into local and regional markets generate thirteen full time operator jobs per \$1 million in revenue, for a total of 61,000 jobs."³⁹ Scholars, too, have described how local food production can work to revitalize local economies both rural and urban.⁴⁰

The type of farming operation a farmer manages is yet another way to define local food. Farmers selling to direct markets are usually diversified farms that grown specialty crops, meaning they grow more than one kind of fruit or vegetable.⁴¹ This is in contrast to industrialized farming practices of cropping monoculture commodity crops, such as wheat, corn, and soybeans. Farmers who sell to direct markets tend to have smaller farms both in terms of acreage and in terms of gross income.⁴² The USDA National Commission on Small

³⁷ Local Food: Potential to Build Health & Wealth in Alabama (available at <http://www.crcworks.org/huntsville.pdf>).

³⁸ <http://www.neofoodweb.org/sites/default/files/resources/the25shift-foodlocalizationintheNEOregion.pdf>

³⁹ <http://www.usda.gov/documents/11-Conclusions.pdf>

⁴⁰ Matthew V. Bradshaw, *The Rise of Urban Agriculture: A Cautionary Tale – No Rules, Big Problems*, 4 Wm. & Mary Bus. L. Rev. 241 (2013), <http://scholarship.law.wm.edu/wmblr/vol4/iss1/8> (describing the economic benefits of urban agriculture). See Kathryn A. Peters, *Creating a Sustainable Urban Agriculture Revolution*, 25(1) J. ENVTL. L. & LITIG. 203, 207 (2010)

⁴¹ Specialty crops are defined as "fruits, vegetables, tree nuts, dried fruits, horticulture, and nursery crops". See Specialty Crop Block Grant Program--Farm Bill, U.S. Dep't of Agric., Agric. Mktg. Serv., <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&navID=SpecialtyCropBlockGrant%20Program&rightNav1=SpecialtyCropBlockGrant%20Program&topNav=&leftNav=&page=SCBGP&resultType=&acct=fvgrntprg>

⁴² History and Philosophy, Small Farm Today Magazine, <http://www.smallfarmtoday.com/> (last visited Feb. 20, 2013) (defining "'small farm' as a farm that is 179 acres or less in size, or earns \$50,000 or less in gross income per

Farms defines a small farm as a family farm with less than \$250,000 total monetary value of food a year.⁴³ In contrast, the USDA's Agricultural Marketing Service (AMS), defines small farms as those farms with gross farm sales less than \$50,000, while medium sized farms gross between \$50,000 - \$250,000.⁴⁴ Large farms are those farms with gross farms sales of \$250,000.⁴⁵ According to the AMS definitions, small local food farms represent 81% of all local food farms; medium-sized farms represent 14%; and large farms accounted for approximate 5% of all local food farms.⁴⁶

B. Local Farmer Survey

With this understanding of the characteristics of local food, I devised a study to evaluate the perspectives of "local farmers" on recent changes to federal laws and policies that could affect local farmers.⁴⁷ My "local farmers" were those farmers with small farms in terms of acreage who sell specialty crops, animal products, or a combination thereof primarily to direct

year; *see also* Agricultural Brief: Large Farms are Thriving in the United States, Bureau of the Census (July 1996), http://www.agcensus.usda.gov/Publications/1992/outlying/ab_9601.pdf (noting that industrialized farms average approximately 1,542 acres in size while small farms average approximately 271 acres in size).

⁴³ Robert A. Hoppe, et al., *Small Farms in the United States: Persistence Under Pressure*, U.S. Dept. of Agric., Econ. Research Serv. (Feb. 2010), http://www.ers.usda.gov/media/147007/eib63_1_.pdf (defining small farms as those with annual sales under \$250,000); 2007 Census of Agriculture: Small Farms, U.S. Dept. of Agric., Nat'l Agric. Statistics Service, http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Farm_Numbers/small_farm.pdf (defining small farms as farms with \$250,000 or less in sales of agricultural commodities); http://www.nifa.usda.gov/nea/ag_systems/in_focus/smallfarms_if_overview.html; *see also* Robert A. Hoppe & David E. Banker, *Structure and Finances of U.S. Farms, Family Farm Report*, 2010 Edition, U.S. Dept. of Agric., Econ. Research Service, EIB 66, iv (2010), available at http://www.ers.usda.gov/media/184479/eib66_1_.pdf (defining "large farms" those with sales from \$250,000- \$499,999 and "very large farms" those above \$500,000).

⁴⁴ Sarah A. Low and Stephen Vogel, ECONOMIC REP. NO. 128, *Direct and Intermediate Marketing of Local Foods in the United States*, 4 (2011) (available at <http://www.ers.usda.gov/publications/err-economic-research-report/err128.aspx#.Ut6dexAo7cs>).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ The survey was determined to be exempt from IRB review by the University of Akron Institutional Review Board. Letter on file with author.

market outlets.⁴⁸ This section describes how I designed and distributed the local farmer survey and includes a discussion of the questions farmers were asked.

I used Survey Monkey to create a 10 question survey which was then distributed by email to local farmers across the country. Farmers had the option of answering some or all of the questions asked. The first question solicited information on the location, type, and size of the farm, as well as the number of years the farmer had been farming. The final question was an open ended question to solicit the farmers' opinions on federal local food policy in a narrative form. The eight questions in-between were Likert-type questions where farmers were asked whether they strongly approved, approved, had a neutral opinion, disapproved, strongly disapproved, or were not familiar with various legislative acts, USDA agency grants and initiatives, and the Secretary of the USDA, Tom Vilsack. In addition to answering the Likert-type question, farmers had the option of providing a narrative response to each question.

A link to this survey was emailed directly to local farmers.⁴⁹ Email addresses were identified through farmers' market websites and other websites housing local farmer information.⁵⁰ Over 200 emails with the survey link were distributed from late July through December 2013, and 56 responses were obtained, although not all farmers answered every question. The responses represent farmers from over 20 states, with the greatest number of responses coming from Ohio (10), Pennsylvania (7), Michigan (6), and Georgia (5).⁵¹ Twenty-eight farmers reported having a farm smaller than 25 acres; nine farmers had a farm between 25-

⁴⁸ Emily Broad Leib calls these farms part of the "alternative food system." Emily Broad Leib, *The Forgotten Half of Food System Reform: Using Food and Agricultural Law to Foster Healthy Food Production*, 9 J. Food L. & Pol'y 17, 31 (2013).

⁴⁹ See Appendix A for the survey questions.

⁵⁰ Many farmers' markets websites have links to vendors where information about the farmer, the farm operation, and contact information can be obtained. Realfarmers.com was another on-line source used to locate farmers. So to a certain extent, I selected which farms received the survey.

⁵¹ This question had 51 responses.

49.9 acres; one farmer had a farm between 50-99.9 acres; eight had a farm between 100-199.9 acres; and 5 had a farm between 200-400 acres.⁵² Of these farmers, 19 grew only vegetables, 10 raised only livestock, three grew only flowers, two were fruit farms, and 19 grew some combination of vegetable, flowers, livestock and fruit.⁵³ I also inquired about how long the farmer had been farming.⁵⁴ Most local farmers had been farming ten years or less: 14 had been farming five years or less; and 17 had been farming between six and ten years. Four farmers had been farming between 16 and 20 years. No farmers reported farming 21-25 years. Three farmers had been farming 26-30 years, and 11 farmers had been farming more than 31 years.

Considering that the survey was distributed during the height of the farming season, I am happy with the response rate. The results represent a cross-section of local farmers, from all across the country, engaged in a variety of farming operations, with various levels of farming expertise, thereby giving different perspectives on what has transpired over the last five years.

C. The Growth of the Local Food Movement

Perhaps because of the identified benefits of local food, the local food movement has steadily grown over the past twenty years.⁵⁵ In many ways local food is the new organic.⁵⁶ John Ikert, a prominent agricultural economic scholar, noted that “local foods have replaced organic

⁵² This question had 51 responses. Unfortunately, I did not differentiate between the number of acres cultivate, leased, or grazed, and the number of acres owned. Some of the “larger” farms could have a smaller number of acres actually cultivated.

⁵³ This question had 53 responses.

⁵⁴ This question had 54 responses.

⁵⁵ Derrick Braaten & Marne Coit, *Legal Issues in Local Food Systems*, 15 Drake J. Agric. L. 9, 10 (2010) (describing the “upsurge in interest” in the local food movement). Some scholars, however, have been discussing the importance of local food for some time. See Neil D. Hamilton, *Tending the Seeds: The Emergence of a New Agriculture in the United States*, 1 Drake J. Agric. L. 7 (1996); see also Neil D. Hamilton, *Greening Our Garden: Public to Support the New Agriculture*, 2 Drake J. Agric. L. 357 (1997); Neil Hamilton, *The Legal Guide for Direct Farm Marketing* (1999).

⁵⁶ The cover of the May 2007 issue of Time states “Forget Organic. Eat Local” (available at <http://content.time.com/time/covers/0,16641,20070312,00.html>.)

foods as the most dynamic sector of the retail food market....For many people, local has become more important than organic.”⁵⁷

The growth of the direct market outlets used by local farmers is one indication that consumers are increasingly interested in purchasing food from a local farmer or rancher. Farmers’ markets are perhaps the most visible direct markets. In 1994, the first year the USDA began gathering information on farmer market, there were over 1,755 farmers’ markets listed in the National Directory of Farmers’ Markets.⁵⁸ In 2008, the year of Mr. Pollan’s letter, there were 4,685.⁵⁹ Over 3,000 more farmers’ markets were added to the directory during the first four years of Obama’s presidency.⁶⁰ The most recent USDA survey from 2013 reported 8,144 farmers market.⁶¹

There has been a similar increase in the number of community supported agriculture (CSA) farms from just over 1,000 in 1999 to over 12,500 farms in 2007.⁶² The number of small farms that cater to their neighbors has increased 20 percent, to 1.9 million in the last six years.⁶³

Consumer demand for local produce in both rural and urban areas has resulted in a new generation of farmers. Agricultural law scholar, Neil Hamilton, has labeled this next generation

⁵⁷ See John Ikert, *Healthy Food, Local Food* (available at http://web.missouri.edu/ikerdj/papers/Jeff%20City%20Catholic%20Conf%20--%20Healthy%20Local%20Food.htm#_ftn1).

⁵⁸ See National Count of Farmers Market Directory Listing Graph: 1994-2013 (available at <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateS&leftNav=WholesaleandFarmersMarkets&page=WFMFarmersMarketGrowth&description=Farmers%20Market%20Growth>).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Scott Malone, *Farmers Warm to Community Agriculture Model*, Reuters, August 26, 2009 (available at <http://www.reuters.com/article/2009/08/26/us-usa-farms-community-IdUSTRE57P5O920090826?pageNumber=2&virtualBrandChannel=11604>).

⁶³ Marian Burros, *Preserving Fossil Fuels and Nearby Farmland by Eating Locally*, New York Times, F10 (Apr. 25, 2007) (available at <http://www.nytimes.com/2007/04/25/dining/25loca.html?ref=localfood&pagewanted=all>).

of farmers “New Agrarians.”⁶⁴ Professor Hamilton notes that New Agrarians often come from non-agricultural families and have a variety of economic, ethnic, racial, geographic, and education backgrounds.⁶⁵ Despite these differences, New Agrarians have “enlightened attitude[s] to resource conservation and sustainability and are interested in embracing environmental stewardship.”⁶⁶ In addition, they view farming as an “avenue for economic development” and “economic opportunity.”⁶⁷ New Agrarians are tech savvy, with the entrepreneurial drive to make their farms successful businesses.⁶⁸

New mechanisms for training this next generation of farmer have also emerged. Some colleges and universities now offer courses for emerging farmers. For example, the University of Washington offers a biology course called The Urban Farm where students learn the “basic skills needed for food production in urban areas.”⁶⁹ There are new incubator programs, such as the California Farm Academy, which trains “beginning farmers in agricultural production, business planning and marketing of specialty crops, poultry and livestock.”⁷⁰ Adding a children’s nutrition focus, the AmeriCorp Service Network’s new Food Corp program recruits “talented leaders for a year of paid public service building healthy school food environments in limited-resource communities” through school gardens.⁷¹

With the growth of local food production in both rural and urban areas, the local food movement has been integrated into society. In 2007 the word “locavore,” a “person who

⁶⁴ See generally Neil Hamilton, *America’s New Agrarians: Policy Opportunities and Legal Innovations to Support New Farmers*, 22 FORDHAM ENVTL. L. REV. 523 (2011).

⁶⁵ *Id.* at 524.

⁶⁶ *Id.* at 527.

⁶⁷ *Id.* at 526.

⁶⁸ *Id.* at 526-7.

⁶⁹ See <http://www.washington.edu/students/crscat/biology.html#biol240>

⁷⁰ See <http://landbasedlearning.org/farm-academy.php>

⁷¹ See <https://foodcorps.org/become-a-service-member>

endeavors to only eat locally produced food,”⁷² was chosen as Oxford American Dictionary’s word of the year.⁷³ That same year, best-selling novelist Barbara Kingsolver published her non-fiction book *Animal, Vegetable, Miracle: A Year of Food Life*, in which she recounts her family’s attempt to eat locally for a year.⁷⁴ Sandwiched between Barbara Kingsolver’s best seller were two other best sellers’ about local food, Michael Pollan’s, *The Omnivore’s Dilemma* and *In Defense of Food*.⁷⁵

Discussion of the local food movement has not been limited to books. Documentaries, such as *King Corn*⁷⁶ and *Food, Inc.*,⁷⁷ have further exposed how industrial agriculture⁷⁸ has eliminated the family farm and generated further interest in the local food movement. In addition to gracing the silver screen, the local food movement has become trendy. Phone apps such as the “locavore app” allow you to find local, in-season food from farmers’ markets and farms⁷⁹ and fancy resorts offer weekend specials to celebrate “all things Locavore.”⁸⁰

The local food movement has also made its way to Capitol Hill.⁸¹ Perhaps the most visible recognition of the local food movement in Washington D.C. was the planting of the

⁷² See <http://blog.oup.com/2007/11/locavore/>

⁷³ Grist Staff, *Locavore is New Oxford American Dictionary Word of the Year* (November 2007) (available at <http://grist.org/article/locavore/>)

⁷⁴ Barbara Kingsolver, *Animal, Vegetable, Miracle: A Year of Food Life*, HarperCollins (2007).

⁷⁵ See *supra* note 5.

⁷⁶ *King Corn* (Mosaic Films, Inc. 2007)

⁷⁷ *Food, Inc.* (Robert Kenner & Elise Pearlstein 2009)

⁷⁸ Michael Pollan describes industrial farming is a method of farming that relies on fossil fuels and chemical fertilizers. See Michael Pollan, *The Omnivore’s Dilemma: A Natural History of Four Meals* 41-47 (2006); see Neil D. Hamilton, *Feeding Our Future: Six Philosophical Issues Shaping Agricultural Law*, 72 Neb. L. Rev. 210, 213 (1993) (describing the “industrialization” of agriculture); see Jodi Soyars Windham, *Putting Your Money Where Your Mouth Is: Perverse Food Subsidies, Social Responsibility & America’s 2007 Farm Bill*, 31-FALL Environ. L. & Pol’y J. 1, 13 (2007) (describing the reasons for the rise of industrial agriculture in America). Numerous scholars have explored the negative impacts of industrial agricultural practices. See *supra* note 11.

⁷⁹ <http://www.getlocavore.com/>

⁸⁰ <http://www.mohonk.com/Events/Locavore13>; see also <http://media.visitsanantonio.com/node/120>; www.rosewoodhotels.com/en/sandhill/i/.../MSNBC.MSNcom010412.pdf; and <http://www.elitetraveler.com/travel-news/luxury-and-locavore-meet-at-lake-placid-for-golden-arrow-resorts-farm-tour-weekend>.

⁸¹ The 2008 farm bill definition was the first legislative acknowledgement of local food.

White House Garden in 2009.⁸² The White House Garden and Michelle Obama’s Let’s Move Campaign highlight fresh, local food as important to combating childhood obesity.⁸³ With First Family the transformed into locavores, local food policy became something worthy of discussion at the federal level.

III. Dormant Not Dominant: Local Food Platforms in the 2008 and 2012 Presidential Campaigns

Months before vegetables were sprouting from the South Lawn and the Obamas were considered locavores, there was the 2008 election and the proceeding campaign. And even though the federal government controls something on which every American relies—food—⁸⁴ there was very little discussion of agricultural policy, much less local food policy, during the 2008 campaign season.⁸⁵ When Obama did discuss food policy it was in the context of his plan for rural America.⁸⁶ In his plan, Obama portrayed himself as having a preference for small farms over agribusiness.⁸⁷ He supported capping subsidies to megafarms, while McCain “oppos[ed] policies that would help family farms stay in business.”⁸⁸ Obama’s official campaign website also included a position paper addressing rural issues in which he stated he would implement

⁸² The Garden was quickly followed by Michelle Obama’s book *American Grown: The Story of the White House Kitchen Garden and Gardens Across America*.

⁸³ Andrew Martin, *Is a Food Revolution Now in Season?*, N.Y. TIMES, Mar. 21, 2009, at BU1 (available at http://www.nytimes.com/2009/03/22/business/22food.html?pagewanted=all&_r=0) (noting that the First Lady has been “[t]he most vocal booster” of local food production).

⁸⁴ See Margaret Sova McCabe, *Reconnecting Federalism And the Farm: Toward Including Local, State and Regional Voices in America’s Food System*, 6 J. Food L. & Pol’y 151, 153 (2013) (describing how the federal government controls America’s food system).

⁸⁵ See *What Does An Obama Win Mean For The U.S. Food Supply?*, The Ethicurian (November 2008) (noting that between April and October, John McCain uttered the word “agriculture” only twice, and “nutrition” just once. Barack Obama did slightly better, referring to “agriculture” twelve times and “nutrition” four times. He gave farms a passing mention in his speech at the Democratic National Convention in August.”) Despite being relatively quiet on the local food issue, Obama was vocal about GMOs. Obama promised while on the campaign trail in 2007 to Iowa farmers when he said on November 10 in Des Moines: “Here’s what I’ll do as president . . . we’ll let folks know whether their food has been genetically modified because Americans should know what they’re buying.” See <http://ecowatch.com/2013/obama-signs-monsanto-protection-act/>

⁸⁶ See *Obama For Rural America: Obama v. McCain on Agriculture and Rural Issues Obama v. McCain on Agriculture and Rural Issues* (available at obama.3cdn.net/0ac86d6cd1d15c3fc8_xhamvyq11.pdf).

⁸⁷ *Id.*

⁸⁸ *Id.* (describing Obama’s commitment to capping subsidies to megafarms and advocating for family farms).

USDA policies that promote local and regional food systems.⁸⁹ Obama's plan displayed further commitment to new farmers by providing tax incentives to make it easier for new farmers to afford their first farm.⁹⁰

In contrast, McCain rarely discussed his agricultural policies. He was described as someone who "had never met a farm bill he liked."⁹¹ McCain did convene an agricultural advisory committee in 2007 and stated: "Farming and agriculture production is part of the backbone of our great country. As president, I will support addressing the larger needs of the farming community abiding by the same standards of common sense and fiscal restraint as demonstrated by our nation's hardworking families."⁹² Yet his staunch opposition to spending for farm programs, flood control and rural development, often drew criticism from farmers who relied on this type of support.⁹³

An interview involving representatives from both the McCain and Obama campaigns demonstrates the weight each candidate gave to local food. When asked specifically about the locally grown food movement, a McCain representative noted that "McCain [was] a major supporter of locally grown products," but provided few details of this support.⁹⁴ In contrast, the Obama representative enthusiastically responded that the local food movement "is one of the most exciting developments in agriculture today. . . . It creates new opportunities for future generations to become or remain involved in agriculture. . . . The consumer [] benefits by

⁸⁹ See *Wall Street Crisis a Top Priority, But What About Our Farms?*, New York Bounty, September 28, 2008 (available at <http://mcorreia.wordpress.com/2008/09/25/wall-street-crisis-a-top-priority-but-what-about-our-farms/>)

⁹⁰ *Id.*

⁹¹ Forrest Laws, *Farmers' Decision Will Not Be Easy in November*, DELTA FARM PRESS, Sept. 29, 2008 (available at <http://deltafarmpress.com/farmers-decision-will-not-be-easy-november>).

⁹² Forrest Laws, *Farmers' Decision on a President Won't Be Easy Come November*, Southwest Farm Press, 10/2/2008, Vol. 35 Issue 19, p4 (available at <http://connection.ebscohost.com/c/articles/34785803/farmers-decision-president-wont-be-easy-come-november>).

⁹³ *Id.*; see also <http://agwired.com/2008/10/10/what-would-you-say-to-mccain/> (stating that McCain's proposed agricultural policy to eliminate food and ethanol subsidies is wrong).

⁹⁴ *Candidate Reps Discuss Farm Policy Proposals*, Lancaster Farming, October 24, 2008 (on file with author).

knowing the source of their food and appreciating the procedure. There is plenty of room for both large-scale commercial agriculture and smaller, more traditional entities to progress.”⁹⁵

Further distinctions between the candidates arose when the 2008 farm bill came up for a vote in the summer before the election. Although the 2008 farm bill continued to provide subsidies to the largest farms, the farm bill increased financial support for food stamps and nutrition programs and created new programs with a sustainability focus.⁹⁶ For example, the 2008 farm bill provided funding to support organic farmers and, for the first time, it included coverage for farmers of fruit and vegetables, or specialty crops.⁹⁷ In addition, the 2008 farm bill included tax incentives for land conservation and increased emphasis on rural development.⁹⁸ One agricultural policy expert described these changes as “meaningful” and a departure from “the status quo” in terms of agricultural policy.⁹⁹ Although neither senator was present to vote on the 2008 farm bill,¹⁰⁰ Senator Obama came out in support of the bill; his rival, Senator John McCain, did not.¹⁰¹

⁹⁵ *Id.*

⁹⁶ David M. Herszenhorn & David Stout, *Defying President Bush, Senate Passes Farm Bill*, N.Y. TIMES, May 15, 2008 (available at <http://www.nytimes.com/2008/05/15/washington/15cnd-farm.html>).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*; see also Melanie J. Wender, *Good Bye Family Farms Hello Agribusiness: The Story of How Agricultural Policy is Destroying the Family Farm and the Environment*, 22 Vill. Envtl. L.J. 141 (2011) (discussing various components of the 2008 Farm Bill).

¹⁰⁰ <http://votesmart.org/candidate/key-votes/9490/barack-obama-ii>; see also See Larry Rohter, *Obama Camp Closely Linked to Ethanol*, N.Y. TIMES June 23, 2008 <http://www.nytimes.com/2008/06/23/us/politics/23ethanol.html?pagewanted=all& r=0> (noting that McCain would have “vetoed” the bill).

¹⁰¹ Consistent with McCain’s campaign promises for fiscal responsibility, McCain voted against the 2008 Farm Bill, calling it “a bloated piece of legislation.” Ken Dilanian, *Bill includes Billions in Subsidies*, USA TODAY, May 15, 2008 (available at http://usatoday30.usatoday.com/news/washington/2008-05-15-farmbill_N.htm).

While biofuels or energy crops was often what both candidates discussed when traveling across America's heartland,¹⁰² Obama also had specifics for supporting local production and supporting new young farmers.¹⁰³ McCain on the other hand was criticized for having an agricultural platform which "never mention[ed] food, local production or the rural economy."¹⁰⁴ Given his fiscally conservative approach to agricultural policy, Senator McCain's criticism of President Obama's local food efforts is not surprising. In 2010, Senator McCain and two other GOP Senators sent a letter to the President complaining that resources were being diverted from "conventional farmers who produce the vast majority of our nation's food supply ... [to] small, hobbyist and organic producers whose customers generally consist of affluent patrons at urban farmers markets."¹⁰⁵ Today, Senator McCain remains critical of "pork" and farm subsidies in the most recent versions of the farm bill¹⁰⁶ and voted against the 2014 farm bill.¹⁰⁷

Although agricultural policy was still not widely discussed during the 2012 election season, there was evidence that food was becoming increasingly political.¹⁰⁸ By this time, Michele Obama had initiated her Let's Move campaign, two food related pieces of legislation had been passed, and the USDA had launched its Know Your Farmer, Know Your Food (KYF) campaign. Obama continued to discuss local food in the context of his agenda for rural

¹⁰² While Obama supported subsidizing domestically produced ethanol, McCain opposed it. See Larry Rohter, *Obama Camp Closely Linked to Ethanol*, N.Y. TIMES June 23, 2008 (available at <http://www.nytimes.com/2008/06/23/us/politics/23ethanol.html?pagewanted=all&r=0>).

¹⁰³ Jim Goodman, *McCain and Obama Need to Talk Real Farm Policy*, October 10, 2008 (available at http://www.organicconsumers.org/articles/article_15099.cfm).

¹⁰⁴ *Id.*

¹⁰⁵ Philip Brasher, *GOP Senators Challenge Vilsack on Local Foods Focus*, May 4, 2010 (available at <http://blogs.desmoinesregister.com/dmr/index.php/2010/05/04/gop-senators-challenge-vilsack-on-local-foods-focus>).

¹⁰⁶ Lindsey Boemar, *McCain Mocks Farm Bill Pork on Senate Floor*, June 14, 2012 (available at <http://www.cbsnews.com/news/mccain-mocks-farm-bill-pork-on-senate-floor/>).

¹⁰⁷ Alan Bjerga, *Congress Passes Farm Bill to End Fight Over Food Stamps*, Bloomberg, Feb. 4, 2014 (available at <http://www.bloomberg.com/news/2014-02-04/congress-passes-farm-bill-to-end-fight-over-food-stamps.html>).

¹⁰⁸ Susan Ruland, *Elections Pains or Gains?*, Food Processing, 2012 (available at <http://www.foodprocessing.com/articles/2012/election-pains-or-gains/?start=0>).

America,¹⁰⁹ but he also had these accomplishments from which to draw. As part of this rural plan, Obama outlined three overarching goals: to ensure economic opportunities for family farmers, to support rural economic development, and to improve rural quality of life.¹¹⁰ He identified “encourage[ing] organic and local agriculture” by “promot[ing] regional food systems” as one way to ensure economic opportunity for family famers.¹¹¹

In addition, in President Obama’s first term, the USDA had implemented several initiatives to support the local food movement representing a “dramatic shift from prior USDA policies.”¹¹² Agricultural law expert Susan Scheider expressed the opinion that the Obama administration coupled its support for production agriculture “with a recognition of the many benefits of local/regional foods.”¹¹³ Obama had “a record of four years of USDA policies in support of local/regional foods.”¹¹⁴ Local farmers, too, acknowledged approval of the USDA policies and encouraged Obama’s reelection.¹¹⁵

In contrast, Mitt Romney’s position on agricultural and food policy was somewhat of an open question.¹¹⁶ And there was no rural platform or agricultural platform to be found on his campaign website.¹¹⁷

¹⁰⁹ The Obama-Bidden Plan for Rural America (available at http://change.gov/agenda/rural_agenda/).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Susan Schneider, *The Last Four Years: Change at the USDA*, October 28, 2012 (available at <http://aglaw.blogspot.com/2012/10/the-last-four-years-change-at-usda.html>).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Iowa Farms NEED Another Four Years of Obama, October 24, 2012 (available at <http://www.bleedingheartland.com/diary/5803/iowa-farms-need-another-four-years-of-obama>).

¹¹⁶ Eleanor West, *Agriculture Fact Sheet: Obama v. Romney*, July 10, 2012 (available at <http://www.foodrepublic.com/2012/07/10/agriculture-policy-cheat-sheet-obama-vs-romney>) (noting that “[n]ot even [Mitt Romney] seems to know for sure” where he stands on food-related issues.)

¹¹⁷ Tom Laskawy, *The Man Without A Plan: Romney Has No Real Food and Farming Platform*, September 10, 2012 (available at <http://grist.org/food/the-man-without-a-plan-romney-has-no-real-food-and-farming-platform/>).

As the election season progressed, Romney's position on farm policy became more apparent. Mitt Romney appeared to approve of government support for farmers and in that respect, was more in-line with President Obama than Senator McCain.¹¹⁸ President Obama and Romney also supported ethanol programs and received a B on their agricultural policy based on responses to a survey conducted by the Corn Caucus Project, an association of Iowa corn growers.¹¹⁹

They also differed on many farm related issues. Mitt Romney was critical of Obama's overregulation of the farming industry and emphasized his support for free enterprise.¹²⁰ Mitt Romney's Advisory Committee consisted of individuals with industrial agricultural backgrounds, further suggesting that Romney's position would support conventional large-scale farming practices.¹²¹ Mitt Romney also blamed President Obama's lack of leadership when Congress was unable to pass a farm bill in 2012 when the 2008 farm bill expired.¹²²

Romney's full agricultural agenda was not revealed until October 2012, when he released his Vision for Agricultural Prosperity. This paper outlined the pillars of his agricultural policy, which included a fair tax code, a rational regulatory environment, access to markets around the world, and an embrace of the nation's domestic energy resource.¹²³

¹¹⁸ West, *supra* note 11.

¹¹⁹ See

http://www.iowacorn.org/documents/filelibrary/presidential_caucus/smallerreportcardgrade_C2B2294DC9F28.pdf.

The Corn Caucus Project's purpose is to keep corn growers informed and engaged in the 2012 presidential campaign. It outlines both the Republican and Democrats' views on a variety of agricultural topics. Presidential candidates were asked to answer a survey with questions relating to the National Corn Growers Association legislative priorities. Topics included: ethanol, farm programs, trade, EPA and transportation.

¹²⁰ http://farmprogress.com/story-romney-farm-team-unveils-agricultural-policy-platform-9-62594-spx_1

¹²¹ <http://nationalfork.com/mitt-romney-will-kill-more-small-farms/>

¹²² Eric Wasson, *Romney Blames Obama for Congress's Failure to Pass New Farm Bill*, October 9, 2012 (available at <http://thehill.com/blogs/on-the-money/economy/131185-romney-blames-obama-for-congress%E2%80%99s-failure-to-pass-new-farm-bill>)

¹²³ http://www.hagstromreport.com/assets/2012/2012_1009_RomneyAgriculture.pdf

Another example of the candidates' different agricultural priorities can be seen in their responses to questions posed by United Fresh, a produce association.¹²⁴ United Fresh submitted questions to the Obama and Romney campaigns about the produce industry's top issues: immigration, food safety, agricultural regulation, the farm bill, taxes, and nutrition.¹²⁵ In the context of questions pertaining to the farm bill, Obama noted that "specialty crops are one of the many important components of our agricultural system" and explained that he "endorsed a farm bill that recognizes the diversity of American agriculture and the importance of providing access to healthy foods by supporting programs that focus on fruits, vegetables, nuts and organic crops."¹²⁶ Romney's response on the other hand made no mention of specialty crops and instead focused on business implications, noting that "agricultural policy in this country is evolving, moving away from decades of government intervention and subsidies toward a more market-based system."¹²⁷

When asked about food safety, President Obama highlighted his accomplishment of passing "the most comprehensive reform of our nation's food safety laws in decades-giving the FDA the resources, authority and tools they need to make real improvements to our food safety system."¹²⁸ Obama again relied on his record when asked about nutritional programs noting that he "signed the Healthy, Hunger Free Kids Act into law that ensure millions of children across the

¹²⁴ According to its website "United Fresh Produce Association is the industry's leading trade association committed to driving the growth and success of produce companies and their partners. United Fresh represents the interests of member companies throughout the global, fresh produce supply chain, including family-owned, private and publicly traded businesses as well as regional, national and international companies. The association was founded in 1904 to represent the produce industry, and recently took the name United Fresh as a result of the 2006 merger of the United Fresh Fruit & Vegetable Association and the International Fresh-Cut Produce Association. United Fresh will continue the shared mission of IFPA and UFFVA to promote the growth and success of produce companies and their partners." See <http://www.unitedfresh.org/about>

¹²⁵ http://www.unitedfresh.org/presidential_nominees_responses

¹²⁶ <http://www.unitedfresh.org/assets/ObamaResponse.pdf> at 2.

¹²⁷ <http://www.unitedfresh.org/assets/RomneyResponse.pdf> at 2.

¹²⁸ <http://www.unitedfresh.org/assets/ObamaResponse.pdf> at 2.

US have access to healthier and more nutritious meals during school.”¹²⁹ Obama also recognized that there was more to be done to “encourage[] schools to promote healthy eating and ensur[e] students are offered [fruit] and vegetables every day of the week,... [and to] support[] regional food hubs and the establishment of grocery stores in underserved neighborhoods.”¹³⁰

IV. Presidential Accomplishments

Current USDA publications identify President Obama as supporting local food systems. One document notes that President Obama “has placed an emphasis on local food systems because of the role they play in driving economic development, creating jobs, and preserving open space.”¹³¹ This support can be seen through legislative acts, agency initiatives, and personnel decisions. The USDA Know Your Farmer Know Your Food Compass Homepage quotes President Obama as stating “[l]ocal food systems work for America: when we create opportunities for farmers and ranchers, our entire nation reaps the benefit.”¹³² This is where President Obama’s legacy becomes more difficult to discern. While President Obama has focused on the importance of local food from the consumer’s perspective, the farmers who produce this food still struggle.

A. Legislation

In the past five years, two legislative acts have acknowledged local food: the Healthy, Hunger Free Kids Act of 2010 and the Food and Safety Modernization Act of 2010. While the focus of one is nutrition and the other is food safety, apart from the 2014 farm bill, they are only

¹²⁹ *Id.* at 3.

¹³⁰ *Id.*

¹³¹ <http://www.usda.gov/documents/10-Localandregional.pdf>

¹³² http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_COMPASS

pieces of legislation enacted during President Obama’s presidency to use the phrase “local food.”¹³³

a. Healthy, Hunger Free Kids Act of 2010

i. Overview

The Healthy, Hunger Free Kids Act of 2010 (HHFKA) is an amendment to the Richard B. Nelson National School Lunch Program enacted in 1946.¹³⁴ It expands the number of students who can participate in the need-based child nutrition programs implemented by the USDA including the National School Lunch and Breakfast programs and the Summer Food Service programs,¹³⁵ and provides new funding of \$ 4.5 billion dollars over ten years.¹³⁶ In addition to increasing access to and funding for these programs, the Act addresses childhood obesity in a number of ways.¹³⁷ For example, this Act for the first time sets nutritional standards for all food sold in schools including vending machines and a la carte lines.¹³⁸

The Act also recognizes the importance of local food in combating childhood obesity by formally establishing farm-to-school programs as part of the government-subsidized programs like the National School Lunch and Summer Food Service programs.¹³⁹ Farm to school programs connect schools (K-12) and pre-schools with local producers with the objective of serving local, fresh food in school cafeterias to improve childhood nutrition.¹⁴⁰ The programs have been recognized as increasing access to fresh fruit and vegetables and therefore increasing

¹³³ The first federal act to use the phrase “local food” was the 2008 Farm Bill.

¹³⁴ See Lauren Kaplin, A National Strategy to Combat The Childhood Obesity Epidemic, 15 U.C. Davis J. Juv. L. & Pol’y 347, 352 (2011).

¹³⁵ *Id.*; see also <http://www.foodpolitics.com/2010/12/president-signs-healthy-hunger-free-kids-act-at-last/>

¹³⁶ <http://www.foodpolitics.com/2010/12/president-signs-healthy-hunger-free-kids-act-at-last/>

¹³⁷ For a more detailed discussion of the strengths and weaknesses of the Health Hunger-Free Kids Act of 2010 see Melissa D. Mortazavi, *Are Food Subsidies Making Our Kids Fat? Tensions Between the Healthy Hunger-Free Kids Act and the Farm Bill*, 68 WASH. & LEE L. REV. 1699 (2011).

¹³⁸ <http://www.foodsafetynews.com/2010/12/president-to-sign-landmark-child-nutrition-bill-today/>

¹³⁹ <http://www.foodsafetynews.com/2011/04/usda-rule-to-encourage-local-food-for-school-meals/>

¹⁴⁰ http://www.farmentoschool.org/files/publications_514.pdf

consumption of these items.¹⁴¹ Farmers benefit through this new market outlet option as does the economy of the area as a whole.¹⁴²

Under the “access to local foods” provision in the 2010 law, the Secretary of Agriculture is directed to carry out a Farm-to-School program whereby eligible schools will have access to local food.¹⁴³ Grants are awarded to eligible schools to “implement[] farm to school programs.”¹⁴⁴ The highest priority of funding is given to schools that make local food products available on the menu as well as incorporate experiential nutrition education activities in the curriculum by having children participation in farm and garden-based agricultural education activities.¹⁴⁵

The Act allows for \$5 million in new funds to be spent in support of farm to school programs.¹⁴⁶ \$3.5 million of the \$5 million takes the form of grants to schools; the remaining \$1.5 million provides technical assistance to implement farm-to-school programs.¹⁴⁷ From the \$3.5 million, applicants are eligible for grants up to \$100,000 to fund programs that bring locally produced foods to school cafeterias.¹⁴⁸ Two types of grants are available: planning and implementation grants.¹⁴⁹ Planning grants help schools starting to develop farm to school

¹⁴¹ See http://www.farmtoschool.org/files/publications_514.pdf (reporting an increase in fruit and vegetable consumption between .9-1.3 % in children in grades K-12).

¹⁴² One Oregon study from before the Act noted that for every Oregon job directly created by school districts purchasing local food, successive rounds of economic activity create another 1.43 jobs, for an overall increase of 2.43 jobs. See <http://civileats.com/2013/09/17/school-food-success-oregon-lawmakers-pledge-to-spend-over-a-million-on-local-ingredients/#sthash.XUzx6SFw.dpuf>; see also http://www.farmtoschool.org/files/publications_514.pdf

¹⁴³ 42 U.S.C.A § 1769(c)(a)(g) (2014) (Westlaw current P.L. 113-74 (excluding P.L. 113-67, 113-67, and 113-73) approved 1-16-14)).

¹⁴⁴ *Id.* U.S.C.A. § 1769(c)(a)(g)(3)(A)(vii).

¹⁴⁵ *Id.* U.S.C.A. § 1769(c)(a)(g)(5)(C). In addition, local education agencies must establish a “local school wellness policy” for all schools under its jurisdiction. *Id.* at § 1758b. The Act delegates to the USDA the duty to promulgate “regulations that provide the framework and guidelines” for these local school wellness policies which focus on limiting the availability of unhealthy foods and developing guidelines for nutrition guidelines and physical education. *Id.* at § 1769b(b).

¹⁴⁶ <http://www.foodsafetynews.com/2012/04/usda-makes-grants-available-to-farm-to-school-programs/>

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*; see also <http://www.fns.usda.gov/f2s/farm-school-grant-program-cfda-10575>

programs and accounts for 25 percent of the allotted money.¹⁵⁰ The remaining 75 percent goes to implementation grants for schools or other organizations already involved in farm-to-school programs.¹⁵¹

By way of example, in 2013 Cleveland Municipal School District received a \$45,000 planning grant to “engage the technical services and expertise of the Ohio State University Extension to help facilitate and guide us in the development of a more coherent strategy and approach to farm to school programming.”¹⁵² As an example of an implementation grant, Portland Public Schools received approximately \$100,000 to implement best practices to increase student consumption of local foods, and to increase public awareness and community engagement in these efforts.¹⁵³ The project plan includes updating central kitchen equipment, certifications, and training in order to become a large volume processor of local foods.¹⁵⁴

To participate in the farm to school program, the local farmer needs to be GAP (Good Agricultural Practices) certified. GAP certification is a way of establishing some sort of quality control (food safety) for the produce served in schools. GAP certification is standard for larger growers, and so the USDA has taken extra measure to help smaller farmers become GAP certified.¹⁵⁵

In addition, a federal rule was enacted to give preference in contract bidding for school meals using local farm products. The USDA has stated that the final rule, entitled the Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² <http://www.fns.usda.gov/f2s/farm-school-grant-program-cfda-10575>

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ <http://www.foodsafetynews.com/2012/04/usda-makes-grants-available-to-farm-to-school-programs/>

Child Nutrition Programs,¹⁵⁶ was designed to “encourage the use of local farm products in school meals” and to “give a much needed boost to local farmers and agricultural producers.”¹⁵⁷

ii. Farmers Response

Fifty-five of 56 local farmers responded to the question asking their opinion of the Healthy, Hunger Free Child Act. 31 farmers (56%) reported not being familiar with the Act. 14 farmers (25.45%) approved of the Act. Four farmers (7.5%) had a neutral perception of the Act, three farmers (5.6%) strongly approved of the Act, two farmers (3.7 %) disapproved of this act and one farmer (1.8%) strongly disapproved.

Only three farmers provided an additional narrative response. Two of the comments were general statements about farming and the federal government. The comment most directly related to the Act noted that the effectiveness of this act was “hard to tell, but it’s always good to get food into the hands of those who need it.”

iii. Assessment

One year after this legislation was enacted, a USDA press release described “bolster[ing] Farm to School Connections” as one of the nine “key accomplishments” from the Act.¹⁵⁸ This assessment is hard to dispute. In fiscal year 2013, 68 programs in over 38 states were funded.¹⁵⁹ In fiscal year 2014, 71 programs in 42 states plus the District of Columbia were funded.¹⁶⁰

In October of 2013, the USDA published the results of the first ever farm to school census for the 2011-2102 school year. The USDA surveyed over 13,000 public school districts

¹⁵⁶ <https://www.federalregister.gov/articles/2011/04/22/2011-9843/geographic-preference-option-for-the-procurement-of-unprocessed-agricultural-products-in-child>

¹⁵⁷ http://www.usda.gov/wps/portal/usda/usdahome?contentId=2011/04/0180.xml&navId=NEWS_RELEASE&navty pe=RT&parentnav=LATEST_RELEASES&edeployment_action=retrievecontent

¹⁵⁸ <http://www.fns.usda.gov/pressrelease/2011/051211>

¹⁵⁹ <http://www.fns.usda.gov/f2s/farm-school-grant-program-cfda-10575>

¹⁶⁰ <http://www.fns.usda.gov/pressrelease/2013/021813>

and received a 65% response rate.¹⁶¹ USDA estimates that as of the 2012-2013 school year, 3,812 districts operating approximately 38,629 schools with 21,008,254 students in attendance are buying local products and teaching children where their food comes from.¹⁶² 43% report participating in farm to school activities, 13% indicated a desire to participate in farm to school programs in the future.¹⁶³ Other reports show farm to school programs increasing from 10 in 1997 to over 12,500 in 2012.¹⁶⁴

Interest in farm-to-school programs at the state level has also increased. For example, the Oregon Legislature awarded nearly \$1.2 million for Farm to School and School Garden programs for the 2013-2015 biennium.¹⁶⁵

Although no studies on the effectiveness in farm-to-school programs in improving childhood nutrition by reducing obesity have been conducted, the CDC recently announced that obesity rates among preschoolers have decreased from 2008-2011.¹⁶⁶ This decrease could be due, in part, to an increased effort to serve fruits and vegetables to preschool aged children.¹⁶⁷

Also missing from this analysis is an assessment of how many local farmers participate in farm to school programs.¹⁶⁸ The number farmers unaware of this program suggest that many farmers still do not know about this “new” market outlet. Coordinating with school districts might also be difficult. I had a difficult time finding information on how a farmer could go about becoming involved with farm to school programs. One website recommended contacting the

¹⁶¹ <http://www.fns.usda.gov/farmtoschool/census#/map>

¹⁶² <http://www.fns.usda.gov/farmtoschool/census#/national>

¹⁶³ *Id.*

¹⁶⁴ http://www.farmtoschool.org/files/publications_514.pdf

¹⁶⁵ <http://www.ecotrust.org/press/oregon-designates-million-local-food-in-schools.html>

¹⁶⁶ http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6231a4.htm?s_cid=mm6231a4_w. The student reports that “during 2008–2011, statistically significant downward trends in obesity prevalence were observed in 18 states and the U.S. Virgin Islands.”

¹⁶⁷ *Id.* Limiting consumption of sugary drinks and reducing screen time and increasing physical activity were also noted as possible reasons for decreased obesity rates. Studies have also been conducted which show that the availability of fruits and vegetables through farm stands and farmers’ markets increases intake of these products. See http://www.ucsusa.org/food_and_agriculture/solutions/expand-healthy-food-access/11-trillion-reward.html.

¹⁶⁸ Perhaps that would have been a better question for my survey.

farmer's school district Food Service Director directly or joining with farmers associations or cooperatives to identify interest in participating in such a program.¹⁶⁹ Some studies have shown that low-volume sales and logistical issues such as storage, refrigeration and preparation space have deterred farmers from participating in these programs in the past.¹⁷⁰ Despite these challenges, farm-to-school programs are on the rise and the Healthy, Hunger Free Kids Act is often cited by Obama and others within his administration as an example of one way the federal government has improved childhood nutrition and increased access to local food.

b. Food Safety and Modernization Act of 2010

i. Overview

A few years ago, the Food and Drug Association (FDA) reported that in the United States between 1996 and 2010, there were 131 documented outbreaks associated with contaminated produce, causing more than 14,000 illnesses and 34 deaths.¹⁷¹ Highly publicized illnesses from contaminated eggs, peanut butter, and spinach lead industry groups and consumer advocates to push for stronger government oversight. That oversight came in the form of the Food Safety and Modernization Act of 2010.¹⁷²

The desire to protect consumers, however, did not receive full support from small farmers and food producers, who argued that the stricter regulations had the potential to harm their businesses. Before the bill's passing, advocates of the local food movement, including the National Sustainable Agriculture Coalition, pushed for exemptions for local food producers. The

¹⁶⁹ <http://www.farmaid.org/site/apps/nlnet/content2.aspx?c=qlI5IhNVJSE&b=2723877&ct=8842627#2>

¹⁷⁰ Betty T. Izumi, D. Wynne Wright, Michael W. Hamm, *Market Diversification and Social Benefits: Motivations of Farmers Participating in Farm to School Programs*, 26 J. RURAL STUDIES 374, 376 (2010) (available at <http://www.sciencedirect.com/science/article/pii/S0743016710000161>).

¹⁷¹ <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334114.htm>. The Center for Disease Control reports that "about 48 million people (1 in 6 Americans) get sick, 128,000 are hospitalized, and 3,000 die each year from foodborne diseases." See <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm239907.htm>.

¹⁷² 21 U.S.C.A. § 341 et seq.

result was the Tester-Hagan Amendment, which was added to the bill before it passed.¹⁷³ This Amendment exempts qualifying food producers from some of the more costly requirements of the Act.¹⁷⁴ For example, prior to the Tester-Hagan Amendment, small farms and food producers would have had to:

identify and evaluate known or reasonably foreseeable hazards; develop a written analysis of the hazards; identify and implement preventive controls; monitor the effectiveness of the preventive controls; establish procedures that a facility will implement if the preventive controls are found to be ineffective; verify that the preventive controls are adequate and the owner operator is conducting monitoring and is making appropriate corrective actions and that the preventive controls implemented are effectively and significantly minimizing or preventing the occurrence of identified hazards including the use of environmental and product testing and that there is documented, periodic reanalysis of the plan to ensure that it is still relevant; maintain for not less than 2 years records documenting the monitoring of the preventive controls, instances of nonconformance, testing results and other verification and corrective actions; prepare a written plan that documents and describes the procedures used by the facility to comply with the measurements of this section; and conduct a reanalysis whenever a significant change is made in the activities conducted at a facility or every 3 years whichever is earlier.¹⁷⁵

Complying with these regulations would have been costly to small farmers. The Tester-Hagan Amendment exempt small farms that sell 51% or more of produce directly to consumers or retail food establishments in the same state or within 275 miles of where they are grown and have an average annual monetary value in the previous 3 year period that was less than \$500,000.¹⁷⁶ Small farms and producers must still comply with existing federal regulations, and state and local laws. The FDA has the authority to withdraw its exemption from a farm or

¹⁷³ See Peter Anderson, *Empowering Local and Sustainable Food: Does the Food Safety Modernization Act's Tester-Hagan Amendment Remove Enough Barriers*, 9 J.L. Econ. & Pol'y 145 (2012) (for a detailed examination of the Tester-Hagan Amendments to the FSMA).

¹⁷⁴ See 21 U.S.C. § 350h(l) for the exemption of "direct farm marketing" to the standards for produce safety and § 350(g) for the exemption of "a qualified facility" under the hazard analysis and risk-based preventive controls .

¹⁷⁵ http://www.worc.org/userfiles/file/Local%20Foods/QA_Testter_Amendment.pdf

¹⁷⁶ See 21 U.S.C. § 350(h)(f).

facility that has been associated with a food-borne illness outbreak.¹⁷⁷ The bill ultimately passed with the Tester-Hagan Amendment in place and with bipartisan support.¹⁷⁸

While this Act did not get a lot of publicity, it “overhauled” the nations’ food safety laws for the first time since the Great Depression.¹⁷⁹ The new law enables the FDA to establish food safety standards for farmers and food processors and to authorize food recalls, something that was left up to food companies before.¹⁸⁰ The goal is to prevent contamination of food and vegetables through water, equipment, worker hygiene, and manure.¹⁸¹ In addition, the law requires food producers to develop food safety plans, obtain licenses from the FDA, and to set up traceability requirements.¹⁸² In addition, stricter laws apply to importers who will be required to verify the safety of their suppliers’ products.¹⁸³ The law also signals a shift in focus of the FDA from responding to contamination to preventing food safety problems.¹⁸⁴

The preventative food safety approach can be seen in two proposed rules published by the FDA in January 2013: the proposed rules for Produce Safety and the Preventative Controls for Human Food.¹⁸⁵ Both rules could have effected small farmers. The proposed produce safety rule covered all fruits and vegetables grown and produced for personal consumption or destined

¹⁷⁷ See 21 U.S.C. § 350(h)(3).

¹⁷⁸ See Dan Fylnn, *Sunday Surprise: Senate Passes the Food Safety Bill*, Dec. 20, 2010 (available at <http://www.foodsafetynews.com/2010/12/sunday-surprise-senate-passes-food-safety-bill/#.UwliGfldWSo>) (describing the bill’s “tortured life”).

¹⁷⁹ Debra M. Strauss, *An Analysis of the FDA Food Safety Modernization Act: Protection For Consumers and Boon For Business*, 66 FOOD & DRUG L.J. 353, 354 (2011).

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Sabrina Tavernise, *Groups Urge Action on Food Safety Laws*, N.Y. TIMES, July 17, 2012 at A16 (available at http://www.nytimes.com/2012/07/17/science/consumer-groups-criticize-delay-on-food-safety-law.html?_r=0)

¹⁸⁴ See commissioner statement. <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm238000.htm>

¹⁸⁵ <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm247546.htm>

for commercial processing.¹⁸⁶ The preventative controls rule covered facilities that manufacture and process food for human consumption.¹⁸⁷

ii. Farmers' Response

All 56 local farmers responded to the question asking their opinion of the Food Safety and Modernization Act and the response was overwhelmingly negative. Only 11 farmers (19.6%) reported being unfamiliar with this Act. Eighteen farmers (32%) strongly disapproved and 11 farmers (19.6%) disapproved. Eleven farmers (19.6%) had a neutral opinion of the act and five farmers (8.9 %) approved. No farmers strongly approved of this act.

Only four farmers provided an additional narrative response. Two farmers expressed concern that the regulations will harm their businesses. One farmer lamented that “[t]his will put most small farmers out of business,” while the other remarked “[i]f small farmers have to meet these standards they will close.” The other two farmers noted approval of the act only because of the Tester-Hagan Amendment.¹⁸⁸

iii. Assessment

Although the FDA reports that 79 percent (roughly 40,211 out of 190,111) of U.S. produce growers will be exempt from the FSMA requirements,¹⁸⁹ farmers in addition to those surveyed still expressed concern with the proposed FDA rules. The primary concern was that the regulations will be too costly for small farmers and put them out of business.¹⁹⁰ The only

¹⁸⁶ <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334120.htm>

¹⁸⁷ <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334115.htm>

¹⁸⁸ “Only approve with the Tester-Hagan Amendments intact.” “Reason I don’t disapprove is because of Tester-Hagan Amendment which exempts small farms.”

¹⁸⁹ http://www.nifa.usda.gov/newsroom/newsletters/smallfarmdigest/sfd_s13.pdf

¹⁹⁰ <http://shooflyfarmblog.wordpress.com/2013/10/26/food-movement-may-be-torpedoed-by-fda/>

working farm within the city of Akron recently switched from growing sweet corn and other specialty crops to soybeans, a crop exempt from the produce rule, and closed its farm stand because the farm “can’t spend the money to comply.”¹⁹¹ Other farmers have expressed concern that the proposed FSMA rules were another strike against the small farm and another win for the industrial farmer.¹⁹²

Sustainable agriculture advocates agreed. Ariane Lotti, National Sustainable Agriculture Coalition’s assistant policy director stated “[i]f the proposed regulations are finalized without changes, they will unjustifiably create barriers to sustainable and organic farming, chill the growth in local and regional food systems, and further consolidate farming into the hands of the few who can afford to comply with expensive requirements.”¹⁹³

Thousands of sustainable and organic farms and local food system entrepreneurs and advocates made their concerns known to the FDA during the commenting period, which closed in November 2013.¹⁹⁴ In addition, 75 members of Congress sent a letter to the FDA expressing concerns with farmers’ ability to comply with the proposed rules.¹⁹⁵ As a result of these comments, in December 2013 the FDA decided to make “significant changes” to “key provisions” of the two proposed rules affecting small famers.¹⁹⁶ Recognizing that the proposed

<http://www.ohio.com/news/top-stories/bessemer-farms-calls-it-quits-says-new-farm-rules-too-cumbersome-1.411362#.U14EuoO0wlM.email>

¹⁹¹ Lisa Abraham, *Bessemer Farms Calls it Quits, Says New Farm Rules Too Cumbersome*, Akron Beacon Journal Online, July 7, 2013 (available at <http://www.ohio.com/news/top-stories/bessemer-farms-calls-it-quits-says-new-farm-rules-too-cumbersome-1.411362#.U14EuoO0wlM.email>).

¹⁹² <http://writetofarm.com/2013/11/01/fsma-theres-something-happening-here/>

¹⁹³ <http://www.motherjones.com/tom-philpott/2013/11/will-new-food-safety-law-small-farms-organic-FSMA>

¹⁹⁴ <http://www.foodsafetynews.com/2013/12/fda-to-issue-revised-fsma-rules/#.UuCsghAo7IV>; see also <http://sustainableagriculture.net/fsma/learn-about-the-issues/> for a list of concerns for farmers and on-farm food processors.

¹⁹⁵ <http://www.producenews.com/index.php/news-dep-menu/test-featured/11802-75-members-of-congress-ask-fda-to-re-propose-fsma-rules>

¹⁹⁶

http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm379397.htm?source=govdelivery&utm_medium=email&utm_source=govdelivery

rules would not have implemented “the law in a way that improves public health protections while minimizing undue burden on farmers and other food producers,” the FDA will revise the language of the proposed rules, publish the revised rules, and accept additional comments on these rules in the summer 2014.¹⁹⁷

This is another act that Obama often brings up when discussing food policy. While the exemptions might be seen as a way to remove barriers for the small farmer, the focus of this Act, at its core, FSMA is a consumer protection act. The Tester-Hagan exemptions reflect a recognition of the segment of farmers who sell to direct markets, and the change of heart by the FDA reflects a willingness of government officials to listen to the concerns of small farmers, at least as far as regulations go. Proposed Legislation

c. The Farm Bill of 2013

i. Overview

The farm bill continues to be the single most important piece of legislation to address agriculture and food policy at the national level.¹⁹⁸ The inclusion of local and regional food systems in the farm bill would, therefore, be the greatest acknowledgment of the local food movement at the federal level. After two years of operating without a farm bill, passing a farm

¹⁹⁷ *Id.*

¹⁹⁸ The Farm Bill has been called “The Most Important Bill You’ve Never Heard Of.” See <http://www.policymic.com/articles/70309/farm-bill-2013-an-inside-look-at-the-most-important-bill-you-ve-never-heard-of>

became a “top priority” for Obama in 2014.¹⁹⁹ The farm bill of 2014 was signed into law February 7, 2014.²⁰⁰

The first farm bill was passed during the Great Depression in 1933. In an effort to provide economic stability to major commodity crops and to preserve of family farms, the bill controlled the production of commodity crops and provided income support to farmers.²⁰¹ Congress is charged with reauthorizing the farm bill, which is administered by the USDA, every five to seven years and making changes and adjustments as needed.²⁰² Overtime, additional provisions have been added to the farm bill such that there are now provisions to address nutrition assistance, conservation, horticulture, and bioenergy programs.²⁰³ Subsidies for those farmers who grow specialty crops (fresh fruits, vegetables, and nuts) were first introduced in the 2002 farm bill.²⁰⁴

The Food, Conservation, and Energy Act of 2008 (P.L. 110-246, “2008 farm bill”), the most recent omnibus farm bill, contained 15 titles addressing commodity price and income supports, farm credit, trade, agricultural conservation, research, rural development, energy, and foreign and domestic food programs, among other topics.²⁰⁵ The 2008 farm bill, which was

¹⁹⁹ In October 2013, Obama identified reforming immigration, resolving the budget, and passing a farm bill as three priorities for resolution in 2014. See <http://www.reuters.com/article/2013/10/17/us-usa-agriculture-obama-IDUSBRE99G1DT20131017>.

²⁰⁰ Michael D. Shear, *In Signing Farm Bill, Obama Extols Rural Growth*, N.Y. TIMES, Feb.7, 2014 at A12 (available at <http://www.nytimes.com/2014/02/08/us/politics/farm-bill.html>).

²⁰¹ William S. Eubanks II, *The Sustainable Farm Bill: A Proposal for Permanent Environmental Change*, 39 *Envtl. L. Rep.* 10,493, 10,494 (2009); see also Erin Morrow, *Agri-Environmentalism: A Farm Bill for 2007*, 38 *Tex. Tech L. Rev.* 345, 350 (2006).

²⁰² There have been sixteen farm bills since the 1930s (2008, 2002, 1996, 1990, 1985, 1981, 1977, 1973, 1970, 1965, 1956, 1954, 1949, 1948, 1938, and 1933). Farm bills have become increasingly omnibus in nature since 1973 with the inclusion of a nutrition title. See What is the Farm Bill? <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS22131.pdf>

²⁰³ What is the Farm Bill? <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS22131.pdf>

²⁰⁴ Although the 2002 Farm Bill enhanced subsidies for crops that advocates point to as contributing to unhealthy eating, it also instituted new subsidies for “specialty crops,” including fruits and vegetables.

²⁰⁵ The 2008 Farm Bill was enacted over veto. H.R.6124.

enacted over President Bush's veto²⁰⁶ and just prior to President Obama's election, included new and renewed agricultural subsidies for farmers, new nutrition programs including increased funding for states to provide specialty crops (fruits and vegetables), new initiatives to help beginning and socially disadvantaged farmers and ranchers, new programs and funding for organic crops, and increased funding for food stamps, research grants, and the production of renewable fuel sources.²⁰⁷ The 2008 farm bill acknowledges the rise of new agrarians and support for local food programs and provides support for sustainable agriculture through a number of grants and programs.²⁰⁸ And it is the first piece of federal legislation to include a definition of local food.²⁰⁹

Many provisions of the 2008 farm bill expired in 2012, but were extended for an additional year in the American Taxpayer Relief Act of 2012 (P.L. 112-240, the fiscal cliff bill).²¹⁰ However, the extension of the 2008 farm bill to 2013 did not provide any additional mandatory funding for 37 programs in the 2008 farm bill.²¹¹

Discussions about renewing the 2008 farm bill began in late 2011. Tom Vilsack, Secretary, of the USDA identified three principles for protection and advancement as Congress worked on this piece of legislation: maintaining a strong safety net, supporting sustainable productivity, and promoting vibrant markets.²¹² No farm bill was passed in 2012, and

²⁰⁶ Jonathan Weisman & Dan Morgan, *House Overrides Veto of Farm Bill: Glitch May Force Repeat of the Process*, WASH. POST, May 22, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/21/AR2008052101313.html>.

²⁰⁷ Lindsay Voirin, *Federal Law and Legislation*, 24 J. Land Use & Envtl. L. 159, 175-76 (2008)

²⁰⁸ See Neil D. Hamilton, *Farms, Food, and the Future: Legal Issues and Fifteen Years of the "New Agriculture"*, 26 J. Envtl. L. & Litig. 1, 5 (2011) (noting that the 2008 farm bill took several important steps to address "new farmers").

²⁰⁹ 7 U.S.C. § 1932(g)(9)(A)(i) (2011); 7 C.F.R. § 4284.902 (2011)

²¹⁰ For example, the nutritional assistance programs are discretionary and therefore require reauthorization, while crop insurance is mandatory and is permanently authorized.

²¹¹ <http://nfu.org/component/content/article/1245>

²¹² <http://www.usda.gov/wps/portal/usda/usdahome?contentId=2011/10/0458.xml>

discussions of the 2013 farm bill dragged on over the summer and into the fall. Frustration brewed as demonstrated by Secretary Vilsack's comment: "I don't care who gets the credit for this. I just want a damn farm bill."²¹³

In late fall 2013, the House and Senate passed their versions of the bill and sent the bills to the conference committee to resolve differences.²¹⁴ While many provisions of the House and Senate versions were similar, they differed greatly when it came to spending on the Supplemental Nutrition Assistance Program, SNAP (formerly known as food stamps).²¹⁵ A House proposal would cut about \$40 billion from the program, while a Senate version would trim roughly \$4.5 billion, mainly by making administrative changes.²¹⁶ A vote on the farm bill finally occurred in January 2014.²¹⁷

ii. Farmers' Response

Fifty-one farmers responded to the question on the proposed 2013 farm bill. An equal number of farmers either disapproved (16 or 31 %) or strongly disapproved (16 or 31%) of the farm bill. Ten farmers (19.6%) had a neutral opinion of the farm bill and one farmer (2%) of the respondents approved of the farm bill. Eight farmers (15.7%) responded that they were not familiar with the bill.

The narrative responses also reflected disapproval of the farm bill. One farmer noted that the farm bill is "completely complicated and maintains subsidies for farms that grow non-food crops." Another responded that the "farm bill is ridiculous. It has very little impact on us since

²¹³ <http://www.capitalpress.com/article/20131031/ARTICLE/131039983>

²¹⁴ <http://fairfoodnetwork.org/connect/blog/farm-bill-2013-mixed-bag>

²¹⁵ *Id.*

²¹⁶ <http://www.nytimes.com/2013/12/12/us/politics/no-farm-bill-in-sight-as-recess-looms-for-congress.html>

²¹⁷ *Id.*

we are small and get no subsidies.” Another noted disapproval because of the “lessening [of] food stamps/benefits.”

iii. Assessment

The 2014 farm bill reflects compromise on both sides. Much to the displeasure of some Democrats, the SNAP program was cut by \$8 billion over ten years, but at the same time there was a \$5 billion cut in direct payments farmers received whether they grew crops or not.²¹⁸ The 2014 farm bill built on many provisions from the 2002 and 2008 farm bill addressing locally and regionally produced food, which shows a shift in priorities and recognition of increased consumer demand.²¹⁹ Many provisions of the Local Farms, Food, and Jobs Act made their way into the 2014 farm bill.²²⁰ And funding for grants supporting local food was significantly greater than the 2008 farm bill.²²¹ The Farmers’ Market Promotion Program was renamed to the Farmers’ Market and Local Food Promotion Program and funding significantly increased from \$33 million over five years in the 2008 farm bill to \$150 million over five years.²²² The program was also expanded to provide grants to farm-to-institution, food hubs, and other local and regional food enterprises that process, distribute, aggregate, or store locally or regionally produced food products.²²³ The Specialty Crop Block Grant program also received increased funding.²²⁴

²¹⁸ http://www.nytimes.com/2014/02/05/us/politics/senate-passes-long-stalled-farm-bill.html?_r=0

²¹⁹ <http://sustainableagriculture.net/blog/2014-farmbill-local-rd-organic/>

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

The farm bill has been called a “victory” for specialty crops.²²⁵ United Fresh, a produce association noted that the bill “includes an overall increase in investment of 55 percent over 2008 farm bill funding levels in critical produce industry initiatives and programs.”²²⁶ It also includes provisions to make it easier to use SNAP benefits with direct markets, such as CSAs and farmers’ markets.²²⁷ Although the bill was endorsed by the National Sustainable Agriculture Collation, it was still considered a “mixed bag.”²²⁸ While the full effect of the 2014 farm bill has yet to be seen, the most recent farm bill represents continued, if not improved, recognition of specialty crops, local food and direct markets, and new farmers.

d. Marker Bills

i. Overview

One recent marker bill proposed changes to several programs in the farm bill to enhance support for local and regional food production and farming systems. The Local Farms, Food, and Jobs Act of 2011 was first introduced on November 1, 2011 as H.R. 3286/S.1773 and was reintroduced as H.R. 1414/S. 679 on April 8, 2013 by Senator Sherrod Brown of Ohio and Congresswomen Chellie Pingree of Maine²²⁹ to promote local and regional farm and food systems. According to the Congressional Research Service, the bill includes “locally or regionally produced agricultural food products” under farm bill provisions on rural development, agricultural research, crop insurance, and nutrition programs.²³⁰ In addition, the bill provides funding for several programs which lost funding in 2012 when the 2008 farm bill was extended

²²⁵ <http://www.freshfruitportal.com/2014/02/07/united-fresh-farm-bill-victory-for-specialty-crops/?country=others>. The vice president of public policy for United Fresh, an produce industry association, noted that most of programs related to their constituency “either increased or remained the same.”

²²⁶ http://www.unitedfresh.org/assets/NR_United%20Statement%20Farm%20Bill%2020140128.pdf

²²⁷ <http://sustainableagriculture.net/blog/2014-farmbill-local-rd-organic/>

²²⁸ <http://sustainableagriculture.net/blog/2014-fb-drill-down-wrap-up/>

²²⁹ <https://www.govtrack.us/congress/bills/112/hr3286#summary>; <https://www.govtrack.us/congress/bills/112/s1773>

²³⁰ *Id.*

including: Local and Regional Food Aid Procurement Projects and Value-Added Producer Grants.²³¹

According to its sponsors, the Act takes on four major tasks: “boost[ing] income and opportunities for farmers and ranchers; improv[ing] local and regional food system infrastructure; expand[ing] access to healthy foods for consumers; [and] enhanc[ing] agriculture research and extension.”²³² The Act would ensure that various agencies have systems in place to serve local farmers and to develop a “whole farm diversified risk management insurance plan” to serve diversified producers who do not currently have access to revenue insurance.²³³ The food system infrastructure could be improved by authorizing funding for local and regional food system projects through grant programs²³⁴ and increasing the Farmers’ Market Promotion Program’s mandatory funding.²³⁵ Some examples of expanding access include allowing SNAP benefits to be redeemed at CSAs and funding the Senior Farmers Market Nutrition Program.²³⁶ Agricultural research and extension could be enhanced by establishing a national program within the Agricultural and Food Research Initiative program for local and regional farm and food systems research.²³⁷

Another recent marker bill focused on making it easier for young people, or new people who have never done it before, to start farming. The Beginning Farmer and Rancher Opportunity Act was first introduced by Senator Tom Harkin (D-IA) and Representative Tim

²³¹ <http://nfu.org/component/content/article/1245>; see also <http://ecowatch.com/2013/04/10/local-foods-bill-provide-healthy-food-create-jobs/>

²³² Allison Condra, *Food Sovereignty in the United States: Supporting Local and Regional Food Systems*, 8 J. Food L. & Pol’y 281, 311 (2012); see also <http://pingree.house.gov/local-farms-food-and-jobs-act-what-the-bill-does>

²³³ <http://pingree.house.gov/local-farms-food-and-jobs-act-what-the-bill-does>

²³⁴ <http://pingree.house.gov/local-farms-food-and-jobs-act-what-the-bill-does>

²³⁵ Megan Galey & A. Bryan Endres, *Locating the Boundaries of Sustainable Agriculture*, 17 Nexus: Chap. J.L. & Pol’y 3, 21 (2012).

²³⁶ <http://pingree.house.gov/local-farms-food-and-jobs-act-what-the-bill-does>

²³⁷ <http://pingree.house.gov/local-farms-food-and-jobs-act-what-the-bill-does>

Walz (D-MN) and several co-sponsors in 2011 as HR 3236/S. 1850 and was reintroduced in 2013. Specifically, the bill would expand opportunities for beginning farmers and ranchers through changes to several USDA programs covering conservation; rural development; research, education, and extension; and farm credit and crop insurance.

The bill represented a “strategic collaboration” by various advocacy groups to introduce “a national strategy for addressing [existing obstacles to entry into farming by] focusing on the issues that consistently rank as the greatest challenges for beginning producers.”²³⁸ The legislation included a variety of forms of new farmer assistance, including proposed modifications to guaranteed direct financing programs and conservation programs. Most of these proposals loosen program eligibility requirements for beginning farmers interested in obtaining credit to invest in farm equipment and farmland.²³⁹

ii. Farmers’ Response

Fifty-five of the 56 farmers responded to questions about the two marker bills. The majority of farmers had not heard about either bill. 34 farmers (61.8%) had not heard about the Local Food, Farm, and Jobs Act and 26 farmers (47.7 %) had not heard about the Beginning Farmer and Rancher Opportunity Act. Of those farmers who had heard of the bills, 10 farmers (18.18%) approved of LFFJA and 12 farmers (21.8%) approved of the BFROA, 5 farmers (9.1%) strongly approved of LFFJA and 4 farmers (7.4%) strongly approved of BFROA. Two farmers (3.2%) were neutral on the LFFJA and 8 farmers (12.5%) had a neutral opinion BFROA. Three farmers (5.4%) disapproved of the LFFJA and three farmers (5.5%) disapproved of the

²³⁸ Alecia Meuleners, *Finding Fields: Opportunities to Facilitate and Incentivize the Transfer of Agricultural Property to New and Beginning Farmers*, 18 Drake J. Agric. L. 211, 229 (2013).

²³⁹ Tyler Slack, *Bridging the Gap: Farm Transition Challenges Facing Elder Farmers and the Need for A Nationwide Farm-on Program*, 20 Elder L.J. 485, 487-88 (2013).

BFROA. One farmer strongly disapproved of the LFFJA and two farmers (3.6%) strongly disapproved of the BFROA. There were four written responses to the question on BFROA and no written response to LFFJA. With regards to BFROA, and farmer noted that the acts “sounded promising,” another noted it was “hard to tell,” and a third was “curious to see how it will play out.” A final farmer expressed annoyance between defining a farmer and “large gardener.”

iii. Assessment

Both acts received support from sustainable agriculture advocacy groups. For example, the National Farm to School Network has come out in support of the Local Food, Farm, and Jobs Act.²⁴⁰ While there is little scholarship, evaluation, or commentary on the Local Food, Farm and Jobs Act or the Beginning Farmer and Rancher Opportunity Act, LFFJA appears to have fared better than BFROA in the final 2014 farm bill. For example, the Farm Bill increased spending on the Farmers’ Market Promotion Program and made the funding mandatory.

B. Personnel

a. The Centrist: Tom Vilsack, Secretary of the Department of Agriculture

i. Overview

The selection of Tom Vilsack, former Iowa Governor, to head the USDA in 2008, was met with mixed reviews from the sustainable agriculture world.²⁴¹ Those in favor emphasized his support for the family farm and non-industrial farming approaches,²⁴² while those opposed

²⁴⁰ <http://pages.invoc.us/archive/bWVzc2FnZV8yMDU1NjU2XzI2XzEwMjZfMjQzNzI=>

²⁴¹ http://www.washingtonpost.com/politics/tom-vilsack/gIQAVs3o9O_topic.html (noting that “[e]nvironmentalists especially criticized his support for corn-based ethanol fuel ... and genetically-modified foods, but applauded his commitment to ending climate change and support for caps on farm subsidies.)

²⁴² Supporters included Neil Hamilton, Dwight D. Opperman Chair of Law and Professor of Law and Director, Agricultural Law Center, Drake University, Des Moines, Iowa, a legal scholar of sustainable agriculture. Mr. Hamilton, was also identified as favorable choices for both the Secretary and Under Secretary by such groups as Food Democracy Non, a grass roots movement focused on creating a new food system to meet the changing needs

noted Mr. Vilsack’s support for biotech crops and ethanol production.²⁴³ Jerry DeWitt, Director of the Leopold Center for Sustainable Agriculture at Iowa State University, viewed these different positions as a positive, remarking that he “honestly believed [Mr. Vilsack] will listen to the broad sense of voices....”²⁴⁴ Mr. Vilsack was also enthusiastically endorsed by Professor Neil Hamilton, an advocate for local and regional food systems for over two decades.²⁴⁵ Seen as a “centrist” who could “balance the demands of farmers, environmentalists, and industry groups”²⁴⁶ Mr. Vilsack was able to gain the support of several national environmental groups, including the Sierra Club, the League of Conservation Voters, and the National Wildlife Federation.²⁴⁷

Early on, Vilsack identified priorities of the USDA’s priorities as: child hunger and obesity, promoting healthy nutrition, expanding and developing bio fuels, and climate change.²⁴⁸ Yet local food has not been ignored. Throughout his tenure as Secretary, Vilsack has discussed local food production and consumption as important and worthwhile. Shortly after his confirmation as Secretary of the Department of Agriculture, Vilsack was interviewed by the Washington Post. Vilsack recognized that “[i]n a perfect world, everything that was sold, everything that was purchased and consumed would be local, so the economy would receive the

of American society as it relates to food, health, animal welfare, and the environment. See <http://www.treehugger.com/corporate-responsibility/help-support-a-sustainable-dozen-for-influential-usda-positions.html>; see also http://www.nytimes.com/2009/03/22/business/22food.html?pagewanted=all&_r=0 (describing the “sustainable-food crowd[s]” “love fest” with the Obama administration and Mr. Vilsack); http://www.washingtonpost.com/politics/tom-vilsack/gIQAVs3o9O_topic.html (noting that “[e]nvironmentalists especially criticized his support for corn-based ethanol fuel ... and genetically-modified foods, but applauded his commitment to ending climate change and support for caps on farm subsidies.)

²⁴³ As governor of Iowa, Mr. Vilsack promoted ethanol production and agricultural biotech. See http://www.nytimes.com/2009/03/22/business/22food.html?pagewanted=all&_r=0

²⁴⁴ <http://www.worldwatch.org/node/5970>

²⁴⁵ See Neil Hamilton, *Moving Toward Food Democracy: Better Food, New Farmers, and the Myth of Feeding the World*, 16 Drake J. Agric. L. 117, 118 (2011).

²⁴⁶ <http://www.worldwatch.org/node/5970>

²⁴⁷ <http://www.worldwatch.org/node/5970>

²⁴⁸ <http://www.usda.gov/wps/portal/usda/usdahome?contentIdonly=true&contentId=2009/01/0027.xml>

benefit of that[.]” but noted that “a very sophisticated distribution system for locally grown food” does not exist. One way to remedy this issue is to “work on strategies to make that happen. It can be grant programs, loan programs, it can be technical assistance.”²⁴⁹

When discussions of the 2012 farm bill were beginning, Secretary Vilsack recommended that Congress look at ways to improve producers’ access local and regional markets.²⁵⁰ Vilsack acknowledged the popularity of local food and the importance of “making connections so that a farmer can sell at a local school or hospital, or even a neighbor down the road.”²⁵¹ These connections “create[] good-paying jobs in our rural communities and keeps the wealth created from the ground close to home. Congress should continue the work that was started in 2008 to support our specialty crop producers with improved risk management tools and expanded market promotion.”²⁵²

ii. Farmer Response

All fifty-six farmers responded to the question on Secretary Vilsack. Most farmers either strongly disapproved (7 or 12.5 %) or disapproved (16 or 28.6%) of Vilsack. 21 or 37.5% had a neutral opinion of Vilsack. Only 3 or 5.36% approved, while no farmers strongly approved of him. Nine or 16% of the farmers were not familiar with Vilsack. No farmers provided a narrative response to Secretary Vilsack.

iii. Assessment

Professor Neil Hamilton has explained that as Secretary of the Department of Agriculture, Mr. Vilsack has supported the ideals a “food democracy,” specifically, the creation

²⁴⁹ Tom Vilsack, *The New Face of Agriculture*, The Washington Post (Feb. 11, 2009).

²⁵⁰ <http://www.usda.gov/wps/portal/usda/usdahome?contentId=2011/10/0458.xml>

²⁵¹ *Id.*

²⁵² *Id.*

of “a more sustainable and just food and farming system in the United States.”²⁵³ For example, in an editorial to the Des Moines Register in 2010, Vilsack identified six opportunities for growth in rural America. Number three was to “provide locally grown products with local institutions that can use them.”²⁵⁴ More recently, Secretary Vilsack highlighted the “development of local and regional food systems” as one of four examples of the “changing landscape that is taking place in rural America.”²⁵⁵

Vilsack has been successful at promoting local and regional food systems through the USDA Know Your Farmer, Know Your Food initiative.²⁵⁶ Secretary Vilsack often touts the success of this initiative in “facilitat[ing] direct farmer to consumer marketing.”²⁵⁷ When this initiative was criticized by Senators on the Senate agriculture committee for diverting funds from rural areas to promote “small, hobbyist and organic producers whose customers generally consist of affluent patrons at urban farmers markets,”²⁵⁸ Vilsack responded quickly and thoroughly. In a letter, which included a 90 page attachment, Vilsack emphasized that rural areas, too, will benefit from the Know Your Farmer, Know Your Food initiative noting that “cultivating these new markets—not replacing old ones—is critical to revitalizing rural America by preserving wealth,

²⁵³ Neil Hamilton, *Moving Toward Food Democracy: Better Food, New Farmers, and the Myth of Feeding the World*, 16 Drake J. Agric. L. 117, 119 (2011) (describing many of Vilsack’s initiatives which “gave new life to the ideas of food democracy”).

²⁵⁴ http://www.agandfoodlaw.com/2010/02/vilsack-urges-renewal-of-rural-america.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+agandfoodlaw+%28The+United+States+Agricultural+%26+Food+Law+and+Policy+Blog+-+Home+Page+and+Listserv%29

²⁵⁵ See Secretary of Agriculture, Tom Vilsack, *Developments in Federal Agricultural Law and Policy*, 18 Drake J. Agric. L. 1, 1 (2013).

²⁵⁶ See *infra* Part IV(D)(a).

²⁵⁷ See Vilsack, *supra* note 255 at 8.

²⁵⁸ <http://blogs.desmoinesregister.com/dmr/index.php/2010/05/04/gop-senators-challenge-vilsack-on-local-foods-focus>

increasing farm income, and reminding us all of the hard work and values that sustain those communities and our Nation.”²⁵⁹

Vilsack has also been successful at promoting nutrition.²⁶⁰ Mr. Vilsack established rules for healthier school lunches as part of the Healthy, Hunger Free Kids Act of 2010. The rules, which went into effect July 1, 2012, require schools serve meals that are lower in calories and sodium, include more fruits and vegetables, and grains rich in whole grain, free from trans-fat, and include milk that is reduced or fat-free.²⁶¹ For the past four years, Vilsack has found himself in the top ten of America’s 50 Most Power People in Food.²⁶² In 2014, he made it to number one.²⁶³

C. Agency Initiatives and Grants: Growing Regional and Local Food Systems and Supporting New Farmers

Up until the enactment of the 2014 farm bill, no new funding had been allocated to local food through USDA programs during Obama’s presidency, but greater attention to promoting local food has occurred. For example, the Know Your Farmer, Know Your Food initiative launched by the USDA in 2009 highlights the benefits of healthy local food systems, but has not

²⁵⁹ <http://blogs.desmoinesregister.com/dmr/index.php/2010/05/04/gop-senators-challenge-vilsack-on-local-foods-focus>

²⁶⁰ <http://www.usda.gov/wps/portal/usda/usdahome?contentId=2011/10/0458.xml> (noting that the three core principles of agriculture should include “maintaining a strong safety net, supporting sustainable productivity, and promoting vibrant markets”).

²⁶¹ http://www.huffingtonpost.com/phil-lempert/first-lady-and-agricultur_b_1231260.html

²⁶² <http://www.thedailymeal.com/50-most-powerful-food-folk-america-for-2011>

²⁶³ <http://www.thedailymeal.com/americas-50-most-powerful-people-food-2014-sllideshow>. The editors of the daily meal note that “our ultimate criterion [for the list] was simply this: Is each person on our list capable, whether by dint of corporate station, media access, moral authority, or sheer personality, of substantially changing, improving, and/or degrading the quality and variety of the American diet or the way we think about it?”

new budget. Apart from KYF and the Seasonal High Tunnel Pilot Program, the grants and programs about which farmers were surveyed were authorized by earlier farm bills.²⁶⁴

a. Know Your Farmer Know Your Food

i. An Overview

The USDA's Know Your Farmer Know Your Food campaign (KYF) was launched in 2009 in an effort to "develop local and regional food systems and spur economic activity."²⁶⁵ This campaign does not have its own budget, but instead is an effort to support local and regional food systems by highlighting and promoting existing efforts, funding programs using existing grants, and reducing barriers between USDA programs, offices, and staff.²⁶⁶ For example, the USDA's webpage "lists over two dozen programs at USDA that can help build local and regional food systems."²⁶⁷ In addition to these programs, the USDA webpage also provides a list of "tools and resources" to "help farmers, ranchers, other businesses, communities, and individuals looking to build or take advantage of local and regional food systems."²⁶⁸ These resources include mapping and financing tools, as well as publications and presentations on farmers' markets, food hubs, and farming practices.²⁶⁹

ii. Farmer Response

Fifty-five of 56 farmers responded to the survey question on the Know Your Farmer Know Your Food initiative. Twenty-two farmers (40%) approved of this initiative, and another

²⁶⁴ Farmers were not surveyed on all possible USDA programs that might benefit local and regional food systems. Instead, farmers were surveyed on those grants which I identified as being particularly attractive to local farmers.

²⁶⁵ USDA, "USDA Launches 'Know Your Farmer, Know Your Food' Initiative to Connect Consumers with Local Producers to Create New Economic Opportunities for Communities," September 15, 2009, Release No. 0440.09.

²⁶⁶ United States Department of Agriculture, *Know Your Farmer Know Your Food Compass* (available at <http://www.usda.gov/documents/KYFCompass.pdf>)

²⁶⁷ http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_GRANTS

²⁶⁸ http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_RESOURCES

²⁶⁹ http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_RESOURCES

4 (7.4%) strongly approved with this initiative. Six farmers (10.9%) had a neutral opinion, while five farmers (9%) disapproved and one farmer (1.8%) strongly disapproved. Interestingly, 17 farmers (30.9%) had not heard of this initiative.

The narrative comments were somewhat critical. One farmer noted that the USDA did not “need to be involved in marketing,” while another noted that the USDA is “not trustworthy.” Another remarked that the program was “pretty well hidden from public view.”

iii. Assessment

Know Your Farmer is often described as a successful effort to promote local food production and policies.²⁷⁰ Tom Vilsack credits this program with the success of the local food industry.²⁷¹ A management and communication effort, the Know Your Farmer Know Your Food has worked to organize information on local foods into accessible form.²⁷² One such form is the KYF Compass, a map which identifies USDA grants to support local farming, infrastructure that could assist local food producers and business and highlights the numerous federal agencies involved in local food production.²⁷³ For example, the USDA coordinates with the Department of Housing and Urban Development, The U.S. Department of Transportation, and the Environmental Protection Agency to administer Sustainable Community Planning Grants, which could support developing local food infrastructure.²⁷⁴ Some other examples of KYF success include: a growth in the number of farmer markets and food hubs, the increase in

²⁷⁰ United States Department of Agriculture, *Know Your Farmer Know Your Food Compass*, 77 (available at <http://www.usda.gov/documents/KYFCompass.pdf>) (noting that “KYF has advanced USDA’s understanding of and support for local and regional food efforts in important ways) [hereinafter *Compass*]. Kathleen Merrigan, former Deputy Secretary of the USDA was instrumental in creating, implementing, and administering KYF. Unfortunately, I did not have space in my survey to ask farmers about her.

²⁷¹ See Secretary of Agriculture, Tom Vilsack, *Developments in Federal Agricultural Law and Policy*, 18 Drake J. Agric. L. 1, 9 (2013) (noting that local food is now a billion dollar industry).

²⁷² See *Compass supra* note 266 at 6.

²⁷³ *Id.* at 21.

²⁷⁴ *Id.* at 75.

the number of local food policy councils, and the implementation of agricultural branding programs such as “Jersey Fresh” or “Simply Kansas” in all 50 states.²⁷⁵

b. Grants

One goal of KYF was to identify programs available to support local food efforts.²⁷⁶

There are over 18 agencies within the USDA to help administer the USDA’s goals and objectives.²⁷⁷ These various USDA agencies administer over 24 grants to “help build local and regional food systems.”²⁷⁸ I identified five I thought farmers would have heard of or have used, and provided an “other” option for grants I had not listed.

Specialty Crop Block Grant Program. The Specialty Crop Block Grant Program (SCBGP), administered by the Agricultural Marketing Service (AMS), an agency within the USDA, was authorized in the Specialty Crops Competitiveness Act of 2004 (P.L. 108-465), and further amended by the 2008 farm bill.²⁷⁹ Under the program, USDA provides block grants to state agricultural programs to enhance research, marketing and promotion of specialty crops.²⁸⁰ The purpose is to encourage competitiveness of specialty crops, such as fruits, vegetables, tree nuts, and nursery crops by funding initiatives to increase consumption, reduce costs of distribution, address environmental and conservation concerns, and develop “buy local” programs.²⁸¹ The program is funded through USDA’s Commodity Credit Corporation (CCC),

²⁷⁵ http://www.usda.gov/wps/portal/usda/usdahome?navId=KYF_MISSION

²⁷⁶ See *Compass supra* note 266 at 6.

²⁷⁷ <http://www.usda.gov/documents/about-usda-quick-reference-guide.pdf>

²⁷⁸ http://www.usda.gov/wps/portal/usda/usdahome?navId=KYF_GRANTS; see also <http://www.usda.gov/documents/11-Conclusions.pdf> (noting that the “USDA has identified at least 27 USDA grant, loan or loan guarantee programs authorized to support work on local and regional foods and found that stakeholders have been utilizing these resources to significant effect”).

²⁷⁹ See Johnson et al., *supra* note 20 at 35.

²⁸⁰ Food, Conservation, and Energy Act § 10109

²⁸¹ Lindsay Voirin, *Federal Law and Legislation*, 24 J. Land Use & Env'tl. L. 159, 176 (2008)

and is therefore mandatory, available without an annual (or discretionary) appropriation.²⁸² Program funding will have totaled \$224 million over the FY2009-FY2012 period: \$10 million (FY2008); \$49 million (FY2009); and \$55 million annually (FY2010-2012).²⁸³ In 2013, \$52 million in grants were awarded.²⁸⁴ This amount represented 54 block grants to U.S. states and territories that will support 694 initiatives nationwide.²⁸⁵ More than \$14.3 million will support local and regional food systems.²⁸⁶ For example, one of the projects receiving funding through the Illinois Department of Agriculture will “increase local specialty crop sales at designated grocery stores and farmers’ markets by implementing the “Illinois Where Fresh is...” buy local marketing campaign.”²⁸⁷ Another project receiving funding through the Nevada Department of Agriculture involves partnering with Gardnerville Main Street Program Corporation to establish a community supported educational garden to teach youth and parents about the health benefits of consuming fresh, locally grown produce.”²⁸⁸

Farmers’ Market Promotion Program. The Farmers’ Market Promotion Program (FMPP), administered by Agricultural Marketing Service (AMS), was originally authorized in the Farmer-to-Consumer Direct Marketing Act of 1976, and was amended in the 2002 and 2008 farm bills.²⁸⁹ Under the program, USDA provides grants to expand farmers’ markets and other direct marketing activities such as roadside stands, community supported agriculture (CSAs), pick-your-own farms, agritourism, direct sales to schools, and other direct marketing activities.²⁹⁰ Eligible entities include farmer cooperatives, grower associations, nonprofit/public

²⁸² See Johnson et al., *supra* note 20 at 35.

²⁸³ *Id.*

²⁸⁴ <http://usda.gov/wps/portal/usda/usdahome?contentId=2013/09/0187.xml&contentIdonly=true>

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ <http://www.ams.usda.gov/AMsv1.0/getfile?dDocName=STELPRDC5105139>

²⁸⁸ <http://www.ams.usda.gov/AMsv1.0/getfile?dDocName=STELPRDC5105139>

²⁸⁹ P.L. 94-463; 7 U.S.C. § 3005 (CFDA# 10.168). AMS, <http://www.ams.usda.gov/AMsv1.0/FMPP>.

²⁹⁰ See Johnson et al., *supra* note 20 at 36.

benefit corporations, local governments, economic development corporations, regional farmers' market authorities, among others. FMPP grants are available to bring local farm products into federal nutrition programs with electronic benefits transfer (EBT) technology at direct-market outlets;²⁹¹ raise customer awareness of local foods through promotion and outreach; educate farmers and growers in marketing, business planning, and similar topics; increase market awareness through advertising and branding efforts; and purchase infrastructure, such as refrigerated trucks, or equipment for a commercial kitchen for value-added products.²⁹² Grant awards are limited to \$100,000, with a minimum award of \$5,000. Matching funds are not required.

The 2008 farm bill made funding for the FMPP mandatory for the first time.²⁹³ Funding is through the USDA's Commodity Credit Corporation and was divided in the following manner: \$3 million (FY2008); \$5 million (FY2009-2010); and \$10 million annually (FY2011-2012). Funding for the Farmers' Market Promotion Program lapsed while plans for a new farm bill were being worked out.²⁹⁴

Some examples of grants awarded in 2012 include: \$93,778 to Heart of the City Farmers Market in San Francisco, California to increase access of SNAP, CalFresh and conventional customers to fresh food and increased EBT usage by: 1). opening the market one additional day weekly, 2) increasing outreach to SNAP recipients, 3) purchasing market supplies, and 4) installing signage.²⁹⁵ Another example is a \$100,000 grant awarded to the City of Davenport,

²⁹¹ The 2008 Farm Bill mandated that USDA spend at least ten percent of the program's budget to support EBT technology at farmers' markets. Megan Galey & A. Bryan Endres, *Locating the Boundaries of Sustainable Agriculture*, 17 Nexus: Chap. J. L. & Pol'y 3, 21 (2012).

²⁹² USDA, "Grants, Loans, and Support," http://www.usda.gov/wps/portal/usda/usdahome?navId=KYF_GRANTS.

²⁹³ <http://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/farmers-market-promotion-program/>. Despite "mandatory" status, the funding level for a given year could be less than the farm bill dictates should the Appropriation Committee decide to use the farm bill to fund other programs.

²⁹⁴ <http://www.ucsus.org/news/commentary/govt-shutdown-harms-Farm-Bill-0408.html>

²⁹⁵ <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5100605>

Iowa to establish a year round market for local and regional foods at a local farmers' market by: 1) purchasing refrigerated storage and value added processing and packaging equipment, 2) building infrastructure for electronic purchasing, and 3) creating a certified kitchen incubator for educational training and classes for producers and consumers.²⁹⁶

Beginning Farmer or Rancher Development Program. The Beginning Farmer or Rancher Development Program was authorized in the 2002 Farm Bill and is administered by the National Institute of Food and Agriculture (NIFA), an agency within the USDA, but was not fully funded until the 2008 farm bill²⁹⁷ The program provides grants to organizations that train, educate, and provide outreach and technical assistance to new and beginning farmers on production, marketing, business management, legal strategies and other topics critical to running a successful operation.²⁹⁸ Grants can be used to support beginning farmers and ranchers in: production and land management strategies that enhance land stewardship; business management and decision support strategies that improve financial viability; marketing strategies for increased competitiveness; legal strategies that assist with farm or land acquisition and transfer.²⁹⁹ The maximum amount of the grant is \$250,000 per year for 3 years, with a 25% match in resources.³⁰⁰ The 2008 farm bill appropriated \$75 million for FY 2009 to FY 2012 to develop and offer education, training, outreach and mentoring programs to enhance the sustainability of the next generation of farmers.³⁰¹

As an example of a project funded in 2012, the Greater Lansing Food Bank in Michigan received a three year grant of over \$350,000 to establish Lansing Roots, a beginning farmer

²⁹⁶ *Id.*

²⁹⁷ P.L. 107-171, § 7405; 7 U.S.C. § 3319f (CFDA# 10.311). USDA, <http://www.nifa.usda.gov/funding/bfrdp/bfrdp.html>; and http://www.usda.gov/wps/portal/usda/usdahome?contentid=kyf_grants_nifa3_content.html.

²⁹⁸ http://www.usda.gov/wps/portal/usda/usdahome?contentid=kyf_grants_nifa3_content.html

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ <http://www.nifa.usda.gov/fo/beginningfarmerandrancher.cfm>

training program aimed at increasing the number of small-scale producers and market-growers in Lansing area and improving economic livelihood of low-income individuals/families through self-employment in farming.³⁰² In another example, Nationalities Service Center in Philadelphia, Pennsylvania received a one year grant of over \$70,000 to help the Philadelphia Community Farming Collaborative help new and beginning farmers grow local food for Philadelphia.³⁰³ [I believe no funding was appropriated for this program in 2013.]

Rural Business Enterprise or Rural Business Opportunity Grants. These two grants were authorized in the 1996 farm bill and reauthorized in the 2008 farm bill.³⁰⁴ Both grants are administered by the Rural Business Cooperative Service, an agency within the USDA, and eligible bodies for both include: rural public bodies (towns, communities, state agencies, and authorities), rural nonprofit corporations, rural Indian tribes, and cooperatives.³⁰⁵ While both programs promote economic growth in rural communities, the opportunity grant has a specific emphasis to support for collaborative economic planning and development through regional food systems.³⁰⁶ Funding varies between the two programs. The maximum amount of funding for RBOG is \$250,000, and the most recent appropriation was for \$2.6 million.³⁰⁷ While there is no maximum amount of funding for RBEG, smaller programs receive priority.³⁰⁸ Typically, grants are between \$10,000 and \$500,000.³⁰⁹ [I believe no funding was allocated for either grant in 2013].

³⁰² <http://cris.nifa.usda.gov/cgi-bin/starfinder/0?path=fastlink1.txt&id=anon&pass=&search=R=53220&format=WEBFMT6NT>

³⁰³ <http://cris.nifa.usda.gov/cgi-bin/starfinder/0?path=fastlink1.txt&id=anon&pass=&search=R=53416&format=WEBFMT6NT>

³⁰⁴ Johnson et al., *supra* note 20 at 39.

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ http://www.rurdev.usda.gov/BCP_RBOG.html

³⁰⁸ http://www.usda.gov/wps/portal/usda/usdahome?contentId=kyf_grants_rd6_content.html

³⁰⁹ http://www.rurdev.usda.gov/BCP_rbeg.html

Seasonal High Tunnel Program. In 2009, the United States Department of Agriculture launched a three year program to study the effectiveness of seasonal high tunnels (also known as hoop houses) in conserving water, reducing pesticide use, maintaining vital soil nutrients, and increasing crop yields.³¹⁰ Funds can be received through the Environmental Quality Incentives Program, which was authorized in the 1996 farm bill, and is administered by the Natural Resources Conservation Service.³¹¹ This is a cost sharing program which supports the installation of seasonal high tunnels, which are unheated greenhouses that can extend a producer's growing season while conserving resources.³¹² Seasonal High Tunnel Pilot Program has been very popular. By January 2011, over 2,400 hoop house contracts worth over thirteen million dollars were signed for FY 2010.³¹³ In 2011, 2,035 high tunnels were funded, 23 of which were funded through the initiative in the Greater Cleveland area.³¹⁴

ii. Farmers' Response

Many farmers responded that they got some sort of funding from the federal government, the most popular being funding as part of the seasonal high wind tunnels program (29.6% or 16 farmers), the farmers' market promotion program (18.9% or 10 farmers), and the beginning farmer and ranchers program (11.3% or 6 farmers). Farmers in the narrative response portion to this question also mentioned receiving loans through the Farm Service Agency (FSA).

iii. Assessment

³¹⁰ Hamilton, *supra* note 1 at 524.

³¹¹ <http://sustainableagriculture.net/publications/grassrootsguide/conservation-environment/environmental-quality-incentives-program/>

³¹² http://www.usda.gov/wps/portal/usda/usdahome?contentId=kyf_grants_nrcs3_content.html

³¹³ *Id.* at 545.

³¹⁴ <http://www.farmanddairy.com/news/nrcs-initiative-brings-hoop-houses-fresh-produce-to-cleveland-area/47867.html>. <http://sustainableagriculture.net/blog/organic-high-tunnel-deadline/>

Many of these programs are not targeted to the individual, but instead focus on funding to states or local governments, non-profits and other organizations. Small farmers could benefit if they are associated with an organization receiving funding. However, farmers could also benefit from more individualized programs that provide both funds and technical assistance like the Seasonal High Tunnel Program. The USDA recently had a blog about a farm in Alaska which benefited from the Seasonal Tunnel Program.³¹⁵ The response to this blog was positive: “This is a wonderful technology to lengthen the growing season. I am so glad that this is cost shared with NRCS.”³¹⁶

D. Narrative Responses

Thirty-three farmers provided some sort of narrative to the open ended question asking for their opinions on federal local food policy. As expected, the narrative responses to Obama’s efforts were negative, positive, and somewhere in between. For example, one farmer simply responded that “[h]e sucks,” while another noted that what has been done is “a good start.” Others identified specific USDA grants as being helpful. One farmer noted that “[o]ur grants through FMPP and the BFRDP have been very helpful to us in getting the word out about our market and supporting our training of new urban farmers, respectively.” Two others noted the Seasonal High Tunnel Program as being beneficial.

Most farmers, however, had mixed feelings. Many were thankful for the increased publicity in local foods, but were disappointed in the lack of real change in agricultural policies. From the small farmer perspective it “seems like big agri-business and biotech industry still have such a huge influence on policy,” but this same farmer was still “glad that Obama recognizes the importance of small farms.” Another farmer noted, “[w]hile the administration seems to have a

³¹⁵ <http://blogs.usda.gov/2013/12/24/alaska-growers-net-many-benefits-from-seasonal-high-tunnel/#more-49380>

³¹⁶ *Id.*

clear interest in promoting healthy food choices, the Dept. of Ag. seems to have done little to redirect the nation away from big ag to local (smaller) farms, who provide the sort of nutritious food the administration promotes.” Still another farmer was appreciative of “[t]he Obama Administration’s public relation activities, which have brought some attention to locally produced, small scale and non-toxic food....But the Obama Administrations [sic] real power has worked for the opposite.”

Along these same lines, others felt that “blaming or giving credit to Obama for our food system is incorrect.” Another viewed “any good or bad in terms of ag law is a direct result of Congress NOT the executive branch of our government.”

Despite Obama’s best efforts, small farmers continue to feel that large industrialized farming practices control and influence policy at the federal level. One farmer stated that “[t]he tiny fraction of the budget that goes to know your framer, local food initiatives, etc. is just a smoke screen to hide the fact that 90plus percent of our food is controlled by a handful of giant corporations.” Another was of the opinion that “[t]he US government’s financial might is devoted to maintaining existing pockets of wealth and power, protecting very large agribusiness and migrating food production toward monoculture, genetic modification and corporate control.” One farmer simply responded that “Monsanto owns the government. Obama’s polices are designed by big-ag corporations.”

Another theme that emerged was that the federal government just does not understand what it takes to be a small farmer. One farmer expressed the opinion that “[f]armers should have someone dedicated to physically going out and finding out what farmers need and actively help them get it. Obama should actually visit a working farm. We have [no] other job, farming is what we do and how we live.” And when the federal government does become involved it tends

to harm rather than help the small farmer. One farmer felt small farmers “should be exempt from regulations.” Another remarked: “[I]leave the farmer alone and let him do his job. Ease up on all the regulations and mandates and make it easier for him/her to earn a living.”

Along these same lines, farmers felt that the federal government is “irrelevant” because so many of the policies do not apply to them. “We’re happy when the government helps support local food, small farmers, farmer’s markets, etc., but we run our business in the free market and it’s working fine. My main opinion of government programs is that most of them should be eliminated.” Another farmer commented “I believe that most of these programs only apply to large farms and don’t trickle down to us small farm folks.”

Others lamented that there just was not enough time to keep on top of all the federal programs and requirements. “Federal programs rarely filter down to benefit small farms. If they do, the regulations and paper work are too overwhelming for me to get involved.” Another noted that “[i]t was difficult to keep up with everything. I feel that there is certainly more support given towards large industrial style farms than small farms.” Still another farmer noted “[t]o participate you must have a great deal of time to apply, and then time to fill out lots of paper work.”

Surprisingly, many farmers responded that they were not familiar with this act, that program, or that person. One farmer found the survey “[a] real eye opener...that stuff is being done to help the small, struggling famers working with the land and NONE of it is getting down to us – all we hear about is big business farming and subsidies for super farms. This info is not getting to the local Farmers Markets and the people it’s supposed to help.”

Rather than a result of being uninformed on the issues, these responses could be a reflection of how time intensive the farming profession is and how little time is left for farmers

to be informed about available programs. One tired famer stated that “farming is 24/7 barely time for family, so tired at the end of the day that to spend energy on finding things we need is a case by case basis.” More so than any profession, farming is a year round, sun up to sun down job, and many farmers reminded me of this fact.

E. Other³¹⁷

There are three other acts—one an executive order, another a collaborative initiative, and a third a First Lady program that warrant inclusion in the discussion on Obama’s local food legacy. The first is the establishment of the White House Rural Council, the second is the Healthy Food Financing Initiative, and the third is Michelle Obama’s Let’s Move campaign.

During the course of his second campaign, President Obama signed an executive order establishing the White House Rural Council.³¹⁸ Agriculture was the starting point of the Council, with the Secretary of Department of Agriculture serving as the chair of the council.³¹⁹ Although the focus of the Rural Council is varied ranging from improving access to health care and education, to promoting innovation, the creation of the Council further underscores that President Obama understands the importance of a strong rural economy, based in part in agriculture.³²⁰

Created in 2009, the Healthy Food Financing Initiative (HFFI) is coordinated between the U.S. Department of the Treasury’s Community Development Financial Institutions (CDFI) Fund, the U.S. Department of Agriculture, and the U.S. Department of Health and Human Services (HHS).³²¹ HFFI represents the federal government’s first coordinated step to expand access to

³¹⁷ Local Farmers were not surveyed on these programs and initiatives.

³¹⁸ <http://www.whitehouse.gov/administration/eop/rural-council/executive-order>

³¹⁹ <http://www.whitehouse.gov/administration/eop/rural-council/executive-order>

³²⁰ <http://www.whitehouse.gov/the-press-office/2011/06/09/executive-order-establishment-white-house-rural-council>

³²¹ <http://healthyfoodaccess.org/find-money/hffi/federal?destination=node/436>

healthy, fresh food in underserved communities.³²² The initiative provides loans and grants to help fresh food retailers overcome the higher initial barriers to entry into underserved, low-income urban and rural communities, and support renovation and expansion of existing stores so they can provide the healthy foods that communities want and need.³²³ The goals of this initiative include: eliminating food deserts, reducing childhood obesity, expanding the number of quality jobs in the food sector, spur livable communities and business growth, and create new opportunities for agricultural producers.³²⁴ This initiative has been so successful that it has been included in the most recent versions of the farm bill.

HFFI is viewed as an effective and sustainable vehicle to eliminate a myriad of health, social, and economic deficiencies that plague low-income communities.³²⁵ The HFFI further reflects the Obama Administration's commitment and efforts to creating sustainable local and regional food systems.³²⁶ Based on the successful Pennsylvania model, the HFFI exhibits how connecting producers and consumers can not only provide healthier foods to the community and ignite economic growth, but also create tangible environmental improvements.³²⁷

Finally, a discussion of Obama's local food legacy would not be complete without acknowledging the First Lady, her Let's Move campaign, and the White House garden. When asked questions related to food policy, President Obama often makes reference to Michelle Obama's Let's Move campaign.³²⁸ Launched in February 2010, the Let's Move campaign is an

³²² *Id.*

³²³ http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/HFFI_ADVOCACY3.PDF

³²⁴ <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5085689>

³²⁵ *Recent Developments in Environmental Law*, 24 Tul. Envtl. L.J. 423, 443 (2011).

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ Combating youth obesity has emerged as a theme, most recently publicized by Michelle Obama's "Let's Move" campaign to promote healthy eating and physical activity. Learn the Facts, Let's Move, <http://www.letsmove.gov/learn-facts/epIdemic-childhood-obesity> (last visited Jan. 29, 2013). Heeding the advice of

effort to solve the country's childhood obesity problem. The four pillars to this program include: empowering parents and caregivers, providing healthy foods in schools, improving access to healthy, affordable foods, and increasing physical activity.³²⁹ Although promoting the production of locally grown produce is not the focus of this campaign, it does play a role in providing access to healthy, affordable foods.

As a precursor to this campaign, in 2009 Michelle Obama planted a vegetable garden at the White House, the first since Eleanor Roosevelt.³³⁰ This act further symbolized and represented the benefits of eating local.³³¹ Although farmers were not directly asked about Michelle Obama, two farmers responded positively to her efforts in the narrative portion of the survey. One farmer noted being “very happy with Michelle Obama’s initiatives for healthy food and activities for children.” Another responded “Mrs. O seems to be doing more for food awareness among the general public.”

V. Conclusion: Recognition But No Revolution

public health experts, Obama's initiative emphasizes strategies to reduce cost barriers to healthy lifestyles. Sheryl Gay Stolberg, *Childhood Obesity Battle Taken up by First Lady*, N.Y. Times, Feb. 10, 2010, at A16.

³²⁹ Press Release, First Lady Michelle Obama, First Lady Michelle Obama Launches Let's Move: America's Move to Raise a Healthier Generation of Kids (Feb. 9, 2010), <http://www.whitehouse.gov/the-press-office/first-lady-michelle-obama-launches-lets-move-americas-move-raise-a-healthier-genera>.

Let's Move is comprehensive, collaborative, and community-oriented and will include strategies to address the various factors that lead to childhood obesity. It will foster collaboration among the leaders in government, medicine and science, business, education, athletics, community organizations and more. And it will take into account how life is really lived in communities across the country--encouraging, supporting and pursuing solutions that are tailored to children and families facing a wide range of challenges and life circumstances.

Id.

³³⁰ See Marian Burros, Obamas to Plant Vegetable Garden at White House, N.Y. Times, Mar. 19, 2009, at A1; Natasha Metzler, Michelle Obama Expands the White House Garden, Christian Sci. Monitor, Apr. 1, 2010, available at <http://www.csmonitor.com/The-Culture/Gardening/2010/0401/Michelle-Obama-expands-the-White-House-garden>.

³³¹ Jaime Bouvier, *The Symbolic Garden: An Intersection of the Food Movement and the First Amendment*, 65 Me. L. Rev. 425, 434 (2013) (describing how the White House Garden “organized advocacy efforts to raise awareness about local food”).

Evaluating a president's legacy on any type of policy is challenging, especially when, as is the case here, the President is still in office. Revolutions, like the one Michael Pollan advocates for, often occur over several years. An assessment of Obama's local food legacy may be premature given that the only farm bill he has ever signed was just enacted. Choosing an evaluative tool by which to measure the president's legacy is also complicated. In terms of a local food legacy, a more quantifiable approach might look at the increase in the number of farmers' markets and food hubs, or the increase in the number of small farms. Looking at just those factors, local food appears to have flourished under the Obama administration. The number of farmers' markets is up, as are the number of food hubs. And the number of small farms is increasing, too.³³² Whether these effects stem from federal policies, market forces, or social movements, however, is difficult to determine.³³³

Because of these challenges, I took a more qualitative approach to evaluating the President's local food legacy. Rather than just rely on an analysis of a single piece of legislation or a single data point, I evaluated those legislative, administrative and personal decisions made

³³² The U.S. Census Bureau noted a slight increase from 2002-2007 in the number of farms less than 179 acres. See <http://www.census.gov/compendia/statab/2012/tables/12s0824.pdf>; see also Brad Plumer, After a 70-year Drop, Small Farms Make a (Small) Comeback WonkBlog, Washington Post, October 2, 2012 (available at <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/10/02/after-a-70-year-drop-farming-makes-a-small-comeback/>) (noting that the number of small farms is increasing while the number of medium-large farms are dwindling; <http://www.incontext.indiana.edu/2007/october/5.asp> (noting that the number of farms in Indiana covering 1 to 49 acres of land increased 32% from 1997 to 2002).

³³³ See Stephen Carpenter, *A New Higher Calling in Agricultural Law*, 18 Drake J. Agric. L. 13, 22 (2013) (describing the "extent to which new farm and food movements act through the market and not through government policy....The core of [these movements]...is voluntary action in dialectic between farmers, consumers, and those in between"). As one farmer aptly stated, "We notice more effect on our farm when Martha Stewart or Sunset Magazine publishes an article suggesting people shop at farmers markets than any policies generated from the federal level." *But see* U.S. Secretary of Agriculture, Tom Vilsack, *Developments in Federal Agricultural Law and Policy*, 18 Drake J. Agric. L. 1, 8 (2013) (explaining that "a sixty percent increase in the number of farmers' markets in part because of our Know Your Farmer, Know Your Food initiative").

during Obama's presidency that have addressed local food in some way.³³⁴ I also considered local farmers' perceptions on these decisions.³³⁵

Through this analysis, it becomes apparent that Obama has been successful in three ways: expanding the scope of food policy discussions at the federal level to include local food; increasing awareness of the benefits of local food production and consumption; and increasing consumer access to local food.

Before President Obama's election, local food had a limited appearance in agricultural policies and limited-to-no appearance in economic or health policies. Today, the influences of local food can be found in all three types of policies and has been written into two pieces of federal legislation addressing child nutrition and food safety.³³⁶ Additionally, local food has been highlighted through the USDA's Know Your Food Know Your Farmer campaign. Local food discussions transcend the USDA to include the FDA, the Department of Treasury and the Department of Health and Human Services. Collaborative enterprises like the Healthy Food Financing Initiative reflect the Obama administration's willingness to expand the discussion local food beyond agricultural policy, where it has traditionally occurred.

And when discussions on 'local food' are expanded, awareness of the importance of local food also grows. The White House Garden and Michelle Obama's Let's Move Campaign are perhaps the most significant way the Obama administration has increased the public's awareness

³³⁴Emily Broad Leib, *The Forgotten Half of Food System Reform: Using Food and Agricultural Law to Foster Healthy Food Production*, 9 J. Food L. & Pol'y 17, 40 (2013); see also Nicholas R. Johnson & A. Bryan Endres, *Small Producers, Big Hurdles: Barriers Facing Producers of "Local Foods"*, 33 Hamline J. Pub. L. & Pol'y 49, 100 (2011) (describing exemptions for small farms to recent federal legislation).

³³⁵ I use the term perception because it seemed that some of the responses did not reflect a complete understanding of the legislation or grant.

³³⁶ Local food also made its way into Obama's international aid policies when he suggested that the government buy the food of local farmers instead of buying food from American farmers and shipping it abroad. Ron Nixon, *Obama Administration Seeks to Overhaul International Food Aid*, *N.Y. Times*, A13 (Apr. 4, 2013) (available at http://www.nytimes.com/2013/04/05/us/politics/white-house-seeks-to-change-international-food-aid.html?_r=0).

of the health benefits that results from local food production and consumption. This is closely followed by the Know Your Farmer Know Your Food campaign, which has been effective at marketing locally grown products and gathering information for consumers and producers about programs to support local food both with the USDA and within other federal agencies..

The benefits of local food, however, can only be realized if local food is available. The Obama administration has also done an admirable job increasing consumer access to local food. For example, an underlining goal of the Healthy, Hunger Free Kids Act and the Healthy Food Financing Initiative has been to improve access to locally grown products. Many school children eat two or three meals a day at school and the Health, Hunger Free Kids Act offers greater opportunity for these meals to include locally grown produce. Similarly, the HFFI expands access to locally grown produce in underserved communities. The recent farm bill continues and expands the use of SNAP benefits at farmers' markets and CSAs.

Obama has portrayed himself as a president in touch with the local food movement and what it entails and is comfortable talking about his local food efforts. For example, in 2011 in response to a YouTube question about what he was going to do to reverse the cost of fresh produced as compared to processed food, the President first emphasized all that the First Lady has done to make healthy eating a priority.³³⁷ The president also noted that his administration was trying to encourage "linkages" between local super markets and local farmers. He explained that this approach is "good for farmers, good for retail stores in underserve communities, and ultimately it's good for the consumer."³³⁸ He also mentioned the Healthy Hunger Free Kids Act and its effort to get fresh fruit and vegetables into school. "[A]ll these things," he notes, "are

³³⁷ <http://veggietogo.wordpress.com/2011/01/28/obama-takes-questions-on-local-food-policy/>

³³⁸ *Id.*

geared towards making local produce, fresh produce much more available and cheaper to every family and not just families who can afford to go into high end supermarkets.”³³⁹ Yet increasing awareness and availability is only part of what is needed to achieve a sustainable local food system.

Professor Czarnezki recently wrote that “to change modern American food consumption, two changes must take place—increased awareness and increased availability.”³⁴⁰ This involves law and policies which “increase available information about the consequences of food choices” and “makes structural changes in the food system that increase access to sustainable foods.”³⁴¹ President Obama has made strides in both areas. But even Professor Czarnezki recognizes that “other changes must occur” including changes to “actual agricultural practices.”³⁴² And it is here where Obama and future Presidents must focus in order to achieve a revolution. As evident from the farmers’ survey responses, farmers need more support in a variety of ways: educational, financial, and technical. Some of these concerns may be addressed through the 2014 farm bill. It is encouraging to see many of those grants identified as assisting local farmers such as the Farmers’ Market and Local Food Promotion Program received full funding (and a name change) in the 2014 farm bill. While funding innovative programs is important, they must also be implemented in a manner that is meaningful to local farmers. Farmers need to be informed about the grants that are available to them and should be given assistance when applying for them. KYF is a start, but there is more to be done.

³³⁹ *Id.*

³⁴⁰ Jason J. Czarnezki, *Food, Law & the Environment: Informational and Structural Changes for A Sustainable Food System*, 31 Utah Envtl. L. Rev. 263, 278 (2011).

³⁴¹ *Id.* at 278-79.

³⁴² Czarneski, *supra* note 329 at 278 n. 82.

Although President Obama has been criticized for not doing enough to support local food,³⁴³ he has certainly not ignored the local food movement. Instead of abandoning his support for industrial agriculture, President Obama's approach has been to push local agriculture as an alternative in as many ways as possible, be it through small pieces of legislation, the advocacy of the USDA, collaborations between and within agencies, and even his wife and home. At the signing of the 2014 farm bill, President Obama described the bill as one which "supports local food by investing in things like farmers' markets and organic agriculture."³⁴⁴ We should applaud the President and his administration's efforts to expand the discussion and increase consumption of and access to local food, but recognize that more can be done to support local food production and the local food producer.

In some ways it may be naïve to suggest that the way America has farmed for the past several decades could somehow be reversed by one president, especially at a time when the president has to do more with less. It could be that the stars were not aligned for this President to achieve a revolution, or it could be that the stars are just starting to move.

³⁴³ See Wenonah Hauter, *Dear Obamas: Let's Move . . . on Food Policy Reform*, Grist (Feb. 11, 2011), <http://www.grist.org/article/2011-02-11-dear-obamas-lets-move-on-food-policy-reform>. Many farmers were also critical of Obama for his continued relationship with big ag players, such as Monsanto.

³⁴⁴ See <http://www.whitehouse.gov/photos-and-video/video/2014/02/07/president-obama-speaks-farm-bill-and-economy>.

Appendix A: Farmer Survey

I am writing a paper entitled *The Farmer in Chief: President Obama's Local Food Legacy*. I'm interested in getting local farmers' perspectives on what has happened at the federal level since Obama's election to help local farmers. In the future, I'd like to write a paper on local food policies, but for now, I am focusing on federal policies, initiatives, and administrations.

Farm Type (vegetable, flower, sheep, etc.): _____

Size of Farm _____

Location of Farm _____

Number of Years Farming: _____

1. What is your impression of the following federal acts that have passed, failed, or been proposed?

a. Healthy, Hunger-Free Kids Act of 2010 (Child Nutrition Act 2010)
 Strongly Approve Approve Neutral Disapprove Strongly Disapprove

b. Food Safety and Modernization Act of 2010
 Strongly Approve Approve Neutral Disapprove Strongly Disapprove

c. Failed Farm Bill of 2013
 Strongly Approve Approve Neutral Disapprove Strongly Disapprove

d. Proposed Beginning Farmer and Rancher Opportunity Act of 2013
 Strongly Approve Approve Neutral Disapprove Strongly Disapprove

e. Proposed Local Farms, Food, and Jobs Act of 2013
 Strongly Approve Approve Neutral Disapprove Strongly Disapprove

2. Have you used or taken advantage of the following grants/programs administered by the USDA through the 2008 Farm Bill:

a. Rural Business Enterprise or Opportunity Grant Yes No
i. If yes, what years? _____

b. Specialty Crop Block Grant Program Yes No
i. If yes, what years? _____

c. Farmers Market Promotion Program Yes No
i. If yes, what years? _____

d. Beginning Farmer and Rancher Development Program Yes No
i. If yes, what years? _____

3. Have you taken advantage of the Seasonal High Tunnel Pilot Program (with NRCS) (funding for hoop houses)? Yes No If yes, what years? _____

4. What is your impression of the USDA's Know Your Farmer Know Your Food initiative?
 Strongly Approve Approve Neutral Disapprove Strongly Disapprove

5. What is your impression of the following administrator?

a. Tom Vilsack (Secretary of the USDA)
 Strongly Approve Approve Neutral Disapprove Strongly Disapprove

6. What is your overall impression of President Obama's local food policy?
 Strongly Approve Approve Neutral Disapprove Strongly Disapprove

7. Narrative

Feel free to comment on any of the above federal policies, initiatives and administrators as it relates to promoting local food systems.

Thank you for your time!
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