

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

CNK, INC., a Colorado corporation, and )  
ROSS GUEBELLE, )  
Plaintiffs, )

vs. )

DEREK SCHMIDT, in his official capacity )  
as Attorney General for the State of Kansas, )  
Defendant. )

Case No. \_\_\_\_\_

**PETITION**

1. Plaintiffs bring this action challenging the constitutionality of the statutory scheme affecting the ownership of agricultural land and engaging in farming operations in Kansas -- K.S.A 17-5901 et. seq.

2. The statutory scheme expressly discriminates against out of state citizens and economic interests in a variety of ways, including, but not limited to:

- a. Expressly providing that only Kansas Corporations may be “authorized farm corporations”;
- b. Expressly requiring that all of the incorporators of “authorized farm corporations” must be Kansas residents;
- c. Expressly requiring that “limited agricultural partnerships” be formed under Kansas law;
- d. Providing more favorable treatment to agricultural business entities if deceased stockholders’ estates are administered in Kansas courts.

3. The effect of the unlawful discriminatory provisions provides strong incentives to

remove Kansas agricultural land from agriculture, burdens small family operations by barring access to much needed capital markets, and places burdens on the tradition of passing on family farming operations to succeeding generations.

4. The statutory scheme discriminates against employees of farming companies by limiting the ability of agricultural employers to reward agricultural employees with an ownership interest in the operation – a burden not imposed on the employees of any other kind of business.

5. It has long been recognized by Kansas public policy and law that farming operations have “unique need of substantial capital investment.” However, the challenged statutory scheme burdens or blocks access by Kansas farmers to capital markets that are readily available to other businesses.

6. CNK, Inc. is a Colorado corporation, with its registered office in Littleton, Colorado.

7. CNK’s Incorporators are Colorado residents.

8. CNK has two stockholders, both reside in Colorado.

9. CNK’s stockholders are unrelated to each other by blood or marriage.

10. CNK’s Incorporators and Stockholders have ownership interest in farming operations located in Southeast Colorado near the Kansas/Colorado border.

11. CNK desires to purchase Kansas “agricultural land” and engage in “farming” thereon as defined in K.S.A. 17-5903(g) and (h).

12. Ross Guebelle is a Kansas resident who owns Kansas agricultural land.

13. CNK intends to purchase agricultural land now owned by Ross Guebelle and located in Stanton County, Kansas, and Ross Guebelle intends to sell the land to CNK.

14. However, K.S.A 17-5904 prohibits any corporation other than a “family farm corporation” or “authorized farm corporation” from owning, acquiring or otherwise obtaining or leasing any agricultural land in Kansas.

15. An “authorized farm corporation” is defined by K.S.A 17-5903(k) to include only “a Kansas corporation, ...all of the incorporators of which are Kansas residents.”

16. These provisions expressly and facially discriminate against CNK because it is a Colorado Corporation and its incorporators are not Kansas residents.

17. This provision of the statute also expressly discriminates against non Kansas individuals because it prohibits them from being incorporators of an authorized farm corporation solely because they are not Kansas residents.

18. The Statutory definition of “authorized farm corporation” also requires that, when all of the stockholders are natural persons, one of them must either reside on the farm in Kansas or be actively engaged in labor or management of the farming operation. The statute further provides that if a stockholder meeting that requirement dies, the requirement does not apply so long as the deceased stockholder’s estate is being administered in a Kansas court. K.S.A. 17-5903(k)(3). This discriminates against corporations whose stockholders meeting this requirement are not Kansas residents.

19. CNK intends to hire employees to conduct farming operations on the Kansas land. Such employees will be the day to day stewards of the land on which they work and their hard work and contributions will be invaluable to the fostering of sound agricultural practices, the preservation of Kansas agricultural land and character and the provision of food and other agricultural products to persons in Kansas, the United States and other countries. CNK desires

to be able to reward the hard work and contribution of its employees and provide incentives for their continued stewardship of their Kansas agricultural heritage by offering them the opportunity to become shareholders in the corporation.

20. However, CNK's ability to so reward its employees is unreasonably and arbitrarily restricted by K.S.A. 17-5903 and 5904 because to do so would exceed the arbitrary, and discriminatory limitations on the number of unrelated persons permitted to, directly or indirectly, acquire, obtain or lease agricultural land.

21. The consequences of being found to own agricultural land or conduct farming operations in violation of K.S.A 17-5903 and 5904 are a civil penalty of up to \$50,000.00 and forced divestiture of the land.

22. Fulfillment of its agreement to purchase the Kansas land and the commencement of farming operations will subject CNK to those penalties.

23. Plaintiffs will suffer significant and irreparable harm if the provisions of the statutes are enforced against them.

24. Derek Schmidt is the duly elected Attorney General for the State of Kansas.

25. K.S.A 17-5904(c) states that "[t]he attorney general or district or county attorney shall institute suits on behalf of the state to enforce the provisions of this section." Plaintiff brings this action against defendant in his official capacity and seeks only declaratory and injunctive relief.

26. The passage of, and actions to enforce, the challenged statutes are actions taken under color of state law.

### **Jurisdiction and Venue.**

27. This court has jurisdiction of this case under K.S.A. 60-1701 and 1704 and 42 U.S.C. 1983.

28. Venue is appropriate in this court because the Office of Attorney General is located in, and Defendant may be served in, Shawnee County, Kansas.

### **COUNT I (Violation of the Commerce Clause of the U.S. Constitution).**

29. Plaintiffs incorporate the allegations of the preceding paragraphs as though fully set forth herein.

30. The Commerce Clause of the United States Constitution grants exclusive authority to regulate interstate commerce and prohibits the states from engaging in economic protectionism by enacting and enforcing regulatory measures that are designed to, or have the effect of, benefitting local interests by burdening out of state competitors or placing excessive burdens on interstate commerce.

31. K.S.A. 17-5901 *et. seq.* is a regulatory measure that was intended to benefit Kansas economic interests by burdening out of state interests and, in fact does have the effect of excessively burdening interstate commerce. The statutes discriminate against interstate commerce on their face and in practical effect and the burdens placed on interstate commerce are unreasonable and clearly excessive in relation to the any putative local benefit.

32. The challenged statutes clearly, discriminate on their face against out of state persons seeking to create an “authorized farm corporation” by prohibiting non-Kansas residents from participating as incorporators, even if there are other incorporators who are Kansas residents. K.S.A. 17-5903(k).

33. The challenged statutes clearly discriminate on their face against out of state corporations by expressly providing that only corporations formed under the laws of Kansas can be “authorized farm corporations” permitted to own farm land and engage in farming in Kansas. K.S.A. 17-5903(k).

34. The challenged statutes clearly discriminate on their face against out of state general partnerships by limiting general partnerships who may participate in “limited liability agricultural companies” to those “formed under the laws of the state of Kansas.” K.S.A. 17-5903(d)(2).

35. The challenged statutes clearly discriminate on their face against out of state interests by requiring that a member or shareholder reside on the land or be actively engaged in the labor or management of the farming operation. K.S.A. 17-5903(d)(2), (u)(2).

36. The intent to discriminate in favor of in state interests is further demonstrated by providing that, if the only member or shareholder residing on the land or actively engaged in labor or management dies, the requirement that a member shareholder reside on land or be actively engaged do not apply while that person’s estate is being administered, but only if it is being administered in a district court in Kansas. K.S.A. 17-5903(d)(3), (j)(3), (k)(3), (u)(3), (w)(3).

37. Agricultural land, goods and services purchased for use in farming operations thereon and the products of farming and agricultural land are all bought and sold in interstate commerce.

38. Farming and ranching operations are expressly recognized by the public policy and laws of the state of Kansas to have “unique need of substantial capital investment.”

39. The statutes challenged herein erect impermissible barriers and burdens on access to out of state capital markets for the unique requirements of capital investment in Kansas farming and ranching operations, and impermissibly deny Kansas farmers and ranchers access to interstate capital and financing and impermissibly deny out of state capital providers, access to Kansas.

40. The challenged statutes unreasonably adversely affect the quality, quantity and price of goods and services moving in interstate commerce that are used in and/or produced by Kansas farming and ranching operations.

41. The statutory scheme viewed as a whole is clearly intended to discriminate against out of state citizens and economic interests.

**COUNT II (Violation of equal protection).**

42. Plaintiffs incorporate the allegations of the preceding paragraphs as though fully set forth herein.

43. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. 1983, provides that “no state shall deny to any person within its jurisdiction the equal protection of the law.”

44. The challenged statutes violate the equal protection guarantee of the Fourteenth Amendment facially and as applied to plaintiffs by making classifications with no rational relationship to any legitimate governmental interest. The challenged statutes draw impermissible distinctions and discriminate against, *inter alia*:

- a. Persons, partnerships and corporations not formed in Kansas or under Kansas law;

- b. Persons permitted to serve as incorporator of authorized farm corporations;
- c. Employees of farming businesses who are prevented from receiving ownership interests in reward for their stewardship of Kansas agricultural land;
- d. Persons or business entities purchasing agricultural land for the purposes of farming in favor of those purchasing agricultural land for the purpose of changing its use and character to nonagricultural uses;
- e. Classes of person who may devise and bequeath ownership interests in farm related businesses;
- f. Sellers of Kansas agricultural land;
- g. Agricultural businesses seeking to obtain capital for farming operations or the purchase of agricultural land and capital providers seeking to provide capital for Kansas farming operations.

**COUNT III (Violation of the Privileges and Immunities  
Clause of the U.S. Constitution).**

45. Plaintiffs incorporate the allegations of the preceding paragraphs as though fully set forth herein.

46. The challenged statutes violate the Privileges and Immunities Clause of Art. IV, Sec. 2 of the United States Constitution by, *inter alia*:

- a. Prohibiting citizens of any state other than Kansas from being an incorporator of an authorized farm corporation;
- b. Prohibiting business entities formed under the laws of other states from owning, acquiring or leasing Kansas agricultural land or conducting farming operations in Kansas;
- c. Providing more favorable treatment to business entities whose stockholders' estates are administered in Kansas courts;
- d. Excluding out of state capital providers.

**COUNT IV (Violation of the Kansas Bill of Rights).**

47. Plaintiffs incorporate the allegations of the preceding paragraphs as though fully set forth herein.

48. Section 17 of the Bill of Rights in the Kansas State Constitution provides that “[n]o distinction shall ever be made between citizens of the state of Kansas and the citizens of other states and territories of the United States in reference to the purchase, enjoyment or descent of property.”

49. The challenged statutes repeatedly make distinctions between the citizens of the State of Kansas and those from other states in reference to the purchase, enjoyment and descent of agricultural land and related property by, *inter alia*:

- a. Limiting the incorporators of an “Authorized Corporation” to Kansas residents;
- b. Limiting authorized corporations to those formed under the laws of Kansas;
- c. Limiting general partnerships that may participate in various business forms to those formed under the laws of Kansas;
- d. Requiring one of the members or shareholders of companies owning agricultural land and related property to be actively engaged in the labor or management of the farming operation and exempting them from this requirement if the only such shareholder or member dies, so long as his or her estate is being administered in a district court of Kansas;
- e. Limiting the ownership of agricultural land and related property to companies that are Kansas companies or family owned businesses;
- f. Prohibiting out of other states from providing capital for Kansas farming operations.

WHEREFORE, Plaintiffs request that the court render judgment in favor of plaintiffs and

grant the following relief:

- A. Declare that K.S.A. 17-5902 thru 5908 interferes with interstate commerce in violation of the Commerce Clause of the United States Constitution;
- B. Declare that K.S.A. 17-5902 thru 5908 deprives the plaintiffs of equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution;
- C. Declare that K.S.A. 17-5902 thru 5908 violate the Privileges and Immunities Clause of the United States Constitution;
- D. Declare that K.S.A. 17-5902 thru 5908 violates Section 17 of the Kansas Bill of Rights;
- E. Declare that the enforcement of K.S.A. 17-5904 by the Defendant violates the Plaintiffs' rights;
- F. Enter an order permanently enjoining the Defendant from enforcing or taking any steps to enforce K.S.A. 17-5902 thru 5908;
- G. Award Plaintiffs their attorney's fees pursuant to 42 U.S.C. 1983 and 1988;
- H. Award Plaintiffs such other and further relief as the court shall deem proper.

WATKINS CALCARA, CHTD.

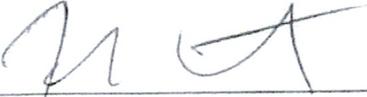
By /s/ Allen G. Glendenning

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Attorneys for Plaintiffs

**VERIFICATION**

The undersigned, being of lawful age, state that they have read the forgoing Petition and verify that the allegations and averments contained in the Petition are true.

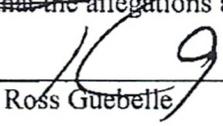
CNK, Inc.

By:   
Karl Nyquist, President

Date: 3/13/17

**VERIFICATION**

The undersigned, being of lawful age, state that they have read the forgoing Petition and verify ~~that the allegations~~ and averments contained in the Petition are true.

  
\_\_\_\_\_  
Ross Guebelle

Date: 2/15/17