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Farm Worker Legal Services Encourage Law of Unintended Consequences

by Kenneth F. Boehm

Summary

Two government-funded programs aimed at helping poor farm workers are actually making it harder for those very workers to find housing. Federal and state policy makers should repeal or reform these programs to ensure that farm workers do not continue to be victims of the law of unintended consequences.

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All too often, government policies exacerbate the very problems they were designed to solve. Problems with two government programs intended to help farm laborers in Michigan are just the latest example of what Nobel Prize-winning economist Milton Friedman has termed "the law of unintended consequences."

Over the past decade, a federal program has tried to promote housing for farm laborers. At the same time, another government program has been trying to help poor migrant workers by providing legal services on their behalf. These two programs intended to "do good" have lately interacted to do real harm by dramatically discouraging Michigan farmers from providing housing for farm laborers.

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With the best of intentions, the U. S. Department of Agriculture (USDA) set up a program (known as Section 514 farm labor housing) to subsidize loans to farmers who would then build better housing for farm workers. But farmers initially balked at participating in the program because of the heavy paperwork, financial costs, and regulatory requirements that came along with it. To induce greater participation in the program, USDA told farmers they could charge workers for utilities, but not for rent. Allowing farmers to do this gives the tenant an incentive to watch expenses and the farmer an inducement to invest in housing in the first place. More farmers then joined the program, relying on USDA's assertion that they could indeed recover utility costs from their worker/tenants.

Enter the Michigan Migrant Legal Assistance Project (MMLAP), a government-funded group that assists migrant workers with legal problems. MMLAP filed a class-action lawsuit in 1991 claiming that the Department of Agriculture erred in allowing farmers to charge workers for utilities. In their defense, farmers came forward with letters from USDA explicitly telling them they could, but then in 1993, USDA backed off its earlier assertion and told farmers they had to sign an agreement enforcing the regulation which *denied* them the right to charge for utilities. Farmers signing the new letter would be liable for all past utilities they had charged in reliance on USDA's advice.

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Ms. Chris T. Searer, a lawyer formerly with MMLAP, testified before a U. S. House Judiciary Subcommittee as to the disastrous effects of the litigation: "All the money at [MMLAP] has been poured into this ill-conceived class action . . . . This lawsuit has had the effect of scaring farmers into not building farm labor housing in Michigan, resulting in a tremendous shortage for the clients this program is supposed to be helping."

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Michigan farmers today are indeed using Section 514 farm housing loans considerably less than a decade ago. In fact, according to the USDA, just two Michigan farmers joined the program in 1999.

In the end, the farmers lost, the migrant workers lost, and—since MMLAP is government-funded—the taxpayers lost. But the years of expensive litigation in this case are not simply an isolated cautionary tale unique to Michigan. Nor is the outcome of reduced housing for farm workers.

Dan Gerawan of Gerawan Farms in California was a prominent fruit grower who had supplied his workers with new housing built at a cost of $1.6 million. His workers had a host of amenities, including centralized air conditioning. Legal services bureaucrats filed a lawsuit against him as frivolous and frustrating as in the Michigan example above. Mounting costs of litigation eventually forced the Gerawan family to demolish the housing.

When the litigation ended after a six-week trial, the government-funded legal services program that had sued the Gerawans for $20 million received a paltry judgment for $45,000. Taxpayers were on the hook for the legal services program's court costs of $450,000 while the Gerawans had to cough up $600,000 for their legal bill. As in Michigan, the farmers lost, the farm workers lost, and the taxpayers lost.

After the case ended, a representative of the legal services program that had filed the lawsuit against Gerawan's model farm worker housing was quoted as saying, "I can count on the fingers of my hands the places where there is available housing for farm workers."

That is the law of unintended consequences at work: When government seeks to "do good" with other people's money, it often serves to only make matters worse. Economists and philosophers have for centuries warned of the dangers of unintended consequences. Unfortunately, for just as long, too many politicians and policy makers have ignored their sage advice.

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