An Equal Protection Analysis of the Classifications in Initiative 300: The Family Farm Amendment to the Constitution of the State of Nebraska

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I. INTRODUCTION

Initiative 300,1 also known as "The Family Farm Amendment,"2 was approved as an amendment to the Constitution of the State of Nebraska by a majority of the state's voters on November 2, 1982.3 Initiative 300, evidently4 an agglomeration of so called "family farm acts" found in the laws of eight of Nebraska's neighboring states, in varying degrees restricts corporations and limited partnerships from owning farmland or engaging in farming operations.5 Nebraska is the only state to have grafted such restrictions upon its state constitution.6

1. The full text of Initiative 300, NEB. CONST. art. XII, § 8, cl. 1, is printed in Appendix 1, infra. The amendment continues to be popularly referred to as "Initiative 300," and for purposes of clarity and brevity will be so referred to in this Note.

2. The proponents of Initiative 300 appealed to the emotions of the voters by promoting the idea that the Initiative, if passed, would "Save the Family Farm." That slogan evokes strong images and reactions, especially in the midst of the agricultural midwest. However, as this Note later discusses, the purposes for rising up in arms were not established and the Initiative is not properly drawn to effectuate any perceivable purpose. See infra text accompanying notes 153-78, 194-270.

3. The final vote was close, with 290,377 votes in favor of Initiative 300 and 224,555 votes against. NEB. SEC'Y OF STATE, Abstract of Votes, Gen. Election, Initiative 300, at 45 (November 2, 1982).

4. The birth of Initiative 300 itself was relatively quiet. The major proponents of the Initiative have not acknowledged a specific author or authors of the legislation but hint that the Farmer's Union of Nebraska played a major role in drafting Initiative 300. See Transcript of the Public Hearing on Initiative 300 Before the Committee on Banking, Commerce, and Insurance, 88th Leg., 2d Sess. (Neb. Leg. 1982) (Comments of Senator Burrows) [hereinafter cited as Initiative 300 Hearing]. The opponents have pointed to this lack of specificity as evidence that it was drafted by novices with no legal training, which thereby accounts for the Initiative's inherent ambiguities.


6. Although Oklahoma still has a constitutional amendment strictly prohibiting
The description of Initiative 300, which was placed on the ballot for voter information, summarized the object of the prospective amendment as follows:

INITIATIVE ORDERED BY PETITION OF THE PEOPLE #300

A vote "FOR" will create a constitutional prohibition against further purchase of Nebraska farm and ranch lands by any corporation or syndicate other than a Nebraska family farm corporation.

A vote "AGAINST" will reject such a constitutional restriction on ownership of Nebraska farm and ranch land.


7. To submit the proposed amendment to the ballot for voter decision, the petition had to meet the following requirements of article III, section 2 of the Nebraska State Constitution:

[I]f the petition be for the amendment of the Constitution, the petition therefore shall be signed by ten per cent of such electors. In all cases the electors signing such petition shall be so distributed as to include five per cent of the electors of each of two-fifths of the counties of the state and when thus signed the petition shall be filed with the Secretary of State, who shall submit the measure thus proposed to the electors of the state at the first general election held not less than four months after such petition shall have been filed.

NEB. CONST. art. III, § 2 (excerpt). Additionally, section IV of article III of the Nebraska Constitution requires:

The whole number of votes cast for Governor at the general election next preceding the filing of an initiative or referendum petition shall be the basis on which the number of signatures to such petition shall be computed. The veto power of the Governor shall not extend to measures initiated by or referred to the people. A measure initiated shall become a law or part of the Constitution, as the case may be, when a majority of the votes cast thereon, and not less than thirty-five percent of the total vote cast at the election at which the same was submitted, are cast in favor thereof, and shall take effect upon proclamation by the Governor which shall be made within ten days after the official canvass of such votes.

NEB. CONST. art. III, § 4 (excerpt).

The last day to file the Initiative was July 2, 1982. The total number of votes for Governor in November, 1978, was 492,423, so the total number of signatures required to put Initiative 300 on the ballot was 49,242, which had to be divided among 38 counties (two-fifths of the ninety-three counties in Nebraska). The petitioners submitted 56,636 valid signatures, which constituted representation from each of the ninety-three counties in Nebraska, on March 2, 1982. NEB. SEC'Y OF STATE, Initiative 300 Petition, Public Record, certified March 2, 1982.

8. See infra text accompanying notes 157-63, for import of the word "object."
Shall a constitutional prohibition be created prohibiting ownership of Nebraska farm or ranch land by any corporation, domestic or foreign, which is not a Nebraska family farm corporation, or by any syndicate as defined, with certain exceptions? A family corporation would be defined in part as a corporation in which the majority of the voting stock is held by members of a family related to one another within the fourth degree of kindred or their spouses and where at least one member of the family resides on the land and where none of the family members are nonresident aliens.9

This seemingly simple and straightforward ballot summary disguises what is in fact the longest and perhaps most complicated amendment ever to be added to the Nebraska Constitution.10 Initiative 300 is a maze of undefined terms, ambiguous phraseology, and special exceptions, which collectively defy precise legal interpretation, and frustrate uniform application.

At a minimum, Initiative 300 radically alters traditional rights of land alienation in Nebraska enjoyed by individuals,11 which rights have been extended by statute to corporations and partnerships.12

9. NEB. Sec'y of State, Ballot Sample, General Election (November 2, 1982). It is the contention of many of the opponents of Initiative 300 that many of the voters had not read the proposed amendment in its entirety prior to casting their votes and, therefore, that the voters were not sufficiently informed of the enormous social, economic, and legal ramifications created by the proposal to enable them to make a valid judgment. These contentions were made at a debate in the seminar: "Taxes and Initiative 300," Nebraska Continuing Legal Education (January 21, 1983), as well as by voters after the adoption of the amendment. See NEB. Const. art. XII, § 8, cl. 1; see also infra Appendix 1, to compare the complexity of the amendment with the ballot summary.

10. Even the most adamant proponent of the amendment will generally admit its complexities. Initiative 300 has added over 1,100 words to the Nebraska Constitution, and on November 2, 1982 it became the largest section amended to that constitution. See NEB. Const. art. XII, § 8, cl. 1; see also infra Appendix 1.

11. See Lincoln Dairy Co. v. Finigan, 170 Neb. 777, 104 N.W.2d 227 (1960), where the Nebraska Supreme Court stated:

A citizen clearly has the right to engage in any occupation not detrimental to the public health, safety, and welfare. Measures adopted by the Legislature to protect the public health and secure the public safety and welfare must have some reasonable relation to those proposed ends. A citizen has a constitutional right to own, acquire, and sell property, and if it becomes apparent that the statute, under the guise of a police regulation, does not tend to preserve the public health, safety, or welfare, but tends more to stifle legitimate business by creating a monopoly or trade barrier, it is unconstitutional as an invasion of the property rights of the individual....

Id. at 785, 104 N.W.2d at 233.


Each corporation shall have power:

(4) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, whenever situated;
Initiative 300's restrictions also establish new distinctions as to who will or will not be allowed to actually engage in the businesses of farming and ranching.\textsuperscript{13} Laws which alter and restrict such basic and fundamental interests as the right to own and sell property and the right to pursue a gainful living or employment inherently raise serious questions of federal constitutional dimension. Initiative 300's objectives are effected in large part through the creation of an array of specific classifications,\textsuperscript{14} including: related versus unrelated individuals;\textsuperscript{15} first cousins versus second cousins;\textsuperscript{16} producers of horticultural products\textsuperscript{17} versus producers of nursery plants and sod;\textsuperscript{18} corn producers\textsuperscript{19} versus alfalfa producers;\textsuperscript{20} and pork breeders\textsuperscript{21} versus poultry breeders,\textsuperscript{22} all of which became collectively referred to as the "Battle of the Corporate Pig Versus the Corporate Chicken."\textsuperscript{23}

The most significant of these classifications, which is also the most legally questionable, is the distinction between the nature of activities which may be engaged in by related persons and the ac-

\begin{itemize}
  \item \textsuperscript{5} To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
  \item \textsuperscript{13} NEB. REV. STAT. § 67-306 (1981) states in part:
    \begin{enumerate}
      \item A partnership is an association of persons organized as a separate entity for the purpose of carrying on a business for profit.
    \end{enumerate}
  \item \textsuperscript{14} NEB. REV. STAT. § 67-306 (1981) states in part:
    \begin{enumerate}
      \item Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.
    \end{enumerate}
  \item \textsuperscript{15} NEB. REV. STAT. § 67-306 (1981) states in part:
    \begin{enumerate}
      \item A partnership is an association of persons organized as a separate entity for the purpose of carrying on a business for profit.
    \end{enumerate}
  \item \textsuperscript{16} NEB. REV. STAT. § 67-306 (1981) states in part:
    \begin{enumerate}
      \item Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.
    \end{enumerate}
  \item \textsuperscript{17} NEB. REV. STAT. § 67-306 (1981) states in part:
    \begin{enumerate}
      \item A partnership is an association of persons organized as a separate entity for the purpose of carrying on a business for profit.
    \end{enumerate}
  \item \textsuperscript{18} NEB. REV. STAT. § 67-306 (1981) states in part:
    \begin{enumerate}
      \item Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.
    \end{enumerate}
  \item \textsuperscript{19} NEB. REV. STAT. § 67-306 (1981) states in part:
    \begin{enumerate}
      \item A partnership is an association of persons organized as a separate entity for the purpose of carrying on a business for profit.
    \end{enumerate}
  \item \textsuperscript{20} NEB. REV. STAT. § 67-306 (1981) states in part:
    \begin{enumerate}
      \item Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.
    \end{enumerate}
  \item \textsuperscript{21} NEB. REV. STAT. § 67-306 (1981) states in part:
    \begin{enumerate}
      \item A partnership is an association of persons organized as a separate entity for the purpose of carrying on a business for profit.
    \end{enumerate}
  \item \textsuperscript{22} NEB. REV. STAT. § 67-306 (1981) states in part:
    \begin{enumerate}
      \item Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.
    \end{enumerate}
  \item \textsuperscript{23} This phrase was used primarily by opponents of Initiative 300 to indicate their opinions as to the inadequacy of the various classifications within Initiative 300. The hog industry is now subject to ownership restrictions as it is not included within the exceptions in Initiative 300, while the poultry industry may continue to incorporate without such restrictions. NEB. CONST. art. XII, § 8; see infra Appendix 1. Presumably, because such a large majority of the poultry industry is already in corporate form, there is no hope of or desire to "save" that industry for family farmers. See also Transcript, Panel Discussion, University of Nebraska, Lincoln (Nov. 1982). Moderator: Dr. Ray Arnold, Panelists: Dr. Lloyd Fisher, Professor of Agricultural Economics, University of Nebraska; Neil Oxtont, President of the Nebraska Farmers Union, Proponent of Initiative 300; Glen LeDioyt, President of LeDioyt Land Company, Opponent of Initiative 300; Dr. Nelson Otto, President of Anticipatory Sciences, Inc., Minneapolis, Minnesota at 4.
\end{itemize}
tivities which may be engaged in by unrelated persons.\textsuperscript{24} The Initiative's corporate ownership requirements demand at least a majority control of the voting stock by family members.\textsuperscript{25} Similarly, all partners in a limited partnership must be members of a family.\textsuperscript{26} Groups of unrelated persons are thereby prohibited from participating in limited partnership ventures and are relegated to a minority interest in any corporate venture. These rules would prevent two unrelated neighboring farmers from jointly and equally acquiring or operating additional farmland in a corporate organization while permitting two related farmers, wherever they may live, to utilize a corporate organization to acquire the same land.\textsuperscript{27} Initiative 300 does not contain a special exception allowing comparable corporations for unrelated persons.\textsuperscript{28} Thus, Initiative 300 severely impairs the ability of unrelated persons to participate in farming business ventures, which provide limited liability\textsuperscript{29} and investment tax advantages.

Of nearly equal significance is the questionable classification concerning the limitations on the degree of kindred required to qualify as a member of a family for purposes of the corporate and syndicate ownership rules.\textsuperscript{30} Initiative 300 requires a majority of the voting stock of a family corporation and all interests in a limited partnership to be owned by members of a family related within the fourth degree of kindred, i.e., that relationship no more distant than first cousins.\textsuperscript{31}

\begin{enumerate}
\item \textsuperscript{24} NEB. CONST. art. XII, § 8, cls. 1-1(A); see infra Appendix 1.
\item \textsuperscript{25} Id. See infra text accompanying notes 179-88.
\item \textsuperscript{26} NEB. CONST. art. XII, § 8, cl. 1(A); see infra Appendix 1.
\item \textsuperscript{27} NEB. CONST. art. XII, § 8, cl. 1; see infra Appendix 1.
\item \textsuperscript{28} Id.
\item \textsuperscript{29} Corporations and limited partnerships are traditional vehicles to limit the financial liability of the entity's participants. Stockholders and limited partners, in most cases, are liable for corporate or partnership debts only to the extent of their investment in the entity. Sole proprietors and general partners, on the other hand, are usually personally liable for the total amount of the debt incurred by the entity. See generally D. Brody, The American Legal System: Concepts and Principles 147-206 (1978); H. Lutz, C. Hewett, J. Donnelle, & A. Barnes, Business Law: Principles and Cases 385-744 (4th ed. 1978).
\item \textsuperscript{30} NEB. CONST. art. XII, § 8, cl. 1(A); see infra Appendix 1; see also Consanguinity Chart, infra Appendix 2; infra text accompanying notes 189-90.
\item \textsuperscript{31} NEB. CONST. art. XII, § 8, cl. 1(A); see infra Appendix 1; see also Consanguinity Chart, infra Appendix 2. The states with corporate farming statutes have varying requirements which must be met to be able to conform to the definition of "family," thereby qualifying as a family farm corporation. Iowa basically requires that a majority of stockholders of the family farm corporation be "lineal descendents of grandparents or their spouses." IOWA CODE ANN. § 172C.1(8)(a) (West Supp. 1981-82). Kansas does not state a requirement for family farm corporations. KAN. STAT. ANN. §§ 17-5901 to 17-5902 (1974). Minnesota requires a family farm relationship "within the third degree of kin-
Whether such classifications improperly abridge important existing rights is best determined in conjunction with an analysis under the equal protection clause of the fourteenth amendment. While discussion focusing on the due process and commerce clauses of the fourteenth amendment may also be appropriate,\textsuperscript{32}
this Note will confine its scope to whether Initiative 300 contravenes the equal protection clause. In order to give perspective to such an analysis, Part I traces the history of attempts to adopt family farm legislation in Nebraska and compares the essential elements of Initiative 300 with family farm legislation in other states.

the occupancy of a dwelling unit to members of a single family. Id. at 499. The ordinance contained a very restrictive definition of “family” and thus established certain categories of family members who could live together and declared that others outside of those categories could not dwell in the same unit. Id. The city of East Cleveland convicted a grandmother of a violation of this ordinance for living in a home with two of her grandsons. Justice Powell, writing for the majority, concluded that:

When a city undertakes such intrusive regulation of the family, . . . the usual judicial deference to the family is inappropriate. “This court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.”

Id. Justice Brennan, in a concurring opinion, referred to freedom of personal choices in matters of family life as “fundamental rights.” Id. at 513.

Additionally, the Court developed its rationale concerning “family living arrangements” from previous cases dealing with other forms of protected family relationships, such as freedom of choice with respect to childbearing and the rights of parents to the custody and companionship of their own children. After reviewing these cases, Justice Powell determined that: “unless we close our eyes to the basic reasons why certain rights associated with the family have been accorded shelter under the Fourteenth Amendment’s Due Process Clause, we cannot avoid applying the force and rationale of these precedents to the family choice involved in this case.” Id. at 501 (emphasis supplied).

Similarly, it could be argued that the associated right of family members to join together to engage in the common pursuit of their economic well-being, such as owning stock in a family corporation, should also receive the protection of the due process clause. Therefore, the legislative line-drawing in Initiative 300, which excludes certain categories of related persons from such ownership, should be held invalid.

Another constitutional argument might be advanced under the interstate commerce clause of the United States Constitution. See U.S. Const. art. I, § 8. The Supreme Court has stated:

A court may invalidate legislation enacted under the Commerce Clause only if it is clear that there is no rational basis for a Congressional finding that the regulated activity affects interstate commerce, or that there is no reasonable connection between the regulatory means selected and the asserted ends.

Hodel v. Indiana, 452 U.S. 314, 323-24 (1981). In Sporhase v. Nebraska, 102 S. Ct. 3456 (1982), the Supreme Court ruled that Nebraska is limited by the commerce clause in regulation of its water resources. It is possible that a court might find that Nebraska, via Initiative 300, is limiting otherwise legitimate entities (nonfamily farm corporations) from engaging in the production of agricultural products which move in the stream of interstate commerce, thereby violating the interstate commerce clause.

33. The equal protection clause requires that no state “deny to any person within its jurisdiction the equal protection of the laws.” U. S. Const. amend. XIV, § 1. See infra discussion of recent Supreme Court equal protection decisions in text accompanying notes 89-152.
Part II discusses the modern test used by the Supreme Court of the United States to identify improper classifications under the equal protection clause. Part III examines the classifications created by Initiative 300 under the lens of the equal protection clause to determine whether the classifications created under the Initiative further its identifiable purposes. Finally, the Note concludes that Initiative 300 does not rationally promote its purposes and therefore should not survive judicial evaluation under the United States Constitution.34

II. THE HISTORY OF CORPORATE FARMING LEGISLATION IN NEBRASKA

Throughout history there have been arguments, regulations, and wars over the ownership and control of agricultural land.35 The Homestead Act of 186236 and the National Reclamation Act of 190237 are just two examples of the numerous attempts in American history to regulate farms by promoting wide distribution of small farm ownership.38 Over the last four decades, however, the American agricultural sector has witnessed a trend towards increasing farm size and decreasing farm numbers. Between 1945 and 1978, the number of farms in Nebraska decreased from nearly 112,000 farms to less than 67,000 farms39 while the size of the average farm increased from 427 acres to 702 acres.40 Reasons for these phenomena are numerous. "Federal programs for research, credit, price support and production stabilization have tended to favor large-scale agriculture.... Technological developments, financing and marketing efficiency, and inflation, especially of land prices, have combined with government policy to encourage in-
creased farm size." Simultaneously, for a host of legal and financial reasons, there has been an increasing trend towards corporate involvement in agriculture both from a land ownership and an operational standpoint. The accumulation of these factors has resulted in an evolution of the basic structure of agricultural society in Nebraska, as well as nationally, which has fueled a widespread fear of corporate involvement in agriculture. This fear has apparently spurred the recent surge of state anti-corporate farming legislation. Nebraska is but one of nine states which has recently responded to the emotional cry to "preserve the family farm."

Since 1972, numerous legislative proposals have been submitted to the Nebraska Legislature containing prohibitions against corporate farming similar to those existing in Initiative 300. The proposed bills were substantially similar to one another, and each bill failed to receive legislative approval largely because of Nebraska Attorney General opinions, which in each case viewed the proposed legislation as having "suspect constitutional validity."

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41. Phelps, supra note 38, at 445.
43. The proponents of Initiative 300 understood the power such emotionally based language could have on the voters and chose to have even their political campaign headed by the "Committee to Preserve the Family Farm," Jann Douglas, Treasurer, Campaign Literature (Fall, 1982).
44. The bills proposed included:
   (1) L.B. 184, 87th Leg., 1st Sess. (Neb. 1981);
   (2) L.B. 837, 86th Leg., 1st Sess. (Neb. 1980);
   (3) L.B. 190, 85th Leg., 1st Sess. (Neb. 1979);
   (4) L.B. 721, 84th Leg., 1st Sess. (Neb. 1978);
   (5) L.B. 130, 83rd Leg., 1st Sess. (Neb. 1977);
   (6) L.B. 203, 81st Leg., 1st Sess. (Neb. 1975);
   (7) L.B. 214, 81st Leg., 1st Sess. (Neb. 1975); and
This list is not exhaustive as the Bill Room of the Nebraska State Legislature does not maintain copies of bills introduced but not adopted. For further legislative proposals of corporate farming laws, see:
   (1) L.B. 713, 88th Leg., 1st Sess. (Neb. 1982);
   (2) L.B. 668, 88th Leg., 1st Sess. (Neb. 1982);
   (3) L.B. 150, 85th Leg., 1st Sess. (Neb. 1979);
   (4) L.B. 751, 84th Leg., 1st Sess. (Neb. 1978);
   (5) L.B. 933, 82d Leg., 1st Sess. (Neb. 1978);
   (6) L.B. 363, 81st Leg., 1st Sess. (Neb. 1975);
   (7) L.B. 464, 79th Leg., 1st Sess. (Neb. 1973); and
under the Nebraska Constitution.

The last anti-corporate family farm bill advanced in Nebraska prior to the proposal of Initiative 300 was L.B. 184.46 L.B. 184 generally restricted any corporation other than a family farm or ranch corporation or an "authorized corporation"47 from directly or indirectly obtaining any interest in farm or ranch real estate or from engaging in the farming or ranching business in Nebraska.48 The Nebraska Attorney General rendered an opinion on the propriety of L.B. 184 which concluded:

We have variously stated that this type of legislation involves an improper and invalid legislative classification of corporations, that this type of legislation involves an improper overextension of the Legislature's police power, and that this type of legislation is in contravention of Article XII, Section 1, and Article III, Section 18 of the Nebraska Constitution pertaining to special laws. We have reviewed LB 184 in light of our various earlier opinions and we have determined that LB 184 raises the same constitutional concerns as we expressed earlier.49

Article XII, section 1, of the Nebraska Constitution in part establishes that, "[t]he Legislature shall provide by general law for the organization, regulation, supervision and general control of all corporations. . . . No corporations shall be created by special law. . . ."50 Additionally, article III, section 18, of the Nebraska Constitution states that the legislature shall not pass local or special laws which grant "to any corporation, association, or individual any special or exclusive privileges."51 These "special laws" clauses of the Nebraska Constitution are similar in impact to the equal protection clause of the fourteenth amendment,52 and as a result have been viewed by the legislature as the greatest barriers

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47. Id. L.B. 184 allowed "authorized" nonfamily corporations which were not included in the drafting of Initiative 300. An "authorized" corporation was basically a Subchapter S Corporation allowing up to ten residents of Nebraska to join as stockholders to buy land to engage in farming or ranching. For a discussion of the inevitable effects of Initiative 300 upon Subchapter S Corporations, see infra text accompanying notes 230-34. See also TRANSCRIPT OF THE PUBLIc HEARING ON THE L.B. 184 BEFORE THE COMMITTEE ON AGRICULTURE AND ENVIRONMENT, 87th Leg., 1st Sess. 44 (Neb. 1981) (Comments of Senator Burrows).
50. NEB. CONST. art. XII, § 1; see infra Appendix 1.
51. NEB. CONST. art. III, § 18.
52. See 40 Op. Neb. Att'y Gen. 43 (1975-1976) where the Attorney General states: "The equal protection clause, particularly, involves classification substantially indistinguishable from the classification questions involved in Article III, Section 18 of the Nebraska Constitution." Id. at 44.
to enacting any type of corporate farming restrictions.\textsuperscript{53} The persistence of the proponents who regularly submitted pro-

\textsuperscript{53} Note, however, that a related bill, the Corporate Reporting Act of 1975, was enacted into law as Neb. Rev. Stat. § 76-501 (1976). Section 3 of the Corporate Reporting Act requires:

After the effective date of this act, each corporation which has acquired title to agricultural land or which has obtained any leasehold interest or any other greater interest less than fee in any agricultural land in this state shall, not later than January 1, 1976 and each year thereafter, file with the Secretary of State a report containing the following information:

1. The name of the corporation and its place of incorporation;
2. The address of the registered office of the corporation in this state, the name and address of its registered agent in this state, and in the case of a foreign corporation, the address of its principal office in its place of incorporation;
3. The total acreage and location, listed by county, of all lots and parcels of land in this state owned or leased by the corporation and used for the growing of crops or the keeping or feeding of poultry or livestock;
4. The names and addresses of the officers and members of the board of directors and of all shareholders owning ten per cent or more of the stock of the corporation;
5. The percentage of the members of the board of directors who are aliens;
6. The name and address of each alien owning ten per cent or more of its voting stock;
7. The names and addresses of the executive officers and managers of the corporation who are aliens;
8. The name and address of each person residing on a farm or actively engaged in farming and owning ten per cent or more of its voting stock; and
9. Any other information which the Secretary of State reasonably determines necessary to enforce the provisions of sections 76-402 to 76-415, Reissue Revised Statutes of Nebraska, 1943.


Each corporation which fails to submit a report, as required by this act, or which willfully submits false, fraudulent, or misleading information on any report shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars.

Neb. Rev. Stat. § 76-1506 (1976). The effectiveness of this Act is limited since there is no provision for funds to be allocated to the Secretary of State's office to enable it to enforce the reporting requirement. The Secretary of State's office merely files the reports as it receives them and nothing more is done. Recent studies conducted by Dr. Bruce Johnson reveal that the data accumulated pursuant to the Act in 1980 was insufficient to be viewed as representative due to a very low incidence of reporting in that year. CARRICKER, JOHNSON, & BAKER, A LOOK AT CORPORATIONS IN FARMING IN NEBRASKA (January, 1983) (manuscript in process). Poor corporate reporting performance and the absence of a reporting enforcement requirement will certainly hamper the enforcement of Initiative 300 by the Secretary of State. See Neb. Const. art. XII, § 8, cl. 1; see \textit{infra} Appendix 1.
posed family farm legislation was partly due to the adoption of family farm acts in eight other midwest states. While the family farm acts are not identical and all have been amended several times, they all possess common elements. Generally, corporations are forbidden to own or operate agricultural land in Oklahoma, Kansas, Minnesota, Wisconsin, South Dakota, Iowa, Missouri, and North Dakota. These statutes principally seek to: (1) prevent monopolization through corporate conglomerates; (2) promote the economic growth of small, owner-operated farms and family farms; (3) encourage stability and moral well-being of surrounding rural communities; and (4) nurture the free-enterprise system. Each of the eight statutes prohibit corporations from owning agricultural land used for farming and from engaging in farming. Each of the eight states also provide for exemptions for certain kinds of corporations, such as corporations with a specified number of shareholders (ranging from five to twenty-five) and corporations in which a majority of the shareholders are related in some way. North Dakota's original statute is the only one of

54. Senator Burrows, now retired, was the major promoter of anti-corporate farming bills in Nebraska's unicameral from 1975 to 1981.
55. See supra note 5.
56. It is not within the scope of this Note to compare the various provisions of the other states' corporate farming statutes. For comparative studies, see Note, North Dakota's Corporate Farming Statute: An Analysis of the Recent Change in the Law, 58 N.D.L. Rev. 293 (1982) [hereinafter cited as North Dakota's Statute], which discusses North Dakota's new law allowing North Dakota's farmers and ranchers to incorporate if they meet and maintain certain requirements. North Dakota, prior to this new law, had prohibited all corporations from "acquiring or holding real estate." 1933 N.D. Sess. Laws 494, § 1. See also Phelps, supra note 38.
57. See Phelps, supra note 38.
66. See North Dakota's Statute, supra note 56; Phelps, supra note 38; see also Morrison, State Corporate Farm Legislation, 7 U. TOL. L. REV. 961 (1976).
67. See North Dakota's Statute, supra note 56; Phelps, supra note 38; see also Morrison, State Corporate Farm Legislation, 7 U. TOL. L. REV. 961 (1976).
68. The original North Dakota Farming Law was embodied within N.D. Rev. Code § 10-0601 to -0606 (1943) (repealed 1981), and the original corporate farming bill was 1933 N.D. Sess. Laws 494, which was amended twice before it was revised in 1943. The original North Dakota Farming Law prohibited all corporations, whether domestic or foreign, from engaging in farming or agriculture. The law had an escheat provision whereby any corporation which had purchased land for farming or agriculture after July 19, 1932 would have
these laws to have ever had its constitutional validity reviewed by the Supreme Court of the United States.

The North Dakota statute was reviewed by the United States Supreme Court, in 1945, in *Asbury Hospital v. Cass County.*69 Prior to the adoption of the North Dakota statute, Asbury Hospital, a nonprofit Minnesota corporation, had acquired North Dakota agricultural land due to a mortgage foreclosure. Asbury Hospital attempted to divest itself of the farmland, which was leased to farmers at the time of the suit, but argued that it should not have to sell the land within the statutory ten-year divestiture period, established under the subsequently adopted corporate farming law, because it was not possible during that time period to sell the land at a profit.70 In seeking a declaratory judgment, the hospital claimed that the Corporate Farming Law was in violation of the due process71 and equal protection clauses72 of the fourteenth amendment. The Supreme Court of the United States affirmed the decision of the North Dakota Supreme Court upholding the validity of the statute, noting that a foreign corporation73 was not guaranteed the recovery of its investment under the due process clause: "[i]t is enough that the corporation . . . is afforded a fair opportunity to realize the value of the land, and that the sale, when required, is to be under conditions reasonably calculated to realize its value at the time of sale."74

In response to Asbury Hospital's equal protection claim, the Supreme Court stated that the "Fourteenth Amendment does not

69. 326 U.S. 207 (1945). The constitutionality of the North Dakota Corporate Farming Law was first tested in *Asbury Hospital v. Cass County,* 72 N.D. 359, 7 N.W.2d 438 (1943); and in *Asbury Hospital v. Cass County,* 73 N.D. 469, 16 N.W.2d 523 (1944). The North Dakota Supreme Court held that the Act violated neither the North Dakota nor the United States Constitutions. This decision was affirmed by the United States Supreme Court on very narrow grounds. See *Asbury Hospital v. Cass County,* 326 U.S. 207 (1945). See infra text accompanying notes 184-88 for a discussion of the narrow holding of the United States Supreme Court in *Asbury.* See also supra note 32, for *Asbury'*s discussion of escheat provisions.

70. 326 U.S. at 210.

71. 326 U.S. at 212. The due process clause of the fourteenth amendment is quoted supra note 32. U.S. CONST. amend. XIV, § 1.

72. 326 U.S. at 214. No argument was made that the statute was in violation of the commerce clause; therefore, that issue has not been decided by the Supreme Court. 326 U.S. at 210. See supra note 32 concerning consideration of impact of Initiative 300 on the commerce clause.

73. “Foreign corporation” means any corporation not domesticated within the State of Nebraska.

74. 326 U.S. at 212-13.
deny to the state power to exclude a foreign corporation from doing business or acquiring or holding property within it. 75 Therefore, the Court concluded there was no violation of the equal protection clause:

The legislature is free to make classifications in the application of a statute which are relevant to the legislative purpose. The ultimate test of validity is not whether the classes differ but whether the differences between them are pertinent to the subject with respect to which the classification is made. 76

Wisconsin's corporate farming statute has also survived an attack based on the equal protection clause in Lehndorff Geneva, Inc. v. Warren. 77 In Lehndorff, the Wisconsin Supreme Court held that a Wisconsin statute did not violate the equal protection provisions of the federal and Wisconsin constitutions by making it unlawful for a nonresident alien, 78 or a corporation or association having more than 20% of its stock owned by nonresident aliens, to acquire or own more than 640 acres of land in Wisconsin. 79

In 1975, faced with several unsuccessful attempts to adopt similar corporate farming acts in Nebraska, 80 a group of Nebraska leg-

75. 326 U.S. at 211.
76. 326 U.S. at 214.
77. 246 N.W.2d 815 (Wis. 1974).
78. "Alien" refers to any investor who is not a resident of the State of Nebraska.
79. 246 N.W.2d at 825. The other cases which involve the corporate farming laws generally raise issues interpreting the various parts of the different state laws. See Coal Harbor Stock Farm, Inc. v. Meier, 191 N.W.2d 583 (N.D. 1971), where the North Dakota Supreme Court found that the corporate farming statute's broad provision against corporate farming "prohibits all corporations, except the qualified cooperative corporations, from engaging in the business of farming or agriculture," (N.D. CENT. CODE, § 10-06-01 (1976)) i.e., the intent of the statute was not to solely prohibit those corporations whose main lifeline was other than farming or ranching, it was to prohibit all unqualified corporations. 191 N.W.2d at 588. See also LeForce v. Bullard, 454 P.2d 297 (Okla. 1969). For a brief discussion of LeForce, see supra note 6. One more North Dakota case construing its statutory provisions is Loy v. Kessler, 39 N.W.2d 260 (N.D. 1949), where the North Dakota Supreme Court again interpreted the old statute which was subsequently repealed, see supra note 68, establishing that:

[T]he act does not expressly prohibit corporations from acquiring title to farm lands. . . .

... Escheat can apply only to lands to which the corporation has acquired title. . . . It excludes the hypothesis that a grant of farm land to the corporation is void. In that event there could be no escheat. The grant is valid but the property becomes subject to escheat.

39 N.W.2d at 272. For further discussion of escheat provisions, see supra note 32. Additionally, there is one case in Missouri which was first filed in 1976 and is still pending: State of Mo., ex rel. Ashcroft v. Lehndorff Geneva, Inc., No. 25, 894 (Cir. Ct. (Cole Cty.) Mo. 1976).

80. See supra text accompanying notes 44-53.
islators sought to place a constitutional amendment on the ballot to circumvent the constitutional prohibitions to such legislation which had been identified by the Nebraska Attorney General. The text of the proposed amendment in 1975 proclaimed that “[n]o corporation, domestic or foreign, shall engage in the business of farming or agriculture, except the Legislature shall exempt family farm corporations and may exempt such other corporations as they determine to be in the best interest of the state.” The Attorney General’s opinion discussing this proposed amendment reasoned that if the amendment was adopted it might be able to withstand charges of violations to the Nebraska Constitution, but would “not eliminate the question of possible violations of the Federal Constitution.”

The Attorney General wrote:

[W]e are of the opinion that even the United States Supreme Court might have difficulty in finding a rational basis upon which to sustain the proposed amendment [against equal protection claims]. As we have said before, it is very difficult for us to detect any public evil in having agricultural products produced by corporations.

The opinion went on to express concern about the divergent classifications which could arise from legislative determinations concerning which corporations should be restricted according to what “they determine to be in the best interest of the state.” The Attorney General concluded that:

[W]e believe that our Supreme Court may well find the same classification problems with this proposed amendment in the context of the Fourteenth Amendment as we foresaw with respect to previous bills in the context of the Nebraska Constitution. The United States Supreme Court is somewhat more liberal than our court in these matters, but we would anticipate that there would be some difficulty in sustaining this amendment even before that Court.

Initiative 300 similarly contains a great number of classifications, which go well beyond the scope of the classifications envisioned by the proposed constitutional amendment in 1975. The large number of special exclusions in Initiative 300 create legislative classifications which are of questionable constitutional valid-

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81. See supra Attorney General Opinions at note 45. While not within the scope of this Note, arguments may exist that a state constitutional amendment in violation of other provisions of that same constitution can be found unconstitutional on a state basis. See Note, Judicial Review of Initiative Constitutional Amendments, 14 U.C.D. L. Rev. 461, 485-86 (1980).
82. Id. at 43.
83. Id. at 43 (quoting Resolution 8, a proposed Section 8 amendment to Article XII of the Nebraska State Constitution).
84. Id.
85. Id. at 44.
86. Id. at 43 (quoting proposed Resolution 8).
87. Id. at 45.
Part III of this article will evaluate those classifications and their validity under the fourteenth amendment, following a discussion of the United States Supreme Court's modern reading of the equal protection clause.

III. THE EQUAL PROTECTION THEORIES OF THE UNITED STATES SUPREME COURT

One of the principal restrictions on the regulatory power of the states is the equal protection clause of the fourteenth amendment, which provides that a state shall not "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."98 A corporation is considered a person90 within the meaning of the due process91 and equal protection92 clauses of the fourteenth amendment. The Supreme Court, in the Civil Rights Cases,93 declared that a prerequisite for all challenges brought under the fourteenth amendment is "state action."94 Thus, persons are protected from irrational governmental action at the state level by the fourteenth amendment. While this constitutional limitation does not guarantee that the law must be applied to all persons equally, it does require rationality in the application of the law to individual

88. See infra text accompanying notes 191-93 relating to the corporate businesses which Initiative 300 allows.
89. U.S. Const. amend. XIV, § 1.
90. In Fulton Market Cold Storage Co. v. Cullerton, 582 F.2d 1071 (7th Cir. 1978), the court stated: While a corporation is not a “citizen” within the meaning of the privileges and immunities clause [and thereby not eligible for its protections], Hague v. Committee for Industrial Organization, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939); Orient Ins. Co. v. Daggs, 172 U.S. 561, 19 S.Ct. 281, 43 L.Ed. 552 (1899); Paul v. Virginia, 75 U.S. (8 Wall) 168, 19 L.Ed. 357 (1868); see also Asbury Hospital v. Cass County, N.D., 326 U.S. 207, 66 S.Ct. 61, 90 L.Ed. 6 (1945), a corporation is a “person” within the meaning of the equal protection and due process of law clauses of the Fourteenth Amendment, Grosjean v. American Press Co., 297 U.S. 233, 56 S.Ct. 444, 80 L.Ed. 660 (1936); Adams v. City of Park Ridge, 293 F.2d 585 (7th Cir. 1961); Advocates for Arts v. Thompson, 532 F.2d 792 (1st Cir. 1976); Raymond Motor Transportation, Inc. v. Rice, 417 F.Supp. 1352 (3-Judge Dist. Ct. W.D. Wis. 1976).
91. U.S. Const. amend. XIV, § 1. See supra note 32 for quotation of the due process clause.
92. U.S. Const. amend. XIV, § 1.
93. 109 U.S. 3 (1883).
persons. Furthermore, a settled principal of law in the courts of this nation recognizes "that the sovereignty of the people is subject to constitutional limitations just as are legislative enactments. . . . For that reason the initiative is necessarily subject to the same scrutiny that it would be had it been adopted by the legislature." The Supreme Court has declared that "[a] citizen's constitutional rights can hardly be infringed upon simply because a majority of the people choose that it [sic] be." Initiative 300, a

95. Justice Blackmun in Regents of University of Cal. v. Bakke, 438 U.S. 265 (1978) approvingly acknowledged the inequality of application of some laws when he wrote:

It is worth noting, perhaps, that governmental preference has not been a stranger to our legal life. We see it in veterans' preferences. We see it in the aid to handicapped programs. We see it in the progressive income tax. We see it in the Indian programs.

Id. at 406.

96. Seattle School Dist. v. Wash., 473 F. Supp. 997, 1011-12, (W.D. Wash. 1979) (paraphrasing Hunter v. Erickson, 393 U.S. 385, 392) ("The sovereignty of the people is itself subject to those constitutional limitations which have been duly adopted and remain unrepealed."). See Snyder, The Proposed National Initiative Amendment: A Participatory Perspective on Substantive Restrictions and Procedural Requirements, 18 Harv. J. on Legis. 429 (1981). Snyder comments that "[t]he Supreme Court has held that the initiative power of state electorates is subject to constitutional limitation to the same extent as the legislative power of the representative assemblies." Id. at 435. See also Mulkey v. Reitman, 64 Cal. 2d 259, 413 P.2d 825, 50 Cal. Rptr. 881 (1966), aff'd, 387 U.S. 369 (1967), where the court pointed out:

Where the state can be said to act, as it does of course, through laws approved by legislators elected by the popular vote, it must also be held to act through a law adopted directly by the popular vote. When the electorate assumes to exercise the law-making function, then the electorate is as much a state agency as any of its elected officials.


direct enactment of law by the people of Nebraska, is therefore subject to the same constitutional constraints under the equal protection clause as acts of the legislature.  

A. The Three Tiers of Scrutiny

The Supreme Court's analysis of the equal protection clause has been described as a tripartite or three-tier approach. The top tier examines the rationality of legislation under strict scrutiny and is invoked when any legislation violates a fundamental right of a certain class or unduly burdens a suspect class without a "compelling state interest" to justify the classification. Recently, commentators have asserted that the Court is analyzing equal protection concerns under a "newer" intermediate scrutiny standard. Under this second tier, or intermediate scrutiny, legislative classifications such as those based on gender are studied to determine whether or not they are substantially related to

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98. U.S. CONST. amend. XIV, § 1. One commentator noted:

Without exception, courts should only entertain state or federal constitutional challenges to the merits of an amendment in post-election litigation. Such issues become ripe for decision only after the electorate approves the amendment in question. . . . After the election, however, courts must actively assure that constitutional rights have not been vitiatted through the initiative process.


100. Id. The top tier strictly scrutinizes any legislation which impinges upon suspect classes such as race or national origin. See, e.g., Nyquist v. Mauclet, 432 U.S. 1 (1977) (State classifications based on alienage are inherently suspect and therefore are subject to strict judicial scrutiny).

101. See the analysis of the "newer" standard of equal protection in Gunther, In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 HARV. L. Rev. 1 (1972). An example of the newer standard is established in Craig v. Boren, 429 U.S. 190 (1976). The Supreme Court in Boren revealed that to be constitutionally valid, "classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." 429 U.S. at 197 (emphasis supplied). See also infra note 106.

102. Id.
an important state interest. A third or lower tier of minimal scrutiny of equal protection inquires whether legislative classifications bear a rational relation to a legitimate state interest.

Initiative 300 does not appear to involve either of the top two tiers of scrutiny since there is no classification scheme which infringes on a fundamental interest or a suspect classification; nor is there a classification within the Initiative based on a protected characteristic such as gender. Therefore, an inquiry into the constitutionality of Initiative 300 will be founded upon the lower tier of scrutiny: do the classifications in Initiative 300 bear a rational relation to a legitimate interest of the State of Nebraska?

B. Minimal Scrutiny—The Rational Relationship Test

Until recently, equal protection review under the minimal scrutiny standard has had little judicial significance and, in practice, has served as little more than a phrase which the Supreme Court mouthed, masking a "mere tautological recognition of the fact that Congress did what it intended to do." Many of the Court's prior decisions have suggested that a legislative enactment must be upheld "if any state of facts reasonably may be conceived to justify" the statute's discrimination, thereby granting nearly unlimited deference to the judgment of the legislative body which enacted the legislation. However, this "rubber-stamp" method

103. See Broderick, supra note 99, at 351-52; Karasik, supra note 99, at 266-70; Barrett, supra note 96, at 871-72. The middle tier requires that constitutionally valid legislative classifications in areas such as gender (a less suspect class) be substantially related to an important state interest. See, e.g., Wengler v. Druggists Mutual Ins. Co., 446 U.S. 142 (1980) (Statutes requiring widowers but not widows to prove dependency on spouse to receive benefits at death of spouse is not substantially related to an important state goal).

104. Id.

105. For a discussion concerning the protected status of certain family relationships and the higher level of judicial scrutiny such status has received, see supra note 32 for a discussion of Moore v. East Cleveland, 431 U.S. 494 (1976).

106. U.S. Railroad Retirement Bd. v. Fritz, 449 U.S. 166, 180 (1980) (Stevens, J., concurring). Similarly, Professor Gunther, in 1972, discovered that "[a]fter an era during which the 'mere rationality' requirement symbolized virtual judicial abdication, the Court — following personnel changes in a non-interventionist direction — has suddenly found repeated occasions to intervene on the basis of the deferential standards. Moreover, that trend has remarkably widespread support on the Court." Gunther, supra note 101, at 19. See also Bennett, "Mere" Rationality in Constitutional Law: Judicial Review and Democratic Theory, 67 CALIF. L. REV. 1049, 1056 (1979).


108. See Schweiker v. Wilson, 450 U.S. 221 (1981), where the dissent explains that some deference to legislative decisions is proper, however, "[a]scertainment of actual purpose to the extent feasible . . . remains an essential step in equal protection." Id. at 245, n. 6 (dissenting opinion).
of legislative analysis has arguably been fading in recent years as a new analytical model has emerged which gives substance and meaning to the minimal scrutiny review. Four recent Supreme Court cases identify this new and intensified method of applying the rationality test to challenged legislation: *U.S. Railroad Retirement Board v. Fritz,* *Minnesota v. Clover Leaf Creamery Co.,* *Schweiker v. Wilson,* and *Logan v. Zimmerman Brush Co.*

1. U.S. Railroad Retirement Board v. Fritz

On December 9, 1980, the Supreme Court in *Fritz,* in a seven-to-two decision, held that the Railroad Retirement Act of 1974 was not violative of the equal protection clause of the United States Constitution. The 1974 Act, replacing similar legislation enacted in 1937, withdrew various social security and railroad retirement benefits, which had been guaranteed under the previous legislation, from a certain class of employees based on their lack of connection with the railroad as of 1974 or their later retirement date. Justice Rehnquist delivered the opinion of the majority in a terse and sarcastic manner, stating: "where, as here, there are plausible reasons for Congress' action, our inquiry is at an end. . . . [T]his Court has never insisted that a legislative body articulate its reason for enacting a statute. This is particularly true where the legislature must necessarily engage in a process of line

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109. In acknowledging the new model, Professor Gunther claims that "[t]he model requires that there be an affirmative relation between means and ends — or, in more traditional equal protection terms, that there be a genuine difference in terms of the state's objective between the group within the classification and those without." Gunther, *supra* note 101, at 47.

110. 449 U.S. 166 (1980).


112. 450 U.S. 221 (1981). As Professor Leedes noted, *Schweiker, Fritz,* and *Clover Leaf* "disclose that several Justices are no longer prepared to defer excessively to the legislature's classifications when the legislation does not identify its purposes. This is a significant shift, a departure from the minimum rationality test of the Warren Court period, which amounted to a meaningless ritual." Leedes, *The Rationality Requirement of the Equal Protection Clause,* 42 Ohio St. L.J. 639, 640 (1981).

113. 455 U.S. 422 (1982).

114. 449 U.S. 166 (1980).


118. Justice Rehnquist's harsh criticism of Justice Brennan's dissent states: "The comments in the dissenting opinion about the proper cases for which to look for the correct statement of the equal protection rational basis standard, and about which cases limit earlier cases, are just that: comments in a dissenting opinion." 449 U.S. at 176, n.10. *See also* Justice Stevens' concurring opinion which draws attention to and mediates Justice Rehnquist's footnote. 449 U.S. at 180 (Stevens, J., concurring).
However, Justice Brennan, with whom Justice Marshall joined, delivered a strong dissent in which he criticized the majority's interpretation and application of the rational basis test and emphasized the propriety of the judicial evolution of a more demanding standard of review, which should be utilized more uniformly by the Court in evaluating equal protection cases. Justice Brennan's standard of review foretold the new analytical approach to equal protection cases which would in essence be used by a majority of the Court in *Clover Leaf* and *Schweiker*, both rendered within three months of *Fritz*. Justice Brennan reasoned that:

"By presuming purpose from result, the Court reduces analysis to tautology. It may always be said that Congress intended to do what it in fact did. If that were the extent of our analysis, we would find every statute, no matter how arbitrary or irrational, perfectly tailored to achieve its purpose. But, equal protection scrutiny under the rational basis test requires the courts first to deduce the independent objectives of the statute, usually from statements of purpose and other evidence in the statute and legislative history, and second to analyze whether the challenged classification rationally furthers achievement of those objectives. The Court's tautological approach will not suffice."

Citing substantial authority, Justice Brennan went on to conclude that the Court should no longer sustain challenged legislation merely by relying on conceivable justifications hypothesized by the Court or by government attorneys. "A challenged classification may be sustained only if it is rationally related to achievement of an actual legitimate governmental purpose."

Just over a month following the Fritz decision, Justice Brennan delivered the majority opinion in Clover Leaf, in which Justice Powell concurred in part and dissented in part, Justice Stevens dissented, and Justice Rehnquist took no part. In Clover Leaf, the Court upheld a Minnesota statute which was intended to protect the environment from nonreturnable plastic milk containers and to conserve energy. The statute did not affect paperboard cartons of milk. In his opinion, Justice Brennan was able to clearly establish the rational basis test he advocated in Fritz as the rule of the majority. While the statute in question was held not to violate the equal protection clause, the Supreme Court examined the purposes and objectives of the Act as articulated by the legislature in the first section of the statute and found them to be legitimate state purposes. "Thus the controversy [in Clover Leaf] centers on the narrow issue whether the legislative classification between plastic and nonplastic nonreturnable milk containers is rationally related to achievement of the statutory purposes."

3. Schweiker v. Wilson

On March 4, 1981, Justice Blackmun delivered the opinion of the Court in Schweiker. In a five-to-four decision, the Court ruled that the distinction made by Congress "between residents in public institutions receiving Medicaid funds for their care, and residents in such institutions not receiving Medicaid funds," did not unconstitutionally violate the plaintiffs' equal protection rights by denying them supplementary benefits. Justice Blackmun, delivering the opinion of the Court, set forth the test to be used in evaluating the legislation: "As long as the classificatory scheme chosen by Congress rationally advances a reasonable and identifiable governmental objective, we must disregard the existence of other methods of allocation that we, as individuals, perhaps would have preferred." Justice Blackmun then undertook an examination of the legislative history of the questioned statutes and concluded that the legislative record, while sparse, unmistakably identified a Congressional objective for the disputed classifications. Justice Blackmun further concluded that that objective was reasonable...

Leedes, supra note 112, at 655.
126. Id. at 462-63.
128. Id. at 232-33.
129. Id. at 235.
and rationally advanced by the statutory scheme. Although Justice Brennan, along with Justices Marshall and Stevens, joined in the dissent written by Justice Powell, the dispute with the majority centered not on the need to search for identifiable governmental objectives under the rational basis standard, but rather on the conclusions reached, after an evaluation of the statute’s legislative history, as to what those identifiable objectives were. After examining the legislative record, Justice Powell concluded: “Neither the structure of [the legislation] nor its legislative history identifies or even suggests any policy plausibly intended to be served by denying appellees the small [benefits].” It appears clear that the Court in Schweiker utilized Justice Brennan’s analytical approach to identifying and examining actual legislative purposes, even though the ultimate purposes identified by the Court were contrary to Justice Brennan’s independent conclusions.


Finally, on February 24, 1982, six of the Supreme Court Justices agreed in Logan v. Zimmerman Brush Co. that a classificatory

130. Id.
131. Id. at 239-47 (dissenting opinion).
132. Id.
133. Id. at 245 (dissenting opinion).
134. Justices Brennan and Powell also differed with the majority concerning the intensity with which the Court should scrutinize the purpose of the legislation. Justice Powell wrote in his dissent that the Court should scrutinize further “[w]hen no indication of legislative purpose appears other than the current position of the Secretary, [and] the Court should require that the classification bear a ‘fair and substantial relation’ to the asserted purpose.” 450 U.S. at 244-45 (Powell, J., dissenting). Additionally, Justice Powell proclaimed that this is a higher standard of review: “This marginally more demanding scrutiny indirectly would test the plausibility of the tendered purpose, and preserve equal protection review as something more than ‘a mere tautological recognition of the fact that Congress did what it intended to do.’” Id. Professor Leedes agreed with Justice Powell and added: The fate of the legislature should not depend on the Court’s willingness to participate in a sham. There is simply no reason why the Court should cover for the legislature’s failure to think things out, nor is there a sound reason why courts should, on their own initiative, explain that a law enacted to serve the interests of pressure groups is a health-related or consumer protection measure. Leedes, supra note 112, at 665. Furthermore, Professor Leedes also suggested that the “rationality requirement . . . be applied with relatively vigorous, means-focused scrutiny. Meaningful judicial scrutiny is unlikely to occur if the Court continues to scan the Universe for imaginary ends . . . .” Id. at 668. See also Kassel v. Consol. Freightways Corp., 450 U.S. 662 (1981) for further justification for the Court’s evaluation of actual legislative purposes when evaluating questionable legislative classifications. Id. at 679-89.
scheme involving claims for employment discrimination violated the minimum rationality test of the equal protection clause.135 Logan filed a claim with the Illinois Fair Employment Practices Commission (FEPC) against his employer, Zimmerman Brush Company, alleging unlawful discharge from employment due to his physical handicap.136 Although the claim was filed correctly and in a timely manner, Logan was deprived of a hearing before FEPC due to the failure of FEPC to commence a fact-finding procedure within the statutory 120-day period.137 Justice Blackmun wrote the opinion of the Court, holding that Logan had a protectable property interest in his right to use FEPC's hearing procedures and that the inaction of FEPC in not processing Logan's claim amounted to a denial of his due process rights.138

Logan also asserted that his rights to equal protection of the laws had been violated.139 While the Court determined that Logan's claim could be decided in his favor solely upon due process grounds, six of the Justices viewed the equal protection claim of sufficient importance to merit additional discussion. In a separate opinion offered by Justice Blackmun, with whom Justices Brennan, Marshall, and O'Connor joined, the 120-day class limitation in FEPC was said to "unambiguously divide claims — and thus, necessarily, claimants — into two discrete groups that are accorded radically disparate treatment."140 The two discrete groups were made up of those claimants whose claims were processed within 120 days and those whose identical claims were not processed within 120 days.141 "In other words, the State converts similarly situated claims into dissimilarly situated ones, and then uses this distinction as the basis for its classification. This I believe is the very essence of arbitrary state action."142 In concluding that the legislative 120-day limitation period was invalid, Justice Blackmun and the joining Justices utilized the Schweiker minimum rational basis test to identify the actual purpose of the law, and then inquired whether or not the "legislation classif[ied] the persons it affected in a manner rationally related to legitimate governmental objectives."143 The four Justices also cited Fritz144 for further sup-

135. 455 U.S. at 438 (Blackmun, J., separate opinion). The Court, though, chose to base its ruling on the due process clause of the fourteenth amendment. Id.
136. 455 U.S. at 426-28.
137. Id.
138. Id. at 436-38.
139. Id. at 427.
140. Id.
141. Id.
142. Id. at 442.
143. Id. at 439 (quoting Schweiker v. Wilson, 450 U.S. 221, 230 (1981)). For additional support of the Court's use of the modern rational basis test, see Tex-
port of the methodology for finding this legislative classificatory scheme irrational under "the lowest level of permissible equal protection scrutiny."\footnote{145}

Justice Powell also wrote an opinion upon equal protection grounds, with which Justice Rehnquist joined, which agreed that the limitation period of FEPC failed to comport with a minimal standard of equal protection review.\footnote{146} Although Justice Powell expressed concern about the Court's "broad pronouncements"\footnote{147} on the law of procedural due process and equal protection and stated that the case should be decided "narrowly on its unusual facts,"\footnote{148} his analysis involved the identification of legislative purposes asserted by the state and an evaluation of whether the statutory scheme rationally promoted those purposes. Further, Justice Powell cited \textit{Schweiker} as authority for the application of the appropriate equal protection test.\footnote{149} Even though Justices Powell and Rehnquist refused to join Justice Blackmun's separate opinion or to outwardly endorse the more demanding equal protection test set forth therein, little more than a subtle distinction from Justice Blackmun's analytical approach can be detected in their analysis.\footnote{150}

While the Court confined its primary holding to issues of due process, \textit{Logan} demonstrates that a majority of the Justices are willing to adopt a more meaningful interpretation of the rational basis test to overturn arbitrary legislative classifications.\footnote{151} This line of cases indicates that the rational basis test for equal protection "is not a toothless one."\footnote{152} It is apparent from \textit{Fritz, Clover} aco, Inc. v. Short, 454 U.S. 516 (1982). \textit{See also} Western and Southern Life Ins. Co. v. State Bd. of Equalization of Cal, 451 U.S. 648 (1981).

\footnote{144} 455 U.S. at 441. The majority is citing the concurring opinion of Justice Stevens in \textit{Fritz}, where Justice Stevens, while agreeing with the conclusion of the majority opinion written by Justice Rehnquist, sided with Justice Brennan in criticizing Justice Rehnquist's analytical approach to the equal protection issues presented in this case. Justice Stevens commented in \textit{Fritz} that: Justice Brennan correctly points out that if the analysis of legislative purpose requires only a reading of the statutory language in a disputed provision, and if any "conceivable basis" for a discriminatory classification will repel a constitutional attack on the statute, judicial review will constitute a mere tautological recognition of the fact that Congress did what it intended to do.

\footnote{449} U.S. at 180.

\footnote{145} 455 U.S. at 439.

\footnote{146} 455 U.S. at 443 (Powell, J., joined by Rehnquist, J., concurring).

\footnote{147} Id.

\footnote{148} Id.

\footnote{149} Id.

\footnote{150} \textit{Compare} Justice Blackmun's concurrence with Justice Powell's concurrence in \textit{Logan}, 455 U.S. at 441.

\footnote{151} Id.

\footnote{152} 450 U.S. at 234 (quoting Matthews v. Lucas, 427 U.S. 495, 510 (1976)). Profes-
Leaf, Schweiker, and Logan that the Court is now utilizing a more critical and less deferential review of questionable legislative classifications under the rational basis test of the equal protection clause. It is through this modern analysis that the validity of Initiative 300 will be evaluated.

IV. APPLICATION OF THE COURT'S EQUAL PROTECTION ANALYSIS TO INITIATIVE 300

A. The Search for an Articulated Purpose

To apply the modern equal protection analysis, one must begin by searching for an articulated and legitimate purpose for the adoption of Initiative 300. However, the enactment of a body of law by the initiative process inherently obscures the purpose of the amendment as well as the subjective intent of its proponents. The difficulty in determining whether there was an intent to discriminate on the part of the voters does not, however, hold

153. See supra text accompanying notes 114-52 for a discussion of Fritz, Clover Leaf, Schweiker, and Logan.

154. The power given to the people of the State of Nebraska to enact or reject constitutional initiatives is embodied within NEB. CONST. art. III, §§ 1-4. The electorate has rights to initiate constitutional (or legislative) changes and submit these changes to the voters for their approval or rejection, while a referendum differs from an initiative in that the legislation submitted to voter approval has originated from and been passed by the legislature. See Referendums, supra note 97, at 409 n.8; BLACK'S LAW DICTIONARY, at 727, 967, 1112 (rev. 5th ed. 1979). Jean Jacques Rousseau believed the individual is sovereign and that the only way to maintain political liberty was by continuous, direct involvement in government by all citizens. See J. Rousseau, Contrat Social (Paris, 1762); see also Note, Initiative and Referendum—Do They Encourage or Impair Better State Government?, 5 FLA. ST. U.L. REV. 925 (1977) [hereinafter cited as Initiative and Referendum].

155. “Determining intent is difficult enough when a law has been enacted by a state legislature. When one examines the motive of hundreds, thousands or even millions of voters who cast their ballots in a referendum [or initiative] the task is even more impracticable.” Referendums, supra note 97, at 420. Authority exists to suggest that some issues are too complex to be left to a vote of the electorate. Leonard v. Bothel, 87 Wash. 2d 847, 851, 557 P.2d 1306, 1308 (1976) (“Administrative acts of municipal legislative bodies are not subject to referendum election.”) Further, objections to direct legislation by the voters have been based on a belief that the electorate has limited capacities for: long range perception; quality decisions; resources, time or motivation to analyze and research issues. Snyder, supra note 96, at 450. See also Initiative and Referendum, supra note 154, at 940.
the majority vote beyond a judicial search for a rational purpose.\textsuperscript{156}

1. **The Initiative Petition, Amendment, and Ballot Summary**

The quest for a determination of the purposes of Initiative 300 leads beyond the electorate’s mindset to many different political and legal sources. The first obvious source, the Initiative petition itself,\textsuperscript{157} fails to delineate a purpose for the legislation. As certified by the Nebraska Secretary of State, on March 2, 1982, the petition stated: “[t]he object of this initiative petition is to prohibit non-family corporations from further purchase of Nebraska farm and ranch land, and to prohibit further establishment of nonfamily corporate crop and livestock operations.”\textsuperscript{158} While this statement of the Initiative’s “object” summarizes what the actual implementation of the Initiative is designed to accomplish, it does not reveal what public purpose or purposes are to be accomplished or fulfilled by its implementation.\textsuperscript{159} In other words, the petition describes what the Initiative is supposed to do but it does not indicate why it is important, necessary, or legitimate to do so. Under the modern means/end analysis of equal protection, promoted by commentators\textsuperscript{160} and recently utilized by the United States Supreme Court,\textsuperscript{161} the petition only delineated the means to accomplish an otherwise undisclosed state end or purpose.

A similar conclusion is drawn from a review of the actual ballot summary prepared for the Nebraska electorate\textsuperscript{162} as well as from a review of the text of the amendment itself.\textsuperscript{163} Neither document contains the familiar preamble of a public purpose incorporated within most state legislation. Therefore, the public documentation of Initiative 300 fails to articulate a legitimate governmental or public purpose for the amendment and requires an evaluation of other available sources.

\textsuperscript{156} See Seattle School Dist. v. Wash., 473 F. Supp. 996 (W.D. Wash. 1979). The fact that it is impossible to determine whether there was a . . . discriminatory intent or purpose does not, however, relieve . . . [a] court of the burden of determining whether there was in fact such an intent or purpose behind the adoption of [the] Initiative . . . . One must simply look elsewhere than within the minds of the voters.

\textsuperscript{157} Id. at 1014.

\textsuperscript{158} \textsuperscript{Id.} See also infra Appendix 1. The object of the Initiative is not printed in the text of the amendment as it appears in the Nebraska State Constitution, at NEB. CONST. art. XII, § 8, cl. 1.

\textsuperscript{159} Id.

\textsuperscript{160} See supra note 101.

\textsuperscript{161} See supra notes 89-152 and accompanying text.

\textsuperscript{162} See supra text accompanying notes 7-10.

\textsuperscript{163} See NEB. CONST. art. XII, § 8, cl. 1; see infra Appendix 1.
2. Legislative Hearings

Some insight into the purposes of Initiative 300 can be drawn from the transcript of the only official public hearing held on the Initiative.164 The hearing took place on September 15, 1982 in front of the Nebraska State Legislature’s Committee on Banking, Commerce, and Insurance.165 Most of the Initiative’s proponents chose to boycott this hearing, apparently for political reasons.166 Consequently, the statements of support revealed in the hearing’s transcript are largely confined to the opinions of a small group of proponents.

The most vocal advocate of the Initiative, State Senator Burrows, identified several factors which led to the effort to draft and submit Initiative 300 to the electorate. The Senator’s most clearly articulated concern involved the perceived intrusion of large corporations into the agricultural community of Nebraska. He argued that this intrusion would perpetuate “concentrated ownership where the individuals [could] no longer get it back.”167 Senator Burrows also stated that the Initiative’s proponents feared the economic power of the large corporations and felt that large corporations produced unfair competition for the family farmer.168

Further indications of purpose can be found in the legislative hearings on previously proposed family farm legislation. Senator Burrows noted at the Initiative 300 hearing169 that the origins of Initiative 300 stemmed largely from the drafting of Legislative Bill 184 (L.B. 184) introduced in the Nebraska Legislature on January 14, 1981,170 and that the object of L.B. 184 was similar to the object of Initiative 300. Legislative Bill 184 stated its underlying purposes as “the efficient use of agricultural land . . . encouraged by a system of family farms, authorized farm corporations, and family ranches . . .” upon which nonabsentee residents of Nebraska lived, worked, and owned the land.171 At the legislative hearing for

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164. Initiative 300 Hearing, supra note 4, at 1.
165. Id.
166. Id. at 2. Most of the Initiative’s proponents chose to boycott the hearing supposedly to protest their displeasure with the Committee in front of which the hearing was held since all previous hearings regarding proposed family farm legislation had been held in the Agricultural Committee. Furthermore, the Chairman of the Banking Committee, Senator DeCamp, was one of the leading opponents of family farm legislation which assuredly fueled the protesters’ frustrations. Therefore, the main purposes to be gleaned from the hearing supporting Initiative 300 result primarily from the comments of Senator Burrows, one of Initiative 300’s chief proponents. Id.
167. Id. at 4.
168. Id. at 5.
169. Id. at 2.
171. Id.
L.B. 184, additional purposes were discussed, including the desires to preserve the rural way of life, to prevent corporate entrapment of Nebraska farmland, and to protect the land from perceived corporate abuses in the area of conservation.  

3. Campaign Literature

A vast amount of campaign literature provides a final source for discovering specific purposes of Initiative 300. Beyond the purposes mentioned above, the campaign propaganda emotionally asserted that “corporations have no soul” and that the “small rural towns without family farmers will go bankrupt and die.” Drey Samuelson, one of the principle organizers of the Initiative 300 campaign, criticized corporate investors in land, concluding that: “[w]e have people investing in cattle these days that don’t know the difference between a steer and a steering wheel, and it is only because of tax shelters.”

To summarize, the purposes of Initiative 300, as can best be determined from the documented sources available, can be translated into three major principles. First, proponents felt that Initiative 300 would protect small family farms from unfair competition which would result from the concentration of farmland ownership by large corporations. Second, the proponents voiced fears of deterioration of the farming communities through absentee ownership and viewed Initiative 300 as a mechanism to protect the local economy by promoting personal involvement with the farm in place of the “soulless” corporate farmer, thereby preserving a way of life. Third, Initiative 300’s proponents felt that resource conservation would be promoted because of the belief that corporate and partnership owned farms would not follow sound conservation practices or endeavor to employ sound environmental practices. With these three probable purposes estab-

172. Id. See also L.B. 837, 86th Leg., 1st Sess. (Neb. 1980); Transcript of the Public Hearing on L.B. 837 Before the Committee on Agriculture and Environment, 86th Leg., 1st Sess. 74 (Neb. 1980) [hereinafter cited as L.B. 837 Hearing].

173. Nebraska Union Farmer, October, 1982, at 3, col. 1. See also Speech by Drey Samuelson, “Why a Nebraska Family Farmer Should Vote for Initiative 300” (Fall, 1982); Advertisement: “Myth and Fact Concerning Initiative 300,” run in newspapers throughout the State of Nebraska (Fall, 1982) (Paid for by the Committee to Preserve the Family Farm, Jann Douglas, Treasurer); Campaign leaflet, “Yes on Initiative 300,” circulated by Center for Rural Affairs, Walthill, Nebraska (Fall, 1982) [hereinafter cited as “Yes on Initiative 300”].

174. Speech by Drey Samuelson, supra note 173 (emphasis in original).

175. See Initiative 300 Hearing, supra note 4, at 2-7.


177. “Nebraska the Good Life,” motto of the State of Nebraska.

lished, it is possible to examine the validity of Initiative 300 by determining whether the purposes behind the Initiative are legitimate and whether Initiative 300 is a rational means for achieving the desired result.

B. The Search for a Rational Relationship

1. The Nature of the Classifications

a. The Distinctions Between Related and Unrelated Individuals

The operational aspect of Initiative 300 is subject to a litany of classifications and exceptions. At the beginning of the text of the amendment, the Initiative establishes that "[n]o corporation or syndicate shall acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any title to real estate used for farming or ranching in this state, or engage in farming or ranching." This blanket prohibition of corporate and syndicate farming is followed by a wealth of exceptions, including "a family farm or ranch corporation.., in which the majority of the voting stock is held by members of a family, or a trust created for the benefit of a member of that family" and "a limited partnership in which the partners are members of a family, or a trust created for the benefit of a member of that family." This is the most questionable of the many classifications, since it raises constitutional questions as a result of the distinctions drawn between the agricultural activities in which related and unrelated persons may be engaged through joint efforts in corporate or syndicate farm ownership and operation. While related persons are not restricted, groups of unrelated persons are forbidden to hold more than 49.9% of any corporation and are precluded entirely from participating in limited partnerships for any type of farming or ranching.

Asbury Hospital v. Cass County was the case most frequently cited by the proponents of Initiative 300 as evidence of the amendment's constitutionality. The Supreme Court acknowledged in Asbury that a state may entirely restrict foreign corporate ownership of farmland and may also recognize differences between corporations, thus allowing application of state policy...
against concentrated corporate farming. However, the Court’s ruling of constitutionality in *Asbury* is clearly distinguishable from issues of constitutionality raised in Initiative 300. The classifying mechanism in Initiative 300, unlike that used in *Asbury*, distinguishes between different kinds of *individuals* rather than different types of corporations. Under Initiative 300, corporate ownership is permitted as long as certain types of individuals own the majority of the voting stock. Similarly, limited partnerships are permitted as long as their partners are all of a particular character. The Initiative differentiates between groups of individuals similarly situated by allowing related persons to engage in various activities while severely restricting the right of unrelated persons to engage in the same activities. While *Asbury* permits a state to exercise control over the activities of corporations wishing to exercise the privilege of doing business within the boundaries of the state, including the power to totally exclude foreign corporations from exercising that privilege, it does not grant a state the authority to create unreasonable distinctions or classifications among the persons within its jurisdiction. This line-drawing between related and unrelated groups of individuals, therefore, is fundamentally different from the classifications addressed in *Asbury* and cannot be justified under that case.

*b. Corporate Kin: Love to the Fourth Degree*

A second major classification of suspect validity, the definition of related persons, also relates to the family farm distinction. The definition of the family farm corporation restricts majority stock ownership to family members "related to one another within the fourth degree of kindred according to the rules of civil law, or their

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186. *Id.* at 214.
187. *Id.* See *NEB. CONST.* art. XII, § 8, cl. 1(A); see infra Appendix 1.
188. Similarly, in North Dakota Pharmacy Board v. Snyder Stores, 414 U.S. 156 (1973), the Supreme Court found a statute valid which required that a corporation applying for a permit to operate a pharmacy must have the majority of stock owned by registered pharmacists. *Id.* at 167. While the Court seems to be allowing a classification based on individual persons within a corporation, these persons are not similarly situated. The Court justified the distinctions of persons within the statute by pointing to the fact that selling drugs requires a high degree of knowledge and expertise and that a stockholder who was also a licensed pharmacist "would be more likely to observe the business with an intelligent eye than a casual investor who looked only to the standing of the stock in the market." 414 U.S. at 165-67 (quoting Liggett Co. v. Baldridge, 278 U.S. 105, 114-15 (1928)). The Attorney General of Nebraska in 1975 considered Snyder in connection with the proposed family farm amendment and said: "[w]e have been unable to detect any such justification [such as the need for expertise] in the amendment under consideration." 40 Op. Neb. Att'y Gen. 45 (1975-1976).
spouses, at least one of whom is a person residing on or actively engaged in the day-to-day labor and management of the farm or ranch . . . ."¹⁸⁹ Such a degree of consanguinity restricts corporate and syndicate ownership to family members no more distantly related than first cousins.¹⁹⁰ For example, corporate kin farming will be valid as long as incorporated cousins do not die, leaving their shares to their children.

c. Some Preferred Businesses

Finally, Initiative 300 contains an extensive list of unrestricted corporations, which include: nonprofit corporations; poultry-raising corporations; alfalfa-producing corporations; nursery and sod farm corporations; and custom-spraying, fertilizing, or harvesting corporations.¹⁹¹ While these exceptions create additional questionable classifications, the discussion in this Note will center on the more crucial questions¹⁹² surrounding the constitutional validity of the classifications between related and unrelated individuals and the degree of consanguinity of family members required under Initiative 300.¹⁹³

¹⁸⁹. N.E.B. CONST. art. XII, § 8, cl. 1(A); see infra Appendix 1.

¹⁹⁰. See Consangunity Chart, infra Appendix 2. It should be noted that the restrictions on corporate ownership contradict and, thereby, necessarily are in derogation of the Nebraska Business Corporation Act, N.E.B. REV. STAT. §§ 21-2001 -2080, 21-20,105, 21-20,139 (Cum. Supp. 1982), which states that every domestic corporation shall be able: "To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real, or personal property, or any interest therein situated . . . ." Id. at § 21-2004(4).

¹⁹¹. N.E.B. CONST. art. XII, § 8, cl. 1(B), 1(F), 1(G), 1(H), and 1(M), respectively; see infra Appendix 1. Note that Illinois invalidated its Sunday Closing Laws due to their unequal effect on various businesses. See Karasik, supra note 99, at 277.

¹⁹². The areas of concern to be discussed may be more crucial to Initiative 300's well-being than the particular types of farming specifically excepted since a judicial determination of unconstitutionality of the broader classifications might render the Amendment void, whereas if the more particular classifications are found unconstitutional, a court might simply delete those sections leaving the rest of the Initiative amendment in force.

¹⁹³. The purpose of the equal protection clause is to protect all individual persons and groups of individual persons.

If this were not so, only the perennial losers in the political process would be entitled to equal protection of the laws. Over a century ago, the Court realized that the Equal Protection Clause means more; it "means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances." Leedes, supra note 112, at 646-47 (quoting Missouri v. Lewis, 101 U.S. 22, 31 (1879)).
2. **Application of the Classifications to the State's Purposes**

a. **Protection of the Family Farm from Competition from Large, Absentee Corporations**

An enormous amount of public debate has centered around the emotional perception that Nebraska agricultural land is being swallowed up by corporations and limited partnerships. Concern has been most vocal during the last ten to fifteen years due to an evolving economy which has made investor ownership of farmland desirable. Until the economic recession of the last two years, total rates of return to investment in agriculture since 1965 have exceeded the rates of return to common stock and long-term bonds.\(^1\) This phenomenon has been due largely to the substantial capital gain realized in the farm sector from dramatically appreciating land values. From 1970 to 1980, average farmland prices nationwide rose over 300%.\(^2\) Moreover, ownership of farmland has had numerous significant advantages, particularly for high income individuals. High income landowners may obtain, among other benefits, preferential tax treatment for capital gains on the sale of farmland, investment tax credits in certain cases, interest deductions on borrowed funds as a business expense, and accelerated depreciation in certain instances.\(^3\) While the lower income farmer or investor also has access to these benefits, the benefits are greatest to those in the highest tax brackets since they can reduce income which would normally be taxed at a higher rate. In addition, the large investor will be able to apply these benefits to income derived from other sources.\(^4\)

The fact that farmland has generally been a good investment has deepened the desire for the purchase and expansion of farms by farmers and nonfarmers alike.\(^5\) Nonfarmer investors in particular, through corporations and limited partnerships, have kindled substantial controversy in Nebraska over the last decade. Limited partnership investments have attracted perhaps the most media attention in the last several years. The principal focus of these partnership investments has been the substantial tax benefits to be derived from the conversion of rangeland in the sandhills and western portions of the state into crop producing land. The

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3. Id. at 14.
very dry and sandy soils in these areas have historically produced vast amounts of native grasses ideal for livestock grazing. However, since the development of the center pivot irrigation system in the mid-fifties, knowledgeable farmers and farm managers have been able to tap Nebraska’s enormous underground water supplies to transform these arid grazing ranges into lush fields of corn and wheat. Investors have envisioned numerous financial benefits from this conversion, including substantial increases in land values and significant tax benefits, in the form of investment tax credits and depreciation, from the acquisition of center pivot irrigation systems.

Proponents of Initiative 300 have focused on such investment projects as examples of the dangers inherent in alien investment through limited partnerships and corporations. To make the tax incentives economically attractive, these projects have typically involved the acquisition of relatively large tracts of land. Such acquisitions have tended to contribute to land price escalation and have intensified the competition for land for traditional farm enlargement. Further, proponents suggest that concentration of ownership makes land unavailable in the smaller parcel sizes needed by starting farmers or the individual farmer seeking to expand. Because corporations, unlike people, do not have a natural life, land can stay in the hands of the corporation indefinitely, impeding the natural redistribution of land inherent in individual ownership.

What actual impact such projects are having on the structure and vitality of the agricultural sector is unclear. There is no consensus on the actual acreage of farmland owned or operated by nonfarmers. This is due in large part to the difficulty of gathering consistent data concerning the identity of farmland owners and in defining such terms as “family” and “family farm.” United States Government studies have concluded that the inconsistent data accumulated by the three major government agencies responsible for data gathering have raised more questions than they have provided answers concerning ownership of farmland. While it is clear that the number of farms in Nebraska has steadily decreased over the last several decades while the average farm size in Ne-
Nebraska has increased, it is not clear whether the corporate farm advanced or even played a meaningful role in the establishment of these trends.

The 1978 Census of Agriculture reveals that there were a total of 66,916 farms in Nebraska. The Census also establishes that approximately 86% of all farms were operated by individuals or families in noncorporate, non-limited partnership organizations. Further, census data shows that partnerships constitute about 10% of the farm operations in Nebraska, while corporations make up 3.6%, of which nonfamily corporate farm operations represent 3% of the total number of farms. Clearly, nonfamily ownership represents a very small percentage of total farm ownership in Nebraska.

While the concentration of farmland ownership in "large" corporations has been viewed as a menace to the success and survival of the family farm, Initiative 300 does not restrict the acreage or nonfarming assets of family corporations or partnerships. Recent statistical studies show that the largest concentrations of Nebraska agricultural land are, in fact, in family-owned farms. Large family-owned farms, comprising 10.6% of the total operating farms, account for fully 36.8% of the total agricultural sales in the state. Nonfamily-owned corporate farming operations, on the other hand, produced only 4.8% of the state's total agricultural sales. Even though Initiative 300 will prohibit any further concentration of farmland in the hands of corporations owned by unrelated individuals, corporations owned by related persons will be allowed to continue to acquire additional land. Therefore, continual ownership of farmland by corporations will not be prohibited but will be merely restricted to those entities owned predominately by related individuals. Consequently, it is apparent that Initiative 300 will perpetuate an already established trend towards concentration of farmland ownership by increasingly larger family-owned entities, including corporations.

The fear of "largeness" is not directly addressed by Initiative 300. No evidence exists to suggest that large family farm corpora-

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208. See supra text accompanying notes 39-40.
209. See Phelps, supra note 38, at 467.
211. Id.
212. Id.
213. See Initiative 300 Hearing, supra note 4, at 4, see also "Yes on Initiative 300," supra note 173.
tions reduce the perceived danger of unfair competition or perpet-
ual ownership of land thought to be associated with nonfamily
farm corporations. The danger, if any, attributable to corporate
ownership, and particularly large corporation ownership, would
appear to transcend any differences in stock ownership between
family members and nonfamily members. If large anticompetitive
farms with monopolistic tendencies are the concern in Nebraska,
then Initiative 300 only scratches the surface of that concern.

Attention to the growing size of farm operations should be di-
rected towards existing farm operators rather than future foreign
investors. A 1979 congressional hearing on the “Status of the Fam-
ily Farm” concluded that “[t]he single most important source of
growth in farm sizes has not been corporate takeovers, but consoli-
dation of additional land into existing farms. This has led to the
concern being voiced that the single greatest threat to the ‘family
farm’ is other ‘family farms.’”216

The trend of farm expansion has been fueled in large part by
the need to increase farm income.217 Over the years, increased
production and increased production costs have lowered commod-
ity prices relative to costs, which in turn has meant lower profit
margins and increased growth incentives.218 The Bureau of Busi-
ness Research at the University of Nebraska has concluded that
“the biggest problem facing smaller farms is low income. Although
per-unit cost and per-unit net income of smaller farms may be sim-
ilar to those of larger farms, smaller farms simply produce fewer
units and, therefore, realize smaller income.”219 Therefore,
smaller farm operations have an incentive to grow in order to pro-
vide a higher level of net income for the family farming unit, reduc-
reliance on other nonfarm income producing activities.220

In recent years, as farm size has increased and farmland values
have appreciated rapidly, the wealth of the farmer has similarly
risen. This additional wealth has enabled the large farmers to se-
cure more credit against current holdings to allow them to buy
more land and farm equipment.221 However, the assertion that
large corporate farms create unfair competition with smaller fam-

216. COMM. ON AGRICULTURE, NUTRITION AND FORESTRY, 96TH CONG., 1ST SESS.,
STATUS OF THE FAMILY FARM 4 (Comm. Print June, 1979) (emphasis in origi-
nal) [hereinafter cited as STATUS OF THE FAMILY FARM: 1979].
217. UNL NEWS, BUSINESS IN NEBRASKA, “STRUCTURE AND EFFICIENCY OF NEBRASKA
FARM,” Pre pared by the Bureau of Business Research College of Business
Administration, Vol. 61, No. 14, at 5 (January, 1982) [hereinafter cited as Busi-
ness in Nebraska].
218. Id.
219. Id. at 3.
220. Id.
ily farm operations due to economy of size advantages has been challenged in recent years. A July, 1981, United States Department of Agriculture (USDA) study entitled “Economies of Size in U.S. Field Crop Farming,” concluded that “[t]echnological change is not always accompanied by increasing economies of size. . . . [I]t appears that technological change has allowed, rather than forced farms to grow larger.” Technology, therefore, has permitted “larger farms to produce at a per-unit cost which is roughly equivalent to smaller farms.” The USDA study also stated that “economies of size in field crop farming are not great. . . . Small or medium-size farms in most regions are nearly as efficient as large farms.” The USDA study concluded:

[F]or all but the smallest farms, economies of size are not a significant factor in the success or failure of a farm. The report says “. . . [c]oncentrating on management and productivity appears to be the most important means of increasing efficiency for commercial farms; size is of much less importance. . . . These studies all challenge the conclusion that small farms do not support families adequately because they are inefficient and that farms grow to become more efficient.”

It appears that a purpose of restricting the competitiveness of large corporations due to their efficiency is of questionable legitimacy.

The federal tax system places the large farmer with income in a high income tax bracket at a competitive advantage over the small farmer without a large amount of nonfarming income. Large farms can operate at a tax loss and can still generate positive cash flow due to investment tax credits and depreciation. The tax system “tends to penalize the farmer who provides most of his labor supply from family resources, buys few purchased inputs, and extends the life of his equipment by careful maintenance and repair . . .


223. Business in Nebraska, supra note 217, at 3 (emphasis in original).

224. Id.

225. Id.

226. Id. at 3, 5 (quoting Economies of Size, supra note 222, at 22).

[whereby] [t]he farm sector loses resiliency." It seems inevitable, due to the tax and ownership advantages, that farm sizes will continue to grow. The trend towards incorporation will also likely expand as farm sizes increase. The large family corporations will probably continue to grow without the added strain of other corporate farms in the free enterprise system and the small farms will continue their struggles to break even.

Ironically, the most recent tax laws have provided a mechanism for circumventing one of the primary objectives of Initiative 300: the exclusion of foreign investment in farmland. This mechanism involves the use of a Subchapter S Corporation, which has many of the attributes of a regular corporation, i.e., limited liability and continuity of existence, but is taxed very much like a limited partnership in that profits, losses, and other tax benefits, such as investment tax credits and depreciation deductions, are passed through directly to the investor. In essence, the Subchapter S Corporation is an alternate vehicle for maximizing tax benefits to investors from the ownership and operation of land, buildings, and machinery. Recent changes in federal tax law have expanded the usefulness of the Subchapter S Corporation in tax shelter investments by permitting the stock of such corporations to have different voting rights. Conceivably, both voting and nonvoting stock could be issued and outstanding simultaneously, which could serve not only to make the Subchapter S Corporation even more like a limited partnership, i.e., limited partners have no voice in management, but could also permit a Subchapter S Corporation to qualify as a "family farm corporation" under Initiative 300 while retaining many of the tax advantages for investors associated with limited partnerships, which Initiative 300 has sought to severely restrict. This could be accomplished by permitting one stockholder, who would agree to live on the farm or provide active day-to-day labor and management, to own all of the stock with voting rights, while additional nonvoting stock could be issued to up to thirty-four unrelated individuals wishing only a passive investment role with possible tax shelter benefits. Such a result is

228. Recent Trends, supra note 227, at 2.
233. Seminar: Taxes and Initiative 300, Nebraska Continuing Legal Education (January 21, 1983). See Neb. Const. art. XII, § 8, cl. 1(A); see infra Appendix 1. The example of a single shareholder holding all the voting stock in a Subchapter S Corporation is perhaps a bit extreme. Neither the Internal Revenue Code, the Subchapter S Revision Act of 1982, nor the Committee Reports re-
particularly ironic because investors in a Subchapter S Corporation do not have to be related to receive substantial tax benefits, whereas investors in a limited partnership would have to meet Initiative 300's consanguinity requirements in order to receive the same tax benefits.\footnote{I.R.C. § 338 (1983). While regular corporations could also circumvent Initiative 300 by using non-voting stock to attract nonfamily investors into a farmland investment, there would be less economic incentive to passive investors because many of the tax shelter benefits would be captured within the corporate structure rather than being passed on directly to the investors, as in a Subchapter S Corporation.}

Since nothing in Initiative 300 bars a corporation or partnership from acquiring stock in existing corporations owning farmland, foreign entities seeking an investment in Nebraska farmland will be able to do so through the acquisition of stock of existing farm corporations. Another recent tax law change will make it more favorable for corporations to acquire stock of farm corporations in existence prior to the effective date of Initiative 300 without effecting a sale of the land owned by the corporation.\footnote{I.R.C. § 338 (1983).} Section 338 of the Internal Revenue Code now permits an entity acquiring stock to make an election to have the transaction treated as a purchase of assets, resulting in a step-up in tax basis.\footnote{I.R.C. § 338 (1983).} The acquiring entity, consequently, will realize greater depreciation benefits on depreciable assets than would otherwise have been available. Since Initiative 300's provisions are triggered upon the actual sale of land, a sale of stock transaction will permit land to be transferred from one owner to another without violating the provisions of Initiative 300.\footnote{NEB. CONST. art. XII, § 8, cl. 1; see infra Appendix 1.} Foreign-owned corporations and partnerships will be able to acquire the stock of existing Nebraska farm corporations with favorable tax results and thereby indirectly own farmland and engage in farming operations, a result not intended by Initiative 300.\footnote{NEB. CONST. art. XII, § 8, cl. 1(A); see infra Appendix 1.}

Furthermore, the family farm residence requirement in Initiative 300 is illusory since it contains a cure provision which allows...
fifty years for a family to requalify as a family farm corporation.\textsuperscript{239} Perpetuating control of farmland ownership by family farm corporations through such liberal requalification provisions appears to undermine the free market system and encourage the creation of a type of landed aristocracy. This phenomenon, combined with land price inflation, creates inheritance problems:

Present provisions of inheritance tax laws, combined with the capital gains tax structure, may serve as a disincentive to sell land. This poses the potential, if unchecked, for the eventual emergence of a "landed class" with attendant implications for tenure arrangements and the distribution of benefits (especially those that tend to get capitalized into asset values) from farm prices and policies.\textsuperscript{240}

Rising land values and inheritance laws "seem to be protecting current family farms instead of the family farming system, with the result that we may be in danger of developing a closed agricultural economy."\textsuperscript{241} Initiative 300 in no way addresses these highly complex socio-economic problems.

One of the primary purposes of Initiative 300 is to protect the farmer from the supposedly evil effects of large corporations. Initiative 300 merely excludes one sector of corporations whose owners are not fortunate enough to be related to one another. Therefore, the legislation and its effect is substantially underinclusive. If family farm legislation is "to be effective in preserving small family farms, legislation of this type must not be underinclusive. That is, it must ban all forms in which large industrial farms can function. Otherwise, instead of eliminating such farms, the legislature will merely cause them to reorganize."\textsuperscript{242}

If a court agrees that the distinction between related and unrelated individuals within the corporate form is sufficiently imprecise, it should find that Initiative 300 violates the equal protection clause of the fourteenth amendment.\textsuperscript{243} Similarly, there seems to be no reasonable public policy to be served by allowing first cousins to do business in a corporate form which is denied to the next

\textsuperscript{239} The "cure" provision states:

If a family farm corporation, which has qualified under all the requirements of a family farm or ranch corporation, ceases to meet the defined criteria, it shall have fifty years, if the ownership of the majority of the stock of such corporation continues to be held by persons related to one another within the fourth degree of kindred or their spouses, and their landholdings are not increased, to either requalify as a family farm corporation or dissolve and return to personal ownership.

\textsuperscript{240} \textit{NEB. CONSt. art Xfl, § 8, cl. 1; see infra Appendix 1.}

\textsuperscript{241} \textit{STATUS OF THE FAMILY FARM: 1979, supra note 216, at 5.}

\textsuperscript{242} \textit{Id.}

\textsuperscript{243} \textit{Comment, supra note 227, at 1205.}

\textsuperscript{243} \textit{See Leedes, supra note 112, at 641 (referring to Fiss, \textit{Groups and Equal Protection}, 5 PHILOSOPHY AND PUB. AFF. 107, 111 (1976)).}
degree of kindred. This degree of consanguinity appears to be an arbitrary line-drawing which bears no rational relationship to the objective of preventing the concentration of agricultural land ownership in large corporations. Furthermore, if a rational purpose could be found for distinguishing family relationships, the fifty-year cure provision would be wholly unnecessary. To draw a line between degrees of family relationships as a threshold requirement for farmland ownership and then to permit the requirement to be ignored for up to fifty years simply confounds any rationality of the requirement in the first instance and nullifies the objectives sought to be achieved. Consequently, the degree of kindred required for family farm corporations in Initiative 300 does not promote any identifiable legitimate state purpose.

These classifications do not bear a rational relationship to the identified purpose of protecting small family farms from the encroachment of centralized farmland ownership by large corporations. Too little is known. Congressional committee reports on the status of farms in the United States conclude that “[u]nless trend data, and data useful on the local level, can be compiled, there will be no basis for making sound policy decisions on the ownership and control of farmland.”244 Without this trend data, “legislative efforts will be based on sheer guesswork,”245 and legislators will tend “to accept conclusions that are based more on emotion than on fact.”246 Before a state can act, it “must have adequate information indicating what the trends are in farmland ownership at the local level. Such information does not exist, unfortunately, and the committee is unaware of plans to gather it.”247 The dearth of information and the wealth of conjecture about the impact of corporations on the farming community make it evident that the classifications in Initiative 300 should not withstand equal protection review. Choosing to restrict corporations comprised of unrelated persons from farming or ranching is to make a mockery of common sense.

b. Preservation of Rural Life

Initiative 300 proponents have asserted that the amendment was intended, in part, to help preserve a sound rural policy in Nebraska by protecting or actually encouraging the concept of family


245. Id. at 17.


farms operated by Nebraska residents upon their own land. Indeed, the United States Congress has consistently supported and espoused the value of the family farm in maintaining the well-being of American rural society.\textsuperscript{248} Congress articulated this public policy recently in the Food and Agriculture Act of 1977: “the maintenance of the family farm system of agriculture is essential to the social well-being of the Nation and the competitive production of adequate supplies of food and fiber.”\textsuperscript{249} However, in adopting the Food and Agriculture Act, Congress also acknowledged that very little was really known about the makeup and character of American agricultural society or what factors were really impacting the evolving structure of the farm sector.\textsuperscript{250} Therefore, the Food and Agriculture Act directed the Secretary of Agriculture to submit to Congress a written report annually containing current information on trends in family farm operations. The first such report, presented in June of 1979, stated this basic tenet: “For informed public policy judgments, an understanding of the forces affecting farm structure is essential. It is important to know, in fact, that a given public policy ... has the consequences on farm structure that are popularly believed.”\textsuperscript{251}

With the passage of Initiative 300, the people of Nebraska appear to be attempting to stop or reverse the evolving character of Nebraska agriculture in an effort to preserve the institution of the family farm and the rural society which it has fostered. However, the informed observer of American agriculture, and Nebraska agriculture in particular, must acknowledge that in reality there exists a complexly interrelated set of economic, social, and psychological reasons for the changing structure of American agriculture. Through the years, as the structure changes, so must the character of the rural way of life which it supports.

The central issue is whether Initiative 300’s restrictions on non-family corporate and syndicate ownership and operation of agricultural land will advance or even preserve traditional rural society.\textsuperscript{252} Fundamental to the analysis of this issue is a determin

\textsuperscript{248} See generally Taylor, supra note 35, at 475.


\textsuperscript{250} STATUS OF THE FAMILY FARM: 1979, supra note 216, at 3.

\textsuperscript{251} Id. (emphasis supplied).

\textsuperscript{252} What is the “traditional rural society?” Not that long ago, one author wrote: [T]he family-sized farm is the American ideal and means that the owner and his son or sons can perform the actual work of tillage, the female members of the household smoothing the way by providing home comforts, assisting about chores, or in field or meadow as pressure of work may dictate.

Taylor, supra note 35, at 477 (quoting J. Schaf, THE SOCIAL HISTORY OF
nation of whether corporate ownership of farmland substantially impacts rural life. The most intensive research conducted in this area was made in the Arvin-Dinuba study in 1946, involving two California communities, one founded upon large-scale farms and the other founded upon smaller, family-size farms. The study concluded that the small farm communities were economically, socially, and culturally much healthier than the communities with large farms. Due to this finding, the Arvin-Dinuba study has naturally become the beacon for opponents of corporate farm ownership. However, it is important to note that the Arvin-Dinuba study focused primarily on the relative sizes of the farm units, rather than on the character of the ownership of the underlying operating entities involved. The study, therefore, only cautions that large farm communities are less healthy than small farm communities. It does not address or document the impact on rural society of corporate landholders, small or large, based on the nature or character of the owners of the corporate stock. In fact, no statistical information can be found which does make such a comparison.

Further, Bruce Johnson, an agricultural economist at the University of Nebraska, pointed out that the California study provides a much different result when applied to the Nebraska agricultural community:

While the Arvin-Dinuba study expresses a valid concern for rural life due to the economic incentives which encourage large farming corporations to vertically integrate, the impact of corporations on rural life, nevertheless, will continue to be much less in Nebraska than it has been in California. One reason that corporate influence in the midwest will never be as strong as in California is due to the land-base agriculture rather than factory-type farming which is prominent in California. A corporate organization works well in a broiler [chicken] plant and with intensive truck farming in

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256. *Id.*
257. See generally *Ownership and Control, supra* note 195.
small areas. The Midwest however, is strung out with a much larger, less contiguous land area which, coupled with a low turnover rate of ownership, cuts efficiency and management, making it less desirable for corporations to invest in farmland.258

Another study was made in 1968 by the South Dakota Legislative Research Council.259 Agricultural trends from 1932 to 1968 in North Dakota and South Dakota were compared “in an effort to determine what, if any, impact corporate farming may have had in South Dakota.”260 South Dakota had never had restrictions on corporate farming.261 “On the assumption that the economic, social and political characteristics of the two States are basically similar,”262 the agricultural trends revealed “that North Dakota’s anticorporate farming law has not significantly helped to maintain farm population, lower the farm tenancy rate, or to maintain the number of farms.”263

Contrary to the concerns expressed in the Arvin-Dinuba study, Initiative 300 restricts corporate ownership of agricultural land not on the basis of size, but rather on the basis of who owns the controlling interest in the underlying entity.264 Under Initiative 300, a family farm could be of any size. Consequently, the public purpose behind Initiative 300, to protect the rural way of life from large corporations, is not accomplished by restricting nonfamily corporate ownership of farmland. No evidence exists to support a conclusion that the evil attributes of large corporate farms would be in any way ameliorated by ensuring that voting control of the corporate stock is owned by members of a family. Similarly, corporate or syndicate ownership concentrated in the hands of family members no more distant than the fourth degree of kindred bears no relationship to the size of the basic entity involved. Initiative 300, therefore, fails to rationally promote the objective of preserving the rural way of life.

c. Corporate Stewardship of the Land

The arguments suggesting that corporations are environmentally raping the farmland of Nebraska are not consistent with the

258. Interview with Dr. Bruce Johnson, Associate Professor of Agricultural Economics at the University of Nebraska - Lincoln, in Lincoln, Nebraska (January 20, 1983).
260. Id. at 19.
261. Id.
262. Id.
263. Id. at 25.
264. NEB. CONST. art. XII, § 8, cl. 1(A); see infra Appendix 1.
long-term nature of investments in farming. While no statistics exist to show that corporate farmers are poorer land stewards than noncorporate farmers, it is reasonable to note that corporate investors desire capital gains. If they destroy the land while waiting for it to appreciate, they will not realize a return on their investment. If the topsoil is ruined, no resale market will exist for the land. Admittedly, there have been instances of poor conservation practices associated with corporate and syndicate farming operations, but there is no evidence available relating to Nebraska agricultural land which supports a conclusion that family farmers are any better stewards of the land than nonfamily corporate farmers.

Linda K. Lee, an authority on the stewardship of land, presented a paper to the American Agricultural Economics Association's annual meeting entitled "The Impact of Landownership Factors on Soil Conservation." Ms. Lee's research focused on national tests tabulating soil erosion rates on the basis of different groups of owners. Her study incorporated data which is presently being accumulated by the USDA in their Land Management Study. Ms. Lee concluded that while significant attention has been focused on alleged high erosion rates attributable to land owned by large corporations, the "results of the structure analysis indicate that nationally there are no significant differences in mean soil losses between different types of ownership groups." Ms. Lee further summarized that "the data indicate that most of the reported differences in erosion rates among types of landowners can probably be attributed to physical rather than management factors."

By restricting .3% of the agricultural farm operators, Nebraska is not rationally curing its environmental or ecological problems. The effect, if any, will be miniscule. Once again, the classifications which restrict ownership of corporations and syndicates on the basis of narrow family relationships do not rationally relate to the environmental purposes voiced in support of Initiative 300.

V. CONCLUSION

Initiative 300 fails to deal with the underlying economic realities of farming in today's economy. Nebraska is fighting an economic inferno of incomprehensible origin with an anti-corporate fan.

267. Id.
Large corporate ownership of farm and ranch land is still possible not only for family corporations but also for any corporation limiting its class of voting shareholders—most favorably for Subchapter S Corporations. The complexities and ambiguities of Initiative 300 are massive, and the perceived will of the people to protect the family farm may in fact be thwarted by a misdirected, emotional, and irrational response to a blinding fear that Nebraska agricultural land is being swallowed up by the soulless, corporate conglomerates and bandit limited partnerships with invisible alien investors.\(^2\) While the purposes promoted by Initiative 300's supporters are sincere and deeply rooted in a traditional way of life, the law demands that the views of the majority, when transformed into law, must rationally relate to their intended purposes. Initiative 300 cannot be conceived in any rational way to achieve its intended purposes. The Initiative, in light of reliable statistics, neither addresses a real danger nor realistically accomplishes a solution to even a perceived danger. Therefore, Initiative 300's classifications are of highly questionable validity.

The classifications which pit related against unrelated individuals and first cousins against second cousins are a weak and inefficent medicinal salve. The survival of the family farm is not to be squeezed from such narrow definitions of popular ideals. The fading prominence of a valued way of life is the product of a set of factors so complex, yet so methodical, that the inevitable wave of change will need far more to be stopped than the naive and frail erection of an anti-corporate dam.\(^2\) The voters of Nebraska have

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\(^2\)68. One week after the adoption of Initiative 300, Secretary of State Allen Beer-\(^2\)man, charged with the enforcement of the Amendment, was quoted as saying: "Nobody understands the amendment. That's why we won't see anything happen for three to four weeks. . . . More attorneys than farmers are looking at it and researching the implications." Lincoln Journal, Nov. 9, 1982, at 1, col. 3. Unfortunately for the electorate, Senator Fenger's remarks at the Public Hearing for Initiative 300 may prove to be prophetic:

> Perhaps it [Initiative 300] should be labeled "Initiative petition to destroy the family farm" since it has the potential of hurting the very segment of Nebraskans that [it] is purported to help, or . . . how about an "initiative petition to enhance and preserve the bank accounts of members of the Bar Association?"

Initiative 300 Hearing, supra note 4, at 13.

\(^2\)69. Alternatives to Initiative 300 are available on the state level. The state legislature could propose legislation which would: (1) limit corporate farm acreage; (2) step-up enforcement of anti-trust legislation to prevent unfair market competition by vertically integrated corporate conglomerates; (3) create vehicles for government assisted financing for small farms and new farmers seeking to enter the business; (4) enact state subsidy programs and special tax provisions to assist small family farms; and (5) adopt meaningful and enforceable soil conservation and environmental protection laws to insure the preservation of Nebraska's vital agricultural resources. See Phelps, supra note 38, at 464-65; see also Comment, supra note 227, at 1208.
shot a haphazard constitutional arrow into space in an attempt to pierce the "evil," a destroyer of family farms, whatever and wherever it may be.*

Patricia Pansing Brooks '84

* On July 6, 1983, an action was filed in the District Court of Lancaster County, Nebraska, challenging the constitutionality of Initiative 300 on the ground, among others, that Initiative 300 is in conflict with the equal protection clause of the fourteenth amendment of the United States Constitution. Omaha Nat'l. Bank v. Paul L. Douglas, Att'y Gen., Doc. 372, No. 191 (Lancaster County, Nebraska, Dist. Ct., filed July 6, 1983).
That Article XII of the Constitution of the State of Nebraska be amended by adding a new section numbered 8 and sub-sections as numbered, notwithstanding any other provisions of this Constitution.

Sec. 8(1) No corporation or syndicate shall acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any title to real estate used for farming or ranching in this state, or engage in farming or ranching.

Corporation shall mean any corporation organized under the laws of any state of the United States or any country or any partnership of which such corporation is a partner.

Farming or ranching shall mean (i) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products, or (ii) the ownership, keeping or feeding of animals for the production of livestock or livestock products.

Syndicate shall mean any limited partnership organized under the laws of any state of the United States or any country, other than limited partnerships in which the partners are members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses, at least one of whom is a person residing on or actively engaged in the day to day labor and management of the farm or ranch, and none of whom are nonresident aliens. This shall not include general partnerships.

These restrictions shall not apply to:

(A) A family farm or ranch corporation. Family farm or ranch corporation shall mean a corporation engaged in farming or ranching or the ownership of agricultural land, in which the majority of the voting stock is held by members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses, at least one of whom is a person residing on or actively engaged in the day to day labor and management of the farm or ranch and none of whose stockholders are non-resident aliens and none of whose stockholders are corporations or partnerships, unless all of the stockholders or partners of such entities are persons related within the fourth degree of kindred to the majority of stockholders in the family farm corporation.

These restrictions shall not apply to:

(B) Non-profit corporations.

These restrictions shall not apply to:

(C) Nebraska Indian tribal corporations.

These restrictions shall not apply to:

(D) Agricultural land, which, as of the effective date of this Act, is being farmed or ranced, or which is owned or leased, or in which there is a legal or beneficial interest in title directly or indirectly owned, acquired, or obtained by a corporation or syndicate, so long as such land or other interest in title shall be held in continuous ownership or under continuous lease by the same such corporation or syndicate, and including such additional ownership or leasehold as is reasonably necessary to meet the requirements of pollution control regulations. For the purposes of this exemption, land purchased on a contract signed as of the effective date of this amendment, shall be considered as owned on the effective date of this amendment.

These restrictions shall not apply to:

(E) A farm or ranch operated for research or experimental purposes, if any commercial sales from such farm or ranch are only incidental to the research or experimental objectives of the corporation or syndicate.

These restrictions shall not apply to:
(F) Agricultural land operated by a corporation for the purpose of raising poultry.
These restrictions shall not apply to:
(G) Land leased by alfalfa processors for the production of alfalfa.
These restrictions shall not apply to:
(H) Agricultural land operated for the purpose of growing seed, nursery plants, or sod.
These restrictions shall not apply to:
(I) Mineral rights on agricultural land.
These restrictions shall not apply to:
(J) Agricultural land acquired or leased by a corporation or syndicate for immediate or potential use for nonfarming or nonranching purposes. A corporation or syndicate may hold such agricultural land in such acreage as may be necessary to its nonfarm or nonranch business operation, but pending the development of such agricultural land for nonfarm or nonranch purposes, not to exceed a period of five years, such land may not be used for farming or ranching except under lease to a family farm or ranch corporation or a non-syndicate and non-corporate farm or ranch.
These restrictions shall not apply to:
(K) Agricultural lands or livestock acquired by a corporation or syndicate by process of law in the collection of debts, or by any procedures for the enforcement of a lien, encumbrance, or claim thereon, whether created by mortgage or otherwise. Any lands so acquired shall be disposed of within a period of five years and shall not be used for farming or ranching prior to being disposed of, except under a lease to a family farm or ranch corporation or a non-syndicate and non-corporate farm or ranch.
These restrictions shall not apply to:
(L) A bona fide encumbrance taken for purposes of security.
These restrictions shall not apply to:
(M) Custom spraying, fertilizing, or harvesting.
These restrictions shall not apply to:
(N) Livestock futures contracts, livestock purchased for slaughter, or livestock purchased and resold within two weeks.

If a family farm corporation, which has qualified under all the requirements of a family farm or ranch corporation, ceases to meet the defined criteria, it shall have fifty years, if the ownership of the majority of the stock of such corporation continues to be held by persons related to one another within the fourth degree of kindred or their spouses, and their landholdings are not increased, to either re-qualify as a family farm corporation or dissolve and return to personal ownership. The Secretary of State shall monitor corporate and syndicate agricultural land purchases and corporate and syndicate farming and ranching operations, and notify the Attorney General of any possible violations. If the Attorney General has reason to believe that a corporation or syndicate is violating this amendment, he or she shall commence an action in district court to enjoin any pending illegal land purchase, or livestock operation, or to force divestiture of land held in violation of this amendment. The court shall order any land held in violation of this amendment to be divested within two years. If land so ordered by the court has not been divested within two years, the court shall declare the land escheated to the State of Nebraska.

If the Secretary of State or Attorney General fails to perform his or her duties as directed by this amendment, Nebraska citizens and entities shall have standing in district court to seek enforcement.
The Nebraska Legislature may enact, by general law, further restrictions prohibiting certain agricultural operations that the legislature deems contrary to the intent of this section. (Adopted, 1982).
The above table of consanguinity, showing degrees of relationships, was reprinted from the Uniform Probate Code Practice Manual § 2-103.