

# URBAN AGRICULTURE & THE MODERN FARM BILL: CULTIVATING PROSPERITY IN AMERICA'S RUST BELT

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## INTRODUCTION

Photographers from around the world flock to Detroit to document the defunct Michigan Central Station and other monuments to the city's former prosperity.<sup>1</sup> These images evoke mourning and nostalgia for what the city once was; yet, they fail to capture Detroit's ongoing vitality. Although the city contains vast swaths of vacant land,<sup>2</sup> faces steep employment and public health challenges,<sup>3</sup> and houses a population that is less than half its peak size,<sup>4</sup> Detroit is gradually adapting to these realities.

One of the most promising signs of Detroit's renaissance is the development of the city's food system.<sup>5</sup> Detroit has a rich history of urban agriculture,<sup>6</sup> and there is growing interest in increasing local food

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1. Susan Saulny, *Seeking a Future for a Symbol of a Grander Past*, N.Y. TIMES, Mar. 6, 2010, at A1.

2. Josh Beniston & Rattan Lal, *Improving Soil Quality for Urban Agriculture in the North Central U.S.*, in CARBON SEQUESTRATION IN URBAN ECOSYSTEMS 281 tbl.15.1 (Rattan Lal & Bruce Augustin eds., 2012) (estimating that Detroit contained over 60,000 vacant parcels in 2011).

3. KAMI POTHUKUCHI, DETROIT FOOD POLICY COUNCIL, THE DETROIT FOOD SYSTEM REPORT 2009–2010 5–6 (2011) (reporting 28 percent unemployment in 2009 and adult obesity rates nearing 40 percent).

4. Detroit's population peaked in 1950, with about 1.85 million residents. *Population of the 100 Largest Urban Places: 1950*, U.S. CENSUS BUREAU (June 15, 1998), <http://www.census.gov/population/www/documentation/twps0027/tab18.txt>. In 2012, the U.S. Census Bureau estimated Detroit's population as 701,475. *State and County QuickFacts: Detroit (city), Michigan*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/26/2622000.html> (last updated Dec. 17, 2013).

5. "[A] local food system is the network of entities that encompasses everything about the production and consumption of food, including farms, distributors, [and] retail stores . . ." NEW HAVEN FOOD POLICY COUNCIL, A PRIMER ON FEDERAL, STATE AND LOCAL POLICIES THAT IMPACT SCHOOL FOOD 24 (2008).

6. For the purposes of this Note, "urban agriculture" encompasses commercial agriculture, backyard gardens, and community gardens while "urban food system" is a broader term signifying a

production.<sup>7</sup> In 2010, for example, “the Garden Resource Program Collaborative engaged more than 5,000 adults and 10,000 youth in more than 1,200 vegetable gardens, . . . [which] collectively produced more than 160 tons of food.”<sup>8</sup> Some of this food was sold in local farmers’ markets such as Eastern Market, which operates six days per week, receives an estimated 45,000 visitors every Saturday, and sells about 70,000 tons of fresh produce every year.<sup>9</sup> The immediate surrounding area features dozens of restaurants and shops that sell locally produced goods and many galleries that highlight local artists.<sup>10</sup> This vibrant district belies the conception of Detroit as a barren wasteland.

In addition to Eastern Market, there are hundreds of food initiatives in Detroit,<sup>11</sup> thousands more in communities nationwide,<sup>12</sup> and there is significant grassroots support for expanding these efforts.<sup>13</sup> Although critics characterize the urban agriculture movement as a temporary solution to food insecurity,<sup>14</sup> urban agriculture has ancient roots<sup>15</sup> and growing relevance for struggling communities. In the last century, urban agriculture has become more prevalent globally in response to food shortages and “political and economic instability . . . .”<sup>16</sup> These motivations are prominent in former manufacturing hubs in the Northeastern and upper-Midwestern

network of producers, distributors, and processors.

7. See Patrick Crouch, *Taking Root: Just in Time for Growing Season, We Begin Series on Urban Farming in the D*, MODEL D (Apr. 26, 2011), <http://www.modeldmedia.com/features/takingroot411.aspx> (listing Detroit local food initiatives and describing their growth).

8. POTHUKUCHI, *supra* note 3, at 9.

9. Ed Deeb, *Market History*, DETROIT EASTERN MARKET, <http://www.detroiteasternmarket.com/page.php?p=1&s=58> (last visited Nov. 22, 2013).

10. See *Detroit Eastern Market Full Business Directory*, DETROIT EASTERN MARKET, <http://www.detroiteasternmarket.com/directory.php?a> (last visited Nov. 22, 2013) (listing nearly 100 nearby businesses).

11. Beniston & Lal, *supra* note 2, at 283.

12. STEVE MARTINEZ ET AL., U.S. DEP’T OF AGRIC., ECON. RES. SERV. REPORT NO. 97, LOCAL FOOD SYSTEMS: CONCEPTS, IMPACTS, AND ISSUES, at iii (2010).

13. See DANIEL IMHOFF, FOOD FIGHT: THE CITIZEN’S GUIDE TO THE NEXT FOOD AND FARM BILL 177 (2012) (describing the local food movement as a “cultural phenomenon”).

14. See, e.g., Richard C. Longworth, *Forget Urban Farms. We Need a Wal-Mart. Wal-Marts in Cities Mean Better Food*, GOOD (Jan. 7, 2011, 11:30 AM), <http://www.good.is/posts/forget-urban-farms-we-need-a-wal-mart/> (criticizing urban farming as a “symptom of civic catastrophe” that “can’t possibl[y] meet global demand”). For a definition and discussion of food insecurity, see *infra* text accompanying notes 78–80.

15. Jac Smit, Joe Nasr & Annu Ratta, *Urban Agriculture Yesterday and Today*, in URBAN AGRICULTURE: FOOD, JOBS AND SUSTAINABLE CITIES 5 (The Urban Agriculture Network, Inc. 2001) (“In all parts of the world, ancient civilization developed urban agriculture systems, devising many innovative ways to produce food and manage land, water, and other resources efficiently.”).

16. *Id.* at 9. For example, urban agriculture improves food security in the Gaza Strip, where the residents face “high population density,” “severe water shortages,” and “significant economic difficulties.” *Id.* at 12–13.

United States—such as Detroit, Cleveland, Pittsburgh, and Buffalo—collectively known as America’s “rust belt.”<sup>17</sup> Rust belt cities feature a shrinking population and an increasing number of vacant lots and blighted areas.<sup>18</sup> While food security is a goal of the urban agriculture movement, most urban farming proponents do not see alimentary self-sufficiency as the ultimate goal.<sup>19</sup> Rather, they envision it as a device for invigorating local economies and strengthening community bonds while promoting public health and social justice.<sup>20</sup> Urban agriculture, therefore, is a valuable component of rust belt revitalization.<sup>21</sup>

Despite the achievements of urban agriculture in cities like Detroit, these initiatives require federal resources to supplement local efforts.<sup>22</sup> Most urban farms rely on volunteer labor, donations, and grants because they need startup capital and cannot subsist solely on farm revenues.<sup>23</sup> Moreover, bank loans are hard for beginning farmers to secure, municipal funding is scarce in rust belt cities like Detroit,<sup>24</sup> and state funding is often slated for rural agricultural projects.<sup>25</sup> Consequently, urban farmers would benefit from federal farming supports like those available for their rural counterparts.

The largest source of federal aid for farming and nutrition assistance is

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17. See Joseph Schilling & Jonathan Logan, *Greening the Rust Belt: A Green Infrastructure Model for Right Sizing America’s Shrinking Cities*, 74 J. AM. PLANNING ASS’N 451, 452 (2008).

18. *Id.*

19. See, e.g., Beniston & Lal, *supra* note 2, at 284 (“[Urban agriculture], while far from being a complete solution to [food insecurity], may at least offer urban populations a reliable, affordable food source and an increased access to nutrient rich foods.”). *But see* Matthew Dolan, *New Detroit Farm Plan Taking Root*, WALL ST. J. (July 6, 2012), <http://online.wsj.com/article/SB10001424052702304898704577479090390757800.html> (advocating industrialized urban agriculture that can account for most, if not all, of Detroit’s food needs).

20. Dana May Christensen, *Securing the Momentum: Could a Homestead Act Help Sustain Detroit Urban Agriculture?*, 16 DRAKE J. AGRIC. L. 241, 241–42 (2011).

21. See Beniston & Lal, *supra* note 2, at 305 (touting urban agriculture’s ability to “bring beauty, community engagement, improved ecosystem services, increased access to nutritious foods, and modest economic benefits to city neighborhoods”).

22. See Doreen Mende & Philipp Oswalt, *Summary*, in DETROIT: STUDIES PART 1 5 (Schrumpfende Staedte Working Paper No. III, 2004), available at [http://www.schrumpfende-staedte.de/fileadmin/shrink/downloads/pdfs/III.1\\_Studies1.pdf](http://www.schrumpfende-staedte.de/fileadmin/shrink/downloads/pdfs/III.1_Studies1.pdf) (summarizing a number of articles that discuss federal resources).

23. Sena Christian, *A Growing Concern*, EARTH ISLAND J., [http://www.earthisland.org/journal/index.php/eij/article/a\\_growing\\_concern/](http://www.earthisland.org/journal/index.php/eij/article/a_growing_concern/) (last visited Nov. 22, 2013) (noting that an urban farm in Sacramento, CA receives nearly 60 percent of its revenue from private and public grants).

24. Elise Hunter, *Where Is The Funding in Detroit’s Farm-to-Fork Movement?*, HUFFINGTON POST (July 23, 2013 4:58 p.m.), [http://www.huffingtonpost.com/student-reporter/where-is-the-funding-in-d\\_1\\_b\\_3639850.html](http://www.huffingtonpost.com/student-reporter/where-is-the-funding-in-d_1_b_3639850.html).

25. E.g., URBAN AGRICULTURE: FEASIBILITY STUDY FOR YOUNGSTOWN, OH, GLOBAL GREEN USA 21 (2012), available at <http://www.globalgreen.org/docs/publication-189-1.012-4> (“[T]he Ohio Department of Agriculture (ODA) primarily supports rural food production.”).

the Farm Bill,<sup>26</sup> which makes this omnibus legislation an ideal vehicle for promoting urban agriculture. Furthermore, Congress revises the Farm Bill every five to seven years, allowing this legislation to evolve with society's needs.<sup>27</sup> Although the Farm Bill is associated with supporting rural communities and subsidizing large agribusiness,<sup>28</sup> recent Farm Bill programs have been more supportive of local food efforts. There are, however, only a handful of programs broad enough to include urban agriculture.<sup>29</sup>

This Note argues that the Farm Bill is a credible means for encouraging urban food systems, and seeks to drive the legislative discussion toward creating a Farm Bill that expressly promotes urban agriculture. Although there is a wealth of scholarship detailing the benefits of urban agriculture and recommending local and state promotional efforts, this Note represents the first comprehensive discussion of the Farm Bill as a source of support for urban agriculture.

Part I discusses the benefits and limitations of urban agriculture. Part II then surveys the evolution of the Farm Bill—from an emergency provision in the 1930s to the monolithic legislation of the present day—and highlights challenges that hinder its application to urban contexts. Finally, Part III presents a vision of a Farm Bill that promotes urban agriculture. First, this Note recommends expanding existing Farm Bill provisions that support urban agriculture. Next, it proposes that Congress create a Farm Bill Title dedicated to urban agriculture, and argues that an essential step toward this goal is defining key terms that impact eligibility for future urban agriculture programs. Although this proposal does not address all facets of promoting urban agriculture through the Farm Bill, this Note seeks to offer a viable framework for supporting urban food systems within the dominant American agricultural legislation.<sup>30</sup>

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26. See IMHOFF, *supra* note 13, at 16 (“[The USDA] is charged with a dual mission: support the creation of an abundant food supply, and ensure that all citizens receive basic nutrition. One of the primary mechanisms for this is . . . the Farm Bill.”).

27. *Id.* at 24.

28. William S. Eubanks II, *The Sustainable Farm Bill: A Proposal for Permanent Environmental Change*, 39 ENVTL. L. REP. 10493, 10509 (2009).

29. For example, some states and local governments allow farmers' markets to accept Supplemental Nutrition Assistance Benefits (SNAP) and provide pathways for schools to integrate locally grown produce into lunch programs. MARTINEZ ET AL., *supra* note 12, at 39 (describing urban agriculture provisions within the 2008 Farm Act).

30. For instance, this Note does not address resource conservation benefits or undertake a cost-benefit analysis of these proposals.

## I. URBAN AGRICULTURE: BENEFITS AND LIMITATIONS

Urban agriculture is an attractive tool for resuscitating rust belt cities because it exploits abundant city resources: vacant land and a citizenry that wants a healthier and more fulfilling future. This Part will discuss some of urban agriculture's benefits, including productive land use and job creation; public health and food access; community building and personal satisfaction; and more consumer power in the agricultural marketplace through a more equitable federal-state partnership. In addition, this Part will address the corresponding limitations of urban agriculture.

### A. *Productive Land Use and Job Creation*

As rust-belt populations continue to shrink,<sup>31</sup> many community groups and city governments are embracing urban agriculture as a way to put the increasing number of vacant properties to more productive use.<sup>32</sup> For example, the City of Cleveland supports urban agriculture as an enduring land-use solution because “it is unlikely that all of the city’s surplus land will be reused for conventional real estate development in the foreseeable future.”<sup>33</sup> Vacant properties currently burden cities with “[n]uisance response, inspections, maintenance and mowing, forgone taxes, and eventual demolition costs”;<sup>34</sup> however, urban agriculture can convert these properties into assets. While cultivation will likely be one of several approaches to restoring vacant properties, urban agriculture is an essential strategy because it offers the benefits of reduced crime, increased food access, and job creation.

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31. The solutions-oriented dialogue around rust belt cities uses the term “shrinking,” which suggests “ongoing decline rather than complete abandonment.” Michelle Wilde Anderson, *Dissolving Cities*, 121 *YALE L.J.* 1364, 1431 (2012); see, e.g., Schilling & Logan, *supra* note 17, at 451 (proposing adaptation strategies for “shrinking” cities).

32. See, e.g., DETROIT WORKS PROJECT, POLICY AUDIT: ENVIRONMENTAL REMEDIATION AND HEALTH 3.3 (Dec. 16, 2010), available at [http://detroitworksproject.com/wp-content/uploads/policy\\_audits/101217\\_AECOM\\_1\\_Policy\\_Audit\\_Remediation.pdf](http://detroitworksproject.com/wp-content/uploads/policy_audits/101217_AECOM_1_Policy_Audit_Remediation.pdf) (identifying urban agriculture as part of its vacancy strategy); Keith G. Tidball & Marianne Krasny, *Community Greening Scholars Talk Shop*, 13 *CMTY. GREENING REV.* 1, 23–25 (2009) (discussing community gardens as a positive use for vacant spaces). Urban agriculture is also being implemented to address vacancy, poverty, and blight in particular sections of cities that are not shrinking on the whole. See, e.g., Lori Rotenberg, *Chicago’s Urban Farm District Could Be the Biggest in the Nation*, *GRIST* (Nov. 15, 2012, 8:36 AM), <http://grist.org/food/chicago-urban-ag-farm-district-could-be-the-biggest-in-the-nation/> (highlighting Chicago’s Black Belt neighborhood as an example of an urban community using urban farming as a renewal method).

33. CLEVELAND LAND LAB, CLEVELAND URBAN DESIGN COLLABORATIVE, RE-IMAGINING A MORE SUSTAINABLE CLEVELAND 5 (2008) (adopted by the Cleveland City Planning Commission).

34. NAT’L VACANT PROPS. CAMPAIGN, BLUEPRINT BUFFALO 3 (2006), available at <http://buffalovacancy.wikispaces.com/file/view/FINAL+BlueprintBuffalo+Policy+Brief.pdf>.

First, implementing urban agriculture on vacant property can improve neighborhood safety.<sup>35</sup> A large proportion of vacant properties in rust-belt cities are abandoned or blighted<sup>36</sup>—rather than for sale or for lease<sup>37</sup>—which “influence[s] crime” in these cities<sup>38</sup> because abandoned and blighted properties are more likely to host crime. For example, “more than 90 percent of all arson fires [in Buffalo in 2007] . . . were in abandoned properties.”<sup>39</sup> In addition, most vacancies in Detroit are in a “belt across the center of the city, and the eastside neighborhoods in particular,”<sup>40</sup> both of which have the highest city crime rates.<sup>41</sup> Urban agriculture efforts, therefore, often prioritize areas with high abandonment rates.<sup>42</sup> By transforming blighted lots into agricultural projects, communities indicate that the area is cared-for and patrolled, and thus “reroute” criminal activity.<sup>43</sup> Moreover, green space “has been found to reduce stress, anger and even blood pressure,” which can further reduce crime.<sup>44</sup> Because rampant crime drives people to leave rust belt cities,<sup>45</sup> addressing this issue is essential to retaining current city residents.

Second, urban agriculture can generate enough produce on vacant properties to feed a sizeable portion of a city’s population, increasing food access.<sup>46</sup> Low-income neighborhoods with limited access to healthy foods

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35. CLEVELAND LAND LAB, *supra* note 33, at 26.

36. In Buffalo, for example, a staggering 41.6 percent of vacant properties were abandoned and blighted based on 2000 census data. Schilling & Logan, *supra* note 17, at 452 tbl.1.

37. *See id.* (reporting sharp population decreases with corresponding high rates of vacant property—much of which is abandoned—in former industrial hubs, such as Buffalo, Cleveland, and Detroit).

38. *Id.* at 452.

39. Joseph Schilling, *Buffalo as the Nation’s First Living Laboratory for Reclaiming Vacant Properties*, in *CITIES GROWING SMALLER* 35 (2008).

40. Katherine J. A. Colasanti & Michael W. Hamm, *Assessing the Local Food Supply Capacity of Detroit, Michigan*, 1 *J. AGRIC., FOOD SYS., & CMTY. DEV.* 41, 48 (2010).

41. For a visual representation, compare a map indicating vacancy distribution in Detroit, Colasanti & Hamm, *supra* note 40, at 48 fig.2, with a map indicating crime distribution in Detroit, *Crime Rates for Detroit, MI*, NEIGHBORHOOD SCOUT, <http://www.neighborhoodscout.com/mi/detroit/crime/> (last visited Nov. 13, 2012). *See also* Jeffery Fraser, *The Cost of Blight*, *PITT. Q.* (2011), available at <http://www.pittsburghquarterly.com/index.php/Region/the-cost-of-blight.html> (discussing the connection between rampant vacancy and crime rates in Pittsburgh, a rust belt city).

42. *See, e.g.*, DETROIT WORKS PROJECT, *LONG-TERM PLANNING: NEIGHBORHOODS 3*, available at [http://detroitworkproject.com/wp-content/uploads/2012/07/20120808\\_ElementSummary\\_Neighborhoods.pdf](http://detroitworkproject.com/wp-content/uploads/2012/07/20120808_ElementSummary_Neighborhoods.pdf) (naming safety as a high priority for neighborhood vacancy strategies).

43. *See* Tidball & Krasny, *supra* note 32, at 10–11 (using a community garden on previously vacant land to “reroute the path of drug dealers” in Baltimore).

44. KATHERINE H. BROWN & ANNE CARTER, *CMTY. FOOD SEC. COAL., URBAN AGRICULTURE AND COMMUNITY FOOD SECURITY IN THE UNITED STATES: FARMING FROM THE CITY CENTER TO THE URBAN FRINGE* 7 (Anne Carter et al. eds., 2003).

45. Schilling, *supra* note 39, at 33–34.

46. Colasanti & Hamm, *supra* note 40, at 53; *see also* Beniston & Lal, *supra* note 2, at 285 (citing

often contain large tracts of vacant land.<sup>47</sup> By replacing vacant properties with urban farms, fresh produce would be more readily available to the surrounding community, increasing food access.<sup>48</sup> This transformation is possible because urban agriculture can be highly productive. In fact, urban agriculture can produce higher yields per acre than rural agriculture with “season extenders such as row covers and hoop houses.”<sup>49</sup> Using these methods, urban agriculture could, for example, produce an estimated seventy-five percent of vegetables and half of fruits that Detroiters consume annually on just 568 acres<sup>50</sup> of the estimated 4,848 acres of vacant land in Detroit.<sup>51</sup> To meet recommended consumption levels, however, farmers would need to cultivate 2,014 acres of land.<sup>52</sup> Even if cities like Detroit are not cultivated to the fullest extent, urban agriculture is a viable strategy for increasing food access in blighted communities.

However, there are several barriers to cultivating vacant lots, including poor soil quality and securing land to cultivate. Given the “legacy of industrial activity” in rust belt cities, soil contamination is a major health concern.<sup>53</sup> As alternatives to expensive soil remediation, urban farmers generally use “raised beds, container gardens, and hydroponics to avoid contaminants.”<sup>54</sup> In addition, securing land is a persistent problem for

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Colasanti & Hamm’s estimates with approval).

47. Beniston & Lal, *supra* note 2, at 284.

48. However, the food must be affordable and community members must be willing to eat healthy foods and know how to prepare healthy meals. Both the government and non-profits run programs to assist with these dimensions of food access. *E.g.*, CTR. FOR THE STUDY OF THE PRESIDENCY & CONG., SNAP TO HEALTH: A FRESH APPROACH TO STRENGTHENING THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM 42 (2012) [hereinafter SNAP TO HEALTH]; *Education & Training*, GLEANERS CMTY. FOOD BANK, [http://www.gcfb.org/site/PageServer?pagename=pg\\_edutaining](http://www.gcfb.org/site/PageServer?pagename=pg_edutaining) (last visited Dec. 31, 2012).

49. BROWN & CARTER, *supra* note 44, at 9. Hoop houses, also known as high tunnels, are “simple, plastic-covered, tubular steel structures [that] rely mainly on the sun’s energy to warm the soil and air.” By protecting crops from the cold and snow, these structures can extend the growing season from one or two seasons to four seasons. TED BLOMGREN & TRACY FRISCH, HIGH TUNNELS: LOW-COST TECHNOLOGY TO INCREASE YIELDS, IMPROVE QUALITY AND EXTEND THE SEASON 1 (Univ. of Vt. Ctr. for Sustainable Agric. 2007), *available at* <http://www.uvm.edu/~susagctr/Documents/HighTunnels.pdf>.

50. Colasanti & Hamm, *supra* note 40, at 51 tbl. 2. For reference, Detroit has about 1,800 acres of vacants land. *Id.*

51. KATHRYN COLASANTI, CHARLOTTE LITJENS & MICHAEL HAMM, GROWING FOOD IN THE CITY: THE PRODUCTION POTENTIAL OF DETROIT’S VACANT LAND 3 tbl.1 (2010), *available at* [http://www.fairfoodnetwork.org/sites/default/files/growing\\_food\\_in\\_the\\_city.pdf](http://www.fairfoodnetwork.org/sites/default/files/growing_food_in_the_city.pdf).

52. Colasanti & Hamm, *supra* note 40, at 51 tbl.2.

53. DETROIT WORKS PROJECT, *supra* note 32, at 1.1. Most community agriculture groups test soil for lead and other contaminants before planting. Colasanti & Hamm, *supra* note 40, at 52.

54. DETROIT WORKS PROJECT, *supra* note 32, at 3.3. These techniques involve elevating garden beds above the contaminated soil and using clean media, such as soil, gravel, or compost; planting in containers with clean media; and planting in mineral-rich water, as with hydroponics. *See* BOB

urban farmers. Urban gardens or farms “are typically established on vacant or abandoned land,” which farmers may have permission to lease or use but do not own outright.<sup>55</sup> Consequently, some urban farmers do not want to heavily invest in the land. In response, local governments have dedicated vacant land to urban agriculture through land trusts and easements,<sup>56</sup> and passed ordinances allowing agricultural activities in residential and business districts.<sup>57</sup>

Third, establishing urban agriculture on vacant properties can create living-wage jobs for community members,<sup>58</sup> particularly in low-income areas.<sup>59</sup> Depending on the scale of the operation, jobs can range from cultivation to processing and distribution.<sup>60</sup> Because most city residents have little to no agricultural experience,<sup>61</sup> community groups around the country have developed programs that “build entrepreneurship and job skills . . . in agriculture, culinary arts, and food service.”<sup>62</sup> Some urban farms even explicitly set out to provide “basic jobs skills that will allow [community members] to enter other job markets.”<sup>63</sup> Furthermore, urban farming encourages new business creation. For example, Detroit’s Eastern Market has attracted dozens of vendors that sell value-added products made from Michigan crops (e.g., pickles and jam), which accounts for hundreds of new jobs.<sup>64</sup> Although some rust belt city residents—particularly older

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HOCHMUTH, UNIV. OF FLA., NON-TRADITIONAL GARDENS 4, 5, 7, 10, 12, available at [http://highlands.ifas.ufl.edu/pdfs/Non-Traditional\\_Gardens.pdf](http://highlands.ifas.ufl.edu/pdfs/Non-Traditional_Gardens.pdf) (last visited Nov. 23, 2013). There are currently no federal remediation standards for urban agriculture, but the EPA has issued interim guidelines for urban farmers and is developing standards. EPA, BROWNFIELDS AND URBAN AGRICULTURE: INTERIM GUIDELINES FOR SAFE GARDENING PRACTICES 16 (2011).

55. ALLISON HAGEY, SOLANA RICE & REBECCA FLOURNOY, POLICYLINK, GROWING URBAN AGRICULTURE: EQUITABLE STRATEGIES AND POLICIES FOR IMPROVING ACCESS TO HEALTHY FOOD AND REVITALIZING COMMUNITIES 23 (2012), available at [http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/URBAN%20AG\\_FULLREPORT\\_WEB2.PDF](http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/URBAN%20AG_FULLREPORT_WEB2.PDF).

56. *Id.*

57. See, e.g., *Overview of San Francisco’s Urban Agriculture Zoning Ordinance*, S.F. URB. AGRIC. ALLIANCE, [http://www.sfuaa.org/uploads/4/8/9/3/4893022/overview\\_of\\_sf\\_urban\\_ag\\_zoning\\_changes\\_final.pdf](http://www.sfuaa.org/uploads/4/8/9/3/4893022/overview_of_sf_urban_ag_zoning_changes_final.pdf) (last visited Mar. 12, 2013) (outlining the ordinance’s main provisions).

58. See, e.g., HAGEY ET AL., *supra* note 55, at 33 (describing an urban farm in Cleveland that projects adding “30 to 40 living-wage jobs for low-income community members” that will include affordable benefits).

59. Neil D. Hamilton, *Moving Toward Food Democracy: Better Food, New Farmers, and the Myth of Feeding the World*, 16 DRAKE J. AGRIC. L. 117, 130 (2011).

60. HAGEY ET AL., *supra* note 55, at 9.

61. Hamilton, *supra* note 59, at 129.

62. POTHUKUCHI, *supra* note 3, at 11.

63. HAGEY ET AL., *supra* note 55, at 18.

64. *Healthy Food Initiatives, Local Production, and Nutrition: Hearing Before the S. Comm. on Agriculture, Nutrition, and Forestry*, 112th Cong. 3 (Mar. 7, 2012) [hereinafter Eastern Market



people with agrarian roots—are reluctant to grow crops and others do not have the time or energy to farm, the younger generation is embracing urban agriculture and the economic possibilities it presents.<sup>65</sup>

A core obstacle to establishing urban agriculture is high operation costs. For example, a feasibility study determined that a 4.4-acre urban farm in Youngstown, Ohio with \$112,000 in annual revenue “would generate . . . a net deficit” after expending \$38,000 in start up costs and \$136,500 in annual operations costs.<sup>66</sup> Even a basic garden requires many inputs—like seeds, soil, water, tools, and labor—and commercial urban agriculture further requires distribution—including refrigeration and packaging costs—and a steady consumer base to remain financially sustainable.<sup>67</sup> To take advantage of economies of scale, urban farmers often share resources.<sup>68</sup> Farmers also develop steady customers by directly distributing their goods to corner stores, or through community-supported agriculture programs or farmers’ markets.<sup>69</sup> To access larger volume markets, like schools and supermarkets, farmers increasingly work with regional food hubs, which “manage[] the aggregation, distribution, and marketing” of locally-produced food.<sup>70</sup> Despite these efforts, financing is still a substantial barrier to expanding urban food systems.

#### B. *Public Health and Food Access*

Urban agriculture is most often cited as a means for improving health and food access. Over the past 30 years, malnutrition and obesity rates have risen dramatically among children and adults across the United States.<sup>71</sup> Improper nutrition can impair academic success<sup>72</sup> and obesity is a major factor in developing chronic health conditions like heart disease, type II

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Testimony] (statement of Dan Carmody, President, Eastern Market Corporation), *available at* <http://www.ag.senate.gov/hearings/healthy-food-initiatives-local-production-and-nutrition>.

65. COLASANTI ET AL., *supra* note 51, at 10 (reporting that some older Detroiters were “resistant to returning to the hard labor of hand-tended agriculture” while younger Detroiters were “more impressionable and open to new things”).

66. GLOBAL GREEN USA, *supra* note 25, at 26, 29. This study found, however, that the same garden could be profitable by using hoop houses to extend the growing season. *Id.*

67. HAGEY ET AL., *supra* note 55, at 26.

68. *Id.*

69. *Id.* at 31.

70. JAMES BARHAM, DEBRA TROPP, KATHLEEN ENTERLINE, JEFF FARBMAN, JOHN FISK & STACIA KIRALY, U.S. DEP’T OF AGRIC., REGIONAL FOOD HUB RESOURCE GUIDE 4 (2012).

71. WHITE HOUSE TASK FORCE ON CHILDHOOD OBESITY, SOLVING THE PROBLEM OF CHILDHOOD OBESITY WITHIN A GENERATION 4 (2010) [hereinafter WHITE HOUSE TASK FORCE] (reporting a 100 percent increase in adult obesity and a 300 percent increase in childhood obesity since 1980).

72. J. Amy Dillard, *Sloppy Joe, Slop, Sloppy Joe: How USDA Commodities Dumping Ruined the National School Lunch Program*, 87 OR. L. REV. 221, 236 (2008).

diabetes, and asthma.<sup>73</sup> Obesity can also lead to or exacerbate psychological disorders like depression.<sup>74</sup> Reducing obesity has become a national priority because poor public health threatens national security, with fewer young people being fit for military service,<sup>75</sup> and requires expensive treatment. Treatment for obesity-related conditions costs \$150 billion annually in the United States and is expected to more than double by 2018.<sup>76</sup>

The steady increase in malnutrition and obesity is partially attributable to inadequate access to healthy foods, but the more insidious cause is a cultural shift toward preferring processed foods and a sedentary lifestyle.<sup>77</sup> While urban agriculture is not a panacea, cultivating city neighborhoods can increase access to fresh foods and supply schools with nutritious ingredients while providing opportunities for children and adults to be more physically active.

First, urban agriculture is a tool for increasing access to healthy foods in food insecure neighborhoods. The United States Department of Agriculture (USDA) defines food security as having “access at all times to enough food for an active, healthy life for all household members.”<sup>78</sup> Unfortunately, about 17.9 million American households are food insecure.<sup>79</sup> This means that millions of Americans are forced to skip meals, sometimes for an entire day, despite the abundance of food that America’s industrialized food system produces.<sup>80</sup> Food access problems are more acute in “food deserts”—areas that have few or no grocery stores that carry affordable and nutritious food.<sup>81</sup> Furthermore, residents living in a food

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73. WHITE HOUSE TASK FORCE, *supra* note 71, at 6.

74. *Id.*

75. *Id.* at 3.

76. IMHOFF, *supra* note 13, at 109.

77. *E.g.*, WHITE HOUSE TASK FORCE, *supra* note 71, at 7. Interestingly, two studies suggest that “improved access to healthy foods is associated with healthier dietary choices.” MARTINEZ ET AL., *supra* note 12, at 46.

78. ALISHA COLEMAN-JENSEN, MARK NORD, MARGARET ANDREWS & STEVEN CARLSON, U.S. DEP’T OF AGRIC., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2011 4 (2012).

79. *Id.* at 4–5 (defining very low food security as at least one household member having to reduce his or her food intake at some point during the year for financial reasons).

80. *FAQs About Agricultural Trade*, U.S. DEP’T OF AGRIC., <http://www.fas.usda.gov/itp/Policy/tradeFAQ.asp> (last visited Nov. 12, 2013) (reporting that “production and production capacity is increasingly faster than domestic demand” and “one out of three acres are planted for export”); BROWN & CARTER, *supra* note 44, at 4 (“[O]ne of the consequences of the economic structure of the current food system is hunger in the midst of plenty.”); DAVID TRACEY, URBAN AGRICULTURE: IDEAS AND DESIGNS FOR THE NEW FOOD REVOLUTION 171–72 (2011) (“Hunger is not a problem of quantity: we grow enough food to feed everyone already. We actually have a surplus. It’s a problem of poverty: the poorest can’t afford it. So it’s the system that’s flawed.”).

81. U.S. DEP’T OF AGRIC., ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND

desert “typically lack the transportation to make trips easily to stores in other parts of town.”<sup>82</sup> As a result, low-income residents often purchase “unhealthy food in corner stores and liquor stores . . . because of the lack of alternatives.”<sup>83</sup>

Many cities, such as Detroit<sup>84</sup> and Cleveland,<sup>85</sup> have identified urban agriculture as a strategy to increase food security. With an urban agriculture system, residents can grow food in backyard or community gardens, or purchase locally produced food from food stands, stores, and farmers’ markets. Although locally produced food usually costs more than heavily subsidized processed food,<sup>86</sup> state and federal programs are starting to include local foods in nutrition assistance programs, thereby making them more accessible to those who need them most.<sup>87</sup> Consumers also get more value by purchasing local produce because “freshly picked foods . . . retain more nutrients than less fresh foods.”<sup>88</sup>

Second, urban agriculture can improve healthy eating in schools and serve as an educational tool to shift eating habits over time. While the federal government provides low-cost or free school meals to millions of children who could not otherwise afford them,<sup>89</sup> these programs often reinforce poor health and eating habits due to lax nutritional standards that classify French fries as a vegetable.<sup>90</sup> K-12 schools around the country are trying to include local foods in school lunches and snack bars, rather than the canned and frozen foods that federal programs subsidize.<sup>91</sup> By engaging with local growers, some schools have negotiated bulk discounts on seasonal produce in exchange for committing to purchasing produce consistently.<sup>92</sup> Schools are also experimenting with incorporating foods

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UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES 1 (2009).

82. HAGEY ET AL., *supra* note 55, at 16.

83. Erica Giorda, *Extreme Environments: Urban Farming, Technological Disasters, and a Framework for Rethinking Urban Gardening*, in LOCAL FOOD SYSTEMS IN OLD INDUSTRIAL REGIONS 61 n.4 (Neil Reid et al. eds., 2012).

84. DETROIT WORKS PROJECT, *supra* note 32, at 3.3.

85. CLEVELAND LAND LAB, *supra* note 33, at 26.

86. See Mary Story et al., *Creating Health Food and Eating Environments: Policy and Environmental Approaches*, 29 ANN. REV. PUB. HEALTH 253, 262–63 (2008).

87. Prominent federal efforts include the farmers’ market nutrition programs for seniors (SFMNP) and women, infants, and children (WIC). MARTINEZ ET AL., *supra* note 12, at 36. To facilitate these programs, as of 2009, states may allow SNAP participants to use their benefits at eligible farmers’ markets. *Id.* at 39.

88. *Id.* at 46.

89. NEW HAVEN FOOD POLICY COUNCIL, *supra* note 5, at 2.

90. *Id.* at 10.

91. *Ann Cooper Talks School Lunches*, TED: IDEAS WORTH SPREADING (Sept. 2008), [http://www.ted.com/talks/ann\\_cooper\\_talks\\_school\\_lunches.html](http://www.ted.com/talks/ann_cooper_talks_school_lunches.html).

92. See, e.g., *Food Policy – Berkeley School District*, INST. FOR LOCAL SELF-RELIANCE (Nov. 21,

from school-sponsored gardens into lunch menus. Students cultivate these gardens as part of a substantive course, like health or history, and studies show that students consume more fruits and vegetables as a result.<sup>93</sup> Increasing the amount of local food also allows individual schools to gain more control over school menus, which allows the school to create more culturally appropriate meals. That is to say, meals students are familiar with and willing to eat.<sup>94</sup>

Third, urban agriculture is an excellent way for children and adults to be more physically active. Americans are becoming increasingly sedentary as television, computers, and other devices draw our attention from participating in athletics and outdoor activities, and there is a direct correlation between screen time and obesity.<sup>95</sup> Americans, therefore, can improve their health by replacing screen time with time spent working in a garden, whether at home, in a neighborhood, or at school. Less obvious is the impact that crime has on physical activity. In neighborhoods with higher crime-rates, parents often forbid their children to play outside or walk or bike to school.<sup>96</sup> As discussed earlier, urban agriculture can improve neighborhood safety by occupying abandoned properties and increasing an outdoor community presence. Providing safe, communal green spaces creates opportunities and incentives to go outside and is thus an initial step toward encouraging physical activity as a social norm.

### C. *Beyond Tangible Benefits: Community Building and the Inherent Value of Farming*

With the advent of cars, highways, and sophisticated communication systems, neighbors have become more distant regardless of physical proximity. This is particularly true in cities where growing numbers of

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2008), <http://www.ilsr.org/rule/local-food/2046-2/> (using bulk discounts as one means to make local foods more affordable).

93. MARTINEZ ET AL., *supra* note 12, at 46; WHITE HOUSE TASK FORCE, *supra* note 71, at 44; EPA, BROWNFIELDS AND URBAN AGRICULTURE: INTERIM GUIDELINES FOR SAFE GARDENING 1 (2011) (“Kids who garden are more likely to try and like vegetables and eat more of them, and the combination of the social connection of gardening with the increased access to fruits and vegetables creates a new norm in children who continue to make healthier choices.”).

94. *E.g.*, WHITE HOUSE TASK FORCE, *supra* note 71, at 41 (encouraging the USDA to “increase local, traditionally appropriate foods in Tribally-controlled school meal programs, such as bison and salmon”).

95. *Id.* at 7. People also tend to snack more while watching television or playing computer games, so decreasing the amount of time spent on these activities will likely decrease the amount of unnecessary snacking. Furthermore, television increases exposure to ads for unhealthy foods, which impacts eating habits. *Id.*

96. *Id.* See also Giorda, *supra* note 83, at 61 (“In some cases, residents declare they are just too scared to leave the house because of criminal activities in the neighborhood.”).

vacant properties create a physical barrier between residents.<sup>97</sup> Agriculture could fill these physical gaps, converting deserted properties into shared spaces “where community members can exchange ideas and discuss community issues and problems.”<sup>98</sup> As humans become more alienated from each other and from the land itself, urban agriculture presents an opportunity to reverse these trends.

Because urban agriculture is an umbrella term for numerous farming activities, an urban food system can facilitate human connections at many levels. At the production level, for example, neighbors can interact when sharing a communal gardening space and peers can socialize while planting a school-sponsored garden. At the distribution level, city residents can connect with food producers at food stands and farmers’ markets. Post-consumption, consumers—including families, neighborhoods, and businesses—can tend compost heaps comprised of leftover produce and donate this to agricultural ventures, which forges another connection between consumers and producers. At their best, urban food systems reflect and foster community values, “including cooperation, volunteering, appreciation for diversity and ecological awareness.”<sup>99</sup>

Although “community building” is a common refrain among urban agriculture advocates, the private benefits of farming are often overlooked.<sup>100</sup> Humans have foraged or tilled the land for millennia, but as communities have become more urbanized, humans have become more disconnected from the land that generates their food.<sup>101</sup> There are substantial emotional benefits from farming that are difficult to quantify.<sup>102</sup> That is to say, urban agriculture provides benefits more fundamental than income or nutrition.<sup>103</sup> Gardens can provide respite from chaotic city life,

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97. Wilde Anderson, *supra* note 31, at 1430 (recommending green space as a means for “reducing the social isolation” caused by the patchwork of vacant, blighted properties). See *supra* text accompanying notes 35–45 for a discussion crime, vacant lots, and green spaces.

98. Nancy Karanja & Mary Njenga, *Feeding the Cities*, in STATE OF THE WORLD 2011: INNOVATIONS THAT NOURISH THE PLANET (The Worldwatch Institute 2011).

99. DAVID TRACEY, *supra* note 80, at 173. This harkens back to an Article from the pre-20<sup>th</sup> century Agrarian Creed: “Farming is not only a job but a way of life.” DON PAARLBERG & PHILIP PAARLBERG, *THE AGRICULTURAL REVOLUTION OF THE 20TH CENTURY* 6 (1st ed. 2000).

100. Hamilton, *supra* note 59, at 145.

101. Approximately 60 percent of Americans lived in rural areas in 1900 compared with approximately 15 percent in 2012. CAROLYN DIMITRI, ANNE EFFLAND & NEILSON CONKLIN, U.S. DEP’T OF AGRIC., BULLETIN NO. 3, *THE 20TH CENTURY TRANSFORMATION OF U.S. AGRICULTURE AND FARM POLICY* 3 (2005); see *State Fact Sheets*, ECON. RESEARCH SERV., U.S. DEP’T OF AGRIC., <http://www.ers.usda.gov/data-products/state-fact-sheets/state-data.aspx> (last updated Nov. 6, 2013).

102. Laurence H. Tribe, *Ways Not to Think About Plastic Trees: New Foundations for Environmental Law*, 83 YALE L.J. 1315, 1317–18 (1974).

103. See *AGRARIANISM IN AMERICAN LITERATURE*, at xiv (M. Thomas Inge ed., 1969) (“[The farmer] has a sense of identity, a sense of historical and religious tradition, a feeling of belonging to a

allowing for personal reflection or simply a quiet moment.<sup>104</sup> More romantic assessments deem cultivation, food preparation, and hospitality to be “our profoundest calling,” which offers fulfillment and happiness.<sup>105</sup>

Because the substantial worth of developing human relationships and reconnecting with the land is hard to value, the more easily monetized benefits of urban agriculture—property values, employment, health, and education—often take precedence in policy discussions.<sup>106</sup> Regardless, communal and personal wellbeing are genuine, if intangible, benefits of urban agriculture and should be part of a holistic dialogue concerning governmental support of urban agriculture.<sup>107</sup>

#### D. *Increasing Consumer Control Within the American Food System*

Finally, the process of creating urban agriculture systems can increase consumer control within the American food system. Federal law currently dictates the character of America’s food system<sup>108</sup> and, having chosen industrialized agriculture,<sup>109</sup> uniformly imposes this system on all communities without regard for their varying cultural norms, challenges, and aspirations. While there is a role for federal government in food policymaking,<sup>110</sup> the present model minimizes food democracy—consumer

concrete family, place, and region, which are psychologically and culturally beneficial.”).

104. See WHITE HOUSE TASK FORCE, *supra* note 71, at 61 (finding city residents with access to green space are better able to cope with stress).

105. WENDELL BERRY, *In Distrust of Movements*, in *IN THE PRESENCE OF FEAR: THREE ESSAYS FOR A CHANGED WORLD* 35, 44 (2001).

106. See, e.g., Specialty Crop Competitiveness Act of 2004, Pub. L. No. 108-465, § 2(a)(3), 118 Stat. 3882, 3883 (2004) (emphasizing the “tremendous health and economic benefits” of specialty crops, which include fruits, vegetables, and flowers). *But see USDA Definition of Specialty Crop*, U.S. AGRIC. MKTG. SERV., U.S. DEP’T OF AGRIC., <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5082113> (last visited Nov. 22, 2013) (allowing “specialty crop” designation if the crop provides, *inter alia*, “aesthetic gratification”).

107. Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENVTL. L. & POL’Y FORUM 935, 959 (2010) (suggesting a holistic approach to farming policy that creates a “forum for considerations of ethical issues in food”).

108. See 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, 151 (2010) (“[T]he relationship between our food system and federalism . . . is important simply because federal law controls the American food system.”).

109. See SUSAN A. SCHNEIDER, *FOOD, FARMING, AND SUSTAINABILITY* 17 (2011) (“[M]ost agricultural production occurs on large commercial farms that employ an industrialized model of production.”).

110. See *United States v. Rock Royal Co-op, Inc.*, 307 U.S. 533, 569 (1939) (conceding that the federal government may regulate local food markets under the commerce clause if necessary to protect the interstate commerce of an essential commodity, like fresh milk); Margaret Sova McCabe, *Foodshed Foundations: Law’s Role in Shaping Our Food System’s Future*, 22 FORDHAM ENVTL. L. REV. 563, 585 (2011) (identifying international food policy and domestic food safety as appropriate federal concerns).

power in the food marketplace—and stifles community voices.<sup>111</sup> By contrast, urban agriculture systems require significant local decision-making because their development implicates land use, public health, and community development, which are traditionally within the States' domain.<sup>112</sup> Furthermore, urban agriculture is typically a grassroots movement stemming from “[l]ack of trust, resentment, and persistent inequality” in cities with widespread food insecurity and poverty.<sup>113</sup> Promoting urban agriculture and food democracy, therefore, requires a more equitable relationship between the federal, state, and local governments.

In a more equitable federal-state relationship, the federal government would facilitate urban agriculture by providing funds, expertise, and flexible programs in which communities could choose to participate.<sup>114</sup> States and localities could then use these federal resources to develop personalized food systems, which could serve as examples for other communities.<sup>115</sup> Although viewing states as laboratories for innovation has become axiomatic,<sup>116</sup> this model functions somewhat differently in the urban agriculture context. Urban agriculture, by its nature, operates at the local level. So in this circumstance, states act as laboratories that develop models of local food systems rather than small-scale versions of nationally

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111. Neil D. Hamilton describes the movement for more power in the food marketplace—for the rights “to be informed and to have more satisfying food choices and alternatives”—as the pursuit of “food democracy.” *Essay—Food Democracy and the Future of American Values*, 9 DRAKE J. AGRIC. L. 9, 12–13 (2004).

112. Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 THE URBAN LAWYER 225, 239 (2010). Interestingly, the Supreme Court held the first Farm Bill to be an unconstitutional intrusion into the States' domain. *United States v. Butler*, 297 U.S. 1, 68 (1936) (finding that the Agricultural Adjustment Act (AAA) of 1933 “is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the federal government”). But just six years later, in *Wickard v. Filburn*, the Court held an amended version of the AAA to be a proper exercise of the Commerce Clause, thus affirming the federal government's ability to regulate both inter- and intra-state agriculture. 317 U.S. 111, 128–29 (1942).

113. Giorda, *supra* note 83, at 57 (citation omitted).

114. In fact, two large Farm Bill programs follow a similar model. Both the National School Lunch Program and Supplemental Nutrition Assistance Program are federally funded and then apportioned by state and local governments. NEW HAVEN FOOD POLICY COUNCIL, *supra* note 5, at 5 (NSLP); MARTINEZ ET AL., *supra* note 12, at 39 (SNAP). However, clearly defining the “regulatory scope and enforcement jurisdiction” of State and local governments and the federal government remains an ongoing challenge. MARTINEZ ET AL., *supra* note 12, at 27.

115. A prominent example is the Seattle City Council's Seattle Farm Bill Principles, which communities around the United States embrace as a general model for federally sponsored local food systems. IMHOFF, *supra* note 13, at 181, 183.

116. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy accidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country.”).

applicable programs.

Because industrialized agriculture is firmly entrenched in American society, establishing local food systems, or even “the simple act of planting a garden,” can be seen as subversive.<sup>117</sup> Engaging in urban agriculture therefore represents the essence of “dissenting by deciding.”<sup>118</sup> This is a species of “uncooperative federalism,” in which states or local governments refuse to enforce federal policies of which they disapprove.<sup>119</sup> Communities dissent by deciding when they “express disagreement . . . by offering a real-life instantiation of their views.”<sup>120</sup> By demonstrating structures and successes of local food systems, communities may assuage concerns that federal policymakers have about backing policies that support urban agriculture and, more important, funding these policies.<sup>121</sup>

Furthermore, engaging in urban agriculture—a manifestation of dissent by deciding—promotes democracy in our food system. By rezoning urban areas for agriculture or requiring the incorporation of more local produce into school lunch programs, local and state governments—and the citizens they represent—are collectively demanding alternatives in the American food system. This demand is amplified when communities nationwide adopt similar policies, which may cause federal policymakers to take note. In this way, urban agriculture is a means to secure a more equitable federal-state relationship and attain food democracy, which confirms

“[the] rights [of] consumers to have more satisfying food choices and alternatives in the market; the rights of farmers, chefs and marketers to produce and market foods reflecting their diversity and creative potential; and our nation’s ability to have a food system that promotes good health, confidence, understanding, and enjoyment as well as economic opportunity.”<sup>122</sup>

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117. THOMAS F. PAWLICK, *THE END OF FOOD* 184 (2006); DAVID TRACEY, *GUERRILLA GARDENING: A MANUAL* 101–03 (2007) (praising small agricultural acts, or “guerilla gardening,” for their collective impact and ability to gain notice).

118. See generally Heather K. Gerken, *Dissenting by Deciding*, 57 *STAN. L. REV.* 1745 (2005).

119. Jessica Bulman-Pozen & Heather K. Gerken, *Uncooperative Federalism*, 118 *YALE L.J.* 1256, 1256–57 (2009).

120. Gerken, *supra* note 118, at 1748.

121. Bulman-Pozen & Gerken, *supra* note 119, at 1294 (“[A] state can make its case by putting its ideas into practice, remapping the politics of the possible.”).

122. Hamilton, *supra* note 111, at 12–13.



## II. EVOLUTION OF THE FARM BILL AND ITS IMPLICATIONS FOR PROMOTING URBAN AGRICULTURE

Since 1933, the federal government has shaped America's food system through omnibus agricultural legislation known as the Farm Bill. This Part examines the Farm Bill's evolution over the past 80 years, charting its progress from an emergency provision to one of the largest pieces of federal legislation. This Part then considers the challenges of promoting urban agriculture through a bill that assumes a rural and industrialized agricultural system.

### A. *History of the Farm Bill*

Ironically, the first federal food subsidies were emergency provisions “designed to save small farming in America” from ruin due to a crop surplus that resulted in rock-bottom prices.<sup>123</sup> Far from achieving this goal, the Farm Bill has expanded to include fifteen Titles<sup>124</sup> and heavily favors large farming operations.<sup>125</sup> As concerns over industrialized agriculture have mounted, Congress has returned some attention to smaller operations. Yet, provisions that promote urban agriculture operations remain largely absent from current legislation.

1. *Original Intent.* When President Roosevelt signed the first Agricultural Adjustment Act (AAA) in 1933 as part of his New Deal, he created the legal framework that continues to shape America's food system.<sup>126</sup> This original Farm Bill was a response to an “acute economic emergency”<sup>127</sup> during the Great Depression, caused by huge crop surpluses that depressed market prices and threatened the livelihood of rural communities across America.<sup>128</sup> Framing this agricultural crisis as an “economic emergency” strongly influenced subsequent Farm Bills; even

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123. Eubanks II, *supra* note 28, at 10494.

124. Food, Conservation, and Energy Act of 2008 contains fifteen Titles: I—Commodity Programs; II—Conservation; III—Trade; IV—Nutrition; V—Credit; VI—Rural Development; VII—Research and Related Matters; VIII—Forestry; IX—Energy; X—Horticulture and Organic Agriculture; XI—Livestock; XII—Crop Insurance and Disaster Assistance Programs; XIII—Commodity Futures; XIV—Miscellaneous; and XV—Trade and Tax Provisions. Pub. L. No. 110-246, 122 Stat. 1651, 1651-1664 (2008).

125. IMHOFF, *supra* note 13, at 27 (“[T]he Farm Bill became an engine driving surplus production of commodity crops and a gravy train for powerful corporations that purchased and traded them; the rules of the game changed and the public benefit aspect of its origins derailed.”).

126. DIMITRI ET AL., *supra* note 101, at 9.

127. Agricultural Adjustment Act of 1933, Pub. L. No. 73-10, 48 Stat. 31, Title I (1933).

128. Anne B. W. Efland, *U.S. Farm Policy: The First 200 Years*, in FOOD, FARMING, AND SUSTAINABILITY 9-10 (Susan A. Schneider ed., 2011).

today, “government policy views food foremost as an economic issue” rather than a nutritional or social justice issue.<sup>129</sup>

Although part of the 1933 Farm Bill was declared unconstitutional in 1936,<sup>130</sup> the 1938 revision retained the core provisions. Because the public perceived these policies as successful, there was broad public support for their renewal.<sup>131</sup> In this way, a piece of emergency legislation became the cornerstone of American agricultural policy. Congress reauthorizes the Farm Bill every five to seven years, revising or adding to the original provisions. If Congress allows the Farm Bill to expire, the law reverts back to the permanent provisions of the 1938 and 1949 Farm Bills.<sup>132</sup> Therefore, understanding these provisions is essential to understanding the current legislation.

The original Farm Bill and amendments throughout the 1930s established two core policies: providing aid to farmers and providing nutrition assistance. First, the government aided farmers by stabilizing commodity prices through supply control mechanisms. For example, the government could purchase surplus crops when the price of an enumerated commodity threatened to dip too low,<sup>133</sup> and sell those crops when they were less abundant.<sup>134</sup> In addition, the government could pay farmers to leave fields fallow.<sup>135</sup> These early programs were also intended to protect small farmers from price manipulation by large distributors, who could theoretically store non-perishable commodities long-term and control commodity prices by strategically restricting and flooding the market with

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129. McCabe, *supra* note 108, at 155.

130. *United States v. Butler*, 297 U.S. 1, 68 (1936) (finding Congress exceeded its authority under the Commerce Clause in enacting the AAA of 1933). See *supra* note 112 for discussion of related Commerce Clause issues. To resolve the legislation’s flaws, Congress replaced the unconstitutional tax on processors with income support payments to farmers in 1936. JASPER WOMACH, CONG. RESEARCH SERV., OC 97-905, AGRICULTURE: A GLOSSARY OF TERMS, PROGRAMS, AND LAWS 9 (updated June 16, 2005) available at <http://www.cnie.org/NLE/CRSreports/05jun/97-905.pdf>. Congress then replaced the unconstitutional 1933 farm subsidy policies with the 1938 AAA. *Id.* at 238.

131. Effland, *supra* note 128, at 10.

132. WOMACH, *supra* note 130, at 9. Congress has let the Farm Bill expire in 1996, 2007, and 2012. To avoid negative impacts on farmers and consumers, Congress must renew the Bill before the following crop year. J.T. Rushing, *Expiration of Farm Bill Should Have Little Impact on Iowans*, THE GAZETTE (Oct. 1, 2012 8:31 AM), <http://thegazette.com/2012/10/01/expiration-of-farm-bill-should-have-little-impact-on-iowans/>.

133. The commodities included in the 1933 law were wheat, cotton, corn, hogs, rice, tobacco, and milk. Agricultural Adjustment Act of 1933, Pub. L. No. 73-10, § 11, 48 Stat. 31, 38 (1933).

134. IMHOFF, *supra* note 13, at 83. The 1996 Farm Bill eliminated price support mechanisms, but these still “figure in the current debate.” Effland, *supra* note 128, at 9.

135. Tom Philpott, *A Reflection on the Lasting Legacy of 1970s USDA Secretary Earl Butz*, GRIST (Feb. 8, 2008, 1:31 AM), <http://grist.org/article/the-butz-stops-here/>.

goods.<sup>136</sup>

Second, the USDA provided nutrition assistance by purchasing and redistributing surplus food to low-income populations.<sup>137</sup> These programs were initially driven by economic considerations, and improved nutrition was a positive side effect.<sup>138</sup> During World War II, however, Congress perceived widespread malnutrition among Americans as a “threat to national security.”<sup>139</sup> To address this problem, Congress established an experimental food stamp program in 1939<sup>140</sup> and passed the National School Lunch Act in 1946, which provided for distribution of surplus food to public schools and remains one of the largest public food assistance programs.<sup>141</sup>

The relationship between the two original Farm Bill policies—farming supports and nutrition assistance—remains the central tension in Farm Bill. In the Farm Bill’s early days, farmers largely embraced price supports but many vehemently opposed nutrition programs, viewing them as “shameful charity and a threat to free markets . . . .”<sup>142</sup> This conflict persists, with a largely rural lobby advocating for increased subsidies and a largely urban lobby pressing for more nutrition assistance.<sup>143</sup> Although nutrition assistance programs have greatly expanded, economic considerations still dominate, as they did in 1933.<sup>144</sup> Consequently, Farm Bill nutrition programs remain subordinate to farming supports, which is most evident during the appropriations process.<sup>145</sup>

2. “*Get Big or Get Out.*”<sup>146</sup> During the 1970s, there was a tectonic shift in agricultural policy. Rather than assist small farmers through supply controls, the Farm Bill awarded subsidies to operations that maximized

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136. IMHOFF, *supra* note 13, at 39.

137. WOMACH, *supra* note 130, at 8–9.

138. McCabe, *supra* note 108, at 155.

139. IMHOFF, *supra* note 13, at 50. For example, forty percent of draftees were rejected due to malnutrition. *Id.*

140. *Id.* at 110 fig.19 (this program ended in 1943 and reemerged in 1964 as the National Food Stamp Program, but was not included in the Farm Bill until 1977).

141. *Id.* at 50 (“30 million children receive[e] meals every school day.”); 42 U.S.C § 1751 (2012).

142. IMHOFF, *supra* note 13, at 40. Some farmers, for example, poured millions of gallons of surplus milk into the street rather than see the milk redistributed. *Id.*

143. *Id.* at 53.

144. *See supra* text accompanying note 129.

145. *See IMHOFF, supra* note 13, at 32 (observing that food distribution programs are among the first to receive funding cuts if the appropriations committee must reduce Farm Bill spending).

146. Originally uttered by Secretary of Agriculture Ezra Taft Benson in the 1950s, this became the slogan of 1970s agricultural policy. JAMES EARL SHEROW, *THE GRASSLANDS OF THE UNITED STATES: AN ENVIRONMENTAL HISTORY* 139 (2007).

yields.<sup>147</sup> Earl Butz, Secretary of Agriculture from 1971 to 1976, is often cited as the architect of this “free-market” policy.<sup>148</sup> Famously, Butz urged farmers to plant “fencerow to fencerow” and advised smaller operations to “adapt or die.”<sup>149</sup> Some operations did adapt by taking out huge loans for land and modern machinery.<sup>150</sup> Many farmers initially profited because a global food crisis provided an international market for surplus crops, and drought led to higher domestic prices.<sup>151</sup> However, crop prices crashed in the 1980s and “tens of thousands” of small farms collapsed with them.<sup>152</sup>

Surviving farms planted even more crops to compensate for low market prices, and the largest operations thrived because they “were essentially writing the Farm Bills for their own benefit.”<sup>153</sup> For example, large agribusiness created a market for surplus corn by successfully lobbying for ceiling quotas on foreign-produced sugar, which made high-fructose corn syrup a cheaper sweetening option.<sup>154</sup> This gluttony peaked with the 1996 and 2002 Farm Bills.<sup>155</sup> While the 1996 Farm Bill was intended to reform the subsidy system, it eliminated remaining supply control provisions and led to market saturation and rock-bottom crop prices.<sup>156</sup> The government responded with billions of dollars in emergency bailouts, made permanent in the 2002 Farm Bill,<sup>157</sup> which overwhelmingly helped “an elite group of mega-farms,” processors, and distributors.<sup>158</sup>

To support struggling rural communities, every Farm Bill after 1973

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147. IMHOFF, *supra* note 13, at 47.

148. See, e.g., Richard Goldstein, *Earl L. Butz, Secretary Felled by Racial Remark, Is Dead at 98*, N.Y. TIMES (Feb. 4, 2008), available at [http://www.nytimes.com/2008/02/04/washington/04butz.html?scp=1&sq=earl+butz&st=nyt&\\_r=0](http://www.nytimes.com/2008/02/04/washington/04butz.html?scp=1&sq=earl+butz&st=nyt&_r=0).

149. IMHOFF, *supra* note 13, at 44.

150. See Philpott, *supra* note 135 (noting that many farmers took out large loans to expand operations, which was one reason for the demise of many small and mid-sized farms).

151. *Id.*

152. *Id.*

153. IMHOFF, *supra* note 13, at 48.

154. Tom Philpott, *How Cash and Corporate Pressure Pushed Ethanol to the Fore*, GRIST (Dec. 7 2006, 7:43 AM), <http://grist.org/article/adm1/>.

155. Between 2002 and 2007, farmers received over \$72 billion in commodity subsidies. RALPH M. CHITE, CONG. RESEARCH SERV., RS22694, FARM BILL BUDGET AND COSTS: 2002 VS. 2007 2 tbl.1 (Jan. 29, 2008), available at <http://www.nationalaglawcenter.org/wp-content/uploads/assets/crs/RS22694.pdf>.

156. IMHOFF, *supra* note 13, at 65.

157. INST. FOR AGRIC. & TRADE POL’Y, A FAIR FARM BILL FOR AMERICA 6 (Ben Lilliston ed., 2007), available at [http://www.iatp.org/files/258\\_2\\_97623.pdf](http://www.iatp.org/files/258_2_97623.pdf).

158. IMHOFF, *supra* note 13, at 67. Farm subsidies peaked in 2000, at nearly \$25 billion, and have remained above \$14 billion annually through 2012. See *EWG Farm Subsidy Database*, ENVTL. WORKING GRP., <http://farm.ewg.org/regionsummary.php?fips=00000&statename=theUnitedStates> (last visited Nov. 13, 2013).

includes a Rural Development Title.<sup>159</sup> This Title provides funds for rural infrastructure—like housing and utilities—and business and community development.<sup>160</sup> Although most farms in the United States are small or mid-sized,<sup>161</sup> “nearly 90% of total farm household income comes from off-farm sources” and farming represents less than eight percent of rural employment.<sup>162</sup> Recognizing this shift, recent farm bills promote smaller operations through programs like loans for “microentrepreneurs” and “locally or regionally produced food products.”<sup>163</sup> Congress, however, is struggling to define the scope of these programs as the physical and cultural boundaries blur between “rural” and “urban” areas.<sup>164</sup>

3. *The Rise of a Food Bill.* The Farm Bill is more aptly labeled a “Food Bill,” because it proposes to balance profitable food production with nutrition assistance.<sup>165</sup> Nutrition assistance has been a Farm Bill policy since the 1930s, but it became firmly entrenched with the passage of the Food Stamp Act of 1977.<sup>166</sup> Food stamps—renamed Supplemental Nutrition Assistance Program benefits (SNAP) in 2008—<sup>167</sup> provide low-income households with additional resources to purchase food. SNAP has become the primary nutrition assistance program and accounts for the majority of Farm Bill spending.<sup>168</sup> But unlike farm subsidies, which increase independent of market demand, SNAP funding and participation closely follow the “cycles of economic prosperity and recession in

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159. TADLOCK COWAN, CONG. RESEARCH SERV., RL 31837, AN OVERVIEW OF USDA RURAL DEVELOPMENT PROGRAMS 1 (May 3, 2010) available at <http://www.nationalaglawcenter.org/wp-content/uploads/assets/crs/RL31837.pdf>. Initially, these programs were a response to “low incomes and low standards of living” in rural areas during the first half of the 20th century. *Id.* They evolved to help rural farmers compete with large agribusiness. *See id.* at 6–7.

160. *Id.* at 4.

161. “Small” farms earn less than \$40,000 annually whereas “mid-sized” farms earn \$40,000 to \$250,000 annually. These represent about 70 percent and 25 percent of American farms, respectively. PAARLBERG & PAARLBERG, *supra* note 99, at 114.

162. COWAN, *supra* note 159, at 1.

163. *Id.* at 6.

164. *See* Food, Energy, and Conservation Act of 2008, Pub. L. No. 110-246, § 6018(b)(1), 122 Stat. 1651, 1933 (2008) (requiring the Secretary to assess possible definitions of “rural” and their impact on Farm Bill programs).

165. *See* IMHOFF, *supra* note 13, at 72.

166. S. REP. NO. 95-418, at 50 (1977) (committing to “safeguard the health and well-being of the Nation’s population by raising levels of nutrition among low-income households”).

167. FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., SNAP NAME CHANGE 2, available at [http://www.fns.usda.gov/snap/outreach/pdfs/toolkit/2011/Community/Basics/SNAP\\_name.pdf](http://www.fns.usda.gov/snap/outreach/pdfs/toolkit/2011/Community/Basics/SNAP_name.pdf) (last visited Jan. 7, 2013) (intending to stress the nutritional mission and reduce social stigma).

168. IMHOFF, *supra* note 13, at 53. The 2008 Farm Bill authorized \$307 billion in total spending, with \$209 billion dedicated for all nutrition programs. *Farm Bill Cost Estimate*, CONG. BUDGET OFFICE (May 13, 2008), <http://www.cbo.gov/publication/24782>.

America.”<sup>169</sup> Other key Farm Bill nutrition programs provide emergency food assistance—such as canned foods for food banks—<sup>170</sup> and additional financial support to women, infants, and children (WIC).<sup>171</sup>

While these programs have improved food access, they have not necessarily improved nutrition. SNAP, for example, does not impose dietary requirements.<sup>172</sup> Furthermore, healthy foods—such as “lean meats, fruits and vegetables, and whole grains”—are far more expensive than highly processed options and generally less available in low-income communities.<sup>173</sup> These factors, among others, cause food assistance beneficiaries to consume less healthy food.<sup>174</sup> This complex problem led nutrition advocates and local food advocates to join forces in lobbying for policies that encourage healthy eating habits and local food production.<sup>175</sup>

Due to fierce lobbying and a deep national recession,<sup>176</sup> the 2008 Farm Bill marked a return to aid for small farmers, increased nutrition assistance, and enlarged programs supporting local food systems. For example, this Farm Bill bolstered programs that increase the competitiveness of rural farms, such as grants for adding value to products through marketing or processing.<sup>177</sup> In addition, nutrition assistance programs included grants for schools to incorporate local produce into meals<sup>178</sup> and increased funding for programs allowing SNAP and WIC participants to use their benefits at farmers’ markets.<sup>179</sup> The 2008 Farm Bill also provided the first substantial funding for grant programs that encourage local food systems and growing specialty crops, like fruit, vegetables and nuts.<sup>180</sup>

In 2009, the USDA united the efforts to promote community economic development, healthy eating, and local agriculture through the Know Your Farmer Know Your Food (KYF2) initiative.<sup>181</sup> This initiative

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169. SNAP TO HEALTH, *supra* note 48, at 12.

170. FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., THE EMERGENCY FOOD ASSISTANCE PROGRAM 1 (2013), available at <http://www.fns.usda.gov/sites/default/files/pfs-tefap.pdf>; see also The Emergency Food Assistance Program, 7 U.S.C. §§ 1721–26 (2008).

171. Special Supplemental Nutrition Program for Women, Infants, and Children, 42 U.S.C. § 1786 (2008).

172. SNAP TO HEALTH, *supra* note 48, at 1.

173. *Id.* at 15–16.

174. *Id.* at 7.

175. IMHOFF, *supra* note 13, at 72.

176. *Id.*

177. MARTINEZ ET AL., *supra* note 12, at 38.

178. *Id.*

179. *Id.* at 36–37.

180. IMHOFF, *supra* note 13, at 73 (Farmers’ Market Promotion Program and Specialty Crop Block Grants).

181. *Id.* at 179.

aims to connect disparate groups that are working to “strengthen[] local and regional food systems.”<sup>182</sup> While the existence of KYF2 may signify the federal government’s willingness to expand programs that support local food systems, both rural and urban, KYF2 has no dedicated budget.<sup>183</sup> This indicates that supporting local food systems—and urban agriculture, by extension—is still a low Farm Bill priority.

*B. Challenges for Promoting Urban Agriculture Within the Current Farm Bill’s Scheme*

Given Congress’s demonstrated flexibility to revise the Farm Bill to meet current agricultural challenges, the Farm Bill is an ideal vehicle for supplying federal resources to urban agriculture projects. Certainly, rural agriculture was the dominant paradigm when the original Farm Bill was passed. Even now, there is debate over “whether urban agriculture is a ‘legitimate’ issue for [the] USDA to embrace.”<sup>184</sup> However, even Thomas Jefferson, as he espoused the virtues of the yeoman farmer, “knew that the structure of society would eventually change. But, he hoped that . . . new traditions would emerge to serve the public good.”<sup>185</sup>

Today, the vast majority of Americans live and work in cities.<sup>186</sup> Urbanization and the subsequent depopulation of old industrial cities have introduced novel social problems and innovations, as discussed in Part I. As a result, urban agriculture has become prominent and the Farm Bill should evolve to reflect this shift. Moreover, the Farm Bill is a suitable means for promoting urban food systems because the goals of urban agriculture align with the Farm Bill’s dual objectives of aiding farmers and providing nutrition assistance.<sup>187</sup> Nevertheless, urban agriculture advocates face steep challenges to realizing the Farm Bill’s potential, chief among them being (1) the Farm Bill’s overwhelming rural bias and (2) a well-established political machine favoring large agribusiness.

1. *Rural-orientation.* Farm Bill programs primarily apply to rural agriculture and rural community development. For example, the Farm Bill

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182. *Know Your Farmer, Know Your Food – Our Mission*, U.S. DEP’T OF AGRIC., [http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF\\_MISSION](http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_MISSION) (last updated Aug. 19, 2013).

183. IMHOFF, *supra* note 13, at 179.

184. Hamilton, *supra* note 59, at 130.

185. William P. Browne et al., *Sacred Cows and Hot Potatoes: Agrarian Myths in Agricultural Policy*, in *FOOD, FARMING, AND SUSTAINABILITY: READINGS IN AGRICULTURAL LAW 13* (Susan A. Schneider ed., 2010).

186. In 2012, approximately 15 percent of Americans lived in rural areas. See *State Fact Sheets*, *supra* note 101.

187. IMHOFF, *supra* note 13, at 42.

dedicates an entire Title to rural development, rather than urban or general development. Notably, the Rural Development Title contains many programs that aid small or disadvantaged farmers and explicitly excludes urban areas.<sup>188</sup> Furthermore, many lending programs—including grants for community facilities and businesses—are contained in the Consolidated Farm and *Rural* Development Act.<sup>189</sup> Some resources are available for non-rural areas, but only if rural residents are the primary beneficiaries.<sup>190</sup>

In recent years, Congress has added more Farm Bill programs that can benefit urban agriculture. This is not because Congress explicitly included urban areas; rather, these programs do not explicitly *exclude* urban areas. Particularly helpful programs include the Specialty Crop Block Grant Program,<sup>191</sup> the Farmers' Market Promotion Program,<sup>192</sup> and Assistance for Community Food Projects.<sup>193</sup> However, many programs are already “oversubscribed,” likely due to low funding and stiff competition with rural areas.<sup>194</sup> Furthermore, many urban farmers may be unaware of these resources or uncertain if they are eligible because applicable provisions are scattered throughout the Farm Bill<sup>195</sup> and the Bill does not define “urban.” A future Farm Bill could increase support for urban agriculture by expanding currently applicable programs, uniting applicable programs under one Title, and clearly defining eligibility.

2. *The Politics of Food.* Politics is perhaps the largest hurdle to promoting urban agriculture through the Farm Bill. Since the 1930s, the farm and nutrition lobbies have become progressively polarized and powerful.<sup>196</sup> Nutrition advocates tend to demonize farm subsidies while the agribusiness lobby attacks nutrition assistance as unjustifiable handouts. Although both groups have secured hefty Farm Bill programs for their

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188. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 6018(a)(13)(A)(ii), 122 Stat. 1651, 1931 (2008) (defining rural as “any area other than . . . any urbanized area”).

189. Pub. L. 87-128, 75 Stat. 294 (2011) (emphasis added).

190. See, e.g., *id.* § 310B(g)(6)(A)(i)–(ii), 75 Stat. at 335 (“[T]he primary benefit of the loan guarantee will be to provide employment for residents of a rural area.”).

191. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 10109, 122 Stat. 1651, 2100 (2008).

192. *Id.* § 10106, 122 Stat. at 2098.

193. *Id.* § 4402, 122 Stat. at 1896.

194. HAGEY ET AL., *supra* note 55, at 36. Rural areas received nearly 8-times more federal agricultural funding than urban areas in 2010. See *State Fact Sheets*, *supra* note 101. There could be many reasons for this, including more applicants and larger projects in rural areas.

195. See HAGEY ET AL., *supra* note 55, at 36 (calling for “greater coordination of urban agriculture opportunities across programs”).

196. See IMHOFF, *supra* note 13, at 35 fig.5 (depicting the steady escalation in spending for Farm Bill lobbying, with \$140 million being spent in 2008).



constituents, the interests of smaller farming operations have been largely ignored.<sup>197</sup> In 2008, small operations received more Farm Bill aid because hard economic times caused the interests of the nutrition and local food lobbies to align.<sup>198</sup> It remains to be seen if the movement to promote small farms and local food systems will continue under different circumstances. Moreover, amending the Farm Bill to accommodate urban agriculture may meet greater resistance because it defies the Farm Bill's rural paradigm and falls outside the traditional mission of both main lobbying groups.

Even if Congress approves programs that support urban agriculture, the next challenge is obtaining funding. There are two phases in creating a new Farm Bill: Congress first votes to reauthorize existing provisions dating back to the 1930s and to approve proposed legislation, and then allocates funds.<sup>199</sup> Congress grants programs either discretionary or mandatory funding. Then, the House and Senate Agricultural Appropriations Subcommittees have broad authority to determine funding priorities. Programs with discretionary funding undergo an annual appropriations process, while programs with mandatory funding should receive set funds for the term of the legislation. However, the appropriations subcommittees may reduce mandatory funding if Congress requires budget cuts to avert a deficit.<sup>200</sup> In determining which programs to reduce, social safety nets like WIC benefits are usually among the first programs to be cut while funding for commodity price supports are maintained or increased.<sup>201</sup> Therefore, urban agriculture advocates must persuade both Congress and the members of the appropriations subcommittees that strengthening urban food systems is a national priority.

### III. ENVISIONING A FARM BILL THAT PROMOTES URBAN AGRICULTURE

The movement to promote alternative food systems within the Farm Bill is gaining steam. Since 1996, every version of the Farm Bill has included more programs that support local food systems and strengthened those that came before. During the 2012 Farm Bill discussions, Congress introduced more than a dozen bills to expand local food programs,<sup>202</sup> some

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197. See PAARLBERG & PAARLBERG, *supra* note 99, at 115 (observing that small farmers “are claimed as constituents by politicians, but rarely are they recipients of political favors”).

198. See *supra* text accompanying notes 176–180.

199. IMHOFF, *supra* note 13, at 32.

200. *Id.* at 33.

201. *Id.* at 32.

202. See *generally* Search Bills in Congress, GOVTRACK.US,

of which specifically addressed urban agriculture.<sup>203</sup> Furthermore, Senate hearings concerning local food initiatives attracted witnesses from prominent groups in rust belt cities who expressly requested funding to promote urban food systems.<sup>204</sup> To capitalize on this momentum, this Part highlights three existing Farm Bill programs that promote urban agriculture and suggests improvements. Then, this Part proposes that Congress create a new Title dedicated to fostering urban agriculture and, as an essential step toward this goal, assesses definitions for key terms that impact eligibility for future urban agriculture programs.

#### A. *Expanding Existing Programs that Promote Urban Agriculture*

Although few local food programs apply to urban contexts—and those that do receive minimal funding—urban communities nationwide are tapping these resources to address problems hindering the development of urban agriculture. Core problems include high operation costs, lack of technical and business training, and enabling low-income residents to afford locally grown produce.<sup>205</sup> Three existing programs that allow communities to devise customized solutions are the Specialty Crop Block Grant Program, the Farmers’ Market Promotion Program, and the Community Food Projects Competitive Grants Program.

1. *Specialty Crop Block Grant Program (SCBGP)*. The SCBGP is intended to “ensure an abundant and affordable supply”<sup>206</sup> of nutritious fruits, vegetables, nuts, and flowers.<sup>207</sup> Upon application, the USDA gives specialty crop block grants directly to States, which in turn distribute competitive grants to qualifying projects in the State.<sup>208</sup> To qualify, projects

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[https://www.govtrack.us/congress/bills/browse?congress=112#similar\\_to=H.R.4351%2F112](https://www.govtrack.us/congress/bills/browse?congress=112#similar_to=H.R.4351%2F112) (last visited Nov. 23, 2013).

203. *E.g.*, Let’s Grow Act of 2012, H.R. 4351, 112th Cong. §§ 302, 366(b) (2012) (authorizing grants to convert “abandoned or foreclosed property to urban agriculture uses” and requiring “an urban entrepreneurship and microenterprise program,” *inter alia*).

204. *See generally* Eastern Market Testimony, *supra* note 64 (Detroit, MI); *Healthy Food Initiatives, Local Production, and Nutrition: Hearing Before the S. Comm. On Agriculture, Nutrition, and Forestry, 112th Cong.* 3 (Mar. 7, 2012) (statement of John Weidman, Deputy Executive Director, The Food Trust), *available at* <http://www.ag.senate.gov/hearings/healthy-food-initiatives-local-production-and-nutrition> (Philadelphia, PA) [hereinafter Food Trust Testimony].

205. *See supra* Part I.A–B.

206. Specialty Crops Competitiveness Act of 2004, Pub. L. No. 108-465, 118 Stat. 3882, 3882 (2004). Congress incorporated this Act into the 2008 Farm Bill, Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 10109, 122 Stat. 1651, 2100 (2008).

207. Specialty Crops Competitiveness Act § 3(1), 118 Stat. at 3883.

208. *Specialty Crop Block Grant Program – Farm Bill*, AGRIC. MKTG. SERV., U.S. DEP’T OF AGRIC.,

<http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&navID=Specialt>

must increase the competitiveness of specialty crops through marketing, research, business planning, or farmer training efforts.<sup>209</sup> The USDA expressly states that “developing regional and local food systems, and improving food access in underserved communities” increase the competitiveness of specialty crops.<sup>210</sup> Therefore, urban agriculture projects are implicitly eligible for this program.

The SCBGP is a vital source of federal support for urban food systems because it receives more funding than most local food programs, with \$55 million annually from 2009 to 2012.<sup>211</sup> Moreover, the SCBGP shares a central goal with urban agriculture: providing affordable, nutritious foods to “all Americans.”<sup>212</sup> This program is also well suited to the urban agriculture context because States distribute SCBGP funds, and States are more sensitive to local needs than the federal government.<sup>213</sup>

In future Farm Bills, Congress should maintain or increase funding for the SCBGP and redefine the types of projects that qualify for funding. These reforms are necessary to meet the high demand for SCBGP funds. For example, in 2009 California received \$65 million in SCBGP applications, four times more than the State’s allotted funds.<sup>214</sup> Furthermore, marketing and research projects have received most SCBGP funds since the 2008 Farm Bill adopted the program,<sup>215</sup> but the Farm Bill contains other programs that support those endeavors.<sup>216</sup> The SCBGP could maximize the impact of its limited funds by focusing on production and training projects, and extending eligibility to equipment and infrastructure purchases. This would be a meaningful extension because most Farm Bill

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yCropBlockGrant0Program&rightNav1=SpecialtyCropBlockGrant0Program&topNav=&leftNav=CommodityAreas&page=SCBGP&resultType (last updated Nov. 1, 2013).

209. BARHAM ET AL., *supra* note 70, at 49.

210. *Specialty Crop Block Grant Program – Farm Bill*, *supra* note 208.

211. *Farm Bill Budget Visualizer*, JOHNS HOPKINS CTR. FOR A LIVABLE FUTURE, <http://www.jhu.edu/farmbillvisualizer/> (last visited Jan. 6, 2013).

212. Specialty Crops Competitiveness Act of 2004, Pub. L. No. 108-465, § 2(a)(2), 118 Stat. 3882, 3882 (2004). *See generally supra* Part I. B.

213. *See supra* Part I.D (advocating a federal-state relationship that values community self-determination in developing local food systems).

214. Kari Hamerschlag, *Making a Good Farm Bill Program Better: Specialty Crop Grants in California*, CIVILEATS.COM (Nov. 1, 2012), <http://civileats.com/2012/11/01/making-a-good-farm-bill-program-better-specialty-crop-grants-in-california-2/>.

215. *See* AGRIC. MKTG. SERV., U.S. DEP’T OF AGRIC., FISCAL YEAR 2011 DESCRIPTION OF FUNDED PROJECTS (2011), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5093992> (accounting for 33 percent and 15 percent of SCBGs, respectively).

216. For example, the Specialty Crop Research Initiative received \$50 million annually from 2010 to 2012. Food, Energy, and Conservation Act of 2008, Pub. L. No. 110-246, § 7311, 122 Stat. 1651, 2006 (2008); *Farm Bill Budget Visualizer*, *supra* note 211. *See also* Hamerschlag, *supra* note 214 (suggesting that private grower associations should support marketing efforts).

infrastructure grants apply only in rural areas.<sup>217</sup>

2. *Farmers' Market Promotion Program (FMPP)*. The FMPP is a competitive grant program designed “to increase domestic consumption of agricultural commodities by improving and expanding” direct-to-consumer marketing.<sup>218</sup> Direct-to-consumer marketing includes farmers’ markets, roadside stands, and community-supported agriculture programs.<sup>219</sup> FMPP grants are available to entities—such as local governments, nonprofit organizations, and agricultural cooperatives<sup>220</sup>—that support direct-to-consumer marketing through projects like research, business planning, equipment purchases, or training.<sup>221</sup> However, like SCBGs, FMPP funds cannot be used to buy, build, or improve buildings.<sup>222</sup>

As funding for the FMPP grows—from \$3 million in 2008 to \$10 million in 2011—<sup>223</sup> this program is increasing important for urban food systems. FMPP grants are available for a wide-array of food projects, which encourages innovation and allows organizations to design programs that suit their community’s needs. The Food Trust in Philadelphia, for example, used FMPP funding “to develop a new model to process wireless SNAP sales at famers’ markets,”<sup>224</sup> which increased access to nutritious food for low-income community members. In addition, Eastern Market in Detroit, a large farmers’ market and aspiring food hub, used an FMPP grant to create a community network that connects smaller local producers with a larger customer base.<sup>225</sup> To encourage these innovative projects, Congress should increase FMPP funding and expand eligibility to include direct marketing to larger institutions like schools, grocery stores, and restaurants. This would allow communities to develop comprehensive food systems and would advance the FMPP’s goal of expanding direct marketing “on an economically sustainable basis.”<sup>226</sup>

3. *Community Food Projects Competitive Grants Program (CFPCGP)*. The CFPCGP awards one-time competitive grants to private,

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217. *E.g.*, Food, Energy, and Conservation Act of 2008, Pub. L. No. 110-246, § 6028, 122 Stat. 1651, 1944–55 (2008).

218. 7 U.S.C. § 3005(b)(1)(A) (2012).

219. *Id.*

220. 7 U.S.C. § 3005(c).

221. BARHAM ET AL., *supra* note 70, at 49.

222. 7 U.S.C. § 3005(b)(2).

223. BARHAM ET AL., *supra* note 70, at 49.

224. Food Trust Testimony, *supra* note 204, at 1.

225. Eastern Market Testimony, *supra* note 64, at 3.

226. 7 U.S.C. § 3001.

nonprofit entities for community food projects designed to “meet the food needs of low-income people” and “promote comprehensive responses to local food, farm, and nutrition issues.”<sup>227</sup> The USDA clarified that “urban gardening” may be part of a comprehensive response,<sup>228</sup> making this a rare Farm Bill program that explicitly applies to urban agriculture.<sup>229</sup> This program also encourages creative local food programs, provided that the solution responds to “community identified food needs.”<sup>230</sup> For example, a Philadelphia nonprofit created a “buying club,” which presented low-income residents with a list of affordable, locally produced foods that they could pre-order.<sup>231</sup> In addition, grantees may use funds to purchase or improve land and buildings as well as provide job training,<sup>232</sup> all of which represent core obstacles to expanding urban food systems.<sup>233</sup>

However, the CFPCGP’s funding restrictions and eligibility requirements limit this program’s impact. Since 2009, the CFPCGP has received only \$5 million in annual funding.<sup>234</sup> There is great demand for these funds, with only eighteen percent of applicants receiving grants since the program’s inception in 1996.<sup>235</sup> Furthermore, CFPCGP applicants must provide matching funds up front.<sup>236</sup> For new nonprofits or impoverished communities, generating matching funds can be a significant barrier to benefiting from the CFPCGP.

To strengthen this program, Congress should increase funding and eliminate the matching fund requirement. Nutrition programs received

227. NAT’L INST. OF FOOD & AGRIC., U.S. DEP’T OF AGRIC., COMMUNITY FOOD PROJECTS COMPETITIVE GRANTS PROGRAM: FY 2011 REQUEST FOR APPLICANTS 22, *available at* [http://www.nifa.usda.gov/funding/rfas/pdfs/11\\_community\\_foods.pdf](http://www.nifa.usda.gov/funding/rfas/pdfs/11_community_foods.pdf).

228. *Id.* at 7

229. 7 U.S.C. § 2034(a)(3) (defining “underserved community” to include “an urban or rural community”).

230. NAT’L INST. OF FOOD & AGRIC., *supra* note 227, at 7.

231. NAT’L INST. OF FOOD & AGRIC., U.S. DEP’T OF AGRIC., *Increasing Eastern North Philadelphia Community’s Access to Locally Grown Food through CSA, Farmer’s Market, Corner Stores and Buying Club*, CURRENT RESEARCH INFO. SYS., <http://cris.nifa.usda.gov/cgi-bin/starfinder/0?path=fastlink1.txt&id=anon&pass=&search=R=46766&format=WEBLINK> (last visited Nov. 22, 2013).

232. NAT’L INST. OF FOOD & AGRIC., *supra* note 227, at 7.

233. *See supra* Part I.A (describing high operation costs, lack of land ownership, and lack of training as core obstacles).

234. *Farm Bill Budget Visualizer*, *supra* note 211.

235. *Hunger and Food Security: Community Food Projects Competitive Grants*, NAT’L INST. OF FOOD & AGRIC., U.S. DEP’T OF AGRIC., [http://www.csrees.usda.gov/nea/food/in\\_focus/hunger\\_if\\_competitive.html](http://www.csrees.usda.gov/nea/food/in_focus/hunger_if_competitive.html) (last updated Mar. 18, 2009).

236. NAT’L INST. OF FOOD & AGRIC., *supra* note 227 at 11. Either public or private entities can donate these funds. *Id.*

approximately \$209 billion in the 2008 Farm Bill,<sup>237</sup> because the CFPCGP is a nutrition program,<sup>238</sup> Congress could allocate a minute fraction of nutrition funding to bolster this program. Then, the matching fund requirement would become unnecessary. While this requirement may be intended to ensure that an applicant is committed to a project, the CFPCGP provides other requirements that attract dedicated applicants. For instance, grant recipients must have experience either in community food work or job training and business development in low-income areas.<sup>239</sup>

*B. Toward a Title for Urban Agriculture: Defining Key Terms*

While expanding existing programs is useful in the short term, Congress should ultimately develop a Farm Bill framework tailored for the urban context.<sup>240</sup> Just as the Farm Bill includes a Title with resources dedicated for rural development, modern legislation should include a Title that promotes urban agriculture. Gathering resources in one Title would allow urban agriculture groups to locate Farm Bill resources more easily, and a new Title would allow Congress to design programs to meet challenges specific to urban agriculture. The first step toward creating such a Title, however, is defining the parameters of urban agriculture. Many key concepts are undefined or inconsistently defined in the Farm Bill, disputed in academic literature, or evolving as American demographics shift. Chief among these are “farm,” “urban,” and “local.” In addition, Congress must define funding priorities to maximize the impact of increasingly limited resources.<sup>241</sup>

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237. *Farm Bill Cost Estimate*, *supra* note 168.

238. Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, § 401(h), 110 Stat. 888, 1027 (1996) (amending the Food Stamp Act of 1977 to include the Assistance for Community Food Projects program).

239. See NAT'L INST. OF FOOD & AGRIC., *supra* note 227 at 11.

240. In 2012, Ohio Congresswoman Marcia Fudge introduced a bill that included a Title for Sustainable Urban Agriculture. Let's Grow Act of 2012, H.R. 4351, 112th Cong. (2012). This bill, however, did not pass into law and suffered from definitional ambiguities and inconsistencies. For example, the bill defines “urban area” in two ways, using both the Census definition and the vague “urban in character” standard from existing farm bills. *Id.* §§ 305(e)(1)(A), 366(a)(12).

241. With mounting federal debt, the Farm Bill has become particularly budget-conscious. See Press Release, Agriculture Secretary Tom Vilsack, Agriculture Secretary Vilsack on Priorities for the 2012 Farm Bill (Oct. 24, 2011), <http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2011/10/0458.xml&printable=true&contentidonly=true> (emphasizing the need to prioritize because “there will be considerably less funding” for the Farm Bill); Kaitlin Durbin, *Agriculture Official: Farm Bill Necessary*, BUCYRUS TELEGRAPH-FORUM (Oct. 22, 2012), <http://www.bucyrustelegraphforum.com/article/20121022/NEWS01/210220313/Agriculture-official-Farm-bill-necessary?odyssey=nav/head> (reporting the Senate version of the 2012 Farm Bill cut spending by \$23 billion while the House version suggested \$184 billion in cuts).

1. *Defining “Farm.”* As a threshold matter, designing Farm Bill programs that support urban agriculture requires considering what constitutes a “farm.” The definition of “farm” can influence the distribution of federal agriculture funds<sup>242</sup> and has rhetorical influence over the types of operations viewed as legitimate. Moreover, this definition is malleable, having changed nine times since 1850.<sup>243</sup> Currently, the USDA defines a farm as “any place from which \$1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the year.”<sup>244</sup> The USDA also classifies farms based on the value of sales and character. Almost 90 percent of American farms are “small,”<sup>245</sup> with gross sales under \$250,000.<sup>246</sup> Over one-third of all farms are further classified as “residential/lifestyle farms,”<sup>247</sup> so designated because farming is not the operator’s primary occupation.<sup>248</sup> Many urban agriculture operations qualify as residential/lifestyle farms because urban agriculture typically occurs on a small scale and is not the primary occupation for most urban farmers.

This classification scheme undermines the success of urban agriculture by suggesting that farms that aim to improve quality of life—rather than maximize sales—are less legitimate than large, industrialized operations.<sup>249</sup> This institutional bias against small-scale agriculture is apparent in legislative proposals that narrow the definition of “farm” by increasing the annual sales requirement and requiring that operators receive most of their income from agricultural activities.<sup>250</sup> This revised definition could prevent urban farmers—particularly beginning and disadvantaged farmers—from receiving federal farming assistance.<sup>251</sup> One reason for this

242. ERIK J. O’DONOGHUE ET AL., ECON. RESEARCH SERV., U.S. DEP’T OF AGRIC., BULL. NO. 49, EXPLORING ALTERNATIVE FARM DEFINITIONS: IMPLICATIONS FOR AGRICULTURAL STATISTICS AND PROGRAM ELIGIBILITY 2 (2009), available at <http://www.ers.usda.gov/media/160912/eib49.pdf>.

243. NAT’L AGRIC. STATISTICS SERV., U.S. DEP’T OF AGRIC., FARMS, LAND IN FARMS, AND LIVESTOCK OPERATIONS: 2011 SUMMARY 21 (2012).

244. *Id.*

245. See *Demographics*, U.S. ENVTL. PROT. AGENCY, <http://www.epa.gov/oecaagct/ag101/demographics.html> (last updated April 15, 2013) (classifying 87.3 percent of all farms as “small”, based on annual revenue).

246. *Farm Household Well-being: Glossary*, ECON. RESEARCH SERV., U.S. DEP’T OF AGRIC., <http://www.ers.usda.gov/topics/farm-economy/farm-household-well-being/glossary.aspx> (last updated Aug. 27, 2013).

247. *Demographics*, *supra* note 245.

248. *Farm Household Well-being: Glossary*, *supra* note 246.

249. See Hamilton, *supra* note 59, at 133 (“The messages sent by using the value-laden and pejorative label ‘residential/lifestyle farm’ . . . are that these farms are less important than others and the farmers less deserving of attention . . .”).

250. O’DONOGHUE ET AL., *supra* note 242, at 3.

251. *Id.* at 17.

is that “urban food production [often] occurs within informal settings, with little or no monetary exchange, which . . . makes it difficult to track and report.”<sup>252</sup>

If legislators value urban agriculture beyond potential profits and wish to support these efforts with federal funds, they must either protect the current definition of “farm” or carve out exceptions for the urban context. In addition, legislators should consider reclassifying these operations to reflect their mission—“supplemental nutrition” farm, for instance. This designation would stress the social utility of small farms, making it harder to dismiss them as “hobby enterprise[s].”<sup>253</sup>

2. *Defining “Urban.”* Perhaps the central challenge in developing urban agriculture programs is determining what qualifies as “urban,” as opposed to “rural.” This distinction is crucial because most Farm Bill programs that support small-scale agriculture are dedicated to rural areas and exclude urban areas.<sup>254</sup> Common dictionary definitions do not clarify the rural-urban distinction, but avoid the question altogether by defining one area as the opposite of the other.<sup>255</sup> A more illuminating approach is to examine how the Farm Bill defines “rural.”

Farm Bill programs define “rural” as “any area other than . . . any urbanized area,” which reflects the United States Census Bureau definition of “rural” as any area “not included within an urban area.”<sup>256</sup> The Census Bureau defines “urban area” as a “densely settled core of census tracts,” and includes adjacent areas “with low population density [that] link outlying settled territory with the densely settled core.”<sup>257</sup> The Census Bureau then distinguishes between “urbanized areas,” which contain at

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252. Peleg Kremer, Tracy L. DeLiberty & Yda Schreuder, *Defining Local Food Systems*, in LOCAL FOOD SYSTEMS IN OLD INDUSTRIAL REGIONS 147, 150 (Neil Reid et al. eds., 2012) (internal citation omitted).

253. O’DONOGHUE ET AL., *supra* note 242, at 3.

254. *See supra* Part II.B.1.

255. *E.g.*, *Rural Definition*, OXFORD ENGLISH DICTIONARY ONLINE, <http://www.oed.com.proxy.lib.duke.edu/view/Entry/168989?redirectedFrom=rural> (last visited Jan. 5, 2013) (defining “rural” as “of the country as opposed to a town or city”); *Urban Definition*, OXFORD ENGLISH DICTIONARY ONLINE, <http://www.oed.com.proxy.lib.duke.edu/view/Entry/220386?redirectedFrom=urban> (last visited Jan. 5, 2013) (defining “urban” as “characteristic of, a town or city, . . . as opposed to the countryside”).

256. Food, Energy, and Conservation Act of 2008, Pub. L. No. 110-246, § 6018(a), 122 Stat. 1651, 1931–33 (2008); *Geography: 2010 Census Urban and Rural Classification and Urban Area Criteria*, U.S. CENSUS BUREAU, <http://www.census.gov/geo/reference/urban-rural-2010.html> (last visited Jan. 6, 2013).

257. *Geography: 2010 Census Urban and Rural Classification and Urban Area Criteria*, *supra* note 256.



least 50,000 residents, and “urban clusters,” which contain between 2,500 and 50,000 residents.<sup>258</sup> The Farm Bill adopts the general 50,000 resident maximum for rural areas, but does not use the “urban cluster” designation.<sup>259</sup> Instead, the Farm Bill contains a variety of criteria to distinguish rural and urban areas, including population size, housing density, and proximity to an urbanized area.<sup>260</sup>

These criteria, however, are becoming less useful as the line between traditionally “rural” and “urban” blurs, with many communities demonstrating both rural and urban characteristics.<sup>261</sup> For instance, the proximity distinction may be of limited use because, “with the exception of the Midwest, all agriculture is now considered to be urban or urban-influenced, meaning that it occurs in or near urban metropolitan counties.”<sup>262</sup> Moreover, Congress is plainly struggling to determine what it is to be “rural.” Not only did Congress request a report evaluating possible definitions for “rural,”<sup>263</sup> but the Secretary of Agriculture also has discretion to classify an area as “urban,” even if it technically qualifies as rural based on population and housing density,<sup>264</sup> and vice versa.<sup>265</sup> These uncertainties encourage the conclusion that, within the Farm Bill, “rural in character”<sup>266</sup> is a “subjective state of mind” rather than a formal designation.<sup>267</sup>

Distinguishing between rural and urban areas is an ongoing challenge. It is important to recognize that Farm Bill programs intended to promote urban agriculture cannot adequately define “urban” simply in terms of not being rural. Similarly, urban agriculture programs cannot fully adopt the Census Bureau’s definition; otherwise, the “urban cluster” designation would allow areas with 2,500 to 50,000 residents to qualify as both rural

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258. *Id.*

259. *See* Food, Energy, and Conservation Act of 2008, Pub. L. No. 110-246, § 6018(a), 122 Stat. 1651, 1931–33 (2008).

260. *Id.*

261. IMHOFF, *supra* note 13, at 178 (“Current Farm Bill definitions around rural development pose funding limitations for counties that have both dense urban populations as well as a balanced rural sector capable of diversified local food production.”).

262. BROWN & CARTER, *supra* note 44, at 3.

263. Food, Energy, and Conservation Act of 2008, Pub. L. No. 110-246, § 6018(b)(1), (b)(3), 122 Stat. 1651, 1933–34 (2008) (requesting a report that “assesses the various definitions of ‘rural’ and ‘rural area’ . . . [and] make[s] recommendations for ways to better target funds”).

264. 7 U.S.C. § 1991(a)(13)(F)(ii) (2012).

265. 7 U.S.C. § 1991(a)(13)(D)(ii).

266. 7 U.S.C. § 1991(a)(13)(D).

267. Louise Reynnells & Patricia LaCaille Johnson, *What Is Rural?*, RURAL INFO. CTR., NAT’L AGRIC. LIBRARY, U.S. DEP’T OF AGRIC., [http://www.nal.usda.gov/ric/ricpubs/what\\_is\\_rural.shtml](http://www.nal.usda.gov/ric/ricpubs/what_is_rural.shtml) (last updated July 16, 2013).

and urban for Farm Bill purposes. However the legislature resolves this problem, two trends are clear: the vast majority of Americans live in urban areas, per the Census Bureau definition,<sup>268</sup> and many rural areas are becoming urbanized. Consequently, future urban agriculture programs may be overwhelmed with demand and legislators must narrow program eligibility to maximize limited resources.

3. *Defining “Local.”* Urban agriculture currently finds support in Farm Bill programs that promote local food systems.<sup>269</sup> Because urban agriculture is community-based, it is inherently a local endeavor. Defining “local,” therefore, may help determine what qualifies as “urban” in the Farm Bill context. Unfortunately, there is no academic consensus on the definition of “local.”<sup>270</sup> But there are many approaches to determining what qualifies as local, such as defining a radius from the food’s origin, using a state’s political boundaries,<sup>271</sup> or using a “foodshed” approach, which allows social relationships to dictate what is local.<sup>272</sup>

The Farm Bill currently employs arbitrary distinctions to define local: “less than 400 miles from the origin of the product; or . . . the State in which the product is produced.”<sup>273</sup> While these firm guidelines provide certainty, they were developed for low-density rural communities and may be overbroad in the urban context. Conversely, a very strict definition may hamper urban food systems because distributors or producers may be hundreds of miles away, in another state, or in another country. For example, Detroit’s Eastern Market attracts vendors from both Ohio and Canada.<sup>274</sup> By imposing arbitrary boundaries, the Farm Bill may restructure these relationships and thus undermine a central tenet of urban agriculture: community decision-making.<sup>275</sup>

Of the various definitions of local, the foodshed approach aligns best with the goals of urban agriculture. Generally, foodsheds “describe the flow of food from producer to consumer” and represent a “geographic area

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268. *Geography: 2010 Census Urban and Rural Classification and Urban Area Criteria*, *supra* note 256 (reporting that 80.7 percent of Americans live in urban areas).

269. *See supra* Part III.A.

270. Jeanette Eckert & Sujata Shetty, *Urban Food Deserts: Policy Issues, Access, and Planning for a Community Food System*, in *LOCAL FOOD SYSTEMS IN OLD INDUSTRIAL REGIONS* 115, 123 (Neil Reid et al. eds., 2012).

271. Food, Energy, and Conservation Act of 2008, Pub. L. No. 110-246, § 6015, 122 Stat. 1651, 1929 (2008).

272. Kremer et al., *supra* note 252, at 147–48.

273. § 6015, 122 Stat. at 1929.

274. DETROIT E. MKT., <http://www.detroiteasternmarket.com/> (last visited Jan. 6, 2013).

275. *See supra* text accompanying note 112.

that supplies” food to a community.<sup>276</sup> Legislators could define a foodshed as both a flexible radius around a city and a network of community relationships, or “common food and agricultural interests [connected] through commerce.”<sup>277</sup> This definition allows communities to create complex urban food systems with some geographic limits.<sup>278</sup> Although this adaptable definition of “local” creates some uncertainty, the benefits of allowing an urban community to determine the shape of its food system may outweigh any detrimental effects of this ambiguity.<sup>279</sup> Moreover, the community relationship requirement may prevent national food corporations from capitalizing on the popularity of the local label, which is a common concern.<sup>280</sup>

4. *Prioritizing Low-Income and Food Insecure Areas.* To maximize the impact of urban agriculture program funding, legislators should target communities that could gain the most from urban agriculture. Although urban agriculture provides many benefits, like personal fulfillment, a core goal of the urban agriculture movement is promoting social equality through improved food access and job creation.<sup>281</sup> Therefore, future Farm Bill programs that support urban agriculture should meet the needs of underserved groups first.

This prioritization is also consistent with many existing Farm Bill programs, including SNAP.<sup>282</sup> Helpfully, SNAP provides characteristics of an “underserved community” that align with the goals of urban agriculture.<sup>283</sup> These characteristics include (1) “limited access to affordable, healthy foods,” (2) high rates of disease-related illnesses, (3) high rates of food insecurity, and (4) “persistent poverty.”<sup>284</sup> Legislators should consider adopting these criteria or using them as guidelines. In particular, “limited access to food” is more accurate, and less pejorative,

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276. *Local Foodshed Mapping Tool for New York State*, DEP’T OF CROP & SOIL SCI., CORNELL UNIV., <http://css.cals.cornell.edu/cals/css/extension/foodshed-mapping.cfm#foodshed> (last visited Jan. 7, 2013).

277. *Foodshed*, FIELD GUIDE TO THE NEW AM. FOODSHED, <http://foodshedguide.org/foodshed/> (last visited Jan. 11, 2013).

278. See NEW HAVEN FOOD POLICY COUNCIL, *supra* note 5, at 24 (defining “food system”).

279. Kremer et al., *supra* note 252, at 164–65.

280. James T. Hathaway, *Benchmarking Local Food Systems in Older Industrial Regions*, in LOCAL FOOD SYSTEMS IN OLD INDUSTRIAL REGIONS 93, 108 (Neil Reid et al. eds., 2012).

281. See *supra* text accompanying note 20.

282. E.g., 7 U.S.C. § 1985(c)(1)(B) (2012) (prioritizing “beginning farmer[s] or rancher[s]” and “socially disadvantaged farmer[s] or rancher[s]”); Food, Energy, and Conservation Act of 2008, Pub. L. No. 110-246, §§ 14001–13, 122 Stat. 1651, 2204–15 (2008).

283. 7 U.S.C. § 2034(a)(3) (2012).

284. *Id.*

terminology than “food desert.” While “food desert” is a term of art,<sup>285</sup> it has adverse rhetorical value. The label “food desert” may demoralize city residents and erroneously suggest to outsiders that a city is barren. For example, parts of Detroit face serious food access problems—both spatial and monetary—but the city also houses over one hundred grocery stores and dozens of specialty stores, in addition to urban agriculture efforts.<sup>286</sup> Like the term “lifestyle/residential” farm, “food desert” does not accurately represent the complexity of urban food systems.

## CONCLUSION

The rise of urban agriculture in the United States signifies a collective demand for more choice in the food we eat and more influence in shaping our food system. For rust belt cities like Detroit, urban agriculture is also a tool for developing a fruitful economy based on community needs. While the Farm Bill was not created to promote urban agriculture, it was similarly not intended to promote industrialized agriculture or, for that matter, to exist beyond assisting small farmers during the Great Depression. The Farm Bill has grown into the premier United States agricultural legislation because it evolves to meet America’s food needs.

This Note presents a scheme for promoting urban agriculture through the Farm Bill. In the short-term, Congress should expand existing Farm Bill programs that promote urban agriculture. But to maximize support for urban agriculture, Congress should create a Title that is dedicated to this cause. Before taking this step, however, Congress must define key terms so that urban agriculture can integrate into the Farm Bill. Although ambiguities are inherent in the terms “farm”, “urban”, and “local”, this Note demonstrates that more precise definitions are possible. Defining these terms is a fundamental step toward creating federal urban agriculture legislation. The next steps are crafting programs that are flexible enough to meet community needs and determining how much federal support these programs require. To assist legislators in this task, future research should quantify the economic and non-economic costs and benefits of urban agriculture at different scales and in different locations, as well as the structure, distribution, and viability of current funding sources. The urban agriculture movement is surviving on a shoestring budget, and Farm Bill resources may allow it to thrive.

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285. See generally U.S. DEP’T OF AGRIC., *supra* note 81.

286. Danny Devries & Robbie Linn, *Food for Thought: Addressing Detroit’s Food Desert Myth*, DATA DRIVEN DETROIT (Sept. 8, 2011), <http://newsletter.datadrivendetroit.org/2011/09/08/food-for-thought-addressing-detroit’s-food-desert-myth/>.