

HOW THE FARM BILL MAY BE THE KEY TO HEALTHIER CITIES

Fatima Ouedraogo^{1†}

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¹ † Written by Fatima Ouedraogo, Notes Editor, *Cardozo Journal of Equal Rights and Social Justice*, Volume 28. J.D. Candidate, May 2022, Benjamin N. Cardozo School of Law; B.A. CUNY Queens College, May 2018. I would like to thank and dedicate this note to my family and friends for supporting me every step of the way during this journey. I would also like to thank Professor Rebekah Diller for her invaluable feedback on this Note. Lastly, thank you to my love, Annie, for being my constant cheerleader.

INTRODUCTION

New York City is home to more than eight million people.² Fighting for parking, yard space, and living space is a common occurrence. Another scarcity other than yard space or parking space, is the access to affordable healthy produce.³ Programs like the Harlem Grown and Culinary Arts and Agricultural Training help children explore what food choices are available in their neighborhood through a summer camp program.⁴ The children were instructed to count how many grocery stores, delis, and fast food restaurants they encountered during a walk.⁵ Shockingly, there were more than twenty fast food restaurants, seventeen delis, and only three supermarkets.⁶ On this list, the three supermarkets were the only places where fresh produce could be found.⁷ Even then, its affordability limited hundreds of people from being able to purchase them.⁸ According to a 2017 report, only 4 percent of residents in the South Bronx met the federal recommendation of five or more daily servings of fruit or vegetables.⁹ The campers reported that their parents take buses outside of their neighborhoods to get produce because it is better quality and fresher.¹⁰ “I’d love to eat healthy, but it’s hard,” said Denise Rodriguez, a 15 year old living in New York City.¹¹ “It’s so expensive, and it’s not any good at the local supermarket. We have to travel to get something good.”¹² This situation is a common one that trends across cities in the United States. Cities such as Memphis and Baton Rouge had the highest percentage of obese adults as well as the highest percentage of physically inactive adults in 2020.¹³ These cities also do not have convenient access to fresh healthy produce in certain neighborhoods.¹⁴

² Arun Venugopal, *NYC’s Population Hits A Record 8.8 Million, According To 2020 Census*, *GOTHAMIST* (Aug. 12, 2021), <https://gothamist.com/news/nycs-population-hits-record-88-million-according-2020-census>.

³ Elizabeth Nolan Brown, *Five Years and \$500 Million Later, USDA Admits That ‘Food Deserts’ Don’t Matter*, *REASON* (Jun. 13, 2016), <https://reason.com/2016/06/13/500-million-later-usda-on-food-deserts/>.

⁴ Amelia Nierenberg, *Urban-Farming Camps Have Kids Asking, Where’s the Healthy Food?*, *N.Y. TIMES* (Sept. 4, 2019), <https://www.nytimes.com/2019/08/30/dining/urban-farming-kids-healthy-food-new-york-city.html#commentsContainer>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Nierenberg, *supra* note 3.

¹¹ *Id.*

¹² *Id.*

¹³ Yasmine S. Ali, *The 5 Most Obese Cities in the United States*, *VERYWELL HEALTH* (Jun. 30, 2020), <https://www.verywellhealth.com/most-obese-cities-in-the-united-states-4022351>.

¹⁴ Maya Smith, *Food Fight: The Battle to Eliminate Memphis’ Food Deserts*, *MEMPHIS FLYER* (June 28, 2018, 4:00 AM), <https://www.memphisflyer.com/food-fight-the-battle-to-eliminate-memphis-food-deserts>.

Obesity is still a fast growing issue in the United States, especially in cities.¹⁵ One reason for this is because healthy diets are statistically more expensive and why many Americans living in cities do not get enough servings of fruits and vegetables.¹⁶ The Farm Bill is a piece of federal legislation passed every five years that governs agricultural and food programs.¹⁷ Much of the produce that is found in grocery stores can be traced all the way back to the Farm Bill and the Farm Bill connects food grown by farmers to the food on our plates. Prices of produce for consumers can be linked to effects of the Farm Bill because the Farm Bill helps guide farmers on which crops are farmed.

This Note outlines a mechanism on how to use the Farm Bill to lower the cost of healthy produce in stores as a way to get Americans in urban populations eating healthier. By amending the Farm Bill to expand Title I to include fruits and vegetables as subsidized crops, it could lower the costs of fruits and vegetables in stores and make it easier for consumers to purchase. Part I will discuss the background and history of the Farm Bill. It will also look deeper into the actual law itself and what certain provisions do. Part II will delve into the several ways states and the Federal Government have tried to address or incentivize people into eating healthier. Part III will propose that using the Farm Bill can be a way to help people eat healthier by subsidizing fruits and vegetables to make it more available and cheaper for consumers. It will also address possible reasons why Congress has not amended it further and hurdles the proposal faces.

PART I: BACKGROUND

Part I delves into the intricacies of the Farm Bill. The Farm Bill has an extensive history that goes back almost an entire century that will be discussed. Furthermore, with the Farm Bill being a massive omnibus piece of legislation, going through its most relevant parts is also outlined in Part I. This note advocates on further subsidizing fruits and vegetables, a discussion on subsidies, what they are, and what their functions are is critical for a better understanding of this note's proposal. Lastly, Part I will also inform the reader about obesity rates in urban populations and who it affects most demographically.

The Farm Bill is a multi-year law that governs a multitude of agricultural and food programs.¹⁸ In 2018, President Donald Trump signed the Agriculture Improvement Act of 2018, also known as the Farm Bill.¹⁹ It lasts five years and encompasses trade and foreign food assistance, farm credits, rural development, forestry, bioenergy, horticulture, domestic nutrition assistance, and farm commodity

¹⁵ Vanessa Russell-Evans & Carl S. Hacker, *Expanding Waistlines and Expanding Cities: Urban Sprawl and its Impact on Obesity, How the Adoption of Smart Growth Statutes Can Build Healthier and More Active Communities*, 29 VA. ENVTL. L.J. 63, 112 (2011).

¹⁶ Venugopal, *supra* note 1.

¹⁷ CONGRESSIONAL RESEARCH SERVICE, WHAT IS THE FARM BILL? (2019) (RS22131 2018).

¹⁸ Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (2018).

¹⁹ Press Release, The White House, President Donald J. Trump Signs H.R. 2 into Law (Dec. 20, 2020), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-signs-h-r-2-law/> [<https://perma.cc/35HY-S67N>].

revenue supports.²⁰ It is scheduled to be renewed in five years and is set to expire in 2023.²¹ The Farm Bill presents opportunities for lawmakers and policymakers to periodically address current food and agricultural issues going on in the country. Out of all the crops that are grown, only five crops are subsidized by the government: corn, soybeans, wheat, cotton, and rice.²² Fruits and vegetables are known to be specialty crops and are not eligible for Farm Bill subsidies.²³

The Farm Bill's earliest iteration was created during the Great Depression for struggling farmers and gave financial assistance to farmers who were struggling due to an excess crop supply.²⁴ The excess crop supply caused crop prices to go down dramatically.²⁵ The early Farm Bill (known as the Agricultural Adjustment Act) also functioned as a way to make sure there would be an adequate food supply.²⁶ President Franklin D. Roosevelt signed the Agricultural Adjustment Act ("AAA") in 1933 as part of his New Deal.²⁷ There were two main goals for the AAA. One, was to help farmers who were in debt and two, to raise the prices of farm goods.²⁸ Farmers received a payment for not growing food on a percentage of their land as allocated by the United States Secretary of Agriculture.²⁹ The AAA further allowed the government to purchase extra grain from farmers.³⁰ This purchase enabled the government to sell it later if bad weather affected output.³¹ The AAA created a primary federal role in limiting the production of certain crops to reduce supply to increase prices.³² However, the AAA did not last long and was found unconstitutional on January 6, 1936 by the Supreme Court in the case of *United States v. Butler* on the grounds that although the Act was designed to regulate agriculture with economic pressure, the power to regulate agriculture is not a power Congress has in the Constitution.³³

²⁰ Agriculture Improvement Act of 2018, *supra* note 17.

²¹ Farm Bill, *supra* note 16.

²² Agriculture Improvement Act of 2018 § 1202.

²³ William S. Eubanks II, *Conference on Agriculture and Food Systems: September 28, 2012: The Future of Federal Farm Policy: Steps for Achieving a More Sustainable Food System*, 37 VT. L. REV. 957, 960 (2013).

²⁴ Chad G. Marzen, *The 2018 Farm Bill: Legislative Compromise in the Trump Era*, 30 FORDHAM ENV'T. LAW REV. 49, 52 (2019).

²⁵ Scott Neuman, *Why The Farm Bill's Provisions will Matter To You*, NPR (Jun. 13, 2012, 4:29 AM), <https://www.npr.org/2012/06/13/154862017/why-the-farm-bills-provisions-will-matter-to-you>.

²⁶ *Id.*

²⁷ Marzen, *supra* note 24 at 52.

²⁸ William S. Eubanks II, *The Sustainable Farm Bill: A Proposal for Permanent Environmental Change*, 39 ENV'T L. REP. 1049, 10494 (2009).

²⁹ *Id.* at 10494-95.

³⁰ *Id.*

³¹ Kathleen Masterson, *The Farm Bill: From Charitable Start To Prime Budget Target*, NPR (Sept. 26, 2011, 12:41 PM), <https://www.npr.org/sections/thesalt/2011/09/26/140802243/the-farm-bill-from-charitable-start-to-prime-budget-target>.

³² *Id.*

³³ *United States v. Butler*, 297 U.S. 1, 68-69 (1936).

A more permanent Farm Bill, the Agricultural Adjustment Act of 1938, was created by Congress with a requirement of it having to be updated every five years.³⁴ The act also remedied issues highlighted by the Supreme Court by having the law's programs be financed through the Federal Government and not through a processor's tax.³⁵

The Federal Government sought to prop up prices by controlling supply, which was done by storing surpluses to take them off the market, similarly to the AAA of 1933.³⁶ Farmers of these surplus crops (corn, soybeans, wheat, cotton, and rice) are eligible for a large array of government assistance and this government assistance forms a major component of the Farm Bill.³⁷ There are over a dozen government assistance programs in the Farm Bill and they consist of helping farmers in funding their farming operation, managing their farms, conserving their farms, and recovering from natural disasters.³⁸

A: What is in the Farm Bill?

The Farm Bill's original main goal was to help farmers stay in business when crop prices substantially drop.³⁹ The Farm Bill still fulfills this objective, but the bill has expanded to be highly more complex with programs having to do with nutritional programs, research, and much more.⁴⁰ These are all included in separate Titles in the Farm Bill.

The 2018 Farm Bill that is in effect currently has 12 Titles, all with different goals.⁴¹ Five of those will be highlighted here due to its importance to the Farm Bill's subsidy program and public benefit programs. Title I (Commodities), provides payments to farmers when crop prices or revenues decrease for major commodity crops (wheat, corn, soybeans, peanuts, and rice).⁴² It also includes some disaster programs to help livestock and tree fruit producers manage production losses due to natural disasters.⁴³ Title I states that farmers can receive commodity-crop income support only if revenues or prices fall below predetermined thresholds.⁴⁴ Specialty crops (fruits and vegetables) are *not* covered to receive commodity-crop income

³⁴ Jennifer Mosquera, *Corn, Cows, and Cash: How Farming Subsidies Work and What They Could Potentially Achieve*, 34 J. LAND USE & ENVTL. LAW 191, 193 (2018).

³⁵ Agricultural Adjustment Act of 1938, Pub. L. No. 75-430, 52 Stat. 31 (1938).

³⁶ Lois Braun, *What Are Commodity Crops and Why Do They Matter?*, HAMPDEN PARK CO-OP, <http://www.hampdenparkcoop.com/what-are-commodity-crops-and-why-do-they-matter> (last visited March 4, 2022).

³⁷ Farm Bill, *supra* note 16.

³⁸ FARMERS GUIDE TO FARM BILL PROGRAMS 2, USDA (2020), <https://www.farmers.gov/sites/default/files/documents/FarmBill-2018-Brochure-11x17.pdf>.

³⁹ Farm Bill, *supra* note 16.

⁴⁰ *Id.*

⁴¹ Agriculture Improvement Act of 2018, *supra* note 17.

⁴² *See supra* note 17 at 4500-4530.

⁴³ *Id.*

⁴⁴ *Id.*

support.⁴⁵ This support comes through conditional programs such as the Agricultural Risk Coverage (“ARC”), Price Loss Coverage (“PLC”) and the “Market Assistance Loan” program (MAL).⁴⁶ The insurance is administered by private insurance companies and those insurance plans are heavily subsidized.⁴⁷ The Federal Government pays for more than 60 percent of the premium while farmers pay less than 40 percent of the cost on average.⁴⁸ PLC program payments are issued when the effective price of a covered commodity is less than the respective reference price for that commodity.⁴⁹ “The effective price equals the higher of the market year average price or the national average loan rate for the covered commodity.”⁵⁰

Title IV (Nutrition), provides nutrition assistance for low-income households.⁵¹ This is where one would find programs such as the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) and The Emergency Food Assistance Program (TEFAP).⁵² SNAP had over 30 million individuals in its program in 2019.⁵³ The CBO has outlined that 76 percent of the projected spending under the Farm Bill is in nutrition alone.⁵⁴ Several studies have shown that SNAP reduces hunger, lowers health care costs, and has a positive lifetime impact on children.⁵⁵ Furthermore, there are also SNAP incentive programs that function as a way to increase the purchasing power of low-income families in purchasing more healthy, local foods.⁵⁶ In doing so, it helps expand the market for small farms and supports regional economies by keeping SNAP dollars circulating locally.⁵⁷ SNAP incentive programs are often funded by federal and state grants in connection with philanthropy through non-profit groups.⁵⁸ However, in 2008, that Farm Bill authorized \$20 million for the Healthy Incentives Pilot Project (HIPP)

⁴⁵ CONGRESSIONAL RESEARCH SERVICE, *supra* note 20.

⁴⁶ SAHAR ANGADJIVAND, CONGRESSIONAL RESEARCH SERVICE, U.S. FARM COMMODITY SUPPORT: AN OVERVIEW OF SELECTED PROGRAMS 3-10 (2018).

⁴⁷ Liam H. Michener, *Meeting America’s Demand: An Analysis of the Hidden Costs of Factory Farming and Alternate Methods of Food Production*, 7 J. ANIMAL AND ENVIRONMENTAL L. 145, 152 (2015).

⁴⁸ Jessica McKenzie, *What Happens if we Eliminate Crop Insurance Altogether?*, THE COUNTER (Sept. 19, 2020, 4:35 PM) <https://thecounter.org/eliminate-crop-insurance-subsidies-regenerative-ag/>.

⁴⁹ *ARC/PLC Program*, USDA, https://www.fsa.usda.gov/programs-and-services/arcplc_program/index (last visited Feb. 10, 2021).

⁵⁰ *Id.*

⁵¹ *See supra* note 17 at 4624-4668 (2018).

⁵² *Id.*

⁵³ Lauren Hall, *A Closer Look at Who Benefits from SNAP: State-by-State Fact Sheets*, CTR. ON BUDGET AND POL’Y PRIORITIES (Jan. 12, 2021), <https://www.cbpp.org/research/food-assistance/a-closer-look-at-who-benefits-from-snap-state-by-state-fact-sheets#Alabama>.

⁵⁴ Erik Dohlman, *Farm Bill Spending*, USDA (Feb. 1, 2021), <https://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/farm-bill-spending/>.

⁵⁵ Steven Carlson & Brynee Keith-Jennings, *SNAP Is Linked with Improved Nutritional Outcomes and Lower Health Care Costs*, CENTER ON BUDGET AND POLICY PRIORITIES (2018), <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care>.

⁵⁶ *The Power of Produce: Healthy Food Incentives Empower Families, Support Farmers and Lift Up Communities*, THE FOODTRUST 4, (2018), http://thefoodtrust.org/uploads/media_items/the-power-of-produce.original.pdf.

⁵⁷ *Id.*

⁵⁸ *See supra* note 55 at 9.

which saw an increase in 26 percent of participants eating more fruits and vegetables.⁵⁹ Title IV is incredibly important for consumers in Farm Bill and there are several other titles with great significance.

Title VII (Research, Extension, and Related Matters) supports agricultural research and programs with the aim to expand academic knowledge about food and agriculture.⁶⁰ This helps farmers and ranchers be more efficient and innovative.⁶¹ One example of this is spinach.⁶² Spinach expires fairly quickly and it is difficult to transport from farms to the grocery store because by the time it arrives, it would already start expiring.⁶³ Spinach cannot be packed like other airtight bags because the leaves would break down while in the bag.⁶⁴ Scientists under Title VII came up with a special bag: one that controls how much oxygen and carbon dioxide can seep in and out.⁶⁵ Spinach now comes pre-washed and ready to eat and is readily available in the produce section.⁶⁶ Because of this technological advancement, Americans are eating more spinach than they were previously before these special bags were implemented.⁶⁷ Spinach is considered a specialty crop and through Title X has received extensive market promotion.

Title X (Horticulture) supports specialty crops through market promotion, plant pest and disease prevention, along with research.⁶⁸ It also provides assistance to support certified organic agricultural production and locally produced food.⁶⁹ Title XI (Crop Insurance) amended the federal crop insurance program that offers subsidized policies to farmers that protect them against losses in yield and crop revenue.⁷⁰ Farmers can purchase insurance policies at a subsidized rate under federal crop insurance programs.⁷¹ The subsidization of certain crops tells farmers which crops to grow and it can dictate the price of items for consumers.

⁵⁹ THE FOODTRUST, *supra* note 55 at 4.

⁶⁰ *See supra* note 17 at 4740-483.

⁶¹ *What is the Farm Bill?*, NAT'L SUSTAINABLE AGRIC. COAL., <https://sustainableagriculture.net/our-work/campaigns/fbcampaign/what-is-the-farm-bill/> (last visited Oct. 3, 2020).

⁶² Helena Bottemiller Evich, *The Vegetable Technology Gap*, POLITICO (Mar. 8, 2017, 7:33 AM), <https://www.politico.com/agenda/story/2017/03/fruits-and-vegetables-technology-000337/>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *See supra* note 17 at 4888-4919.

⁶⁹ *Id.*

⁷⁰ *See supra* note 17 at 4919-4937.

⁷¹ Erik Dohlman, *Crop Insurance Program Provisions-Title XI*, USDA (2020), <https://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/crop-insurance-program-provisions-title-xi/>.

B: What is a subsidy?

A subsidy is defined as a payment by the government that forms a wedge between the price consumers pay and the costs incurred by producers, such that price is less than marginal cost.⁷² Subsidies are used to influence the supply or demand for a particular good, and most commonly, to complement a price stabilization program.⁷³

Subsidies help reduce the risk farmers endure from bad weather, and other major disruptions in demand of crops.⁷⁴ Farm subsidies act as an economic incentive to farmers to grow certain crops and ensure their economic safety should they overproduce or deal with disruptions.⁷⁵

There have been numerous policies to incentivize the production of certain crops. Before the 1930s, the government granted land to families moving out west and offered them credits along with support through research colleges known as land-grant institutions.⁷⁶ The AAA provided incentives for farmers to not over produce to help stabilize crop prices.⁷⁷

Expanding subsidies to incentivize certain behaviors is not a new concept and is done in other areas of the government outside of agriculture.⁷⁸ For example, the Environmental Protection Agency (“EPA”) utilizes an array of incentives to stop or mitigate certain activities done by corporations and individual actors. Pollution has been an issue in the country and as a way to curb harmful activities that are producing pollution, the government has instituted subsidies for pollution control.⁷⁹ Rather than charging a polluter for emissions, a subsidy rewards a polluter for reducing emissions.⁸⁰ Subsidies have also been used for a wide variety of purposes, including brownfield development after a hazardous substance contamination; agricultural grants for erosion control; low-interest loans for small farmers; grants for land conservation; and loans and grants for recycling industrial, commercial and residential products.⁸¹ Subsidies offer incentives to discourage certain activities in

⁷² Robert H. Lantz, *The Search For Consistency: Treatment of Nonmarket Economies in Transition Under United States Antidumping and Countervailing Duty Laws*, 10 AM. U.J. INT’L L. & POL’Y 993, 1009 (1995).

⁷³ *Id.*

⁷⁴ Robert W. Adler, *Balancing Compassion and Risk in Climate Adaption: U.S. Water, Drought, and Agricultural Law*, 64 FLA. L. REV. 201, 259 (2012).

⁷⁵ *Farm Subsidy Primer*, ENVT’L WORKING GROUP, <https://farm.ewg.org/subsidyprimer.php> (last visited Feb 11, 2021).

⁷⁶ Liza Vertinsky, *Universities as Guardians of Their Inventions*, 2012 UTAH L. REV. 1949, 1962 (2012).

⁷⁷ Eubanks II, *supra* note 27.

⁷⁸ *Economic Incentives*, EPA, <https://www.epa.gov/environmental-economics/economic-incentives> (last visited Dec. 20, 2020).

⁷⁹ Symposium, *Hong Kong and the Unprecedented Transfer of Sovereignty: Conserving a Legal Heritage in Hong Kong: Environmental Regulation After 1997*, 19 LOY. L.A. INT’L & COMP. L. REV. 363 (1997).

⁸⁰ *Id.*

⁸¹ *Supra* note 77.

favor of others but at the same time, subsidies encourage market entry for individuals and corporations to qualify for the subsidy.⁸²

C: Obesity in Urban Populations

In order to combat obesity, understanding it and what causes it is required. Obesity is defined as a weight that is higher than what is considered a healthy weight for a certain height.⁸³ Obesity is caused by a combination of factors such as behavior and genetics and is currently the leading cause of death in not only the United States, but around the world.⁸⁴ Cities around America are reporting high rates of obesity and overweight individuals.⁸⁵ The increase in obesity rates in urban populations is directly correlated with an increase in diabetes, heart disease, and other weight related diseases.⁸⁶ Unlike many other conflicts, obesity can be reduced through behavioral changes.⁸⁷

There are healthy behaviors to help mitigate the effects of obesity and obesity itself and these include regular physical activity and healthy activity.⁸⁸ Every five years, the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Agriculture (USDA) publish the Dietary Guidelines for Americans, the nation's go-to source for nutrition advice.⁸⁹ The Dietary Guidelines for Americans emphasizes eating whole grains, fruits, vegetables, low-fat, and fat free dairy products as a healthy diet but most Americans do not eat this way.⁹⁰

Dietary patterns associated with positive health outcomes include relatively higher intake of vegetables, fruits, legumes, whole grains, lean meats and poultry, seafood, nuts, and unsaturated vegetable oils.⁹¹ As for unhealthy foods, the American Heart Association defines unhealthy foods as highly-processed items such as fast foods and snacks.⁹² Highly-processed foods tend to be low in nutrients (vitamins, minerals, and antioxidants) and high on empty calories due to the content of refined flours, sodium and sugar.⁹³ In cities like New York City, there are

⁸² David M. Schizer, *Energy Subsidies: Worthy Goals, Competing Priorities, and Flawed Institutional Design*, 70 TAX L. REV. 243, 272 (2017).

⁸³ *Adult Obesity Causes & Consequences*, CDC, <https://www.cdc.gov/obesity/adult/causes.html> (last visited Feb. 19, 2021).

⁸⁴ *Id.*

⁸⁵ Ali, *supra* note 12.

⁸⁶ CDC, *supra* note 81.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Dietary Guidelines for Americans 2020-2025*, USDA 2, (2020) https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf.

⁹⁰ *Supra* note 81.

⁹¹ *Dietary Guidelines for Americans 2020-2025*, USDA 36, (2020) https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf.

⁹² *Unhealthy Foods*, AMERICAN HEART ASS'N, <https://www.heart.org/en/healthy-living/go-red-get-fit/unhealthy-foods> (last visited Mar. 4, 2021).

⁹³ *Id.*

hundreds of fast food restaurants in one borough alone.⁹⁴ It is creating a serious health issue among adults and children in cities.⁹⁵

In the United States, the adult obesity rate stands at 42.3 percent.⁹⁶ Since 2008, the national adult obesity rate has increased by 26 percent.⁹⁷ In children, obesity rates have also increased.⁹⁸ 19.3 percent of people aged between 2 and 19 are obese.⁹⁹ Being overweight or obese as a child further increases the risk of being obese and having health related risks as an adult.¹⁰⁰ Moreover, children are beginning to show symptoms of hypertension and high cholesterol much earlier.¹⁰¹ Generally thought to be of more a rural and suburban American issue, cities are seeing a huge increase in overweight and obese individuals.¹⁰²

It is estimated that 83% of the U.S. population lives in urban areas, up from 64% in 1950.¹⁰³ By 2050, 89% of the U.S. population and 68% of the world population is projected to live in urban areas.¹⁰⁴ The rise in urban sprawl has encouraged more driving and studies suggest this correlation is associated with a higher weight due to individuals not walking as much as before.¹⁰⁵ Moreover, the layout and design of certain cities can severely hinder individuals in being physically active and eating healthy.¹⁰⁶ Having a city that is not designed to be walkable means people are more reliant on their cars to get them where they need to go.¹⁰⁷ Within these cities, there are different groups that are more susceptible to being overweight and obese.

⁹⁴ Christian González-Rivera, *State of the Chains 2017*, CTR. FOR AN URB. FUTURE 3, (Dec. 2017), https://nycfuture.org/pdf/CUF_StateOfChains_2017.pdf.

⁹⁵ George Rice, Comment, *COVID-19 & Food Insecurity: How the COVID-19 Pandemic has Exacerbated Food Insecurity and will Disproportionally Affect Low Income and Minority Groups*, 21 RRG 160, 161 (2021).

⁹⁶ Rhea Farberman & Breanna Kelley, *The State of Obesity 2020: Better Policies for a Healthier America*, TRUST FOR AMERICA'S HEALTH, <https://www.tfah.org/report-details/state-of-obesity-2020/> (last visited Feb. 10, 2021).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Rice, *supra* note 93.

¹⁰³ *U.S. Cities Factsheet*, CTR. FOR SUSTAINABLE SYSTEMS: UNIV. OF MICHIGAN 1, (2020) http://css.umich.edu/sites/default/files/US%20Cities_CSS09-06_e2020.pdf.

¹⁰⁴ *Id.*

¹⁰⁵ Joreintje D Mack et al., *Obesogenic Environments: A Systematic Rev. of the Ass'n Between the Physical Env't. and Adult Weight Status, the SPOTLIGHT Project*, BMC PUBLIC HEALTH 10, <https://bmcpublihealth.biomedcentral.com/track/pdf/10.1186/1471-2458-14-233.pdf>.

¹⁰⁶ *Id.*

¹⁰⁷ Sarah Stark Casagrande et al., *Association of Walkability with Obesity in Baltimore City, Maryland*, 101 AM J. PUB. HEALTH S318, S320-23 (2011) (discussing the correlation between white or high-socioeconomic status neighborhoods with high walkability and lower obesity rates compared to low-socioeconomic status neighborhoods with low walkability and higher obesity rates).

D: Which Population Groups are Most Affected?

In terms of race, the population groups most affected and susceptible to being obese are Black and Hispanic adults in the United States.¹⁰⁸ Asian adults are much less likely to be obese. The reasons for this conclude that diet, exercise, and environment play as factors.¹⁰⁹ For example, a CDC report shows that Black Americans consume fast food 33% more than Caucasians.¹¹⁰ Black Americans are also 51% more likely to be obese compared to non-Hispanic Whites.¹¹¹

Now, in terms of class, the poor are more likely to be overweight or obese.¹¹² Studies suggest that lower income Americans consume a higher amount of calories through fast foods and sodas.¹¹³ Healthy foods in the United States cost more than unhealthy foods.¹¹⁴ This may be a potential reason as to why lower income Americans are more likely to eat unhealthily and be overweight. There are also location trends: those who are under the age of 60 and above low-income Caucasians living in Appalachia, Latino migrant farm workers, American Indians, and Black Americans living in the south of the United States have a higher risk of being obese.¹¹⁵ With all of these factors, the government has had to face this health crisis in various ways to find solutions. One solution could be lowering the costs of healthy foods.

E: The Cost of a Healthy Diet

For many individuals, buying healthy produce can be an expensive endeavor. Research from the Harvard School of Public Health has found that the healthiest diets cost about \$1.50 more per day than the least healthy diets.¹¹⁶ The finding was based on the most comprehensive examination in comparing prices of healthy foods and diet patterns versus less healthy ones.¹¹⁷ The researchers found that healthier diet patterns—those rich in fruits, fish, nuts, and vegetables—cost more than diets rich in processed foods, meats, and refined grains.¹¹⁸

The researchers further suggested that unhealthy diets cost less because the government’s food policies focus on the production of “inexpensive, high volume”

¹⁰⁸ *Who is affected?*, PUBLICHEALTH, <https://www.publichealth.org/public-awareness/obesity/affected/> (last visited Oct. 3, 2020).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Karen D. Lincoln et al, *Race and Socioeconomic Differences in Obesity and Depression among Black and Non-Hispanic White Americans*, 25(1) JOURNAL OF HEALTH CARE FOR THE POOR AND UNDESERVED 257, (2014) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4830390/>.

¹¹² PublicHealth, *supra* note 106.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Mayuree Rao et al., *Do Healthier Foods and Diet Patterns Cost More than Less Healthy Options? A Systematic Review and Meta-Analysis*, 3 BRITISH MED. JOURNAL ISSUE 12 (2013), <https://bmjopen.bmj.com/content/bmjopen/3/12/e004277.full.pdf>.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

commodities.¹¹⁹ This has resulted in “a complex network of farming, storage, transportation, processing, manufacturing, and marketing capabilities that favor sales of highly processed food products for maximal industry profit.”¹²⁰ However, the researchers believe that there needs to be an infrastructure created to support the production of healthier foods to increase availability and reduce prices of those items.¹²¹ This would mean that eating the healthiest diets could cost \$547.50 a year more than unhealthier diets. As stated earlier, Americans are prone to being obese due to unhealthy foods being generally cheaper than healthy ones.¹²² In order to incentivize healthy eating and improve access for urban populations, lowering the costs of healthy foods could substantially help facilitate this. It is reasonable to foresee that the large differences in prices between healthy and unhealthy foods would lead to individuals making very different purchasing decisions and eating differently.¹²³ We would see these differences be much more pronounced for individuals of lower incomes and in cities in the United States.¹²⁴ Unfortunately however, there are several obstacles in the way and failed attempts by the Federal, state, and local governments on how to promote healthier eating.

PART II: PROBLEM

A: Federal Attempts to Address Obesity

There have been several attempts to address the issue of obesity in the United States by the Federal state and local governments. Mediums used to address this include education on healthier eating habits and exercise,¹²⁵ bans or laws limiting consumption of sugary drinks and unhealthy foods,¹²⁶ and a focus on funding understocked grocery stores.¹²⁷

None of the several attempts by the government have had a long-lasting major impact on obesity numbers. One major potential reason is that consumers do not want to feel like the government is trying to directly control what they consume, and that any attempts could exceed the power of the government. An example of this was the “sugary drinks portion cap rule,” also known as the “soda ban” in New York City.

¹¹⁹

Id.

¹²⁰

Id.

¹²¹

Id.

¹²²

PublicHealth, *supra* note 106.

¹²³

See Rao et. al, *supra* note 115.

¹²⁴

Id.

¹²⁵

Jennifer Steinhauer, *Michelle Obama Promotes Healthy Eating With a Grass-Roots Campaign*, N.Y. TIMES (Jun. 19, 2013), <https://www.nytimes.com/2013/06/20/us/michelle-obama-promotes-healthy-eating-with-a-grass-roots-campaign.html>.

¹²⁶

Rachel Weiner, *The New York City Soda Ban Explained*, THE WASH. POST (Mar. 11, 2013) <https://www.washingtonpost.com/news/the-fix/wp/2013/03/11/the-new-york-city-soda-ban-explained/>.

¹²⁷

Brown, *supra* note 2.

B: New York City's Soda Ban

The soda ban was proposed by then-Mayor Michael Bloomberg.¹²⁸ The rule would have made all New York City regulated restaurants, fast food restaurants, delis, sports stadiums, food carts, and movie theaters, prohibit the sale of sweetened drinks that were more than 16 fluid ounces in volume.¹²⁹ This would not apply to grocery stores, as they are regulated by New York State, not the city.¹³⁰ There were further exceptions to the rule that included drinks that were more than seventy percent fruit juice, diet sodas, alcoholic drinks, and drinks with fifty percent milk or milk substitute.¹³¹ It was scheduled to take effect on March 12, 2013.¹³² The Board of Health unanimously voted to accept the proposed limit.¹³³ Its enforcement would have been carried out by the city's regular inspection team and those found to not comply would be fined.¹³⁴ The rule was contested in court, with the New York Supreme Court ruling that the proposed limit violated "the principle of separation of powers"¹³⁵ and that the board "failed to act within the bounds of its lawfully delegated authority."¹³⁶ On June 26, 2014, the New York Court of Appeals affirmed the lower court's opinion and stated that the New York City Board of Health had exceeded the scope of its regulatory authority.¹³⁷

The second reason as to why current solutions have not worked is differing government prioritizations surrounding the issue, and a lack of understanding of underlying social and class issues that continue to perpetuate obesity. There have been notable programs such as the *Let's Move!* initiative and government programs where millions of dollars were spent to address the issue of food deserts in the nation, but it has not lowered obesity rates in the United States.¹³⁸ The USDA defines food deserts as areas in the United States that have a poverty rate greater than or equal to twenty percent, or a median family income that does not exceed eighty percent of the median family income in urban areas, or eighty percent of the statewide median family income in nonurban areas.¹³⁹ Furthermore, the area must also have at least 500 or thirty-three of the population residing more than 1 mile away from the

¹²⁸ Weiner, *supra* note 125.

¹²⁹ *Matter of N.Y. Statewide Coal. of Hispanic Chambers of Commerce v. N.Y.C. Dep't of Health & Mental Hygiene*, 110 A.D.3d 1, 3 (App. Div. 1st Dept. 2013).

¹³⁰ *Id.* at 4.

¹³¹ *Id.*

¹³² *Id.* at 6.

¹³³ *Id.*

¹³⁴ *Id.* at 2.

¹³⁵ *Matter of N.Y. Statewide Coal. of Hispanic Chambers of Commerce*, 110 A.D.3d at 12.

¹³⁶ *Id.* at 4.

¹³⁷ *Id.* at 7.

¹³⁸ Michele Ver Ploeg & Ilya Rahkovsky, *Recent Evidence on the Effects of Food Store Access on Food Choice and Diet Quality*, USDA (2016), <https://www.ers.usda.gov/amber-waves/2016/may/recent-evidence-on-the-effects-of-food-store-access-on-food-choice-and-diet-quality/>.

¹³⁹ Paula Dutko et al., *Characteristics and Influential Factors of Food Deserts*, 140 USDA ECON. RES. SERV. ECON. INFO. REP. 1, (2012), https://www.ers.usda.gov/webdocs/publications/45014/30940_err140.pdf.

nearest large grocery store.¹⁴⁰ As for rural areas, at least 500 people or thirty-three of the population must live more than 10 miles from the nearest grocery store.¹⁴¹ Between 2000 and 2006, the USDA identified over 6,000 food deserts.¹⁴²

C: Federal Actions

Since 2011, the Federal Government has spent almost 500 million dollars to improve food access in neighborhoods lacking well-stocked grocery stores.¹⁴³ Several states also launched their own programs to bring in new supermarkets or improve on the stock in already

existing ones by making sure the stock is of good and high quality.¹⁴⁴ An example is the Pennsylvania Fresh Food Initiative, which has provided over 100 million dollars to help address the issue of food deserts in urban and rural areas of Pennsylvania.¹⁴⁵ The Pennsylvania Fresh Food Financing Initiative (FFFI) is a statewide public-private financing program that invests in new or expanding grocery stores and other healthy food retail outlets in communities throughout Pennsylvania.¹⁴⁶ The FFFI provides one-time grants to eligible food retailers in order to increase access to healthy, affordable grocery food options and to improve economic opportunities for underserved communities in urban, rural and suburban areas across the state.¹⁴⁷ The theory behind this was that people were not eating healthy because they lacked access to grocery stores, hence the term “food desert.”¹⁴⁸ It was thought that addressing this problem would curb obesity rates in the country, and Americans would eat healthier.¹⁴⁹

The government’s solution in improving food access through funding did not help, because even though there were healthy items in the stores, people were still not buying them.¹⁵⁰ Business owners noted that although grocery stores were stocked with more healthy options, consumers were not purchasing them at all.¹⁵¹ The USDA highlighted this in its report on food deserts in its magazine, *Amber Waves*, and noted that household and neighborhood resources, education, and taste preferences, and food costs were more important determinants of food choice than the proximity of the grocery store.¹⁵² Another example was the CDC providing funding to state departments in Maine, Montana, New York, and North Carolina for

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Id.

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Id.

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Id.

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Pleog & Rahkovsky, *supra* note 132.

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Id.

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Id.

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Pennsylvania Fresh Food Financing Initiative, Pennsylvania Dep’t of Agric., https://www.agriculture.pa.gov/Food_Security/Pages/Fresh-Food-Financing-Initiative-COVID-19.aspx.

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Id.

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Pleog & Rahkovsky, *supra* note 132.

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Id.

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Id.

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Id.

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Id.

the establishment of health promotion programs.¹⁵³ The goal was for state health departments to formulate and implement policy changes that supported healthy eating and increased physical activity.¹⁵⁴

D: Federal Action in Schools

A rule in January of 2020 proposed by the Agriculture Department would have given schools more discretion to decide on how much fruit to give out to students and the types of vegetables to be included in meals.¹⁵⁵ Food items that constituted a snack were broadened with nutritionists predicting that items such as hamburgers could potentially be counted as a snack.¹⁵⁶ Child nutritionists felt that the proposed rule could result in school meal providers moving away from healthy foods rather than inventing ways to make the healthy food more appealing to students.¹⁵⁷ Nutritionists further stated that if there is more flexibility on the types of vegetables being offered, it could lead to student meals mostly being starches, like potatoes, which are cheaper than green vegetables.¹⁵⁸ Although the rule was proposed, nothing further came out of it after an extensive comment period.¹⁵⁹

E: Let's Move! Initiative

Other government intervention includes the *Let's Move!* Initiative.¹⁶⁰ Former First Lady Michelle Obama's "*Let's Move Initiative*" included these extra factors into its program, but its implementation targeted children. It launched in 2010 and ran until 2016.¹⁶¹ The program launched new farmers markets in areas of food deserts and promoted state grant programs that were designed to attract more fruit and vegetable offerings to food deserts.¹⁶²

At the launch of the initiative, President Barack Obama signed a Presidential Memorandum creating the first-ever task force on childhood obesity to conduct a review of every single program and policy relating to child nutrition.¹⁶³ It

¹⁵³ *Appendix A: Examples of Federal Programs and Initiatives*, NAT'L CTR. FOR BIOTECHNOLOGY INFO., (2001), <https://www.ncbi.nlm.nih.gov/books/NBK44202/>.

¹⁵⁴ *Id.*

¹⁵⁵ Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program, 85 Fed. Reg. 4064 (proposed Jan. 23, 2020).

¹⁵⁶ Lola Fadulu, *Trump Targets Michelle Obama's School Nutrition Guidelines on Her Birthday*, N.Y. TIMES (Jan. 17, 2020) <https://www.nytimes.com/2020/01/17/us/politics/michelle-obama-school-nutrition-trump.html>.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Simplifying Meal Service and Monitoring Requirements in the Nat'l School Lunch and School Breakfast Programs, 85 Fed. Reg. 4094 (proposed Jan. 23, 2020) (not codified).

¹⁶⁰ *About Let's Move*, THE WHITE HOUSE, <https://letsmove.obamawhitehouse.archives.gov/> [<https://perma.cc/RBE6-269M>].

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Office of the First Lady, *First Lady Michelle Obama Launches Let's Move: America's Move to Raise a Healthier Generation of Kids*, THE WHITE HOUSE (Feb. 9, 2020),

also conducted a review on physical activity, developed a national action plan to maximize federal resources, and set concrete benchmarks toward the First Lady's national goal.¹⁶⁴ The task force recommendations focused on the five pillars of the First Lady's *Let's Move!* initiative: creating a healthy start for children, empowering parents and caregivers, providing healthy food in schools, improving access to healthy, affordable foods, and increasing physical activity.¹⁶⁵ Over 500 cities signed onto the program and worked to incorporate the program goals to improve access to food, nutrition, and health education.¹⁶⁶ Since 2012, *Let's Move!* connected municipalities with private grants and technical assistance from the U.S. Department of Health and Human Services to help them reach those goals.¹⁶⁷ The *Let's Move!* initiative had aspects to it that seemingly would help individuals make better eating choices long term but there were issues within the entire initiative that caused it to fail.

The New England Journal of Medicine published a perspective that highlighted reasons as to why the *Let's Move!* initiative did not work. It pointed to the fact that the program would have needed to be more comprehensive and target different populations than the ones the initiative did.¹⁶⁸ Evidence does suggest that targeting school-aged children is important to battle the roots of obesity, but targeting children under 2 years of age and preschoolers would have made the program much more comprehensive and successful because healthy eating habits and tastes are easier to reinforce at an earlier age.¹⁶⁹ The perspective also stated that prevention must start as early as possible because school age children already have a high prevalence of obesity.¹⁷⁰ Furthermore, the program was only in effect for six years and did not continue under the Trump administration.¹⁷¹

The Trump administration made several attempts to roll back school nutrition standards that came into effect under the Obama administration with the *Let's Move!* initiative.¹⁷²

F: SNAP

The Supplemental Nutrition Assistance Program “SNAP” is an assistance program designed to help provide nutritional support individuals under a certain

<https://obamawhitehouse.archives.gov/the-press-office/first-lady-michelle-obama-launches-lets-move-americas-move-raise-a-healthier-genera> [https://perma.cc/5KV2-8R48].

¹⁶⁴ *Id.*

¹⁶⁵ THE WHITE HOUSE, *supra* note 155.

¹⁶⁶ *A Call to Action for Local Elected Officials*, THE WHITE HOUSE, <https://letsmove.obamawhitehouse.archives.gov/become-lets-move-city-or-town> [https://perma.cc/9B9Y-L6QE].

¹⁶⁷ Mattie Quinn, *Without Michelle Obama, What Will Happen to 'Let's Move'?*, GOVERNING (Dec. 15, 2016) <https://www.governing.com/topics/health-human-services/gov-obesity-michelle-obama.html>.

¹⁶⁸ *What Has The Impact of "Let's Move!" Had on Childhood Obesity?*, UNIV. OF NEV., RENO, <https://onlinedegrees.unr.edu/blog/what-has-the-impact-of-lets-move-had-on-childhood-obesity/> (last visited Dec. 20, 2020).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Fadulu, *supra* note 151.

income level.¹⁷³ In the Farm Bill, Title IV (Nutrition) includes the SNAP program.¹⁷⁴ SNAP has been a way to not only provide food for low-income families and individuals, but also nutritious healthy food incentives.

A 2008 study in Massachusetts found that SNAP users who received SNAP incentives increased their fruit and vegetable consumption by twenty-six percent.¹⁷⁵ Further surveys conducted by the non-profit organization, Wholesome Wave, found that in the SNAP incentive program reported increasing how many fruits and vegetables they consumed.¹⁷⁶ This success was credited to making fresh produce more affordable.¹⁷⁷ Expanding on SNAP incentive programs is a great way to get those living in cities to eat healthier, but not everyone in cities is a SNAP participant. There are still millions of others who are not in the SNAP program because they do not qualify. However, Congress will ultimately determine the effectiveness of SNAP. Republican congressional members have tried to cut SNAP's budget by millions of dollars.¹⁷⁸ After former President Donald Trump's inauguration, Republicans in the House proposed one-hundred-fifty billion dollar cuts to SNAP.¹⁷⁹ Those proposals did not go through in the budget process and the 115th Congress, along with the Trump administration, looked to the 2018 Farm Bill to make changes to SNAP.¹⁸⁰ In the House version of the 2018 Farm Bill, the House made changes to SNAP that would have cut SNAP benefits for millions of Americans.¹⁸¹ The Senate version was very different and did not include cuts to SNAP.¹⁸² Senate members stated that the House cuts to SNAP could not pass the sixty-vote threshold for legislation as the reason as to why the Senate version did not include SNAP cuts.¹⁸³ There were even further proposed budget cuts for the 2021 fiscal year by President Trump.¹⁸⁴

Congress had rejected this proposal, but it is clear that Congress could one day pass budget cuts to SNAP.¹⁸⁵ It all depends on the goals of Congress and who is in power. Democrats have generally worked to keep SNAP benefits in and not cut

¹⁷³ Kelly Nuckolls, *SNAP Retailer Redemption Data: Is more Transparency in the Future for the Nation's Largest Anti-hunger Program?*, 21 *DRAKE J. AGRIC. L.* 121, 123 (2016).

¹⁷⁴ *see supra* note 17 at 4264-4668.

¹⁷⁵ *The Power of Produce*, THE FOOD TRUST (2018), http://thefoodtrust.org/uploads/media_items/the-power-of-produce.original.pdf.

¹⁷⁶ THE FOOD TRUST, *supra* note 55.

¹⁷⁷ THE FOOD TRUST, *supra* note 55.

¹⁷⁸ Andrew Hammond, *LITIGATING WELFARE RIGHTS: MEDICAID, SNAP, AND THE LEGACY OF THE NEW PROPERTY*, 115 *Nw. U.L. Rev.* 361, 403 (2020).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Richard Kogan et al., *Trump's 2021 Budget Would Cut \$1.6 Trillion From Low-Income Programs*, *CTR. ON BUDGET AND POL'Y PRIORITIES* (Mar. 9, 2020), <https://www.cbpp.org/research/federal-budget/trumps-2021-budget-would-cut-16-trillion-from-low-income-programs>.

¹⁸⁵ Hammond, *supra* note 173.

them, while some Republicans have been trying to use the Farm Bill as a way to make cuts and changes to SNAP in Title IV.¹⁸⁶ Bipartisan ship is always possible and this was indicated in the passing of the 2018 Farm Bill because it was passed fairly quickly with both Republicans and Democrats mostly voting for it with only a handful voting no.¹⁸⁷ Outside of SNAP, there is a more expansive way to reach those living in urban populations and that it through Title I.

G: Conflicting Actions

The Federal Government has conflicting actions on how it goes about addressing unhealthy eating habits in the nation. This is firmly shown in how the agricultural system is run in the United States. The USDA has dietary guidelines which state that meal plates should be half fruits and vegetables, and the other half should be protein and grains.¹⁸⁸ This ideal is not reflected at all in the USDA's allocation for research grants.¹⁸⁹ Title VII of the Farm Bill primarily deals with research. Between 2008 and 2012, only 0.5% of USDA research grants went to fruit, nut, and vegetable farmers. 80% went to corn, soy, livestock, dairy, cotton, tobacco, and other oil crops.¹⁹⁰ Research grants are primarily the reason as to why the United States is able to efficiently and safely grow crops.¹⁹¹ Farmers are able to get six times as much corn out of one acre than they were able to back in the 1920's because of extensive research grants going to corn.¹⁹² Lettuce has only doubled in the amount being produced since the 1920's due to the government not prioritizing it and not giving it research grants.¹⁹³ The burning question here is why are non-specialty crops so important to the government?

There are several reasons as to why the five commodity crops are given the most government assistance. First, the USDA's goal is to work on boosting the American Agriculture industry and this means investing in crops that mostly fuel the farming industry.¹⁹⁴ Corn is the nation's biggest crop.¹⁹⁵ Over 15 billion bushels were grown in 2017, with 15% of that being exported.¹⁹⁶ Corn is also significantly used for cattle feed.¹⁹⁷ It fattens up 40% of the nation's grain-fed beef.¹⁹⁸ Notably,

¹⁸⁶ Jason DeParle, *As Hunger Swells, Food Stamps Become a Partisan Flash Point*, N.Y. TIMES (May 6, 2020), <https://www.nytimes.com/2020/05/06/us/politics/coronavirus-hunger-food-stamps.html>.

¹⁸⁷ Hammond, *supra* note 173.

¹⁸⁸ *Dietary Guidelines for Americans*, USDA (2021), <https://www.fns.usda.gov/cnpp/dietary-guidelines-americans>.

¹⁸⁹ Evich, *supra* note 61.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ William S. Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 STAN. ENVTL. L.J. 213, 227 (2009).

¹⁹⁶ Kimberly Amadeo, *Farm Subsidies with Pros, Cons, and Impact*, THE BALANCE (Nov. 10, 2020), <https://www.thebalance.com/farm-subsidies-4173885>.

¹⁹⁷ Arnold W. Reitze, *Should the Clean Air Act Be Used to Turn Petroleum Addicts Into Alcoholics?*, 36 ELR 10745, 10755 (2006).

¹⁹⁸ *Id.*

corn is further used for ethanol and farmers are encouraged to grow corn for ethanol biofuel.¹⁹⁹ Cotton is another commodity crop that is mainly used to be shipped to China where it is made into cheap clothing sold in stores in the United States.²⁰⁰ Second, there are many states that depend on the current system to keep their economy strong.²⁰¹ An example of this is that a third of Iowa's economy depends on farming.²⁰² The corn belt is Indiana, Illinois, Iowa, Missouri, Nebraska, and Kansas.²⁰³ Expanding the subsidies under Title I would pave the way for other crops to help keep state economies strong because there would not need to be a removal of certain crops from the subsidy program, only that there would be an expansion of the list. This Note's proposal addresses the Farm Bill being a way to lower food costs and improve access to healthy foods for urban populations.

PART III: PROPOSAL

The Farm Bill is a key way to lower the cost of produce and help people eat healthier in urban areas. However, there would need to be changes made to the next Farm Bill to help achieve these goals such as expanding the crop subsidy list to include specialty crops (fruit and vegetables) in Title I. As Congress is the only vehicle to facilitate these changes, we would need to look to Congress to make this change. Title I of the Farm Bill includes statutory reference prices and loan rates for commodity crops.²⁰⁴ Payments to farmers under the Agriculture Risk Coverage program, Price Loss Coverage, and Market Assistance Loan programs (ARC, PLC, and MAL) depend on these prices and rates.²⁰⁵ Congress should expand price protections to include specialty crops like it does for commodity crops. For example, Title I, Section 1202 highlights that the loan rate for nonrecourse marketing assistance is \$3.38 per bushel for wheat.²⁰⁶ Specialty crops should also be protected like this by expanding Title I to include specific prices that specialty crops can be protected under.

The Farm Bill's programs such as the Agriculture Risk Coverage-County program (ARC-CO) and the Price Loss Coverage program (PLC) act as a mechanism to pay farmers when subsidized crop prices are lower than the respective reference price for the commodity (these prices are in the Farm Bill itself in Title I).²⁰⁷ The ARC/PLC program kicks in automatically while some subsidies come in the form of government subsidized insurance policies to help farmers when acts of god occur

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Id.

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Julian B. Heron, *CALIFORNIA AGRICULTURE IN WORLD EXPORT MARKETS TWENTY YEARS LATER*, 20 S.J. AGRIC. L. REV. 1 (2011).

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Amadeo, *supra* note 191.

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Id.

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Jason Scott Johnston, *Regulatory Carrots and Sticks in Climate Policy: Some Political Economic Observations*, 6 TEX. A&M L. REV. 107, 123 (2018).

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Agriculture Improvement Act of 2018, *supra* note 17.

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SAHAR ANGADJIVAND, *supra* note 35.

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Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4509 (2018).

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ANGADJIVAND, *supra* note 35.

and destroy crops.²⁰⁸ Most commodity crops go into the production of highly processed and unhealthy foods.²⁰⁹ This is resulting in consumers eating low cost unhealthy foods and adding to the growing rate of obesity in cities across America.²¹⁰ Under this proposal, specialty crops being included in Title I would make them eligible to the benefits under the ARC/PLC program. It would help farmers feel protected as well as incentivized to plant specialty crops. This in turn would help drive costs down for consumers in the store and allow them to make healthier purchases. Congress' role is integral to the Farm Bill being changed into something that could positively impact individuals, but these changes would need to happen in the next Farm Bill.

As the Farm Bill is updated every five years, the current Farm Bill would need to expire before new or major changes would be added to it by Congress. Expanding the subsidy program would be a costly one, so the Farm Bill would have to have money budgeted for this. The expansion of the subsidy program would have to happen during the process of writing the 2021 Farm Bill and members of Congress would need to agree on these changes being made. There is already one member of Congress who does want to change the subsidy program.

Representative Chellie Pingree, an organic farmer, often speaks about the difference between what the USDA recommends should be on our plates and what it currently looks like due to the current subsidy program.²¹¹ The representative often gives talks and lets people know that there is a discrepancy between what the government wants our meal plates and how the government subsidizes certain crops.²¹² Outside of Congress, there is pressure from external forces to make changes to the subsidy program.

Public health advocates have complained that the USDA's nutrition recommendations do not line up with how the USDA spends its money and point to current crop subsidies as the biggest issue.²¹³

A: Why the Farm Bill Should be Amended

The Farm Bill should be expanded to include specialty crops in Title I because it can help make urban populations healthier by lowering the cost of specialty crops in stores and making it affordable and accessible for consumers to purchase. The current issue with the Farm Bill's subsidy program is that it tells farmers to grow specific crops which then results in those crops selling at a very low price in grocery stores due to subsidy payments making up the price difference for farmers.²¹⁴ Farmers need to have an economic reason to grow specialty crops. If farmers knew they would receive the same amount of government protection from

208 ANGADJIVAND, *supra* note 35.

209 Roberta F. Mann, *Controlling the Env't'l Costs of Obesity*, 47 ENVTL. L. 695, 707 (2017).

210 *Id.* at 708.

211 Evich, *supra* note 61.

212 *Id.*

213 *Id.*

214 Mallorie McCue, Note, *Follow the Money: Insulating Agribusiness Through Lobbying and Suppression of Individual Free Speech*, 6 PITT. J. ENVTL. PUB. HEALTH L. 215, 232 (2012).

growing subsidized crops like corn, it is likely that more farmers would grow specialty crops. This is how the system currently functions now because the top grown crops in the country are subsidized crops. The addition of specialty crops to the list of subsidized crops would drive prices down because farmers would produce much more of it and secondly, because the cost of subsidy payments would make up the price difference to farmers.²¹⁵

Consumers would be directly affected in this because according to a study by Jayson Lusk, an economist at Oklahoma State University, expanding the subsidy program can keep food prices lower by encouraging farmers to produce more than they would without coverage.²¹⁶ If the government's assistance for corn, wheat, cotton, soybeans, and rice were to be eliminated, the cost of those items would increase.²¹⁷ Using this information, subsidizing specialty crops could help lower their costs. Furthermore, having access to and consuming specialty crops is incredibly important for one to have a balanced healthy diet.

Even though the USDA wants half of Americans' plates to consist of fruits and vegetables, they are generally more expensive to buy because they are not subsidized. Specialty crops are foods that Americans are supposed to eat more of, and yet, as pointed out by Sonny Ramaswamy, former director of the USDA's National Institute for Food and Agriculture, the country would find it extremely difficult to meet the demand if Americans actually started eating the recommended amounts because of how the current subsidy program is run.²¹⁸

Specialty crops only receive insurance for weather related losses. Farmers of specialty crops could lose a large amount of money if demand suddenly dropped whereas commodity crop farmers would face less risk. There are two major programs that protect commodity crop farmers for when prices drop below market price.

B: How Specialty Crops are Minimized

The Farm Bill includes an array of assistance to farmers, mostly for those producing commodity crops.²¹⁹ The Agricultural Risk Coverage and Price Loss Coverage program offers a financial shield to farmers of commodity crops.²²⁰ This financial shield dictates what farmers will mostly plant, as it guarantees a minimum income on their land.²²¹

Specialty crops account for only 10 million acres (3%) of cropland in the United States.²²² These items have not been a major part of federal crop insurance

²¹⁵ ANGADJIVAND, *supra* note 35.

²¹⁶ Philip Brasher, *Study Finds Link Between Farm Subsidies, Food Price*, AGRIPULSE (Mar. 5, 2017, 3:52 PM), <https://www.agri-pulse.com/articles/9009-study-finds-link-between-farm-subsidies-food-prices>.

²¹⁷ *Id.*

²¹⁸ Evich, *supra* note 61.

²¹⁹ CONGRESSIONAL RESEARCH SERVICE, *WHAT IS THE FARM BILL?* (2019).

²²⁰ ANGADJIVAND, *supra* note 35.

²²¹ *Id.*

²²² Evich, *supra* note 61.

support and specialty crops are also generally not eligible for the USDA's revenue-support programs.²²³ However, the 2018 Farm Bill expanded federal crop insurance for specialty crops with other programs. Despite this expansion, coverage for specialty crops remain well below that for traditional crops.²²⁴ These programs also still do not project a price guarantee or price protection point. As stated earlier, they are supposed to account for more than half our plates, but these specialty crops do not receive enough support or insurance in the Farm Bill.²²⁵

C: Why there has not been a Title I expansion to include Specialty Crops

With all this overwhelming evidence, why doesn't Congress simply expand their subsidy program to include specialty crops? Big Agriculture stands as a large hurdle in the way of this proposal succeeding and would be the reason it fails.

Big agriculture lobbyists have successfully convinced the government to spend \$35 billion dollars each year to subsidize commodity crops.²²⁶ Big agriculture benefits the most from the current subsidy program and most of the insurance payouts go to them.²²⁷ Large companies rely on crop insurance and other federal subsidies. This is why they are a large advocate for Congress to maintain the current benefit program.²²⁸ Big agriculture and agrochemical trade associations spent more than \$126 million dollars in campaign contributions and lobbying expenditures in 2017.²²⁹ The agricultural lobbying group is extremely powerful and has the largest influence over agricultural policy in the United States.²³⁰

If the government wants to prioritize healthy eating or at least uphold the standards set forth by the USDA, allotting specialty crops with the same subsidies as traditional crops could potentially lower the costs for consumers and give them more reason to pick up specialty crops in the grocery store. However, Congress would face a major hurdle from big agriculture. Fortunately, there has been a growing list of politicians in favor of breaking up big agriculture and lowering its immense influence. In 2019, Senator Elizabeth Warren announced plans to stop the consolidation of America's farms from giant companies.²³¹ She also criticized the "immense market power" created by mergers and expansion.²³² During her campaign speech in 2019, Warren stated, "Twenty years ago, 600 different outfits

²²³ CONGRESSIONAL RESEARCH SERVICE, FEDERAL CROP INSURANCE: SPECIALTY CROPS (2019).

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ McCue, *supra* note 209.

²²⁷ Claire Kelloway, *Status Quo Farm Bill Does Not Tackle Agriculture Consolidation Nor Address the Farm Crisis*, FOOD AND POWER (Dec. 20, 2018), <https://www.foodandpower.net/latest/2018/12/20/status-quo-farm-bill-does-not-tackle-agriculture-consolidation-nor-address-the-farm-crisis>.

²²⁸ Alexandra I. Evans & Robin M. Nagele, *A LOT TO DIGEST: ADVANCING FOOD WASTE POLICY IN THE U.S.*, 58 NAT. RESOURCES J. 177, 210 (2018).

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ Team Warren, *Leveling the Playing Field for America's Family Farmers*, MEDIUM (Mar. 27, 2019), <https://medium.com/@teamwarren/leveling-the-playing-field-for-americas-family-farmers-823d1994f067>.

²³² *Id.*

were selling seed; today it's basically six."²³³ Senator Bernie Sanders also made calls to break up big agriculture in 2019.²³⁴ Warren and Sanders views are only in the minority however.²³⁵ If Congress does not dedicate itself in alleviating the hold from big agriculture, this proposal would fail. There are also other possible alternative ideas to accomplish healthier eating that some may feel are more useful than this proposal.

Some may say that if healthy eating simply comes down to taste, it still will not make people buy these items.²³⁶ However, there are numerous studies showing that price factors are a major reason as to why people, especially those who are low income, do not purchase produce.²³⁷ There is strong evidence also showing that those who are low-income have lower rates of eating the daily recommended amounts of fruits and vegetables versus those who are wealthier.²³⁸

Another argument may be to simply tax unhealthy foods. This is essentially a fat tax and has been found problematic and also not useful in curbing unhealthy eating in other countries who have implemented fat taxes.²³⁹ Lower socioeconomic classes are generally more dependent on fast foods for their nourishment.²⁴⁰ A tax on this will have a disproportionate effect on lower incomes citizens and function as a way to punish.²⁴¹ In Canada, soft drink consumption fell 35 percent between 1999 and 2012 but obesity has still steadily risen over that time.²⁴²

This proposal is a better alternative because it focuses on lowering costs for consumers. Fat taxes only make certain unhealthy foods more expensive but do not make healthier foods more affordable. As there is substantial evidence indicating cost of food being a major indicator on what someone purchases at the grocery store, tackling the issue of affordability is the most ideal solution and the Farm Bill is the best way to achieve this.

Lastly, there is no guarantee that even expanding specialty crops will lower costs for consumers or even make them purchase and consume them. However, with how subsidies currently function in the United States for agriculture, this is precisely

²³³ Jeff Daniels, *Big Agriculture Fights Back Against Sen. Elizabeth Warren's Call to Break Up Industry*, CNBC (Apr. 5, 2019), <https://www.cnbc.com/2019/04/05/big-agriculture-fights-back-against-warrens-call-to-break-up-industry.html>.

²³⁴ Alexandra Jaffe, *Sanders Calls for Breaking Up Big Agriculture Monopolies*, ASSOCIATED PRESS (May 5, 2019), <https://apnews.com/article/fb1ebc0dff34251b64f53bf5a7273c2>.

²³⁵ *Id.*

²³⁶ Michele Ver Ploeg & Ilya Rahkovsky, *supra* note 132.

²³⁷ *Id.*

²³⁸ Simone A. French et al., *Nutrition Quality of Food Purchases Varies by Household Income: The SHoPPER Study*, 19 BMC PUBLIC HEALTH, 231 (2019), <https://doi.org/10.1186/s12889-019-6546-2>.

²³⁹ Nadeem Esmail, *Taxing 'Unhealthy' Foods Won't Reduce Obesity*, FRASER INST., <https://www.fraserinstitute.org/article/taxing-unhealthy-foods-wont-reduce-obesity> (last visited Feb. 13, 2021).

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

what is happening. It seems likely that this trend would also follow through for specialty crops.

CONCLUSION

The Farm Bill is a highly complex piece of legislation that governs the eating habits and access to foods for millions of Americans. Without it, numerous programs and assistance for farmers would stop and millions would go hungry without it. It has continuously been changed throughout the years and will continue to change. The eating patterns and dietary needs of Americans are not the same as they were fifty years ago. Students like Denise and her family, along with the campers in New York City deserve a city that can provide them with healthy nutritional options. As there have been numerous attempts to help mitigate obesity, changing the Farm Bill to make healthy food more affordable is a way to achieve this and create a healthier America.