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DESERTS STILL NEED WATER: USING ADR PROCESSES TO SUPPORT RURAL RESIDENTS AND COUNTER THE CHALLENGES STEMMING FROM THE SHORTAGE OF LAWYERS IN THE “GREAT AMERICAN LEGAL DESERT”

Whitney Heuermann*

I. SETTING THE STAGE

Outside the bright lights of Hollywood or the towering skyscrapers of New York City’s famous Manhattan Borough as frequently depicted in popular media, there is a lesser-portrayed world in the United States, a place known as “Rural America.”¹

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¹ See generally Michael Ratcliffe et al., *Defining Rural at the U.S. Census Bureau*, U.S. CENSUS BUREAU 1, 2–3 (2016), <https://www.census.gov/content/dam/Census/library/publications/2016/a/cs/acsgeo-1.pdf>; see also *Rural*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/rural> (last visited Apr. 13,

Images of the green rolling hills of Tennessee, the sweeping plains of Kansas, or the grand Rocky Mountains of Colorado might pop into mind, all a testament to the fact that life goes on beyond the major metropolitan areas of the United States.

So, what is rural America, and what are the challenges it faces? To be sure, a country occupying a large portion of a continent, “from sea to shining sea,” will have space and large swaths of land between its urban areas.² While it is hard to define the exact metric of what makes a place rural versus urban, roughly 97% of the United States’ land mass is considered rural.³ One-fifth of Americans call that 97% of more sparsely populated land home.⁴ Moreover, 10% of the U.S.’ GDP comes from producing water, energy, food, and recreation in rural areas.⁵ While rural America sometimes gets a bad reputation for being provincial or outdated, it is much more economically and demographically diverse than it receives credit for.⁶

While rural America is still home to many Americans, since the 1950s there has been a trend toward de-population or “out-migration” as populations move from rural to urban areas.⁷ As this author is from a relatively thriving rural area near Grand Island, NE, it is difficult to watch other communities slowly but surely wither away, consolidating schools, losing population, and closing businesses. As this author observed, proximity to larger urban centers such as the prosperous small communities around Nebraska’s capitol city, Lincoln, NE, and numerous other factors, determine whether a rural community may or may not possess the resources to survive, let alone thrive.

However, not all hope is lost. According to a recent Gallup poll, almost half of Americans (48%) would now like to live in a

2024) (defining rural as “of or relating to the country, country people or life, or agriculture”).

² See generally *America the Beautiful: About the Song*, BALLAD OF AMERICA, <https://balladofamerica.org/america-the-beautiful/> (last visited Apr. 13, 2024).

³ Olugbenga Ajilore & Caius Z. Willingham, *Redefining Rural America*, CTR. FOR AM. PROGRESS REP. (Jul. 17, 2019), <https://www.americanprogress.org/article/redefining-rural-america/>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ John Cromartie et al., *Why Some Return Home to Rural America and Why it Matters*, USDA ECON. RSCH. SERV. (July 6, 2015), <https://www.ers.usda.gov/amber-waves/2015/july/why-some-return-home-to-rural-america-and-why-it-matters>.

rural area or small town.⁸ The poll suggests the renewed and increased interest is likely driven in part by the COVID-19 pandemic, its associated health and safety concerns, and restrictive shutdowns experienced in larger urban areas.⁹ Regardless of COVID-19, some simply choose to return to rural areas.¹⁰ Individuals may leave rural communities for more education, to serve in the armed forces, or live elsewhere and then later return for numerous reasons, including smaller schools, family ties, or specific opportunities.¹¹ However, something places a damper on the well-being and welfare of current rural citizens and those who hope to become one.

II. THE PROBLEM FACING RURAL AMERICANS

Researchers dub rural America the “Great American Legal Desert,” deriving its nickname from the fact that roughly 20% of the nation's population lives in rural America while only 2% of small law practices are located in rural areas.¹² This means there is a substantial shortage of lawyers unable to meet the needs of rural citizens.¹³ A 2017 study showed that, “a quarter of rural residents experienced six or more civil legal problems in a year” but, “only 14% of rural residents received adequate assistance for their civil legal problems,” which is less than half the national average.¹⁴ Further, the legal desert affects low-income rural residents, with three-fourths experiencing at least one civil legal problem a year.¹⁵ When it comes to legal problems, especially in the category of civil issues, economic disparities are pressing, but rural justice gaps have also increased public health concerns.¹⁶

⁸ Carlie Poterfield, *More Americans Crave The Rural Life Amid Pandemic, Poll Suggests*, FORBES (Jan. 5, 2021), <https://www.forbes.com/sites/carlieporterfield/2021/01/05/more-americans-crave-the-rural-life-amid-pandemic-poll-suggests/?sh=1f6799606a8c>.

⁹ See generally *id.*

¹⁰ See Cromartie et al., *supra* note 7.

¹¹ *Id.*

¹² Lisa R. Pruitt et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15, 22 (2018).

¹³ *Id.*

¹⁴ *Id.* at 19.

¹⁵ *Id.*

¹⁶ See Michele Statz & Paula Termuhlen, *Rural Legal Deserts Are a Critical Health Detriment*, 110 AM. J. PUB. HEALTH 1519, 1519–22 (2020).

At this juncture, one must take a step back and consider why there is a shortage of rural attorneys in the first place.¹⁷ Because recent law school graduates are saddled with copious amounts of debt, and often, rural jobs are not as lucrative, financial incentives to seek work elsewhere pull recent graduates away from rural areas.¹⁸ Rural practice frequently involves working in small-private firms.¹⁹ These jobs usually do not qualify for public interest law programs, which would help forgive a law graduate's acquired debt.²⁰ Regarding legal practice within a small-private or solo firm, attorneys must juggle the law and the business components of the firm.²¹ This serves as an additional deterrent for new attorneys, as mastering the practice of law beyond the classroom is already hard enough, let alone trying to learn and run the business side of a firm.²² Finally, there are cultural aspects to consider.²³ An individual not from rural America is more likely to struggle to understand the specific culture and dynamics of a rural community compared to a person from the area.²⁴ While attracting more lawyers to rural places is needed, it cannot be the only solution to reducing problems caused by the legal desert.

Clearly, the Great American Legal Desert exists, but initiatives intending to address the problems and provide increased access to justice for rural individuals often fail to create meaningful change. Across the country there are numerous initiatives to increase access to justice in rural areas, including legal aid and in-person clinics for pro se litigants.²⁵ However, many of the initiatives do not necessarily ensure the individual will get justice, especially those proceeding pro se.²⁶ Individuals may obtain information and be able to attend court, but they are at a steep disadvantage without adequate knowledge of the legal system.²⁷ To magnify these concerns, rural America faces infrastructural problems.²⁸ Issues

¹⁷ See generally Pruitt et al., *supra* note 12.

¹⁸ See Zachary Newton, *Legal Deserts: Race & Rural America*, 26 MICH. J. RACE & L. (Mar. 22, 2022), <https://mjrl.org/2021/03/22/legal-deserts-race-rural-america/>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Michele Statz et al., “*They Had Access, But They Didn’t Get Justice*”: *Why Prevailing Access to Justice Initiatives Fail Rural Americans*, 28 GEO. J. ON POVERTY L. & POL’Y 321, 324–28 (2021).

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Pruitt et al., *supra* note 12, at 22.

such as lack of computers, unreliable phone service or data access, and poor transportation concerns make simple correspondence and court attendance difficult, adding to an individual's stress.²⁹ If a rural resident lacks good cell service and internet, communicating with their attorney may be difficult enough, let alone conducting their own research and navigating the legal system alone.³⁰ With courts being geographically sparse, just getting to the local courthouse may take considerably more time and resources for rural residents than their urban counterparts.³¹

This comment proposes that an increase in alternative dispute resolution (ADR) programming and usage serves as a viable avenue to alleviate the lawyer shortage's harmful effects in rural America. This note begins by generally identifying ADR's pros, such as cost, privacy, and community preservation, and then correlating these advantages to various aspects of rural America. ADR programming in Kentucky, Idaho, and Kansas is then explored, identifying what factors makes ADR in a rural setting both successful and unsuccessful. Next, various types of rural disputes, including agricultural, family, and business, are examined to determine where ADR can be most beneficial. Finally, methods are assessed to increase ADR awareness and usage in rural America by emphasizing educational, governmental, political, and judicial support, with the hope that change can create a lasting impact on rural communities today and in the future.

III. TREATING THE PROBLEM'S MANIFESTATIONS

While conditions may seem bleak for rural citizens, ADR can potentially create positive change for rural communities low on lawyers. ADR encapsulates "any procedure agreed to by the parties of a dispute, in which they use the services of a neutral party to assist them in reaching agreement and avoiding litigation" through common processes such as arbitration, mediation, and negotiation.³² This is not to say that ADR does not already exist in rural communities; rather, a quick search of a few predominantly rural states such as Iowa, South Dakota, and Wyoming show few mediation centers and various initiatives with far from overwhelming results.³³ ADR could, and should, certainly be utilized more to create solutions for individuals who need it the

²⁹ *Id.*

³⁰ *Id.* at 23.

³¹ *Id.*

³² *Alternative Dispute Resolution*, U.S. DEP'T OF LAB., <https://www.dol.gov/general/topic/labor-relations/adr> (last visited Apr. 13, 2024).

³³ *See* Statz et al., *supra* note 25, at 324.

most. Research shows the general public does not possess a solid understanding of arbitration and mediation.³⁴ Further, the public has little engagement with these processes.³⁵ This finding clarifies that even if a rural community is lucky enough to have an ADR program and support from the local courts, individuals may not even be aware of this viable alternative to traditional court proceedings.³⁶ If individuals are unaware and uninformed, ADR options will be left unutilized.

IV. THE ADVANTAGES OF ADR IN RURAL AMERICA

Because ADR is an alternative to the traditional court system, it has several advantages and disadvantages to traditional litigation.³⁷ Many of the benefits match lockstep with rural America's needs, and therefore, if utilized, could be highly beneficial for those seeking resolution.³⁸ Some key advantages include cost, efficiency, privacy, flexibility, and preserving the community.³⁹

The first advantage for rural Americans is cost.⁴⁰ ADR is usually, if not always, less expensive than traditional litigation.⁴¹ With no court fees, attorney expenses, expert expenses, and all the other unexpected costs that typically arise with litigation, costs associated with ADR are more manageable, especially for pro se individuals.⁴²

Rural Americans make less money than their urban counterparts.⁴³ From 2013 to 2017, urban counties primarily had a

³⁴ See Kristen M. Blankley et al., *ADR Is Not a Household Term: Considering the Ethical and Practical Consequences of the Public's Lack of Understanding of Mediation and Arbitration*, 99 NEB. L. REV. 797, 799 (2020).

³⁵ *Id.*

³⁶ *See id.*

³⁷ See *ADR Types and Benefits*, CAL. CTS., <https://www.courts.ca.gov/3074.htm#panel4538> (last visited Apr. 13, 2024).

³⁸ See, e.g., Nathan K. DeDino, *When Fences Aren't Enough: The Use of Alternative Dispute Resolution To Resolve Disputes Between Neighbors*, 18 OHIO ST. J. ON DISP. RESOL. 887, 888 (2003).

³⁹ See CAL. CTS., *supra* note 37.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Gloria Guzman et al., *Poverty Rates Higher, Median Household Income Lower in Rural Counties Than in Urban Areas*, U.S. CENSUS BUREAU (Dec. 6, 2018), <https://www.census.gov/library/stories/2018/12/differences-in-income-growth-across-united-states-counties.html>.

median household income of \$59,970, while completely rural counties had a median income of \$44,020.⁴⁴ Long-drawn-out court battles are not in rural residents' budgets, which again factors into why only 14% of rural residents receive adequate assistance for legal problems, which is less than half the national average.⁴⁵ Rural residents would likely jump at an alternative if a cheaper, more reliable opportunity was available.⁴⁶

ADR also allows for a speedier and more efficient process for parties because of its simplified procedures.⁴⁷ As this author is from rural America and can attest, often rural residents are some of the most hard-working, independent individuals, especially those who raise crops and livestock. Their jobs are often seven days a week, 365 days a year. The sooner they can return to business, the better for themselves and their livelihoods.

ADR also provides a unique level of privacy and confidentiality not available in the court system.⁴⁸ The dispute can take place out of the public eye, and sensitive business as well as personal matters can be kept from being paraded before the community.⁴⁹ People often say that in a small town, whether for better or for worse, "everybody knows everybody's business."⁵⁰ Unfortunately, this is a little too accurate in small communities. For instance, with the advent of the internet and social media, gossip has moved from the local diner to online platforms, causing detrimental effects in small communities.⁵¹ For peace of mind, rural residents who dislike the idea of firing up the local rumor mill would appreciate the advantages of increased privacy, especially if it involves a local dispute.

Within ADR's inherent qualities lies the ability to adapt to the specific needs of rural America. ADR allows for flexibility because individuals can influence the process they use to resolve conflict.⁵² Only the individuals involved in the dispute truly know

⁴⁴ *Id.*

⁴⁵ Pruitt et al., *supra* note 12, at 19.

⁴⁶ *See id.*

⁴⁷ Sterling Miller, *The Problems and Benefits of Using Alternative Dispute Resolution*, THOMSON REUTERS (Apr. 29, 2022), <https://legal.thomsonreuters.com/en/insights/articles/problems-and-benefits-using-alternative-dispute-resolution>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Gossip Takes Toll on Small-Town America as Rural Areas Log onto Social Media*, IRISH TIMES (Sept. 26, 2011), <https://www.irishtimes.com/news/gossip-takes-toll-on-small-town-america-as-rural-areas-log-on-to-social-media-websites-1.609570>.

⁵¹ *Id.*

⁵² Miller, *supra* note 47.

the concerns and values that precipitate in rural America.⁵³ Further, ADR allows for creativity within the process.⁵⁴ For instance, in an agricultural dispute, one could tailor the timeline to consider essential time frames such as planting and harvest, while also recognizing that an award or settlement may not be monetary, but could be crops and livestock or some kind of specific performance.

Rural Americans are sometimes faced with large distances to access justice.⁵⁵ During COVID-19, ADR went virtual; thus, practitioners are now more familiar with online processes, increasing the possibility that people may utilize virtual avenues in the future.⁵⁶ While broadband can be unstable in some rural spots, finding a solid internet connection may still be more manageable than traveling.⁵⁷ This is not to say that courts themselves have not become more conducive to virtual proceedings as well, but rather with ADR's less stringent and more flexible processes, ADR may be better suited for virtual proceedings.⁵⁸

Dispute resolution can encourage community building.⁵⁹ ADR provides opportunities to resolve conflict through personal interaction and mutual recognition so that parties will see themselves as a part of a larger community.⁶⁰ As previously mentioned, "everybody knows everybody's business" in a small town, and if you know their business, you certainly know them and probably half of their family.⁶¹ Disputes are universal, but the magnitude shakes the core of a small community to a higher degree.⁶² If you have a problem with an individual, there is a good chance you will run into that person at the grocery store, gas station, bank, or any number of places in a small community.⁶³ ADR could help rural individuals identify their place in the community with

⁵³ *See id.*

⁵⁴ *See* Blankley et al., *supra* note 34, at 799 (noting creative problem-solving as an advantage of non-litigation processes).

⁵⁵ *See generally* Pruitt et al., *supra* note 12.

⁵⁶ Shira A. Scheindlin, *Virtual v. in person ADR: What does the future hold?* REUTERS (Mar. 8, 2022), <https://www.reuters.com/legal/legalindustry/virtual-v-person-adr-what-does-future-hold-2022-03-08/>.

⁵⁷ *See* Javier Valentín-Sívico et al., *Evaluating the Impact of Broadband Access and Internet Use in a Small Underserved Rural Community*, 47 TELECOMM. POL'Y 1 (2023).

⁵⁸ *See* Scheindlin, *supra* note 56.

⁵⁹ *See* Robert M. Ackerman, *Disputing Together: Conflict Resolution and the Search for Community*, 18 OHIO ST. J. ON DISP. RESOL. 27, 71–72 (2002).

⁶⁰ *Id.*

⁶¹ *See* IRISH TIMES, *supra* note 50.

⁶² *See id.*

⁶³ *Id.*

hopes of encouraging respect and resolution so both parties may continue to function in their shared community.

ADR is a less adversarial and hostile way of resolving disputes; thus, relationships are more likely to be preserved.⁶⁴ Maintaining relationships in a small community is vital for both the individuals and the community as a whole. Rural individuals depend on one another for support, and strong relationships are key to thriving.⁶⁵ With the decrease in rural populations, having strong harmonious communities is crucial for the well-being of its populace and essential for attracting newcomers.

V. ADR ON THE GROUND

The discussion below will provide a 30,000-foot overview of ADR development and implementation across various states. The aim is to identify common threads, aiding in discerning what disputes may be best addressed in rural settings and how to increase ADR usage to investigate the side effects of the lawyer shortage.

A. MEDIATION IN THE BLUEGRASS STATE

In Lexington, Kentucky, through the efforts of key individuals and the support of the local judicial system, “a quasi-public, independent, nonprofit program” entitled The Mediation Center of Kentucky, Inc., fully cooperates with the support of local courts.⁶⁶ The organization’s chosen method of ADR is mediation, which attributes to its cost savings, adaptability, commitment to resolution, and ability to establish trust and reduce animosity.⁶⁷

After extensive research, the organization started by forming an all-volunteer mediation program to lower costs with hopes of including larger segments of the population and a volunteer basis that would “open up the justice system and get more individuals involved.”⁶⁸ Through policy change, local judges started ordering

⁶⁴ See CAL. CTS., *supra* note 37.

⁶⁵ See Ronnie J. Evans, *A Comparison of Rural and Urban Older Adults in Iowa on Specific Markers of Successful Aging*, 52 J. GERONTOLOGICAL SOC. WORK 423, 423 (2009) (discussing how strong social support correlates to older rural adults having higher life satisfaction than their urban counterparts).

⁶⁶ Thomas J. Stipanowich, *The Quiet Revolution Comes to Kentucky: A Case Study in Community Mediation*, 81 KY. L.J. 855, 857 (1993); see generally *Welcome!*, MEDIATION CTR. OF KY, INC., <http://www.mediationcenterofkentucky.com/index.html> (last visited Apr. 13, 2024).

⁶⁷ Stipanowich, *supra* note 66, at 870–73.

⁶⁸ *Id.* at 880–892.

mediation at their discretion.⁶⁹ While parties were often happy with the results, one of the most significant concerns for the organization as a whole was funding.⁷⁰ The organization has since seen success, continuing to remain flexible and adapting to community needs by branching out into smaller communities and widening its available services.⁷¹

B. ADR IN THE SPUD STATE

Recounting a broader narrative of ADR's history across Idaho, *Dreamer and Visionaries: The History of ADR in Idaho* articulates the triumphs of ADR across the state while also looking to the future.⁷² Individuals across communities, the judiciary, the bar, and education generated the success of ADR in Idaho through collaborative work.⁷³ Key developments include passing of Idaho Rule of Civil Procedure 16(k), which established rules and procedures for civil mediation and created mediation options for families in conflict.⁷⁴ Despite some initial criticism from members of the bar and judiciary, ADR took a foothold, and there is full confidence that ADR is here to stay in Idaho.⁷⁵

What does the future hold for Idaho ADR? While mediation will remain voluntary at the state and federal levels, technology use will play a growing role.⁷⁶ Natural resources and environmental disputes will likely increasingly use ADR.⁷⁷ Further, to improve the longevity of ADR programming, individuals should be able to make a livelihood doing mediation work while increasing state and federal ADR coordinators to ensure programming receives adequate institutional support.⁷⁸

C. THE SUNFLOWER STATE'S ADR

Like many other states, ADR usage for civil disputes in Kansas is a more recent development, and while not perfect, the

⁶⁹ *Id.* at 889–91.

⁷⁰ *Id.* at 907.

⁷¹ *Id.* at 936.

⁷² See generally Maureen Laflin, *Dreamers and Visionaries: The History of ADR in Idaho*, 46 IDAHO L. REV. 177 (2009).

⁷³ *Id.* at 225.

⁷⁴ IDAHO R. CIV. PRO.16(k); see *id.*

⁷⁵ Laflin, *supra* note 72, at 225.

⁷⁶ *Id.* at 226, 228.

⁷⁷ See *id.* at 226.

⁷⁸ *Id.* at 226–27.

benefits are not unnoticed.⁷⁹ In 2000, the state legislature passed a law allowing licensed attorneys to provide dispute resolution services without further training and with no formal reporting requirements, which anecdotally lends itself to the conclusion that ADR may be more widely used across Kansas than is even reported.⁸⁰ At the time of this article, ADR experienced a high approval rating from Kansas judges and attorneys.⁸¹ In particular, judges value the time-saving advantages of ADR reporting they save, on average, one to eight hours on child custody and visitation cases—a huge savings for over-burdened court systems.⁸²

Kansas is primarily a court-based dispute resolution system, meaning it allocates resources district by district or even county by county, thus the funding and type of ADR systems used are locally controlled.⁸³ The most common method of mediation referral is by providing a list of practitioners for parties to pick from.⁸⁴ As the state government attempts to do more with less, including less funding and personnel, but more with initiatives, ADR will continue to play an important role.⁸⁵ While the state government should encourage ADR experimentation, it must hold current programs accountable for their cost-effectiveness, success for the parties, and upholding constitutional considerations such as the right to trial and due process.⁸⁶

From these overviews, it is clear there is not a one-size-fits-all method for implementing or expanding the usage of ADR in rural communities. Location and context highly influence how mediation or arbitration's functions will be accessed, utilized, and funded.⁸⁷ Furthermore, successful ADR requires creative individuals who are willing to collaborate.⁸⁸

ADR exists at the crossroads of the government, judiciary and practitioners' work alongside volunteers and individuals' collective initiatives.⁸⁹ Beyond just a review of accomplishments, each initiative in the three states listed above keenly look to the

⁷⁹ Art Thompson, *The Use of Alternative Dispute Resolution in Civil Litigation in Kansas*, 12 KAN. J.L. & PUB. POL'Y 351, 371 (2003).

⁸⁰ *Id.* at 354.

⁸¹ *Id.* at 355.

⁸² *Id.* at 356.

⁸³ *Id.* at 361.

⁸⁴ *Id.*

⁸⁵ *Id.* at 371.

⁸⁶ *Id.* at 371–72.

⁸⁷ *See generally id.*; Laflin, *supra* note 72.

⁸⁸ *See* Blankley et al., *supra* note 34, at 799.

⁸⁹ *See* Laflin, *supra* note 72, at 225–27.

future.⁹⁰ In Kentucky, funding for the future of the local mediation clinic is of the utmost importance.⁹¹ At the same time, in Idaho, there is desire for more institutional support from the state and federal levels.⁹² In Kansas, reviewing current ADR processes for cost-effectiveness and quality of results for individuals is crucial for the future.⁹³ While the ability to adapt and adjust is an innate quality of ADR itself, those involved in the process must also lean into these characteristics to maintain the viability of current ADR processes and expand their usage to address problems like the legal desert of rural America.⁹⁴

VI. RURAL DISPUTES ADDRESSABLE WITH ADR

ADR has tangible advantages for rural settings that have previously worked.⁹⁵ However, as to the “D” in ADR, what disputes in rural areas are actually able to be resolved? The discussion below analyzes the effectiveness and application of ADR to resolve various rural (and non-rural-specific) disputes, including neighbor, agricultural, family, employment and small business, healthcare, and insurance disputes.

A. NEIGHBOR DISPUTES

Whose fencepost is it anyway? While there are fewer individuals in rural America relative to the land mass it occupies, inevitably, as in urban areas and cities, neighbor-versus-neighbor disputes occur.⁹⁶ Instead of running to litigation, ADR’s attributes allow for not only resolution, but better outcomes for neighbor disputes.⁹⁷

Though it is not always the case, neighbor disputes tend to be over minor inconveniences like noise complaints or property line disputes; thus, escalating something like this to litigation does not make sense from a cost or commitment perspective.⁹⁸ Mediation is particularly well-suited and up to the challenge of addressing the

⁹⁰ See *id.* at 226–28; Stipanowich, *supra* note 66, at 936; Thompson, *supra* note 79, at 372.

⁹¹ Stipanowich, *supra* note 66, at 907.

⁹² See Laflin, *supra* note 72, at 226–27.

⁹³ Thompson, *supra* note 79, at 353–57.

⁹⁴ See Blankley et al., *supra* note 34, at 799; Pruitt et al., *supra* note 12, at 22.

⁹⁵ See Thompson, *supra* note 79, at 353–57.

⁹⁶ See generally DeDino, *supra* note 38.

⁹⁷ *Id.* at 888.

⁹⁸ *Id.*

interpersonal nature of these disputes, which stands in contrast to, for example, a rights-based contractual dispute between businesses.⁹⁹ Further, there is the possibility that meditation will not only reach a resolution, but also restore and preserve the neighbor relationships.¹⁰⁰ This is particularly important in small communities, where adjoining landowners may have been around for generations, and no one plans on moving anytime soon.¹⁰¹ Reinforcing the need to preserve relationships, rural communities hoping to thrive know that the stronger the positive relationships among community members, the more likely the community overall will be successful.¹⁰²

B. AGRICULTURAL DISPUTES

When people think of rural America, the first thing that comes to mind is often farmers. Whether seeing them as a sentimental part of rural culture, a voting base, or a dying breed, there are “more than [two] million farms in the U.S., vary[ing] greatly in size and characteristics” with family farms still “making up 98% of all farms and providing 88% of production.”¹⁰³ Weather changes, market fluctuations, and the ever-increasing globalization of the industry make agricultural production fraught with uncertainty.¹⁰⁴ Beyond this, producers must grapple with changes in input costs, pests and disease control, and changing laws and regulations.¹⁰⁵

To help alleviate some of the uncertainty, Congress passed the Agricultural Credit Act of 1987, which included the Agricultural Mediation Program.¹⁰⁶ When farmers face foreclosure, this program provides that mediation should be used to restructure loans and take other appropriate measures, yielding positive results overall.¹⁰⁷ The use of mediation allows both the farmer and the lender, who often

⁹⁹ *Id.* at 889.

¹⁰⁰ *Id.*

¹⁰¹ *See id.* at 897–98.

¹⁰² *See id.* at 906–07.

¹⁰³ Christine Whitt, *A Look at America’s Family Farms*, USDA (2020), <https://www.usda.gov/media/blog/2020/01/23/look-americas-family-farms>.

¹⁰⁴ Debra D. Burke, *The Expansion of the Federal Agricultural Mediation Program: A Promising Signal*, 51 CUMB. L. REV. 319, 319 (2021).

¹⁰⁵ *See id.*

¹⁰⁶ *Id.* at 323; Agricultural Credit Act of 1987, 12 U.S.C. §§ 501–512 (1988).

¹⁰⁷ *See id.* at 327.

are already in a close working relationship, to construct a plan to reach identified goals and avoid foreclosure.¹⁰⁸

Given its success, in the 2018 Farm Bill, Congress expanded the program to include provisions for both the National Organic Program and disputes arising from neighbor issues, family farm transitions, and leases.¹⁰⁹ This illustrates that mediation in an agricultural setting has worked so well that U.S. tax dollars are increasingly being allocated to facilitate ADR programming.¹¹⁰ Farmers have a lot to juggle, so when a dispute arises, a long, expensive, drawn-out court battle is far from the best option.¹¹¹ With a successful mediation program like this in place, agricultural litigation should be a last resort.¹¹² However, from this author's experience in a small farming community, agricultural disputes still end up in court. This leads to another consideration of whether litigants are aware of ADR options, attorneys are pushing litigation, or if there is need for increased familiarity with the success of ADR processes.¹¹³

C. FAMILY DISPUTES

Family is family. Although we may not always be able to choose the individuals who make up your next of kin, families are a vital component of life. Like any other area of life, disputes arising within the family are everywhere, and if they are everywhere, they are also in rural America.¹¹⁴ As previously mentioned, strong relationships are important for a thriving rural community, but so are strong family relationships.¹¹⁵ As this author has seen in their own rural community, often businesses, churches, and communities are laced with multiple members of the same family. Thus, when there is intra-family conflict, effects are felt beyond the immediate family, as family members project conflict onto not only other individuals within the family, but eventually to the rest of the community as well.

¹⁰⁸ *See id.* at 345.

¹⁰⁹ *See id.* at 335, 337, 339–40; Agriculture Improvement Act of 2018, 7 U.S.C. § 5402 (2018).

¹¹⁰ *Id.* at 345.

¹¹¹ *Id.* at 319, 345.

¹¹² *Id.* at 324.

¹¹³ *See infra* Part VII.

¹¹⁴ *See generally* Shelley Clark et al., *Growing Up in Rural America*, 8 RUSSELL SAGE FOUND. J. OF THE SOC. SCI. 1, 14–16 (2022).

¹¹⁵ *See* Sheila Barnhart et al., *Supportive Neighborhoods, Family Resilience and Flourishing in Childhood and Adolescence*, 9 CHILDREN 1, 3 (2022) (noting importance of social cohesiveness in family structures and impact on mental, physical, and emotional health).

Studies show that family disputes using ADR are not only successful in decreasing court time, but also improving the status of relationships on the brink of collapse.¹¹⁶ Litigation for families is emotionally and economically draining, often worsening the conflict.¹¹⁷ In Denver, Colorado, an interdisciplinary center focuses on helping families caught in conflict to facilitate successful outcomes.¹¹⁸ The Center “encourage[s] parents to determine the family’s future through mutual agreement rather than reliance on court orders.”¹¹⁹ The Center’s integrated model includes “mediation, mental health services, financial planning,” and encourages the parents to work collaboratively.¹²⁰ After empirical evaluation, the Center improved the emotional health of parents and children, increased communication between parties, and reduced time and expenses that the litigation process would have otherwise increased.¹²¹

Although the Center demonstrated success, this does not necessarily mean every small community could do the same, especially if funding is a concern.¹²² However, the success of the Center’s use of mediation alone suggests that ADR should not be considered an “alternative” but rather a “primary” option for families in conflict.¹²³ Strong families are pillars of thriving rural communities.¹²⁴ While family conflict is inevitable, using ADR to resolve these disputes in the most positive manner possible allows damage to be limited and parties involved to be able to continue residing in rural areas on the best terms possible.¹²⁵

D. EMPLOYMENT & SMALL BUSINESSES

From the ma and pop hardware store on the corner to the family farming operation handed down for generations, rural America is the home of small businesses.¹²⁶ Statistically, small

¹¹⁶ See Thompson, *supra* note 78, at 367.

¹¹⁷ See Andrew Shepard et al., *If We Build It, They Might Come: Bridging the Implementation Gap Between ADR Services and Separating and Divorcing Families*, 26 HARV. NEGOT. L. REV. 25, 29 (2018).

¹¹⁸ *Id.* at 26–27.

¹¹⁹ *Id.* at 29.

¹²⁰ *Id.*

¹²¹ *Id.* at 26–27.

¹²² *Id.* at 30.

¹²³ *Id.* at 31.

¹²⁴ See Clark et al., *supra* note 114, at 3.

¹²⁵ See Thompson, *supra* note 79, at 371–72.

¹²⁶ *Rural Small Business Play Key Factor in American Economic Growth but Experience Roadblocks to Success*, PR NEWSWIRE (June 2, 2022), <https://www.prnewswire.com/news-releases/rural-small-businesses-play->

businesses with less than fifty employees provide 42% of all jobs in rural America.¹²⁷ Without the hierarchy of a major corporation, small businesses face unique challenges, but also have the ability and flexibility to adapt and create solutions.¹²⁸

The flexibility provided by ADR processes would allow small businesses to quickly resolve disputes at a lower price point.¹²⁹ For instance, when it comes to employee and employer disputes, ADR could be most advantageous.¹³⁰ In fact, “an increasing number of non-unionized employers are establishing dispute resolution processes to resolve employee complaints.”¹³¹ While there are concerns that employers could unfairly tailor the ADR processes, there are resources available, such as the Employment Due Process Protocol adopted by the American Arbitration Association that, when utilized, can help ensure employee rights.¹³² Often, small business owners and their employees are members of the same rural community; thus, resolving these disputes in the least contentious way has a positive, compounding effect.

E. HEALTHCARE & INSURANCE DISPUTES

Most people will require some form of healthcare or medical treatment at some point in their life, whether something minor like a cold or significant like cancer care. However, like other businesses and industries, problems can arise, especially regarding payment.¹³³ Access to quality healthcare and consumer protection is of great concern to the American public.¹³⁴ Further, similar to the lawyer

key-factor-in-american-economic-growth-but-experience-roadblocks-to-success-301560238.html.

¹²⁷ *Id.*

¹²⁸ See Holly Woodward, *Flexibility, the Secret Weapon for Small Business Success*, CAPITAL ON TAP (Apr. 13, 2022), <https://www.capitalontap.com/us/blog/posts/flexibility-the-secret-weapon-for-small-business-success/>.

¹²⁹ See Jay E. Grenig, *Evolution of the Role of Alternative Dispute Resolution in Resolving 25 Employment Disputes*, 71 DISP. RESOL. J. 99, 120 (2016).

¹³⁰ See generally *id.*

¹³¹ *Id.* at 120.

¹³² *Id.*; *Employment Due Process Protocol*, AM. ARBITRATION ASS'N (1995),

https://www.adr.org/sites/default/files/document_repository/Employment%20Due%20Process%20Protocol_0.pdf.

¹³³ See, e.g., Eleanor D. Kinney, *Tapping and Resolving Consumer Concerns About Health Care*, 26 AM. J. L. & MED. 335, 335 (2000) (discussing coverage denial for the gravely ill and the quality of prepaid managed care plans being of great concern).

¹³⁴ See *id.*

shortage, there is a lack of healthcare professionals in rural areas as “rural communities represent nearly two-thirds of primary care health professional shortage areas.”¹³⁵ Therefore, because it is already hard enough for rural residents to obtain healthcare, disputes regarding care, coverage, and payment should not prevent individuals from seeking treatment with already limited options.¹³⁶ With a shortage of lawyers, these rural individuals will have trouble seeking legal help to fight these disputes.

Many healthcare entities use their own internal ADR processes to resolve disputes.¹³⁷ However, this raises questions of fairness when binding arbitrations are mandated by healthcare insurers or program providers.¹³⁸ However, an independent healthcare program funded by the state could implement ADR processes with certified medical practitioners to serve on its panels.¹³⁹ This envisioned process in the healthcare sector is an excellent jumping-off point for discussing how to increase ADR usage across the vast majority of disputes in rural America, hopefully to help alleviate the problems associated with the shortage of lawyers.¹⁴⁰

¹³⁵ Thomas Waldrop & Emily Gee, *How States Can Expand Health Care Access in Rural Communities*, CTR. FOR AM. PROGRESS (Feb. 9, 2022), <https://www.americanprogress.org/article/how-states-can-expand-health-care-access-in-rural-communities>.

¹³⁶ Karen Pollitz et al., *Consumer Survey Highlights Problems with Denied Health Insurance Claims*, KAISER FAM. FOUND. (Sep. 29, 2023), <https://www.kff.org/affordable-care-act/issue-brief/consumer-survey-highlights-problems-with-denied-health-insurance-claims/> (“[S]urvey of adults with health insurance found that roughly 6 in 10 insured adults experience problems when they use their insurance. Problems studied include denied claims, network adequacy issues, preauthorization delays and denials, and other.”).

¹³⁷ Eleanor D. Kinney, *Tapping and Resolving Consumer Concerns About Health Care*, 26 AM. J.L. & MED. 335, 357 (2000).

¹³⁸ *Id.*

¹³⁹ *Id.* at 388 (describing this independent program to “use ADR methods, such as mediation and arbitration, more easily than dispute resolution processes operated by plans or providers” while “coupl[ing] with a truly independent expert, [to] greatly mitigate the problem that plagues the use of ADR methods in the health care system today: the power imbalance between the consumer and the plan or provider. The sponsor of the process would not be the consumer's adversary and would not have exclusive possession and control of the requisite expert knowledge of the relevant medical facts.”).

¹⁴⁰ *Id.*

VII. HOW TO INCREASE ADR USAGE IN RURAL AREAS

A. START WITH EXISTING ATTORNEYS

Before moving further, it must be noted that ADR cannot replace many of the critical functions that a rural attorney performs for their client as certain disputes must go to court, such as criminal proceedings and civilly when a party refuses ADR processes.¹⁴¹ The few attorneys that exist in rural communities are irreplaceable; however, their impact could be magnified, and their workloads lessened by pursuing the usage of ADR.¹⁴² If attorneys spend less time in court and resolve disputes quickly, they can take on more clients and cases. Further, rural attorneys would encourage a less adversarial option to facilitate reconciliation and the preservation of relationships within small rural communities.¹⁴³

Attorneys in rural areas could be at the heart of making ADR commonplace. Judge Joseph W. Milam Jr. of the 22nd Judicial Circuit of Virginia articulated, “[a]s a judge who sits in a predominately rural circuit, I routinely encounter lawyers who demonstrate patience, civility, and tireless dedication to their clients. These traits make such lawyers naturals for ADR. Despite this, I am concerned that not all lawyers in rural areas are inclined to pursue ADR.”¹⁴⁴

The question remains, how can this be changed? Most lawyers acknowledge the efficiency of ADR but have hesitations about the finality of ADR processes (e.g., will the dispute end up in court anyway) or clients wanting their “day in court.”¹⁴⁵ However, there are several ways to encourage an attorney's inclination toward ADR.

¹⁴¹ See Daniel Liberto, *Alternative Dispute Resolution: Definition and Meaning*, INVESTOPEDIA (May 15, 2023), <https://www.investopedia.com/terms/a/alternative-dispute-resolution.asp>.

¹⁴² See Michelle Paxton, *Preventing Legal Deserts in Our Rural Communities*, AM. BAR ASS'N (Nov. 14, 2023), <https://www.americanbar.org/groups/litigation/resources/newsletters/childrens-rights/fall2023-preventing-legal-deserts-in-our-rural-communities/>.

¹⁴³ *Id.*

¹⁴⁴ Joseph W. Milam Jr., *Consider ADR, Regardless of Where the Dispute Arises*, VA BAR ASS'N: ALL THINGS ADR BLOG (Nov. 20, 2017), <https://www.vba.org/blogpost/1274779/289865/Consider-ADR-Regardless-of-Where-the-Dispute-Arises>.

¹⁴⁵ *Id.*

1. ATTORNEY EDUCATION & EXPERIENCE

If an attorney's familiarity with ADR is increased through education and experience, they become more likely to recommend it and use it in the future; however, overcoming the inertia created by years of litigation-oriented practice can be challenging.¹⁴⁶ While education provided by organizations like state bar associations may be helpful, research is not clear on how well education actually translates to increasing ADR usage.¹⁴⁷ However, education not readily available or encouraged would hamper whatever minimal effect it has on the practice of ADR.¹⁴⁸ ADR education options are substantially more valuable, particularly if discussing these options with clients becomes a requirement for attorneys.¹⁴⁹

Research exploring education versus experience shows experience more readily translates to an increase in ADR usage.¹⁵⁰ Suppose an attorney utilized an ADR process before.¹⁵¹ In that case, the attorney gains a comfort level that translates to voluntarily seeking out ADR options, not just when mandatory or when requested by a client.¹⁵² Not only is an attorney more likely to seek out an ADR option, but they are more likely to at least discuss the option with their clients.¹⁵³ If an attorney, armed with experience, can articulate the advantages of ADR properly, and can convey the success of previous utilization to their clients, there is a much higher likelihood their clients would consider ADR.¹⁵⁴ If experience translates toward increase usage of ADR and referral to ADR, the question then becomes how attorneys can gain more experience.

2. JUDICIARY EDUCATION & ENCOURAGEMENT

Three common ways attorneys gain experience with ADR, without the mutual agreement of the parties, are through: (1) a court rule or statute mandating ADR use in certain types of cases, (2) a pre-dispute contractual agreement between parties, or (3) judicial

¹⁴⁶ See Roselle L. Wissler, *When Does Familiarity Breed Content? A Study of the Rule of Different Forms of ADR Education and Experience in Attorneys' ADR Recommendations*, 2 PEPP. DISP. RESOL. L.J. 199, 214–15 (2002).

¹⁴⁷ *Id.* at 212–13.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 214–15.

¹⁵⁰ *See id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

referral.¹⁵⁵ However, attorneys often choose not to use or discuss ADR for several reasons, including lack of knowledge, unfavorable views of ADR (such as a lack of an appeal process), perceived weaknesses of ADR, typical routines of legal practice, and lack of judicial involvement.¹⁵⁶ Research shows judges suggesting ADR have the strongest impact on whether attorneys use or discuss ADR, followed by whether attorneys believe ADR is beneficial, and attorneys' familiarity with ADR processes.¹⁵⁷ This suggests that, perhaps, a more targeted way of encouraging rural attorneys to use ADR processes is through the education of judges.¹⁵⁸ If judges at both the state and federal levels are more familiar and comfortable with the process, they are more likely to discuss and suggest ADR to the attorneys, thus, instilling with them the confidence to pursue ADR.¹⁵⁹

3. NO DISCUSSION—NO USAGE

One of the biggest hurdles includes the fact that the general population, who may become potential legal clients seeking dispute resolution, is unfamiliar with ADR processes.¹⁶⁰ If a potential client has yet to learn about ADR, they certainly will not encourage their attorney to pursue it and will more likely be on a b-line to the courtroom.¹⁶¹ This suggests a need for education not just for attorneys or judges, but for the general population.¹⁶² Existing ADR clinics, the state government, the state bar associations, and individuals willing to get out and spread the word at local functions (such as the local chamber of commerce meetings) could support these education initiatives.¹⁶³ However, based on a combination of common sense and this author's personal experience in rural America, it is questionable how far-reaching and practical education would be for the general rural population. Most are more focused on their work, families, and daily lives, and they are only likely to seek out this education if they become involved in a dispute. Still, there is a strong case for mandating attorneys at least be required to discuss ADR options with their clients.¹⁶⁴

¹⁵⁵ See Roselle L. Wissler, *Barriers to Attorneys' Discussion and Use of ADR*, 19 OHIO ST. J. ON DISP. RESOL. 459, 461 (2004).

¹⁵⁶ See *id.* at 463.

¹⁵⁷ *Id.* at 491.

¹⁵⁸ *Id.* at 496.

¹⁵⁹ See *id.* at 470, 496.

¹⁶⁰ See Blankley et al., *supra* note 34, at 799.

¹⁶¹ See *id.* at 801.

¹⁶² *Id.*

¹⁶³ See *id.* at 846.

¹⁶⁴ See Wissler, *supra* note 155, at 203–04.

Research shows that while litigants are unlikely to propose ADR initially, if suggested by the court or their attorney, they are often willing to do so.¹⁶⁵ There may be questions about enforcing compliance with a rule mandating the discussion of ADR, but it would increase the chances that attorneys would at least place the option on the table in an informed manner.¹⁶⁶ Some states, whether more rural or urban, possess either a precatory duty, a mandatory duty, or an implied ethical duty to advise ADR options, all codified in various locations, including in statutes or court rules and professional responsibility and ethics codes.¹⁶⁷ Suggestively then, creating an addition to the ABA *Model Rules of Professional Conduct*, and making the advisement of ADR options a mandatory requirement would create much-needed uniformity and translate down to the states more substantially.¹⁶⁸

B. BEYOND THE ATTORNEYS

Say an attorney is familiar with ADR, advises their client to pursue it, and the client agrees. Who takes it from there? To be most effective and lessen the workload on the insufficient number rural attorneys, a qualified third party should manage the ADR process

¹⁶⁵ *See id.*

¹⁶⁶ *Id.*

¹⁶⁷ *See* Marshall J. Breger, *Should an Attorney be Required to Advise a Client of ADR Options?*, 3 GEO. J. LEGAL ETHICS 427, 436, 440, 462–64 (2000). California illustrates how a state may have both precatory language, *see, e.g.*, CA. R. SAN DIEGO SUPER. ST. DIV. 5, R. 2.2 (1999) (emphasis added) (“ADR [A]ttorneys representing family law litigants are **encouraged** to advise their clients of the availability of mediation as an alternative means of dispute resolution.”) as well as mandatory language, *see, e.g.*, U.S. BANKR. CT. R. S.D. CAL., L.R. 7016-4. § 10.2.4 (emphasis added) (“Prior to the pre-trial status conference, counsel **shall** confer with the client and discuss the mediation program, and shall ask the client for authorization to participate in the mediation program.”). *But see* KAN. BAR ASS’N, PROFESSIONAL ETHICS—ADVISORY COMM., INFORMAL OP. 94-01(1994). Kansas has the following ethical guidelines: “When a lawyer’s professional judgment indicates ADR is a viable option, the lawyer should discuss that option with the client, whether or not the issue is raised by opposing counsel or the court.” Pursuant to the Model Rules of Professional Conduct as adopted by Kansas, if opposing counsel or the court suggests ADR, “the lawyer must advise the [his] client of the benefits and disadvantages of the ADR techniques proposed.” *Id.*

¹⁶⁸ *See* Breger, *supra* note 167, at 460 (suggesting the following language for adoption: “[a] lawyer has a duty to inform his client about the availability and applicability of alternative dispute resolution procedures that are reasonably appropriate under the circumstances”).

instead of the attorney.¹⁶⁹ The Nebraska’s Dispute Resolution Act, later codified in the Nebraska Rules of Civil Procedure, provides for referral to ADR processes by “non-profit dispute resolution centers,” to “preserv[e] the court’s scarce resources for those disputes and offenses which cannot be resolved by means other than litigation.”¹⁷⁰ This finding by the Nebraska State Legislature demonstrates that ADR is not just for the clients and attorneys, but rather a way to address the overburdened court systems in rural states.¹⁷¹ Across Nebraska, there are six non-profit Office of Dispute Resolution (ODR)-approved mediation centers.¹⁷² But is it enough? Are these programs even utilized? It is hard to know without more research.

It would be misleading not to discuss how Nebraska compares to other states. There is significant variance among states’ approaches to ADR, the codification of ADR rules/guidance, availability of state-supported or independent organizations, and rates of ADR utilization and completion.¹⁷³ Further research needs

¹⁶⁹ See generally Burke, *supra* note 104.

¹⁷⁰ NEB. R. CIV. P. § 25–2902(11).

¹⁷¹ See *id.*

¹⁷² See *ODR-Approved Mediation Centers*, STATE OF NEB. JUD. BRANCH, <https://supremecourt.nebraska.gov/programs-services/mediation-restorative-justice> (last visited Apr. 14, 2024).

¹⁷³ See Rusty W. Rumley, *States’ Alternative Dispute Resolution (ADR) Statutes*, NAT’L AGRIC. L. CTR. <https://nationalaglawcenter.org/state-compilations/alternative-dispute-resolution-adr/> (last visited Apr. 30 2024) (describing how “all fifty states have enacted statutes and administrative code provisions that create an alternative to traditional litigation,” and “while many states have adopted some version of the Uniform Arbitration Act, the Revised Uniform Arbitration Act, or the Uniform Mediation Act, there are also many laws and regulations that create or mandate various forms of dispute resolution unique or particular to the specific state in which it was enacted”); *The Use of Alternative Dispute Resolution (ADR) in Maryland Business: A Benchmarking Survey*, MD. MEDIATION & CONFLICT RESOL. OFF. (2004), <https://www.mdcourts.gov/sites/default/files/import/macro/pdfs/macro-busstudy.pdf> (describing MACRO as “Maryland’s statewide dispute resolution office, created and chaired by the Honorable Robert M. Bell, Chief Judge of the Maryland Court of Appeals,” which “[Wo]rks to advance the use of mediation and other appropriate dispute resolution processes in Maryland. Areas of concentration include: businesses, courts, criminal and juvenile justice programs, communities, family programs, government agencies, and schools.”); *Your Guide to Alternative Dispute Resolution*, ILL. ST. BAR ASS’N (2012), <https://www.isba.org/public/guide/adr> (providing information on Illinois county and local bar associations, noting “most circuit courts have a list of certified child custody mediators and also maintain lists of individuals certified in dispute resolution for civil disputes”).

to be completed on a state-by-state basis, and more importantly, done in rural states with shortages of lawyers serving rural populations. The state government, judiciary, and private world can only improve towards a target if they see it. While ADR has gained more popularity since its inception, its application in rural communities must be critically evaluated for it to have a meaningful impact on rural residents, attorneys, and courts.

1. REFER TO PROGRAMS ALREADY IN PLACE

Before state or local governments initiate a new ADR entity, a thorough look is needed at options already available, including organizations that need funding or revitalization. As previously discussed, the agricultural industry in particular benefitted from the rise in ADR, so much so that the most recent Farm Bill extended the areas that the Certified Mediation Program can mediate and increased its funding.¹⁷⁴

Under this program, the Farm Service Agency administers federal grants to state-designated entities that provide ADR services.¹⁷⁵ The program allows mediation for the following: agricultural loans (by the USDA or commercial lenders), disputes with the USDA action and conservation programs, wetland determinations, rural water loan programs, national forest grazing, pesticides, rural housing and business loans, crop insurance, family farm transitions, farmer-neighbor disputes, and other issues deemed appropriate by the Secretary of Agriculture of the respective state.¹⁷⁶ This combination of federal funding and targeted local distribution allows certified mediation clinics to address a wide range of issues with efficiency.¹⁷⁷

With these certified mediation centers operating in forty-three out of fifty states, the federal government is successfully funding ADR programming in rural area.¹⁷⁸ While no clear data exists on who is recommending these centers, a vast number of referrals likely come from Farm Credit Services, the USDA, and the programs these organizations administer.¹⁷⁹ Hopefully, attorneys and the courts make referrals as well, especially regarding anything agricultural or small business related. Programs with a successful

¹⁷⁴ See Burke, *supra* note 104, at 335, 337, 339–40; Agriculture Improvement Act of 2018, 7 U.S.C. § 5402 (2018).

¹⁷⁵ See *Certified Mediation Program*, FARM SERV. AGENCY USDA, <https://www.fsa.usda.gov/programs-and-services/certified-mediation-program/index> (last visited Apr. 14, 2024).

¹⁷⁶ See *id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

track record like these should be the first, not last, alternative to a courtroom.¹⁸⁰ This approach could lighten the load for rural attorneys, allowing them to take on more truly litigation-centric matters. It is important to note that ADR is not a step-down from or back-up to litigation; in fact, ADR is often a better fit for the needs of rural residents.¹⁸¹ Accordingly, offloading cases to a qualified ADR center maybe the best way to lighten attorneys' caseloads and keep them available for non-ADR resolvable matters.

2. CREATING NEW ADR CENTERS

Preserving and revitalizing rural America is always a subject for discussion on the national stage. Looking at the Biden Administration's "Historic Investments to Create Opportunity and Build Wealth in rural America" factsheet from March of 2022, areas for improvements in the rural America plan include access to healthcare, recreation, water, child-care, internet, and transportation infrastructure.¹⁸² But what about access to justice, legal assistance, and dispute resolution for vulnerable rural communities? There appears to be an opportunity for the federal government to play a more prominent role and bring attention to the issue.

After the USDA Farm Mediation Program's success, the government could set aside more federal grants to support additional centers.¹⁸³ Centers in rural locations could cover other areas, such as healthcare and family disputes, as well as offer other ADR services like arbitration. Even if no existing centers fit specific needs, opportunities to start new centers could arise. A good starting place would be allocating funds to the states. The state's proximity to their populations allows it to more prudently and precisely direct money to the local level by identifying the most frequent disputes, critical shortages, and backlogs.¹⁸⁴ One way states could do so is by creating mixed-background committees (comprising of attorneys, judiciary members, legislators, and community leaders) to review research, appoint, and implement programming on a community-by-community basis.¹⁸⁵

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Fact Sheet: The Biden Administration's Historic Investments to Create Opportunity and Build Wealth in Rural America*, THE WHITE HOUSE (Mar. 1, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/01/fact-sheet-the-biden-administrations-historic-investments-to-create-opportunity-and-build-wealth-in-rural-america/>.

¹⁸³ See FARM SERV. AGENCY USDA, *supra* note 175.

¹⁸⁴ See Stipanowich, *supra* note 66, at 857.

¹⁸⁵ See Ackerman, *supra* note 59, at 31.

Revisiting the discussion of the various ADR initiatives in Kansas, Idaho, and Kentucky, the future success of local ADR initiatives all hinged upon common threads of funding, institutional support at the state and federal level, and collaboration between the judiciary, government, and local non-profits.¹⁸⁶ Because of this, there is more opportunity to expand financial and institutional support for existing and up-start ADR initiatives. The beauty of ADR is that it is flexible both in process and location—parties don't have to go to the courthouse.¹⁸⁷ Thus, parties can stretch their funds further as most funding would not have to go towards significant infrastructure investments like buildings and boardrooms but could be utilized by properly paying vital individuals who head up ADR initiatives a properly. At the end of the day, throwing money at problems is not always the solution, but it can help.

Another common thread of successful ADR initiatives includes finding individuals with the passion and drive to make these programs happen, especially through non-profit organizations.¹⁸⁸ Finding people willing to go all in makes any organization better. Rural America is full of hardworking, resourceful people who could gain the necessary training to be successful in the ADR processes, but perhaps there may not be a clear-cut path for individuals to get involved. For instance, even retired legal and business professionals could serve as mediators and arbitrators but may not have an opportunity to do so or have the awareness of this way to serve their community. Spreading awareness, educating, and providing funding to pay professionals properly and their support staff is a great start.

VIII. CONCLUSION

Rural America is here to stay, where its resilient residents look to the future and continue to diversify and create in this sweeping and unique corner of the world. However, the folks who call rural America home should have equal opportunity to resolve their disputes as their urban counterparts do. This stems from the lack of attorneys and overburdened rural courts in the “Great American Legal Desert,” however, ADR stands poised, waiting to alleviate problems arising from these shortages. But it's not just treating the problem; ADR provides meaningful resolutions for many kinds of rural disputes, including neighbor disputes, agriculture disputes, family disputes, small business disputes, and healthcare and insurance disputes.

¹⁸⁶ See *infra* Part V.

¹⁸⁷ See Stipanowich, *supra* note 66, at 857.

¹⁸⁸ See generally Laflin, *supra* note 72.

As previously discussed, in several predominantly rural states, ADR does work, but to what extent? On a rural state-by-rural state basis, states, non-profits, or other interested parties must thoroughly assess the current ADR programs' utilization and effectiveness to obtain an accurate picture. Once this is complete, the suggested approaches, including attorney (likely through state bar associations), judicial, and governmental (primarily at the state-level) engagement, support, and collaboration will be necessary to increase the usage and benefits of ADR in rural communities. With a bit of increased awareness and elbow grease, the opportunity for ADR to positively impact rural communities and bring water to the far-reaching corners of the "Great American Legal Desert" looms large.