

**In the United States Court of Appeals  
for the Eighth Circuit**

Nos. 02-2366, 02-2588,  
02-2644, 02-2646

---

SOUTH DAKOTA FARM BUREAU, INC., *et al.*,

Plaintiffs/Appellees,

v.

JOYCE HAZELTINE, in her official capacity as Secretary of  
State of South Dakota; MARK W. BARNETT, in his official  
capacity as Attorney General of South Dakota,

Defendants/Appellants,

DAKOTA RURAL ACTION; SOUTH DAKOTA  
RESOURCES COALITION,

Intervenors-Defendant-  
Appellants.

---

**Motion of *Amici Curiae* National Farmers Union, Minnesota  
Farmers Union, South Dakota Farmers Union, Iowa Farmers  
Union, North Dakota Farmers Union, Land Stewardship  
Project, Iowa Citizens for Community Improvement,  
Missouri Rural Crisis Center, Illinois Stewardship Alliance,  
Citizens Action Coalition of Indiana, Campaign for Family  
Farms, and Western Organization of Resource Councils in  
Support of Intervenors-Defendants-Appellants Dakota Rural  
Action's and South Dakota Resources Coalition's Petition for  
Rehearing *En Banc***

---

Susan E. Stokes  
David R. Moeller  
FARMERS' LEGAL ACTION GROUP, INC.  
1301 Minnesota Building  
46 East Fourth Street  
St. Paul, Minnesota 55101  
Telephone: 651-223-5400  
Facsimile: 651-223-5335

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, National Farmers Union, Minnesota Farmers Union, South Dakota Farmers Union, Iowa Farmers Union, North Dakota Farmers Union, Land Stewardship Project, Iowa Citizens for Community Improvement, Missouri Rural Crisis Center, Illinois Stewardship Alliance, Citizens Action Coalition of Indiana, Campaign for Family Farms, and Western Organization of Resources Councils (collectively, “Proposed *Amici Curiae*”) respectfully request the Court’s permission to submit a brief as *amicus curiae* in this action in support of Intervenors-Defendants-Appellants Dakota Rural Action’s and South Dakota Resources Coalition’s Petition for Rehearing *En Banc*.<sup>1</sup> In addition, given the potential for broader affect beyond this case, Proposed *Amici Curiae* requests permission to file an *amicus* brief of up to fifteen (15) pages in length. Proposed *Amici Curiae*’s brief is submitted herewith.

### **PROPOSED AMICI CURIAE**

The National Farmers Union (NFU), officially called the Farmers Educational and Cooperative Union of America, was founded in 1902. NFU is a general farm organization with a membership of nearly 300,000 farm and ranch families throughout the United States. NFU is a federation, with the presidents of

---

<sup>1</sup> A similar motion was recently granted by this Court. See Order of Aug. 28, 2003 granting American Rivers’ Motion (Nos. 02-2133/2144/2185/2187/2191/2305).

the 23 state and one regional (covering three states) Farmers Union organizations serving as its board of directors. For nearly 100 years, NFU's primary goal has been to sustain and strengthen family farm and ranch agriculture. NFU believes that a vibrant agricultural sector is the foundation for strong farm and ranch families and thriving rural communities. These vibrant rural communities, in turn, are vital to the health and economic well-being of the entire U.S. economy. Family farm agricultural production is an important part of America's heritage.

Minnesota Farmers Union (MFU) is a non-profit membership-based organization with approximately 23,400 members, about 95% of whom are Minnesota farmers. Founded in 1929, MFU works to protect and enhance the economic interests and quality of life of family farmers and ranchers in rural communities. MFU has lobbied at the Minnesota legislature to protect Minnesota's corporate farming law, Minn. Stat. § 500.24, which restricts non-family corporations from farming in Minnesota. This law is important to MFU's family farmer members who endeavor to sustain a strong economy and healthy environment in rural Minnesota.

The South Dakota Farmers Union (SDFU) is a grass roots membership organization that serves the needs of rural South Dakota. SDFU has been the voice of the family farm for nearly a century. Its primary goal is to increase farm income. SDFU has done this-and will continue to do so in the future-by being the

farmers’ “hired hand” in the halls of state and federal government. Building on a foundation of education, legislation and cooperation, SDFU has provided guidance and support for farmers, small businesses and rural communities throughout the state.

Iowa Farmers Union (IFU) is a non-profit advocacy group representing family farmers across the state. The mission of the Iowa Farmers Union is to promote a viable system of sustainable agriculture and high quality of life in rural communities through education of farmers, rural residents, and urban consumers; cooperation among farmers; and community activism. IFU has worked to preserve Iowa’s restrictions on corporate ownership of farmland and livestock including by joining with other farm organizations in submitting *amicus curiae* briefs in support of Iowa’s corporate farming law before the United States District Court for the Southern District of Iowa and this Court. *See Smithfield Foods, Inc. v. Miller*, 241 F. Supp. 2d 978 (S.D. Iowa. 2003), *appeal pending* No. 03-1411 (8th Cir.).

North Dakota Farmers Union (NDFU) is a non-profit organization committed to providing effective grassroots leadership in rural America and to significantly increase net farm income, improve the quality of rural life and increase North Dakota’s rural population so that family farmers and rural communities can thrive and prosper.

The Land Stewardship Project (LSP) is a membership organization founded in 1982 and based in Minnesota whose mission is to foster an ethic of stewardship for farmland, promote sustainable agriculture, and develop sustainable communities. LSP seeks to develop and implement farm policies, farming practices, and marketing systems that help family farms and rural communities to thrive. Hundreds of LSP's members are family farmers, and raising crops and livestock is an important element of the economies and environment of Minnesota's rural communities where these members live. LSP members believe that Minnesota's corporate farming law, Minn. Stat. § 500.24, which prohibits non-family corporations from farming in Minnesota, is an important part of Minnesota policy that supports family farming and may be put in question by the ruling in this case.

Iowa Citizens for Community Improvement (Iowa CCI) is a membership based, multi-issue community organization. Iowa CCI works in both rural and urban areas to achieve community improvement and work for social, economic and environmental justice. Iowa CCI has more than 1,800 members statewide including hundreds of members who are family farmers. The organization holds public and private institutions accountable by using community organizing strategies emphasizing empowerment, leadership development, and issue development. Iowa CCI has worked to protect Iowa's restrictions on corporate farming including

joining with other farm organizations in submitting an *amicus curiae* brief in support of Iowa's corporate farming law before this Court. *See Smithfield Foods, Inc. v. Miller*, No. 03-1411 (8th Cir.).

The Missouri Rural Crisis Center (MRCC) is a non-profit organization founded in 1985 by Missouri farmers and rural citizens with more than 5,500 member families statewide today. MRCC's mission is to preserve family farms, promote stewardship of the land and environmental integrity, and to strive for economic and social justice among diverse groups, both rural and urban.

The Illinois Stewardship Alliance (ISA) is a 28-year-old statewide membership organization founded in 1974 as the Illinois South Project. ISA is a citizens' organization that promotes a safe and nutritious food system, family farming, and healthy communities by advocating diverse, humane, socially just and ecologically sustainable production and marketing practices.

Founded in 1974, Citizens Action Coalition of Indiana (CAC) is a not-for-profit coalition of organizations and more than 250,000 individual members throughout the State of Indiana. For over two decades, CAC has worked to empower citizens and promote economic and environmental justice, including promotion of family farm-based agriculture.

The Campaign for Family Farms (CFF) is an unincorporated association of family farm and community membership organizations including LSP, Iowa CCI,

MRCC, ISA, and CAC. CFF has worked to enact a federal ban on packer livestock ownership. Due in large part to CFF's efforts, a federal packer ban amendment passed the United States Senate in 2001 with 51 votes and in 2002 with 53 votes. CFF also has sought to protect hog farmers who signed petitions calling for a referendum to end the mandatory pork checkoff program from having their names and addresses disclosed to corporate hog interests, which prevailed in this Court. *See Campaign for Family Farms v. Glickman*, 200 F.3d 1180 (8th Cir. 2000). In addition, CFF, on behalf of independent hog farmers nationwide, has brought a constitutional claim to end the mandatory pork checkoff program, which prevailed in United States District Court. *See Michigan Pork Producers v. Campaign for Family Farms*, 229 F. Supp. 2d 772 (W.D. Mich. 2002), *appeal pending* Nos. 02-2337, 02-2338 (6th Cir.).

The Western Organization of Resource Councils (WORC) is a network of grassroots organizations from seven states that includes 8,250 members and 49 local community groups. WORC's seven state organizations are: the Dakota Resource Council (North Dakota), Dakota Rural Action<sup>2</sup> (South Dakota), the Idaho Rural Council (Idaho), the Northern Plains Resource Council (Montana), Oregon

---

<sup>2</sup> Dakota Rural Action is an Intervenor-Defendant-Appellant in this case. Dakota Rural Action and its counsel did not author in whole or in part this brief, and

Rural Action (Oregon), the Powder River Basin Resource Council (Wyoming), and the Western Colorado Congress (Colorado). In addition, WORC, on behalf of independent cattle farmers and ranchers nationwide, has brought a constitutional claim to end the mandatory beef checkoff program, which prevailed in this Court. *See Livestock Mktg. Ass'n v. USDA*, 335 F.3d 711 (8th Cir. S.D. 2003), *petition for rehearing en banc filed* (8th Cir. Aug. 22, 2003).

### **INTEREST OF PROPOSED AMICI CURIAE**

These organizations and their members believe in preserving the family farm system of agriculture. This Court's decision striking down under the dormant Commerce Clause the State of South Dakota's Amendment E that restricts corporations from farming or having an interest in farmland (with certain exceptions), undermines the family farm to the detriment of rural communities. For-profit corporations are creatures of state laws designed to allocate capital in what is deemed the most "efficient" manner without regard to communities, neighborhoods, and families. In contrast, family farms, and the families that operate them, strive for different goals: building sustainable rural communities, promoting responsible stewardship of soil, water, and other resources, and ensuring

---

Dakota Rural Action did not make a monetary contribution to the preparation or submission of this brief.

through family ownership that land can be farmed by future generations. *See, e.g.*, Marty Strange, *Family Farming: A New Economic Vision* at 32-42 (1988).

Proposed *Amici Curiae* believe that allowing corporations to enter into farming and eventually control agriculture in South Dakota and potentially in other states would undermine family farms and the rural communities they support. Proposed *Amici Curiae* have advocated for many years to preserve and strengthen the family farm system of agriculture.

If this Court's decision is not reversed, it could open the floodgates to challenges of state laws that restrict to varying degrees corporations from engaging in farming and owning agriculture land in eight other states. *See* Iowa Code §§ 9H.1 to 9H.15; Kan. Stat. §§ 17-5902 to 17.5904; Minn. Stat. § 500.24; Mo. Stat. § 350.015;<sup>3</sup> Neb. Const. Art. 12, § 8;<sup>4</sup> N.D. Cent. Code §§ 10-06.1-01 to 10.06.1-27;<sup>5</sup>

---

<sup>3</sup> The Missouri Supreme Court has noted Missouri's restriction on corporate ownership of farmland serves a legitimate state interest and without the restriction the legislature could not protect traditional farming communities. *State ex rel. Webster v. Lehndorff Geneva, Inc.*, 744 S.W.2d 801 (Mo. 1988).

<sup>4</sup> This Court has denied an Equal Protection Clause challenge to Nebraska Initiative 300 (after which South Dakota's Amendment E was patterned) that prohibits non-family farm corporations from owning and operating Nebraska farm and ranch land. *MSM Farms, Inc. v. Spire*, 927 F.2d 330 (8th Cir. 1991). This Court held that Nebraska's Initiative 300 implemented a legitimate state interest because: "The people of Nebraska have made a reasonable judgment that prohibiting non-family corporate farming serves the public interest in preserving an agriculture where families own and farm the land. It is not for the courts to second-guess the wisdom of this judgment." *Id.* at 335.

Okla. Const. Art. XXII, § 2; and Wis. Stat. § 182.001. In addition, South Dakota's legislature enacted the Family Farm Act of 1974, which may be challenged under this Court's decision in the instant case. *See* S.D. Codified Laws §§ 47-9A-1 to 47-9A-23. These laws are important and necessary for a number of reasons, but the overarching reason--the protection of family farms--was declared succinctly by the Minnesota legislature in the purpose section of Minnesota's corporate farming law:

The legislature finds that it is in the interests of the state to encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family.

Minn. Stat. § 500.24, subd. 1. The Proposed *Amici Curiae* have sought to enact and protect state laws that support family farmers and therefore have an interest in seeking that the full Eighth Circuit Court of Appeals review *en banc* and reverse the decision of the panel of this Court.

For the foregoing reasons, Proposed *Amici Curiae* respectfully request that their Motion for Leave to File Brief as *Amici Curiae* be granted.

Dated: September 16, 2003.

Respectfully submitted,

---

<sup>5</sup> The United States Supreme Court ruled that the State of North Dakota statute barring all corporations, except cooperatives, from owning farmland is an appropriate application of a state policy against the concentration of farming lands in corporate ownership. *Asbury Hospital v. Cass*, 326 U.S. 207, 214-15 (1945).

s/ Susan E. Stokes

---

Susan E. Stokes

David R. Moeller

FARMERS' LEGAL ACTION GROUP, INC.

1301 Minnesota Building

46 East Fourth Street

St. Paul, Minnesota 55101

Telephone: 651-223-5400

Facsimile: 651-223-5335

Counsel for Proposed *Amici Curiae*

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eighth Circuit Rule 26.1A, National Farmers Union, Minnesota Farmers Union, South Dakota Farmers Union, Iowa Farmers Union, North Dakota Farmers Union, Land Stewardship Project, Iowa Citizens for Community Improvement, Missouri Rural Crisis Center, Illinois Stewardship Alliance, Citizens Action Coalition of Indiana, and Western Organization of Resource Councils are all not-for-profit corporations. The Campaign for Family Farms is an unincorporated association.

s/ Susan E. Stokes

SUSAN E. STOKES

Dated: September 16, 2003

## CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2003, I served the foregoing Motion of National Farmers Union, Minnesota Farmers Union, South Dakota Farmers Union, Iowa Farmers Union, North Dakota Farmers Union, Land Stewardship Project, Iowa Citizens for Community Improvement, Missouri Rural Crisis Center, Illinois Stewardship Alliance, Citizens Action Coalition of Indiana, Campaign for Family Farms, and Western Organization of Resource Councils Motion for Leave to File Brief as *Amici Curiae* in support of Intervenors-Defendants-Appellants Dakota Rural Action's and South Dakota Resources Coalition's Petition for Rehearing *En Banc* by causing two copies to be mailed to:

Randy C. Canney  
1733 High Street  
Denver, CO 80218

John H. Davidson  
USD Law School  
414 E Clark St., Rm. 215  
Vermillion, SD 57069

Diane Best  
Roxanne Giedd  
Office of the Attorney General  
State of South Dakota  
500 E. Capitol Avenue  
Pierre, SD 57501-5070

Thomas Tonner  
Tonner, Tobin & King LLP  
P.O. Box 1456  
Aberdeen, SD 57402-1456

Neil Fulton  
David A Gerdes  
Attorneys at Law  
P.O. Box 160  
Pierre, SD 57501-0160

Richard O. Gregerson  
Woods, Fuller, Shultz & Smith P.C.  
300 South Phillips Ave., Suite 300  
Post Office Box 5027  
Sioux Falls, SD 57117-5027

David Day  
315 Forest Avenue  
Vermillion, SD 57069

William R. Barger  
Assistant Attorney General  
State of Nebraska  
2115 State Capitol Bldg.  
Lincoln, NE 68509-8920

Robert V. Broom  
Broom, Johnson & Clarkson  
310 Flatiron Bldg.  
1722 St. Mary's Ave.  
Omaha, NE 68102

John J. Rademacher  
Michael J. Stientjes  
American Farm Bureau Federation  
225 Touhy Ave.  
Park Ridge, IL 60068

R. Alan Peterson  
Heath R. Oberloh  
Attorneys at Law  
P.O. Box 1920  
Sioux Falls, SD 57101-1920

David P. Iverson  
Assistant Attorney General  
State of Minnesota  
445 Minnesota Street, Suite 900  
St. Paul, MN 55101-2127

Thomas Alan Linzey  
Community Environmental Legal  
Defense Fund, Inc.  
2859 Scotland Road  
Chambersburg, PA 17201

s/ Susan E. Stokes  
SUSAN E. STOKES