

Approved March 2, 1988
Date

MINUTES OF THE _____ COMMITTEE ON Select Committee on Corporate Farm Law

The meeting was called to order by Senator Allen at _____
Chairperson

12:16 ~~am~~/p.m. on February 24, 1988 in room 529-S of the Capitol.

All members were present ~~except~~

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Revisor of Statutes Department

Conferees appearing before the committee:

Senator Allen called the committee to order and called for action on committee minutes.

Senator Montgomery made a motion the minutes of the meetings of February 15, 16 and 18 be approved. Representative Bryant seconded the motion. Motion carried.

The Chairman reminded the committee that the resolution passed by both houses commissioned the committee to make recommendations back to the full Legislature by March 14. We do not have the power or authority to draft a bill but, hopefully, this committee will draft a resolution that will state the recommendations of this eleven member committee. The Chairman called for committee recommendations as to what was desired to be included in a resolution concerning corporate farming in Kansas.

When asked for information concerning the funding of a center of excellence at Kansas State, the Chairman stated he hoped that recommendations could all be included in one bill that would include the committees' recommendations plus funding for a swine center of excellence at Kansas State or wherever it might be placed. The Governor sent word that he does not want a swine center of excellence funded in a bill but that he would purpose funding at the end of the session in an appropriations bill if changes are made in the Corporate Farm Law. The amount of funding was not stated. The Chairman called attention to figures by the Pork Producers Council who had worked with personnel at Kansas State. The estimated budget for fiscal year 1989 was set at between \$500,000 and \$630,000.

Representative Bryant expressed the need for the Legislature to support the swine industry of Kansas and that the need could be helped by the Legislature requesting a center of excellence for swine at Kansas State, and also expressed the need for a diagnostic laboratory for the state. Representative Bryant made a motion the committee recommend a center of excellence for swine at Kansas State and that the committee also recommend that plans be made for a diagnostic laboratory also. Senator Warren seconded the motion. Committee discussion included: That, planning for a center of excellence with funding without discussing such with the Board of Regents, was going behind their backs. That the need for a swine center of excellence has been addressed but nothing has been done so maybe this suggestion will get the Regents' attention. Kansas State has had some basics but has never had enough people to really do much; if can get a center of excellence by going behind the backs of the Regents then do it. That Kansas State has said a swine center of excellence not a number one priority with them that they want present programs funded first. That hogs have been slighted in our state and that the center should be recommended and if recommended then let us do it. That whether Corporate Farm Law is changed or not, a center of swine excellence is needed and would be available for family hog producers in the state. That most small producers that spoke to this committee had little technology about the swine industry so it is obvious that a center of excellence is needed and that opposing it would be

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saying one wanted to ruin the industry in Kansas. That there is a lot of research that needs to be done and if we pass a corporate farm law bill the small producers are going to need information more than ever to enable them to compete with corporations who have technical information.
The motion carried.

Senator Warren made a motion that we correct our law to the extent of making it so a farmer can own and keep his own farm and his hogs and contract them with anybody he wants to (there is doubt cast on that by the Attorney General and that ought to be cleared up at this time). Representative Campbell seconded the motion. The Chairman stated that a bill is presently in the Senate Agriculture Committee to correct that situation caused by the interpretation from South of the Capitol. That the question is whether the corporation can own the hogs and contract for their care with the promise of taking them back and paying the farmer for caring for them. If changes are made to allow corporations to get into this business that question would be eliminated. Representative Beauchamp made a substitute motion that the committee recommend that we allow corporate ownership of hogs to be contracted and fed by existing swine producers excluding slaughter house ownership. Seconded by Senator Frey. During discussion it was stated that lots of work is done these days by so called custom work; this motion would make this allowable by law. This motion allows for anyone with capital to be involved in ownership of hogs except slaughter houses. The feeling was expressed that this motion was going in the wrong direction because we do not want what has happened in the chicken industry to happen in the hog business. Feeling was expressed that this motion would allow for small producers to have more of a chance especially ones that do not have finances to start out on their own. It was asked if this motion would allow DeKalb to expand their business at Plains. It was stated that this motion would not allow DeKalb to own more land, and that DeKalb will not invest lots of money for something on someone else's land.
The substitute motion carried.

The Chairman commented that he felt the committee should make a recommendation to allow DeKalb to expand to allow them to increase and improve their production of swine in the State of Kansas.

The question was asked if the committee made a recommendation to allow existing corporations to expand in their existing counties would that help DeKalb at Plains. It was also stated that the committee would be negligent and doing a disservice to the people in that part of the state if this committee does not allow DeKalb to expand. The question was asked that if allow DeKalb to expand will this cause other corporations to go to court for same privileges. It was stated that a law could not name DeKalb but rather it would have to be worded in terms of creating classes or refer to a set of circumstances that would cover DeKalb and other corporations that would fall into that class would be entitled to the benefits of that law. There are not many corporations in the state right now so doubt if such a law would benefit other than DeKalb. The question was asked if there was a reason why just limit this to DeKalb, why if good for DeKalb why not good for others. The Chairman answered that there was not enough support at this time to open the Corporate Farm Law. The question was asked if the document the committee prepares could have a statement concerning the general ownership of land by corporations something to the effect the committee acknowledges the benefits of a broader application of the law but we have decided at this time to only recommend this. Representative Gjerstad expressed doubts about the booklet by Mr. O'Day and gave committee members copies of her analysis of that report (attachment 1). It was stated that if changes were made that corporation investments would be in the western part of the state, that that would be economically good for the whole state but probably will not help the eastern part of the state as much. Also that the O'Day report did not say, if changes were made, what the individual impact would be on small areas of the state. It was stated that hog producers in the eastern part of the state have access to markets, that with change it means lots of economic growth for

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the state, and that the minority must be heard but it is time for the majority to rule.

Senator Gannon made a motion to amend the present Corporate Farm Law to allow swine corporate breeder farm operations, corporate farrow to finish operations and to exclude any vertical integration between production and processing entities. Seconded by Senator Frey. It was stated that if allow corporations that small producers cannot compete, that present markets for eastern part of Kansas will close up. The statement was made that hogs will be grown someplace and why not in Kansas instead of, for instance, in the eastern part of Colorado. The comment was made that did not feel could be sure hogs would be grown by corporations in other states because other states are beginning to tighten up their corporate laws. It was stated that committee needs to do what is right and feels that what needs to be done is change Corporate Farm Law because people change their minds, feels the committee needs to recommend what is best for the state and that means opening up Corporate Farm Law.

Representative Beauchamp made a conceptional substitute motion that the committee recommend to the Legislature to allow existing corporations involved in swine production in Kansas to buy land for their desired expansion for the purpose of swine production on a proportional basis to what land they own at present. Representative Campbell seconded the motion. Committee discussion consisted of questions making sure DeKalb would be allowed to expand with this motion. Senator Gannon stated that he opposed the motion but that he was not opposed to DeKalb that he has a lot of respect for their organization, he thinks it has been foolish that they were not allowed to expand in the past, thinks the committee is making a mistake, that he feels it is the year for change and he is willing to work for the change and thinks it is time for the majority to rule and that is reason he will vote no on the motion. It was stated it seems the whole issue is coming down to if we are causing the state swine production to move from Eastern Kansas to the western part of the state. This is a compromise in that it will help DeKalb and will not hurt eastern Kansas swine producers. It was questioned if there were enough votes in the House to pass these suggested changes, so why not go for the whole change and let the majority rule. If the whole does not pass then compromise. Representative Beauchamp explained he had offered the substitute motion because he felt like that was all there were votes for.

The Chairman called for the vote on Representative Beauchamp's conceptional substitute motion. The Chairman declared the yeas in the majority. A division of vote was requested. Six voted in favor, motion carried. The Chairman asked if any wanted to be recorded as voting no. Senator Gannon requested that it be recorded that he voted no.

Representative Bryant expressed the desire to have some language included in the committee statements that reflect the feeling that no state or local government in the state can make any exceptions so that a corporation or anyone doing business in the state would be favored economically over an individual. He stated that was an issue brought up by proponents and opponents and feels the committee should make a recommendation on it.

It was commented that did not believe this a good suggestion because there are a lot of different corporation farming operations right now that are operating under exceptions. It was also stated that the reason there has been opposition against changes was because of the unfairness that corporations have over the individual producer. It was pointed out that the new section 4 of Representative Holmes bill addresses tax issues.

Representative Bryant made a conceptional motion that state and local governments not be involved with any economic advantage or expansion of any existing swine facility or any other that might come about. Representative Hamm seconded the motion. Motion carried.

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Representative Roenbaugh made a motion the committee accept the recommendations made to be the report from the committee to the Legislature. Representative Campbell seconded the motion. It was requested that the committee be allowed to read the report after completion before voting to report it to the Legislature. Representative Roenbaugh retracted her motion.

The Chairman announced the committee would meet again after the report is completed, and he then adjourned the committee at 1:50 p.m.

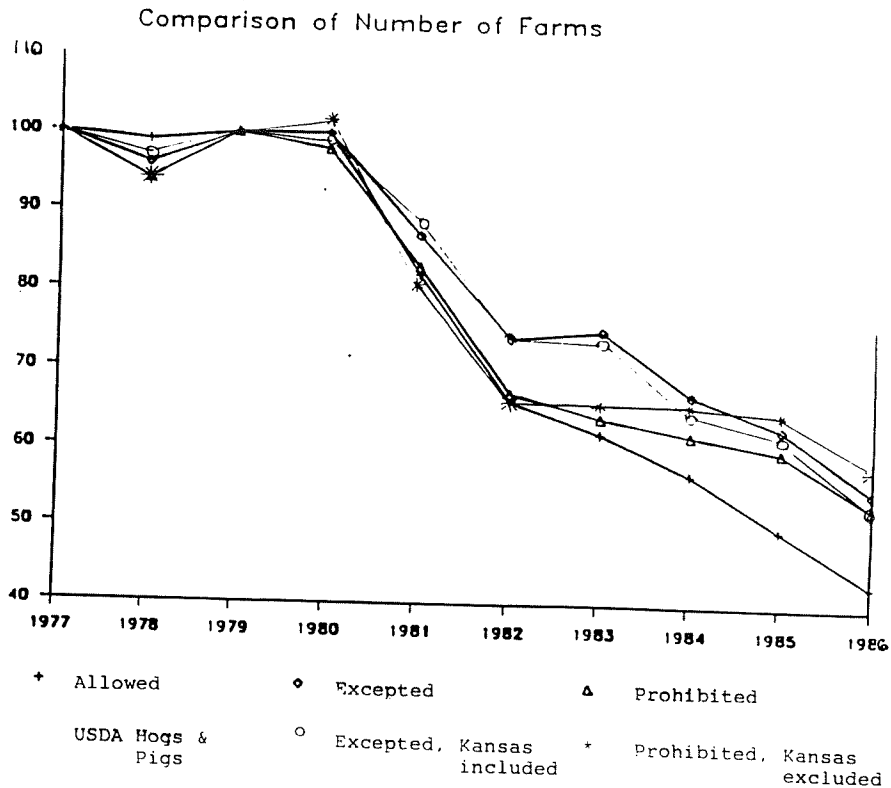
ANALYSIS OF O'DAY STUDY

The Development International study ^{funded} altered by Kansas, Inc. and presented to the Economic Development Committee contains several flaws crucial to its policy recommendations. First, only perceptions of agribusiness members were relied upon to classify the Kansas law as "restrictive", not analysis of the actual state laws to determine whether the characterization was justified.

Analysis indicates Kansas could fairly be placed within the category of "restrictive with exceptions", given the authorization of various corporate entities excluding only the largest multi-stockholder corporations and the many similarities of Kansas law with other states in that category. One should also note the Iowa law categorized us "restrictive with exceptions" bars vertical integration while the Oklahoma law considered restrictive does not bar vertical integration. The apparently arbitrary classification is inherently suspect.

Therefore, to test the validity of this categorization, graphs were generated utilizing the same data (USDA Hogs and Pigs) (1) removing Kansas from the initial restrictive category and comparing that with the unrestrictive and restrictive with exceptions group, and (2) placing Kansas in the group considered restrictive with exceptions. This simple change completely altered the analysis in many instances, thus indicating the arbitrariness of the initial classification based on perceptions, and brings into question the validity of any study so sensitive to a minor change.

attachment 1
2-24-88



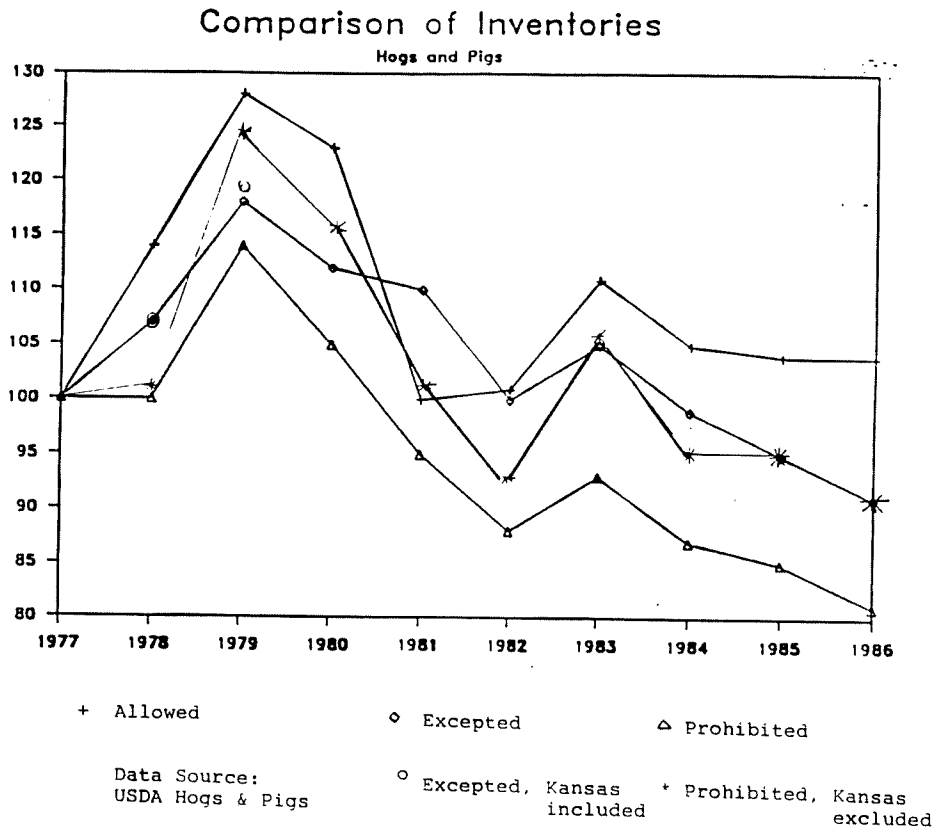
The O'Day study initially concluded that the most restrictive laws did not protect the individual swine farmer (emphasis on original), yet removal of Kansas data completely reverses this conclusion, indicating the states laws with restriction did protect swine farmers. This only shows Kansas individually was disproportionately greater by the combined farm crisis and Kansas' performance dominated the data.

One should also note the original study attempted to rationalize the precipitous drop in farm numbers in unprotected states by mentioning the fact that this category had few farms to begin with thus the losses had a disproportionate effect on the differentials. What was not mentioned is the fact that the category including Kansas was even smaller, thus the same rationale of disproportionate effect on differentials is even stronger.

The actual farm numbers for 1977 were:

Restrictive (including Kansas)	38,500
No Restrictions	109,600
Restrictive with exceptions	147,000

This is an exceptionally slanted omission when you realize the first category has only 26% of the largest, the second category has 75% of the largest, yet only the second category mentions smaller initial starting numbers as a mitigating factor to support his analysis (USDA Hogs and Pigs Reports).

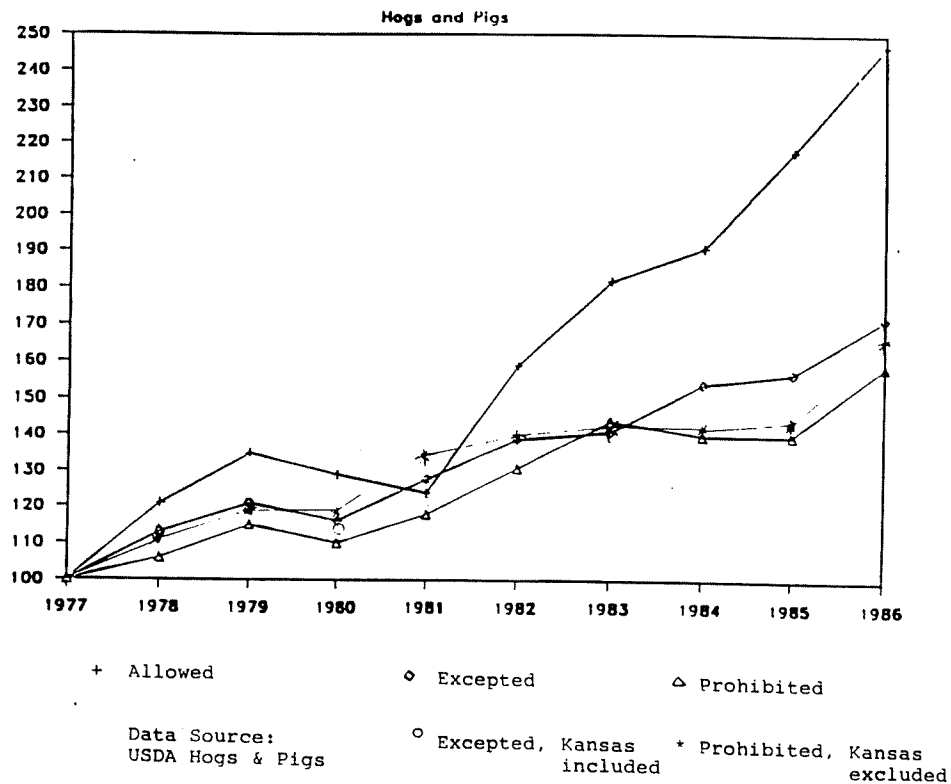


The O'Day study concluded the restrictive with exceptions category experienced a greater loss in total inventories than the other two categories. Removal of Kansas figures again has a dramatic effect, with the restrictive category exceeding the restrictive with exceptions category in three of the prior ten years, and equaled or bettered the performance of states with laws allowing exceptions in five of the past ten years, indicating that other factors than the law alone play a significant role in inventory figures.

The O'Day study again concluded states with a restrictive law as a group had the poorest performance in inventory value. Removal of Kansas figures again showed the minimal differences of these categories, with the restrictive states having a higher ending inventory value than states with exceptions. Are we to conclude now that a more restrictive law is appropriate to help swine farmers inventory values?

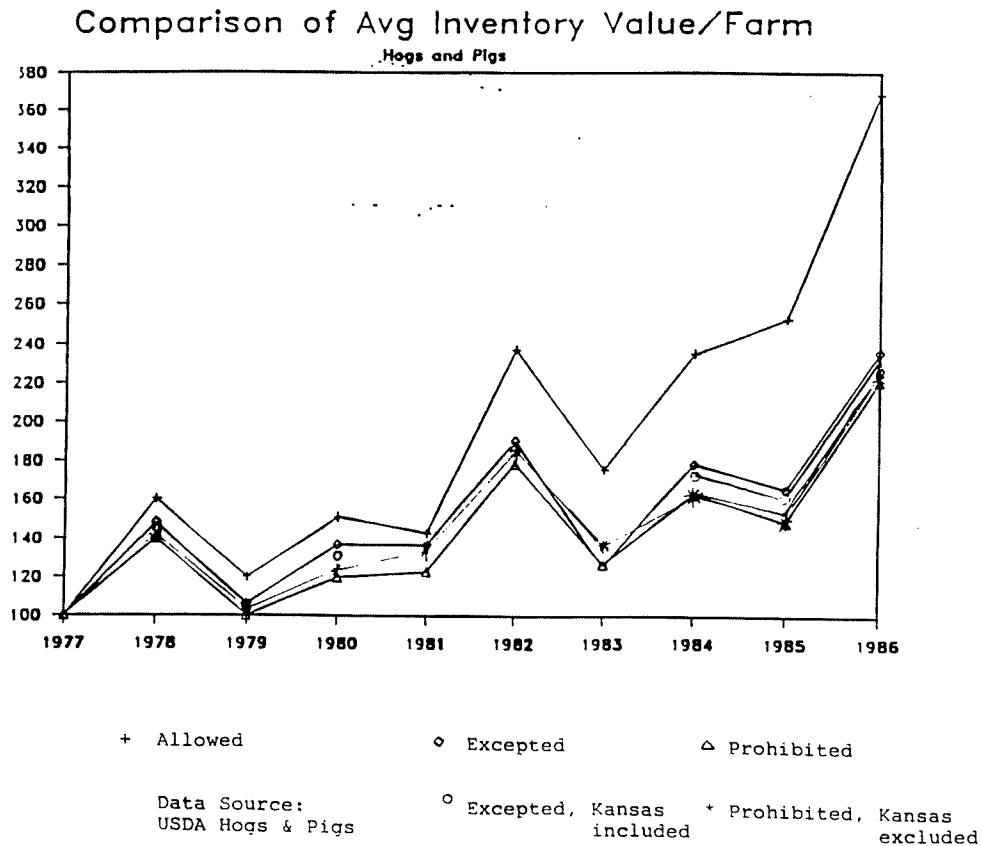
Note again the virtually identical performance over the last four years of the two controversial classifications. Valid analysis is now impossible.

Comparison of Average Head per Farm



As the graphs show and the O'Day study indicates, the category with the greatest growth of average head per farm was the category allowing unlimited corporate growth. Though the law categorized as "restrictive" law was lowest and removal of Kansas data

had little appreciable effect, the overall index growth of both categories were within 6% of each other at the end of the ten year period, reinforcing the notion of analytically insignificant categorization.



The O'Day study pointed out states in the excepted category "did not seem to benefit much more than the states in the restrictive category". This again points out the fact that the type of law the O'Day study purported to identify had very little correlation to an individual state's economic performance. In fact, both Kansas and South Dakota had better growth rates than Iowa and Missouri. If Oklahoma was excluded from the restrictive group, and Nebraska from the excepted group, the performance of the restrictive group would now exceed the performance of the excepted group by a margin of almost 10%. Though this is merely statistical manipulation, it clearly

indicates each states individual performance cannot be explained as simplistically as the O'Day study attempts to do.

Conclusions

The O'Day study concludes that corporate farming prohibitions have been ineffective, have actually appeared to create negative impacts, and that states allowing contracted integration have developed their industries to a greater degree. The reason given that the corporate farming laws have been ineffective is that there are too many other factors which impact on swine farmers. Some of these factors are increasing competition due to vertical integration, rapidly fluctuating market prices, and the need to remain flexible to adapt to these changes. Therefore, the study concludes, corporate farming integrated with an overall economic development program should lead to continued growth and viability.

Review of the basic assumptions relied upon by the O'Day study indicate the study is analytically weak and potentially misleading. First, Kansas appears to be inappropriately classified. No analysis of the law to determine the prohibited corporations were ever undertaken. Categorization was based on perception, not reality. The analytical categories chosen to demonstrate the dire consequences of minimal corporate restrictions in reality show the states individual performance had virtually nothing to do with the type of law in place. Assuming the law was significant, the "trends" should remain the same for the other states in that category. However, removal of Kansas data from the arbitrary classification in almost every instance significantly changed the trends and conclusions reached. Removing Kansas from its arbitrary classification reverses the conclusion that restrictive with exceptions categories performance are virtually identical, their much touted differences in reality are statistically insignificant.

Third, the premise of the O'Day study rests upon the notion that professional business corporations are better able and react and grow in rapidly changing environments than the currently allowed family farms, family farm corporations, authorized farm corporations, and partnership arrangements operating in Kansas now. This premise is not absolute. Mere numbers of stockholders and potential capitalization has no relationship to the quality of operational decisions. In any type of business structure, the decisions are always made by a few key people, not numbers of stockholders. As the data indicates, Kansas swine farmers are reacting to economic conditions by increasing herd size and discontinuing operations when no longer profitable.

Conclusions

- 1) Family farm laws are effective. Protection is provided. Family farms and authorized farm corporations are equally capable of conforming to economic changes as an exception allowing a marginally - or radically - different corporate structure farm.
- 2) "Appears" is the key word. Removing Kansas figures shows no difference does result. Thus the "negative impact" is virtually nonexistent.
- 3) No disagreement, except Kansas does allow exceptions - the family farm corporation and authorized farm corporations. Thus, our strategy of economic development is to work with what we have, not wave an emotional magic wand.
- 4) Merely shows longer history. Equating the "best" (non-restrictive) and the "worst" (restrictive) as even worse than the middle is logically irrelevant and nonsense. He merely says "it is", not why it is or why a law change would help.