



Reinvent the Committee System of Local Agriculture Governance¹

Change is needed in the elected farmer-committees system (also called “county committees”) due to their failures, including: racism and discrimination,² inexpert administration,³ and disinterest among farmers.⁴ Recent history of congressional responses to county committee failures⁵ and a 2023 USDA Equity Commission Interim Report⁶ further support our recommendation to reinvent the county committee system.

BACKGROUND

Housed within USDA’s Farm Service Agency (FSA),⁷ these county committees are made up of farmers who are elected to their position by other farmers,⁸ for the purpose of overseeing the local implementation of various USDA programs.⁹ They have been around since the 1930s¹⁰ and USDA is empowered to use them for almost any activity for which USDA has statutory authority.¹¹ USDA is vague about the exact duties of committees, but acknowledges their varied roles, noting that they “are a critical component of the day-to-day operations of FSA and

QUICK SUMMARY

- County committees have a history of racism and inept management, lack representation, and are not well trusted.
- Therefore, the county committee system should be dismantled.
- However, because the committees are responsible for important tasks required to advance agriculture, we recommend a study to determine interim steps and, ultimately, how to effectively eliminate county committees.
- In the meantime, the members of the committees should be appointed to include diverse representation, including expertise, industry, race, ethnicity, gender, etc.

¹ Some of the language in this brief is taken directly from Joshua Ulan Galperin, *Life of Administrative Democracy*, 108 GEO. L. J. 1213 (2020) with permission of the author. Quotes have been omitted for simplicity and tidiness.

² Joshua Ulan Galperin, *Life of Administrative Democracy*, 108 GEO. L. J. 1213, 1242–47 (2020).

³ *Id.* at 1247–49.

⁴ *Id.* at 1249–50.

⁵ *Id.* at 1250–52.

⁶ USDA EQUITY COMMISSION, USDA EQUITY COMMISSION INTERIM REPORT 2023: RECOMMENDATIONS MADE TO THE US DEPARTMENT OF AGRICULTURE TO ADVANCE EQUITY FOR ALL 24–26, <https://www.usda.gov/sites/default/files/documents/usda-ec-interim-report-2023.pdf>.

⁷ Galperin, *supra* note 2 at 1219.

⁸ *Id.* at 1220.

⁹ *Id.* at 1219.

¹⁰ *Id.* at 1222.

¹¹ *Id.* at 1224.

allow grassroots input and local administration of federal farm programs.”¹² As elected administrators, county committees are unique within the entire federal bureaucracy.¹³

STRUCTURE AND POWER OF COUNTY COMMITTEES

There are more than 7,700 elected farmers sitting on more than 2,200 county committees.¹⁴ Each county committee has 3 to 5 elected members.¹⁵ These members are elected by the farmers within the same jurisdiction.¹⁶ Only the farmers who are involved in USDA programs are eligible to vote in county committee elections.¹⁷ Elected members serve three-year terms, and there is a limit of three consecutive terms.¹⁸

Congress explicitly permits the Secretary of Agriculture to use these committees to help carry out any program over which the Secretary has authority.¹⁹ Some example programs are farm safety-net, credit, and environmental-conservation.²⁰ These local programs rely on both state-level committees, which are appointed by the Secretary and the elected county committees, which are below the state-level committees.²¹

FAILURES OF COUNTY COMMITTEES

There are many failures of the elected farmer-committees. This brief summarizes four key issues: 1. racism and discrimination; 2. inexpert administration; 3. farmer disinterest; and 4. Congressional responses that expose their failures. These failures further support our recommendation to dismantle them.

1. Racism and Discrimination

The first failures are racism and discrimination,²² fatal flaws that have been documented in landmark court proceedings,²³ government publications,²⁴ popular

¹² FARM SERV. AGENCY, County Committee Elections—2019: fact sheet (2019), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/2019/county_committee_elections_fact_sheet.pdf [<https://perma.cc/E4XM-VDES>]; see also FARM SERV. AGENCY, County Committee Elections 2022, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/fsa-coc_fact_sheet_county_committee_elections_june2022.pdf (same).

¹³ Galperin, *supra* note 2 at 1232.

¹⁴ *Id.* at 1255.

¹⁵ *Id.* at 1220.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 1219.

²⁰ *Id.*

²¹ *Id.* at 1219–20. Although the term “county” committees are used throughout this brief, they include “area committees” which follow the boundaries of more than one county or carve out a smaller jurisdiction within a county.

²² See generally *id.* at 1241–47.

²³ See *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999).

²⁴ See U.S. DEP’T OF AGRIC., CIV. RIGHTS ACTION TEAM, CIVIL RIGHTS AT THE UNITED STATES DEPARTMENT OF AGRICULTURE (1997), <https://acresofancestry.org/wp-content/uploads/2021/01/CRAT-Report-.pdf>.



media,²⁵ and legal scholarship.²⁶ An unsigned Columbia Law Review note from 1967²⁷ describes the “whole-sale exclusion of Negroes from the processes of government.”²⁸ In addition, in the Southeast, agricultural governance was “under virtually all-white control—even where the people it affect[ed] [we]re mostly Negro.”²⁹ Although contemporary federal reports gave a favorable overall review of the farmer-committee system, they also identified “unwholesome situations” without specifically articulating their nature.³⁰ Notably, a dissent to one of the government reports damningly revealed that “in all of the county committees of the south there has never been, as far as I can discover, a single Negro member.”³¹

In addition, in 1965, the United States Commission on Civil Rights also made damning conclusions, “[t]he virtual exclusion of Negroes . . . poses one of the most serious problems with which the Department of Agriculture should be concerned, particularly because this exclusion is compounded by the discriminatory operation of the county committee elections.”³² In this report, the section on elected farmer committees pointed out that the system marginalized Black farmers, isolated them, and limited them to subservient agricultural roles.³³ The same report documented that federal benefits were also inequitably distributed.³⁴ These problems remain.³⁵ Very recently, the USDA Equity Commission has issued a report that acknowledged the inequities and recommend better training, representation, and accountability.³⁶ These recommendations for an official government advisory committee are less dramatic than abolishment, but they nonetheless underscore the intractable injustices.

2. Inexpert Administration

The elected farmer committees have authority over many important and substantial programs. However, they do not effectively administer these programs.³⁷ Expertise is one of the justifications for the administrative state, but the farmer-committee structure rests on popularity, not expertise.³⁸ In addition, their competence is demonstrably lacking, as they have not provided effective or efficient administration over nearly a century of existence.³⁹ The records of lawsuits involving their various omissions and errors are further evidence of their lack of managerial expertise or

²⁵ See Vann R. Newkirk II, *The Great Land Robbery*, THE ATLANTIC (Sep. 2019), <https://www.theatlantic.com/magazine/archive/2019/09/this-land-was-our-land/594742/>.

²⁶ Galperin, *supra* note 2 at 1243 n.241, 1243.

²⁷ *Id.* at 1243 n.241.

²⁸ *Id.* at 1243.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 1243–44.

³² *Id.* at 1245.

³³ *Id.* at 1244.

³⁴ *Id.*

³⁵ See generally *id.* at 1241–47.

³⁶ USDA EQUITY COMMISSION *supra* note 6 at 24–26.

³⁷ *Id.* at 1247.

³⁸ *Id.*

³⁹ *Id.* at 1248.

capacity.⁴⁰ Although understandable, as their occupation is farming, not federal program administration,⁴¹ their inept administration should not be tolerated.

3. Farmer Disinterest

Many farmers who are eligible to participate in county committees are disinterested in them.⁴² They also lack awareness or excitement about the committees, and even when they are aware, they are only vaguely so, tending to underestimate the authority of committees.⁴³ Disinterest in serving on the committees coupled with low turnout for elections⁴⁴ are fatal to the functioning of the committees. This failure demonstrates the flaw in the promise of local electoral administration.⁴⁵ Thus, it undermines legitimacy because small blocs with heightened interest are empowered compared to the larger public.⁴⁶

4. Congressional Responses to Electoral Failures.

Although Congress has not made dramatic moves to strip the farmer-committees of their power or to explicitly challenge their electoral process, there have been two statutory changes that emphasized the county committees' failures.⁴⁷ The first change addressed inept administration.⁴⁸ In 1994, USDA was restructured, including the creation of a National Appeals Division (NAD).⁴⁹ Through the NAD, aggrieved farmers can seek a review of county committee decisions.⁵⁰ This change indicated the need for oversight over the inept farmer-committees.⁵¹

The second statutory change occurred in 2002.⁵² This change attempted to make the county committee elections more equitable by assuring election access and transparency and allowing secretarial appointment of one underrepresented farmer as a committee member.⁵³ Although imperfect, the change signaled Congressional recognition of the failures of county committees with respect to race, because here, Congress mandated nondiscrimination and transparency, among other changes.⁵⁴

⁴⁰ *Id.* at 1249.

⁴¹ *Id.*

⁴² *See id.*

⁴³ *Id.*

⁴⁴ *Id.* at 1249–50. The 1962 Report found that in 1961, the median voter turnout in elections was only 9 percent. The average was around 23 percent in the same year, and the low from one county was just 4.8 percent.

⁴⁵ *Id.* at 1250.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 1250–51. They can also seek review of other USDA decisions.

⁵¹ *See id.* at 1251.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*



RECOMMENDATIONS⁵⁵

Because the farmer-committees have failed in their roles as both representatives and administrators, Congress should, eventually, dismantle them.⁵⁶ They are ineffectual as administrators because they do not advantage experts or excite voters.⁵⁷ They fail as representatives because election and removal by voters contradict the Supreme Court's interpretation of the constitutional process for appointing and removing administrators.⁵⁸

Because the county committee system is responsible for many important and substantial programs, we do not recommend their immediate repeal, which could have negative consequences. Instead, we recommend the following:

- Congress should mandate a study of county committee operations in each jurisdiction to fully understand the role the committees play in administering specific farm programs, including the source of legal authority for each of the committee responsibilities, and what other units of USDA could effectively administer each program in place of the committees.
- Congress should impose a strict timeline on the study to assure that USDA does not drag its feet and delay much needed progress. We recommend a three-year timeline, which would provide enough time to gather trustworthy information while also concluding prior to the next farm bill.
- Congress should mandate that USDA invite diverse parties, including external parties, to support the study, as well as, in particular, the USDA Equity Commission.
- In addition to conducting this study, Congress, in the upcoming farm bill, should shift the county committees from an elected to a more traditional appointed structure to cure the committees' constitutional and social failures. Congress should amend the statutory language to require the secretarial appointment of 3 to 5 committee members that reflect diversity among farmers. Congress should also mandate the appointments of one non-farm expert on the committee, rotating experts in public health, nutrition, labor, environment, etc.⁵⁹

CONCLUSION

Changes to the county committees are long overdue. Their racial, electoral, managerial, and constitutional failures will continue to persist if they are not repealed. At the same time, the county committee system plays an important role in federal farm programs, but the exact nature of that role is murky and variable from committee to committee. And immediate repeal would jeopardize effective

⁵⁵ The recommendations in this section are sourced from: FARM BILL LAW ENTERPRISE, EQUITY IN AGRICULTURAL PRODUCTION & GOVERNANCE 57–61, <https://www.farmbilllaw.org/wp-content/uploads/2022/10/Equity-Report.pdf>.

⁵⁶ See *id.* at 1256.

⁵⁷ *Id.*

⁵⁸ Joshua Ulan Galperin, *Death of Administrative Democracy*, 82 U. Pitt. L. Rev. 1, 36-42 (2020).

⁵⁹ *Id.*

implementation of farm programs. For this reason, we have recommended a gradual shift. First, Congress should develop an appointed structure for the committees so they look more like traditional administrative units. Second, Congress should conduct a time-limited study to fully understand how the committees operate. Third, based on the results of that study, Congress should eliminate the committees and transfer their essential programs to other units within USDA or other agencies.

The time is long past to address this broken system, and the next farm bill provides the perfect opportunity.

ACKNOWLEDGEMENTS

This brief was written by Kasama Star (Elisabeth Haub School of Law at Pace University, JD '23) with assistance from Josh Galperin (Assistant Professor of Law, Elisabeth Haub School of Law at Pace University).