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Right to Food Gone in a Snap? Evaluating Section 12-4.13C of the Illinois Public Aid Code and Whether it Adequately Addresses Citizens' "Right" to Food, 53 UIC J. Marshall L. Rev. 1125 (2021)

Katelyn Healy

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RIGHT TO FOOD GONE IN A SNAP?
EVALUATING SECTION 12-4.13C OF THE
ILLINOIS PUBLIC AID CODE AND
WHETHER IT ADEQUATELY ADDRESSES
CITIZENS’ “RIGHT” TO FOOD

KATELYN HEALY*

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I. INTRODUCTION: FOOD INSECURITY IN ONE OF THE RICHEST COUNTRIES

In Illinois, one in nine people struggle with hunger.¹ Roughly 1,395,970 people are struggling with hunger and of them, almost a

* Juris Doctor Candidate, UIC John Marshall Law School, May 2021

1. *Hunger in Illinois*, FEEDING AMERICA, www.feedingamerica.org/hunger-in-america/Illinois [perma.cc/9AXV-5NPV] (last visited Sep. 19, 2019).

third are children.² Additionally, 11.2 percent of Illinois households are food insecure, meaning that the individuals are unable to provide adequate food for one or more household members due to lack of resources.³ In the United States as a whole, that number is even worse.⁴ In 2017, the United States Department of Agriculture reported that over 12 percent of American households are food insecure - over 41 million people in the United States face hunger.⁵ One in eight households in the United States had difficulty at some point throughout the year in providing enough food for all members.⁶

Food insecurity in America has been a problem in this country throughout its history.⁷ Food insecurity is measured by the Food Security Supplement survey conducted by the United States Census Bureau.⁸ Although the right to food is not recognized by the United States Constitution, this issue maintains the attention of the Executive and Legislative branches through the implementation of social welfare programs to combat food

2. *Id.*

3. *Public Health Impact: Food Insecurity - Household*, AMERICA'S HEALTH RANKINGS, www.americashealthrankings.org/explore/health-of-women-and-children/measure/food_insecurity_household/state/IL?edition-year=2019 [perma.cc/P8LM-UYCY] (last visited Sep. 20, 2019); *see also Understand Food Insecurity: What is Food Insecurity*, UNDERSTAND FOOD INSECURITY, hungerandhealth.feedingamerica.org/understand-food-insecurity/ [perma.cc/D8QJ-RPUT] (last visited Oct. 8, 2019) (differentiating between hunger and food insecurity – the United States Department of Agriculture “defines food insecurity as a lack of consistent access to enough food for an active, healthy life”).

4. *41 Million People in the United States Face Hunger*, FEEDING AMERICA (Sept. 6, 2017), www.feedingamerica.org/about-us/press-room/new-data [perma.cc/E7J5-NPEQ].

5. *Id.*

6. *Id.*

7. *See, e.g.*, NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, *FOOD INSECURITY AND HUNGER IN THE U.S.: AN ASSESSMENT OF THE MEASURE*, (2006) (providing historical analysis on the issue of food insecurity in the United States); and Lily Rothman, *A Turning Point for Hunger in America*, TIME MAG. (Sept. 7, 2016) (providing historical analysis on the issue of food insecurity in the United States).

8. *Food Security in the United States*, U.S. DEPT' AGRIC. (Sept. 9, 2020), www.ers.usda.gov/data-products/food-security-in-the-united-states [perma.cc/9TA5-YXUY]. The Current Population Survey Food Security Supplement is the source of all national and State-level data on food insecurity. *Documentation: Overview of Surveys*, FOOD SECURITY UNITED STATES (Sept. 9, 2020), www.ers.usda.gov/data-products/food-security-in-the-united-states/documentation/#cps [perma.cc/D7VG-34JB]. The information from the Current Population Survey is used in the Department of Agriculture's annual reports on household food security throughout the country. *Id.* The Survey “is a monthly labor force survey of about 50,000 households conducted by the Census Bureau for the Bureau of Labor Statistics.” *Id.* After completing the labor force questions relevant to the census, the same households are then asked a series of questions regarding food security, food expenditures, and use of food and nutrition assistance programs. *Id.*

insecurity.⁹ Beginning with the nation's first federal Food Stamp Program in 1939 to the recent advancements of Supplemental Nutrition Assistance Program ("SNAP") programs in some states to include restaurant meals,¹⁰ there is no doubt that progress has been made.¹¹ However, there is much more progress to be made in order to recognize American citizens' right to food.

As this Comment will demonstrate, food insecurity is an issue that has been on the minds of politicians and legislators throughout recent history. However, unlike many other countries, the right to food is not recognized by the United States.¹² In making those points, Part II of this Comment chronicles the timeline through federally implemented food programs and evaluates the Illinois Public Aid Code as it relates to food aid. Next, Part III of this Comment will analyze the United States' position in recognizing particular human rights and the right to food in comparison to international standards and the recognition of the right to food. Finally, this Comment proposes two alterations to the Restaurant Meals Program: 1) the federal implantation of the Restaurant Meals Program so those battling food insecurity throughout the country may receive the same benefits no matter the state he or she may reside in, and 2) an amendment that would allow all individuals receiving SNAP benefits to redeem benefits at participating restaurants – not just the elderly, disabled, and/or homeless victims.

9. *The Right to Food Around the Globe*, FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, www.fao.org/right-to-food-around-the-globe/countries/usa/en/ [perma.cc/ZER7-QLJG] (last visited Feb. 12, 2020).

10. States including Rhode Island and Arizona already have restaurant meal programs in place for some SNAP beneficiaries to use. See *SNAP Restaurant Meals Program*, STATE R.I. DEP'T HUMAN SERVICES, www.dhs.ri.gov/Programs/RESTAURANT%20MEALS%20PROGRAM%20FLYER%20Q&A.pdf [perma.cc/T8SZ-2H6A] (last visited Oct. 8, 2019) (providing that the Rhode Island Department of Human Services has approved regulations allowing homeless households, some elderly SNAP recipients, and some disabled SNAP recipients to utilize SNAP benefits to buy prepared restaurant meals); and *Restaurant Meals Program*, ARIZ. DEP'T OF ECON. SECURITY, des.az.gov/content/restaurant-meals-program [perma.cc/5YMN-QFBA] (last visited Oct. 10, 2019) (illustrating that the Restaurant Meals Program in Arizona is a Nutrition Assistance program which allows certain disabled, elderly, and homeless participants to use their EBT cards to purchase prepared meals from participating restaurants).

11. See *New USDA Report Findings Demonstrate Improvement in Food Insecure Population*, FEEDING AMERICA (Sept. 4, 2019), www.feedingamerica.org/about-us/press-room/new-usda-report-findings-demonstrate-improvement-food-insecure-population [perma.cc/VK4B-YLLA] (illustrating declines in some food insecure groups while recognizing that many individuals still face hunger).

12. FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, *supra* note 9.

II. BACKGROUND

A. *The “Right” to Food in the United States and Timeline Through Federal Food Programs*

Under the United States Constitution, there is no fundamental right to food security in our country.¹³ However, there is some recognition of a fundamental right to food under food stamp programs (now Supplemental Nutrition Assistance Program (“SNAP”)) enacted by the federal and state governments.¹⁴ The first Federal food stamp program began in 1939; six years after the Federal Surplus Relief Corporation was established during the midst of the Great Depression.¹⁵

Among the United States’ Department of Agriculture’s goals is the aim to increase food security and reduce hunger by increasing access to food, a healthful diet, and nutrition education for low-income Americans.¹⁶ SNAP is one way the federal government is trying to achieve those goals.¹⁷ In 2019, over 34 million persons participated in the federal government’s SNAP program.¹⁸ Of those more than 34 million persons, SNAP benefits impacted over 17 million households to reach a cost of almost 45 billion dollars annually.¹⁹ This number of SNAP participants represents a decrease from 2016 in which over 44 million persons participated in

13. Although the Constitution does not recognize a “right to food,” nor many other positive socioeconomic rights for that matter, one position is that the Court’s decision in *Obergefell v. Hodges* simulates a changing perspective on the right of human dignity. See Maxine D. Goodman, *The Obergefell Marriage Equality Decision, with Its Emphasis on Human Dignity, and a Fundamental Right to Food Security*, 13 HASTINGS RACE & POVERTY L.J. 149, 175 (2017) (opining that the Court’s view towards extending basic rights to same-sex couples should be extended to recognize a fundamental right to food security under a Fourteenth Amendment Due Process or Equal Protection analysis).

14. See generally *SNAP: The History of Snap*, SNAP TO HEALTH!, www.snapttohealth.org/snap/the-history-of-snap/ [perma.cc/2JGF-3DGY] (last visited Sept. 30, 2019) (illustrating the Federal government’s attempts to combat food insecurity within the United States over time).

15. *Id.*

16. COMMITTEE ON EXAMINATION OF THE ADEQUACY OF FOOD RESOURCES AND SNAP ALLOTMENTS & FOOD AND NUTRITIONAL BOARD COMMITTEE ON NATIONAL STATISTICS, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: EXAMINING THE EVIDENCE TO DEFINE BENEFIT ADEQUACY 13 (Julie A. Caswell & Ann L. Yaktine eds., Nat’l Academies Press 2013), available at www.ncbi.nlm.nih.gov/books/NBK206911/pdf/Bookshelf_NBK206911.pdf [perma.cc/4PJ5-4PKJ].

17. *Id.*

18. *Supplemental Nutrition Assistance Program Participation and Costs*, FOOD NUTRITION SERVICE U.S. DEP’T AGRIC., fns-prod.azureedge.net/sites/default/files/resource-files/SNAPsummary-7.pdf [perma.cc/828E-NTXM] (last visited Oct. 20, 2020),

19. *Id.*

the program at an annual cost of over 66 billion dollars annually.²⁰

1. *First Food Stamp Program*

The first food stamp program in the United States was created in 1939.²¹ The basic legislation first authorizing food assistance for low-income individuals in the United States began during the Great Depression.²² However, the program as we know it today was created in 1939.²³ The foundation for the federal government's Food Stamp Program was laid in 1933 as part of the Agricultural Adjustment Act.²⁴ This program, which was then known as the Federal Surplus Relief Corporation, was established to support farmers whose crop prices had fallen dramatically during the Great Depression.²⁵ In order to bolster farmers, the federal government purchased basic farm commodities at discounted prices and distributed them amongst "hunger relief agencies" throughout states and local communities.²⁶ This first Food Stamp Program allowed citizens to buy orange stamps equal to their normal food expenditures.²⁷ For every one dollar an individual purchased in orange stamps, 50 cents of blue stamps were given.²⁸ Of the stamps received, orange could be used to purchase any food and blue could be used to buy food determined by the United States Department of Agriculture to be surplus.²⁹

This program ended in the spring of 1943, only four years after its conception, because "the conditions that brought the program into being – unmarketable food surpluses and widespread unemployment – no longer existed."³⁰ However, during those four years, about 20 million people in almost half of the counties in the United States participated in the Food Stamp Program.³¹ Peak participation in the program was four million at a total cost of 262 million dollars.³²

20. *Id.*

21. *A Short History of SNAP*, FOOD NUTRITION SERVICE U.S. DEP'T AGRIC. (Sept. 11, 2018), www.fns.usda.gov/snap/short-history-snap [perma.cc/7WKX-7FS8].

22. Maurice MacDonald, *Food Stamps: An Analytical History*, 51 SOC. SERV. REV. No. 4 at 643 (Dec. 1977), www.jstor.org/stable/30015546 [perma.cc/5ZQY-RX2N].

23. *A Short History of SNAP*, *supra* note 21.

24. *The History of Snap*, *supra* note 14.

25. *Id.*

26. *Id.*

27. *A Short History of SNAP*, *supra* note 21.

28. *Id.*

29. COMMITTEE ON EXAMINATION OF THE ADEQUACY OF FOOD RESOURCES AND SNAP ALLOTMENTS & FOOD AND NUTRITIONAL BOARD COMMITTEE ON NATIONAL STATISTICS, *supra* note 16 at 29.

30. *A Short History of SNAP*, *supra* note 21.

31. *Id.*

32. *Id.*

2. *The Pilot Food Stamp Program from 1961 – 1964*

The 1960s heralded the next era of Federal food stamp programs.³³ The Pilot Food Stamp Program existed in the United States between 1961 and 1964.³⁴ In the eighteen years between the end of the initial program in 1943 and 1961, many studies, reports, and legislative proposals had been conducted.³⁵ On February 2, 1961, President Kennedy utilized his first Executive Order to initiate the Food Stamp pilot programs.³⁶ In response to campaign promises made, President Kennedy's pilot Food Stamp programs advocated for expanded food distribution and retained the requirement that food stamps be purchased, but eradicated the concept of special stamps for surplus foods.³⁷ This program also focused on increasing the consumption of perishable food products.³⁸

3. *The Food Stamp Act of 1964*

On January 31, 1964, President Johnson requested that Congress pass legislation making the Food Stamp Program permanent.³⁹ Some purposes of the Food Stamp Act of 1964 were to strengthen the agricultural economy and provide "improved levels of nutrition among low income households."⁴⁰ The practical purpose, however, was to bring the pilot program under Congressional control.⁴¹ Additionally, the Food Stamp Act enacted these regulations into law.⁴²

Of the new Food Stamp Act, major provisions included requiring: a State Plan of Operation and the development of eligibility standards by the States,⁴³ individuals purchase the

33. See COMMITTEE ON EXAMINATION OF THE ADEQUACY OF FOOD RESOURCES AND SNAP ALLOTMENTS & FOOD AND NUTRITIONAL BOARD COMMITTEE ON NATIONAL STATISTICS, *supra* note 16 at 29-31 (noting that President John F. Kennedy's first executive order "expanded food distribution programs" and that the USDA initiated multiple food stamp pilot programs in the early 1960s).

34. *A Short History of SNAP*, *supra* note 21.

35. *Id.*

36. COMMITTEE ON EXAMINATION OF THE ADEQUACY OF FOOD RESOURCES AND SNAP ALLOTMENTS & FOOD AND NUTRITIONAL BOARD COMMITTEE ON NATIONAL STATISTICS, *supra* note 16 at 29.

37. *A Short History of SNAP*, *supra* note 21.

38. *Id.*

39. *Id.*

40. Food and Nutrition Act, Pub. L. No. 88-525, 78 Stat. 703 (1964).

41. *Id.*

42. *A Short History of SNAP*, *supra* note 21.

43. Food and Nutrition Act, 78 Stat. 703 at § 4. www.govinfo.gov/content/pkg/STATUTE-78/pdf/STATUTE-78-Pg703.pdf [perma.cc/28CG-2R3U].

stamps,⁴⁴ participation be limited to those whose income is determined “to be a substantial limiting factor in the attainment of a nutritionally adequate diet,”⁴⁵ the coupons shall be used to purchase food in food stores approved for participation in the program,⁴⁶ and the establishment of eligibility for the consumption of all food except alcoholic beverages and imported foods.⁴⁷ The Food Stamp Act appropriated funding limited to 75 million dollars in its first year, 100 million dollars for its second year, and 200 million dollars for its third year.⁴⁸ The Department of Agriculture estimated that citizens’ participation in a national Food Stamp Program would eventually reach four million individuals at an annual cost of 360 million dollars.⁴⁹

4. *The 1960s Through the 1980s*

After the passing of the Food Stamp Act in 1964, participation in food stamp benefits was rapidly growing.⁵⁰ In 1965, participation surpassed the expected participation rate and reached over half a million citizens.⁵¹ In the following ten years, participation reached 15 million by October of 1974.⁵² The Department of Agriculture attributed this rapid increase in participation to geographic expansion.⁵³

The Food Stamp Program saw significant legislative reform throughout the 1970s.⁵⁴ The Food Stamp Act Amendment of 1970 was passed in January of 1971.⁵⁵ This amendment established uniform national standards of eligibility and work registration requirements, required that Food Stamp allotments be equivalent to the cost of a nutritionally adequate diet, and limited households’ purchase requirements to 30 percent of their income.⁵⁶ Additionally,

44. *Id.*

45. *Id.* at § 5.

46. *Id.* at § 6.

47. *A Short History of SNAP*, *supra* note 21.

48. *Id.*

49. *Id.*

50. The success of the pilot federal food stamp programs prompted President Johnson to enact the Food Stamp Act of 1964. COMMITTEE ON EXAMINATION OF THE ADEQUACY OF FOOD RESOURCES AND SNAP ALLOTMENTS & FOOD AND NUTRITIONAL BOARD COMMITTEE ON NATIONAL STATISTICS, *supra* note 16 at 29-31. The program was signed into law “under the auspices of his ‘War on Poverty.’” *Id.*

51. Participation in SNAP at the time actually rose to 561,261 individuals. *A Short History of SNAP*, *supra* note 21.

52. *Id.*

53. *Id.*

54. *Id.*

55. Food Stamp Act of 1964, Pub. L. 91-671, 84 Stat. 2048-2052 (1971). www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg2048.pdf#page=5 [perma.cc/RJ86-Y3WY].

56. *A Short History of SNAP*, *supra* note 21.

the amendment instituted an outreach requirement, authorized the Department of Agriculture to pay 62.5 percent of administrative costs incurred by States, expanded the program to Guam, Puerto Rico, and the Virgin Islands, and allotted 1.75 billion dollars in appropriations for the 1971 fiscal year.⁵⁷

In 1973, the Agriculture and Consumer Protection Act of 1973 was passed.⁵⁸ This Act required that all states expand the Food Stamp program to each political jurisdiction before July of 1974; expanded the program to benefit both drug addicts and alcoholics in treatment and rehabilitation centers; established semi-annual allotment adjustments, Supplemental Security Income (“SSI”) cash-out, and bi-monthly issuance; and required the Department of Agriculture to establish temporary eligibility standards for disasters.⁵⁹ Further, benefits could be used to purchase a new category of items – seeds and plants that produce food for consumption.⁶⁰ In 1974, an amendment to the Agriculture and Consumer Protection Act of 1973 authorized the Department of Agriculture to pay 50 percent of all States’ costs in administering the program.⁶¹ This law also established a requirement for States to utilize efficient and effective administration practices.⁶²

Beginning in 1974, the Food Stamp Program began operating across the entire country in accordance with the extension and amendment to the Agricultural Act of 1970 “for the purpose of assuring consumers of plentiful supplies of food and fiber at reasonable prices.”⁶³ In 1976, participation in the Program included 18.5 million American citizens.⁶⁴

Additional legislative changes occurred through the Food and Agriculture Act of 1977.⁶⁵ Most significantly, the new law eliminated the purchase requirement because of the barrier it presented to participation the requirement.⁶⁶ The new legislation also penalized families whose head of household voluntarily left their jobs, raised the general resource limit to 1,750 dollars, and restricted eligibility for students and aliens.⁶⁷

In the early 1980s, the Food Stamp Program came under close scrutiny of the Executive and Legislative branches leading to

57. *Id.*

58. *Id.*

59. *Agriculture and Consumer Protection Act of 1973*, FOOD NUTRITION SERVICE U.S. DEP’T AGRIC., www.fns.usda.gov/snap/leghistory/agriculture-consumer-protection-act-1973 [perma.cc/3KG4-TS8Z] (last visited Nov. 20, 2020).

60. *A Short History of SNAP*, *supra* note 21.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. Food and Agriculture Act of 1977, Pub. L. 95-113, 91 Stat. 913.

66. *A Short History of SNAP*, *supra* note 21.

67. Food and Agriculture Act of 1977, 91 Stat. 913.

significant cutbacks.⁶⁸ By 1981, participation reached a new record high of 22.4 million people.⁶⁹ In 1981 and 1982, cutbacks included a temporary freeze on adjustments of the shelter deduction cap and constraints on future adjustments, prohibited using federal funds for outreach, replaced the Food Stamp Program in Puerto Rico with a grant for nutrition assistance, and increased disqualification periods for voluntary quitters.⁷⁰

Following these drastic cutbacks in the early 1980s, the mid-to late 1980s exemplified the severe domestic hunger problems faced by many Americans using the Food Stamp Program.⁷¹ In 1985 and 1987, changes to the law eliminated sales taxes on food stamp purchases, reinstated categorical eligibility, increased eligibility for the homeless, and expanded nutrition education.⁷² The 1988 and 1990 legislation made significant improvements to the Program including the exclusion of advance earned income tax credits as income, making outreach an optional activity for states, and authorized nutrition education grants.⁷³ Additionally, the Program established Electronic Benefit Transfer (“EBT”) as an issuance alternative.⁷⁴

5. *1988 Through 2004 – the Development of EBT*

EBT modernized the Food Stamp program in ways its creators likely doubted possible. EBT allows a recipient to authorize the transfer of governmental benefits from a federal account to a retailer account to pay for products.⁷⁵ The benefits are delivered to participants on a debit card.⁷⁶ EBT helped decrease food stamp fraud “by creating an electronic record of each food stamp transaction, making it easier to identify violations.”⁷⁷ The rate of trafficking food stamps for cash decreased from almost four percent in the 1990s to around one percent after the complete

68. *A Short History of SNAP*, *supra* note 21.

69. *Id.*

70. *Id.*; see also Steven V. Roberts, *Food Stamps Program: How it Grew and How Reagan Wants to Cut it Back*, N.Y. TIMES (Apr. 4, 1981), www.nytimes.com/1981/04/04/us/food-stamps-program-it-grew-reagan-wants-cut-it-back-budget-targets.html [perma.cc/SET5-3L6C] (providing that the Federal budget director at the time stated this proposal was designed to “thwart strikers,” even though it was believed that “strikers make up less than 1 percent of the food stamp rolls”).

71. *A Short History of SNAP*, *supra* note 21.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Restrictions on Use of Public Assistance Electronic Benefit Transfer (EBT Cards)*, NAT'L CONFERENCE STATE LEGIS. (Dec. 12, 2019), www.ncsl.org/research/human-services/ebt-electronic-benefit-transfer-card-restrictions-for-public-assistance.aspx [perma.cc/L4F8-ABSM].

77. *A Short History of SNAP*, *supra* note 21.

implementation of EBT.⁷⁸ The EBT card can be used to purchase food from authorized food retailers and, save a few exceptions like alcohol and tobacco, does not directly influence what foods can be purchased using the benefits.⁷⁹

6. *The Food, Conservation, and Energy Act of 2008*

The Food, Conservation, and Energy Act of 2008, which became public law in May of 2008, increased the federal commitment to federal food assistance programs by more than 10 billion dollars over the next decades.⁸⁰ Additionally, it changed the name of the Federal Food Stamps program to SNAP and the Food Stamp Act of 1977 to the Food and Nutrition Act of 2008.⁸¹ It granted states the flexibility to change the name to SNAP – Illinois is one of the states that did.⁸²

Some changes this law created included: extending simplified reporting to all households;⁸³ requiring the USDA to set standards for major changes in program design;⁸⁴ extending transitional benefits to those leaving a state-funded cash assistance program;⁸⁵ and providing for the mandatory and discretionary exclusion of certain retirement and education accounts from allowable household financial resources.⁸⁶ Further, the law was now acknowledged as the standard issuance vehicle of SNAP benefits.⁸⁷ Within the federal government, much of the administration of these SNAP benefits has been delegated by the Department of Agriculture to the Federal Food and Nutrition Service.⁸⁸

B. *The Illinois Public Aid Code and 305 ILCS 5/12-4.13c*

The Illinois Public Aid Code aims to “assist in the alleviation and prevention of poverty and thereby to protect and promote the

78. *Id.*

79. COMMITTEE ON EXAMINATION OF THE ADEQUACY OF FOOD RESOURCES AND SNAP ALLOTMENTS & FOOD AND NUTRITIONAL BOARD COMMITTEE ON NATIONAL STATISTICS, *supra* note 16 at 14.

80. Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, 122 Stat. 923.

81. *A Short History of SNAP*, *supra* note 21.

82. *See Supplemental Nutritional Assistance Program – SNAP (10/01/2020)*, ILL DEP’T HUMAN SERVS, www.dhs.state.il.us/page.aspx?item=30357 [perma.cc/KV7E-TPDU] (last visited Oct. 07, 2019) (providing that SNAP, formerly Food Stamps, assists low-income people and their families in buying the foods that they need for healthy living).

83. Food, Conservation, and Energy Act of 2008, 122 Stat. 923 at § 4105.

84. *Id.* at § 4116

85. *Id.* at § 4106

86. *Id.* at § 4104

87. *A Short History of SNAP*, *supra* note 21.

88. *Garnett v. Zeilinger*, 301 F. Supp. 3d 199, 201 (D.C. Cir. 2018).

health and welfare of all the people of this State.”⁸⁹ This code in its entirety authorizes financial aid and social welfare services “for persons in need thereof by reason of unemployment, illness, or other cause depriving them of the means of a livelihood compatible with health and well-being” through the coordination and use of all resources in Illinois – both governmental and private.⁹⁰ Although the code focuses on many more aspects of social welfare services, this Comment will limit its discussion to the code’s implications on SNAP in Illinois.

In Illinois, SNAP reached almost two million residents in 2019.⁹¹ In the same year, 14 percent of the state population, or one out of every seven people, received benefits.⁹² More than 63 percent of SNAP participants are in families with children, almost 30 percent are in families with members who are elderly or have disabilities, and more than 43 percent are in working families.⁹³

In July 2019, Illinois’ Public Aid Code was amended by the addition of Section 12-4.13c.⁹⁴ The amendment requires that the Department of Human Services establish a Restaurant Meals Program as part of the federal Supplemental Nutrition Assistance Program.⁹⁵ Under the Restaurant Meals Program, Illinois households with elderly or disabled members, and their spouses, will have the option to redeem their SNAP benefits at private establishments contracted with the Department of Human Services to offer meals for concessional prices.⁹⁶ The Restaurant Meals Program will be operational on or before January 1, 2020.⁹⁷

Illinois’s Restaurant Meals Program would allow participants to use their benefits on meals at fast-food restaurants.⁹⁸ Supporters of this bill recognize that there may be a trade-off between pricing at restaurants and grocery stores, but acknowledge that individuals

89. 305 Ill. Comp. Stat. Ann. 5/1-1 (2021).

90. *Id.*

91. Lexin Cai and Catlin Nchako, *A Closer Look at Who Benefits from SNAP: State-by-State Fact Sheets*, CENTER ON BUDGET & POLICY PRIORITIES (Mar. 16, 2019), www.cbpp.org/research/food-assistance/a-closer-look-at-who-benefits-from-snap-state-by-state-fact-sheets#Illinois [perma.cc/9M97-MJUV].

92. *Id.*

93. *Id.*

94. 305 Ill. Comp. Stat. Ann. §5/12-4.13c (2021).

95. *Id.* See also Alexia Elejalde-Ruiz, *Dining Out on Food Stamps: Bill to Let Some Recipients Spend SNAP Benefits at Restaurants Heads to Pritzker’s Desk*, CHI TRIB. (May 17, 2019), www.chicagotribune.com/business/ct-food-stamps-restaurant-meals-20190515-story.html [https://perma.cc/8BQD-C4C3] (providing opinions from the leaders of the legislative efforts stating that SNAP recipients’ ability to access restaurants “offers them an opportunity to be part of the wider community”).

96. *Id.*

97. *Id.*

98. Brad Weisenstein, *Illinois House Bill Would Allow Fast-Food Restaurants to Accept Food Stamps*, ILLINOIS POLICY (July 19, 2019), www.illinoispolicy.org/illinois-house-bill-would-allow-fast-food-restaurants-to-accept-food-stamps/ [perma.cc/B37S-HWWD].

who may be able to take advantage of this program have limited options for hot meals.⁹⁹ Although this Illinois amendment does help address food inequality within the state, the United States as a whole fails to recognize the right to food as a fundamental right and, as of October of 2020, the United States Department of Agriculture has yet to approve this Illinois Act.¹⁰⁰ This Comment will address possible solutions to this lack of recognition of the right to food more thoroughly in Section IV.

III. ANALYSIS

Food insecurity in America has no doubt been on the minds of legislators throughout the past century, with the implementation of multiple SNAP programs.¹⁰¹ However, our country still recognizes no constitutional right to food.¹⁰² The United States has made clear that “we do not treat the right to food as an enforceable obligation.”¹⁰³ Nevertheless, our country asserts that it does “pursue[] policies that promote access to food, and it is our objective to achieve a world where everyone has access to food.”¹⁰⁴ This

99. *See id.* (providing that the prices of foods at restaurants are higher than what the same items may be at a grocery store). Additionally, although a 1970 addition to the Food Stamp Act of 1964 allowed elderly homebound and disabled participants to use coupons for delivered meals, the extension of the program is not as limiting as those requirements. *See also* COMMITTEE ON EXAMINATION OF THE ADEQUACY OF FOOD RESOURCES AND SNAP ALLOTMENTS & FOOD AND NUTRITIONAL BOARD COMMITTEE ON NATIONAL STATISTICS, *supra* note 16 at 42 (providing that Meals on Wheels was an eligible entity that could accept coupons by this class of SNAP beneficiaries on a voluntary basis).

100. *See* Cassie Chew, *The Fight to Use Food Stamps for Restaurant Food: Three states are moving to make more SNAP recipients eligible for hot meals*, EATER (Jan. 21, 2020), www.eater.com/2020/1/21/21075357/food-stamps-snap-hot-food-restrictions [web.archive.org/web/20201106181422if_/https://www.eater.com/2020/1/21/21075357/food-stamps-snap-hot-food-restrictions] (recognizing that Illinois has successfully passed a bill similar to California’s Restaurant Meals Program but noting that Illinois still requires federal approval to implement the program).

101. *See Hunger and Nutrition*, NAT’L CONFERENCE STATE LEGIS., www.ncsl.org/research/human-services/hunger-partnership-overview-summary.aspx [perma.cc/P9AC-AG2B] (last visited Feb. 3, 2020) (identifying a bipartisan federal hunger partnership aimed at “commit[ing] significant resources to addressing hunger in America, leveraging federal programs and enlisting their employees, customers and clients to improve the availability and accessibility of affordable, healthy food for those who need assistance”).

102. Dr. Hilal Elver, *Article and Essay: The Challenges and Developments of the Right to Food in the 21st Century: Reflections of the United Nations Special Rapporteur on the Right to Food*, 20 UCLA J. INT’L L. & FOR. AFF. 1, 11 (2016).

103. *U.S. Explanation of Vote on the Right to Food*, U.S. MISSION TO INTERNATIONAL ORGANIZATIONS IN GENEVA (Mar. 24, 2017), geneva.usmission.gov/2017/03/24/u-s-explanation-of-vote-on-the-right-to-food/ [perma.cc/JG8L-358D].

104. *Id.*

Comment will now analyze the seemingly counterintuitive stance of the United States.

A. Human Rights Recognized in the United States

Under the Bill of Rights, guarantees of certain civil rights grant our country's citizens a wide array of human rights.¹⁰⁵ Those include but are not limited to the right to freedom of religion, the right to free speech, freedom of the press, the right to bear arms, the right to a speedy and public trial in all criminal prosecutions, and the right to be free from testifying on your own behalf in criminal prosecutions.¹⁰⁶ There is no question that the United States does recognize a broad variety of human rights; however, it is necessary for the addition of a nationally recognized right to food.¹⁰⁷ The stance of the United States is in drastic opposition to the stances taken by many other developed countries and their recognition of a right to food.¹⁰⁸

B. International Standards for the Right to Food

Internationally, over one billion individuals are undernourished.¹⁰⁹ Additionally, over 2 billion people suffer from a lack of essential vitamins and minerals in the food they eat.¹¹⁰ Almost 6 million children die each year from malnutrition or other related diseases, resulting in almost half of all preventable deaths.¹¹¹ The United Nations Office of the High Commissioner for Human Rights asserts that “[c]ombatting hunger and malnutrition is more than a moral duty or a policy choice; in many countries, it is a legally binding human rights obligation.”¹¹² The United Nations Human Rights Office of the High Commissioner's Fact Sheet

105. *United States Key Role in Support of Human Rights*, U.S. EMBASSY IN THE CZECH REPUBLIC, cz.usembassy.gov/our-relationship/policy-history/usa-and-human-rights/ [perma.cc/U7FV-AZWD] (last visited Oct. 27, 2019).

106. *Id.*

107. See *Miranda v. Arizona*, 384 U.S. 436, 460 (1996) (holding that “the constitutional foundation underlying the privilege [of the Fifth Amendment right against self-incrimination] is the respect a government must accord to the dignity and integrity of its citizens”); see also *Furman v. Georgia*, 408 U.S. 238, 305 (1972) (holding that “even the vilest criminal remains a human being possessed of common human dignity”).

108. *Fact Sheet No. 34, The United Nations Human Rights: The Right to Adequate Food*, UNITED NATIONS HUM. RIGHTS OFF. OF THE HIGH COMM'R (Apr. 2010), www.ohchr.org/Documents/Publications/FactSheet34en.pdf [perma.cc/CYV2-XHZE].

109. *Id.*

110. *Id.*

111. *Id.*

112. Girmay Teklu, *Analysis on Legal Status of the Right to Food*, 7 J. POL. SCI. & PUB. AFF. at 1 (2019).

addresses four major misconceptions about the right to food.¹¹³ The Office clarifies that the right to food is not the same as a right to be fed; the denial of the right to food is not a result of a lack of food in the world; the right to food is different from food security and food sovereignty; and the right to adequate food is not the same as the right to safe food.¹¹⁴

1. *The Food and Agriculture Organization of the United Nations*

Similar to the United States Department of Agriculture, the Food and Agriculture Organization of the United Nations dedicates its efforts to lead international efforts to defeat hunger.¹¹⁵ Further, the agency's primary goal is "to achieve food security to all and make sure that people have regular access to enough high-quality food to lead active, healthy lives."¹¹⁶ Additional efforts of the agency include helping eliminate hunger, food insecurity, and malnutrition; making agriculture, forestry and fisheries more productive and sustainable; reducing rural poverty; enabling inclusive and efficient agricultural and food systems; and increasing the resilience of livelihoods to threats and crises.¹¹⁷

The Food and Agriculture Organization reports that more than 820 million people still suffer from chronic hunger.¹¹⁸ And, despite a stronger political commitment from countries around the world, "investments and policies are not being fully effective in fighting hunger and malnutrition and are not reaching some population groups."¹¹⁹ As such, the Food and Agriculture Organization has dedicated much effort to the advancement of human rights treaties, educational documents, and informational guidelines establishing

113. *Fact Sheet No. 34, The United Nations Human Rights: The Right to Adequate Food*, *supra* note 108.

114. The authors of this Fact Sheet address common misconceptions and clarify that "[t]he right to food is not a right to be fed, but primarily the right to feed oneself in dignity." *Id.* Further, "individuals are expected to meet their own needs, through their own efforts and using their own resources." *Id.* According to the Food and Agriculture Organization of the United Nations, the world produces enough food to feed the entire international population. *Id.* Lastly, the right to food requires adequate food to be both available and accessible. *Id.* Adequacy in this context "refers to quantity, quality, and appropriateness, taking into account cultural aspects as well as the physiology of the individual (e.g. sex, age, and health)". *Id.*

115. *About FAO*, FOOD AND AGRIC. ORG. OF THE U.N., www.fao.org/about/en/perma.cc/3ZJG-UD4J (last visited Oct. 30, 2019).

116. *Id.*

117. *What We Do*, FOOD AND AGRIC. ORG. OF THE U.N., www.fao.org/about/what-we-do/en/ [perma.cc/D7N5-QYB7] (last visited Oct. 30, 2019).

118. *Id.*

119. *Id.*

the implementation of the right to food.¹²⁰

2. *International Agreements and Covenants on the Right to Food*

“The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”¹²¹ On December 10, 1948, the Universal Declaration of Human Rights was passed “in the aftermath of the horrors of World War II.”¹²² That declaration “recognizes the human right to food in the context of the right to an adequate standard of living.”¹²³ Further, “[e]veryone has the right to a standard of living adequate for the health and well-being of himself of his family, including food”¹²⁴ The General Assembly adopted the Declaration “with eight nations abstaining from the vote but none dissenting.”¹²⁵

Further, the International Covenant on Economic, Social and Cultural Rights states that “[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food”¹²⁶

120. The Food and Agriculture Organization of the United Nations provides information via a handbook to “provide practical information and guidelines for national legislators and individual parties or groups interested in establishing or strengthening the legal and institutional framework surrounding the right to food, in accordance with the International Covenant on Economic, Social, and Cultural Rights [] and other relevant instruments of international human rights law.” *Fact Sheet No. 34, The United Nations Human Rights: The Right to Adequate Food*, *supra* note 108. The handbook further provides binding and non-binding instruments assisting in the “formulation process of the concept of the human right to food and recognition of this right in international instruments,” normative content categories, and obligations of states. *Id.* Additionally, it evaluates the implications and consequences of constitutional recognition of this right to food through explicit, “as a guiding principle,” and implicit views. *Id.*

121. *Toolkit on the Right to Food*, UNITED NATIONS HUM. RIGHTS OFF. OF THE HIGH COMM’R, www.ohchr.org/EN/Issues/ESCR/Pages/Food.aspx [perma.cc/6R5N-NT2T] (last visited Oct. 31, 2019).

122. *Right to Food Handbooks: The right to food within the international framework of human rights and country constitutions*, FOOD AND AGRIC. ORG. OF THE UNITED NATIONS (2014), www.fao.org/3/a-i3448e.pdf [perma.cc/TPT5-FL9E].

123. *Id.*

124. *Universal Declaration of Human Rights*, SHAPING OUR FUTURE TOGETHER www.un.org/en/universal-declaration-human-rights/ [perma.cc/7XB N-YGUB] (last visited Nov. 1, 2019).

125. *History of the Document*, SHAPING OUR FUTURE TOGETHER, www.un.org/en/sections/universal-declaration/history-document/index.html [perma.cc/WM2Q-3ULU] (last visited Nov. 1, 2019).

126. *International Covenant on Economic, Social and Cultural Rights* UNITED NATIONS HUM. RIGHTS OFF. OF THE HIGH COMM’R, www.ohchr.org/en/professionalinterest/pages/cescr.aspx [perma.cc/PB5V-WBJS] (last visited Nov. 2, 2019).

The Covenant also recognizes that those same States “will take appropriate steps to ensure the realization of this right [to food], recognizing to this effect the essential importance of international co-operation based on free consent.”¹²⁷ The International Covenant on Economic, Social and Cultural Rights was comprised of 170 nations.¹²⁸ Of those 170 nations, 71 were signatories.¹²⁹ Although the United States signed the agreement on October 5, 1977,¹³⁰ it has not yet become a State Party.¹³¹

Although the United States was a member nation in the drafting and adoption of the Universal Declaration of Human Rights, our country fails to recognize the economic, social, and cultural rights guarantee in the Declaration.¹³² Statutes and some state constitutions do address issues like access to food, however, the right to food is not recognized as a right to which all people are entitled.¹³³ This perspective differs drastically from international recognitions of the right to food.¹³⁴

C. Statutory Implementation is not Sufficient for Right to Food Recognition

Although state legislators, like those in Illinois, have enacted statutes that provide access to food to some who are food insecure, that legislation is inefficient for our country. The national recognition of a right to food is necessary to protect the vulnerable of our country and guarantee this internationally recognized right to those in our country. Further, this right to food must be free from governmental interference that could cut spending or limit households benefitting from SNAP.¹³⁵ Governmental intervention

127. *Id.*

128. *International Covenant on Economic, Social and Cultural Rights*, Human Rights, UNITED NATIONS TREATY COLLECTION, treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-3&chapter=4&clang=_en [perma.cc/SH6V-NFVK] (last visited Sep. 22, 2019).

129. *Id.*

130. *Id.*

131. FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, *supra* note 9.

132. *Human Rights and the U.S.*, THE ADVOCATES FOR HUMAN RIGHTS, www.theadvocatesforhumanrights.org/human_rights_and_the_united_states [perma.cc/CW6Y-P82F] (last visited Nov. 1, 2019).

133. *Id.*

134. See FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, *supra* note 9 (sorting Food and Agriculture Organization of the United Nations member countries by levels of recognition to the right to adequate food). Countries can be categorized by the “[e]xplicit protection of the right to adequate food,” “[i]mplicit protection of the right to adequate food,” “[d]irective principles of state policy,” “[n]ational status of international obligations,” and “[o]ther pertinent provisions for the realization of the right to adequate food.” *Id.*

135. See Lola Fadulu, *Trump Administration Unveils More Cuts to Food Stamp Program*, N.Y. TIMES (Oct. 4, 2019), www.nytimes.com/2019/10/04/us/politics/trump-food-stamp-cuts.html [perma.cc/9RYZ-X4HD] (noting

is by no means the same as the right to food guaranteed internationally.¹³⁶

In 2019, the Trump administration has proposed new rules that would allow millions of Americans to lose SNAP benefits.¹³⁷ On July 24, the Trump Administration proposed altering the way states calculate who is eligible to receive SNAP benefits.¹³⁸ The proposed change is called broad-based categorical eligibility, and “was designed to give states further discretion to determine who needs food stamps beyond federal requirements.”¹³⁹ The language of the proposal alleges that this categorical eligibility “is intended to apply only when the conferring program has properly determined eligibility.”¹⁴⁰ Additionally, people whose gross income is 130 percent above the federal poverty line – which equals slightly more than 16,000 dollars per person – or people who have more than 2,250 dollars in assets will no longer qualify to receive federal SNAP benefits.¹⁴¹ If this proposal is adopted, an estimated 3.6 million Americans would no longer receive benefits.¹⁴²

In October of 2019, the Agriculture Department moved again to cut spending on food stamps, resulting in a cut of 4.5 billion dollars from the program over five years.¹⁴³ Although this proposed cut is seemingly slight for the overall SNAP program, it is still the third time the Trump Administration has attempted to cut food stamp spending.¹⁴⁴ In this proposal, income and expenses would be calculated when benefits are decided in a more modern way, and will be altered to additionally set a fixed allowance for heating and cooling costs based on the average utility costs in each state.¹⁴⁵ If this proposal is implemented, the average loss in benefits would be 31 dollars per month and the average gain would be 13 dollars per

the possibility of food stamps benefits being cut by the Trump administration).

136. FOOD AND AGRIC. ORG. OF THE UNITED NATIONS, *supra* note 9. The United States Constitution does not include provisions “related to the right to adequate food,” although the government does provide food resources through SNAP benefits. *Id.*

137. Laura Santhanam, *Here’s Who Could Lose Food Stamps Under Trump’s Proposed Changes*, PBS NEWS HOUR (Sep. 5, 2019), www.pbs.org/newshour/health/heres-who-could-lose-food-stamps-under-trumps-proposed-changes [perma.cc/WEN3-G3VQ].

138. *Id.*

139. *Id.*

140. *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)*, FEDERAL REGISTER: THE DAILY JOURNAL OF THE UNITED STATES GOVERNMENT (July 24, 2019), www.federalregister.gov/documents/2019/07/24/2019-15670/revision-of-categorical-eligibility-in-the-supplemental-nutrition-assistance-program-snap [perma.cc/QYY8-MEHX].

141. Santhanam, *supra* note 137.

142. *Id.* As a result, almost one out of every ten households currently receiving SNAP benefits would lose them. *Id.*

143. Fadulu, *supra* note 135.

144. *Id.*

145. *Id.*

month.¹⁴⁶ The ability that the government has to cut spending and SNAP benefits is concerning.

D. Our Courts Have the Ability to Recognize this Right to Food

The United Nations Human Rights Office of the High Commissioner asserts that economic, social and cultural rights can be litigated in court and be subject to judicial enforcement.¹⁴⁷ However, the Office does recognize that the justiciability of these rights have traditionally been questioned and that the realization of these rights “depends heavily on Government policies.”¹⁴⁸ Although judicial enforcement is by no means the only means of protecting a particular right, judicial enforcement “has a clear role in developing our understanding of these rights, in affording remedies in cases of clear violations and in providing decisions on test cases which can lead to systematic institutional change to prevent violations of rights in the future.”¹⁴⁹

Scholars have asserted that the Supreme Court’s recent decision in *Obergefell v. Hodges* expanded our interpretation and recognition of human dignity.¹⁵⁰ Additionally, it has been argued that “the Court’s willingness to advance human dignity provides a meaningful common thread between the right to marry and the right to food security.”¹⁵¹ Further, the Supreme Court has recognized human dignity in its understanding and interpretation of the Fifth and Eighth Amendments of our Constitution.¹⁵² It seems that the leap of recognizing a right to food as simply another area of recognizing and supporting human dignities is one that the Supreme Court can and should recognize.

146. *Id.* Households would be able to gain up to 33 dollars per month if utilities were underestimated or lose up to 75 dollars per month if utilities were overestimated. *Id.*

147. *Key Concepts on ESCRs – Can economic, social and cultural rights be litigated at courts?*, UNITED NATIONS HUM. RIGHTS OFF. OF THE HIGH COMM’R, www.ohchr.org/EN/Issues/ESCR/Pages/CanESCRbelitigatedatcourts.aspx [perma.cc/4BEH-Q8FK] (last visited Nov. 3, 2019).

148. *Id.*

149. *Id.*

150. See Goodman, *supra* note 13 at 150 (propounding that “[t]he Supreme Court’s reliance on human dignity as the value underlying the due process and equal protection guarantees to which the petitioners were due in *Obergefell*, resembles the Court’s reliance on human dignity in other Supreme Court decisions”).

151. Goodman, *supra* note 13 at 151-52.

152. See *Miranda*, 384 U.S. at 460 (holding that “the constitutional foundation underlying the privilege [of the Fifth Amendment right against self-incrimination] is the respect a government must accord to the dignity and integrity of its citizens”); see also *Furman*, 408 U.S. at 305 (holding that “even the vilest criminal remains a human being possessed of common human dignity”).

Another position on this right to food in the United States is that “with the Patient Protection and Affordable Care Act, Social Security, Medicare, and public schooling, human dignity as liberty can certainly coexist with (and be enhanced by) the government’s provision of resources.”¹⁵³ However, the United States has made clear that, domestically, it “pursues policies that promote access to food, and it is our objective to achieve a world where everyone has adequate access to food, but we do not treat the right to food as an enforceable obligation.”¹⁵⁴ Further, in its explanation of its vote on the right to food in March of 2017, the United States emphasized that it is not a party to the International Covenant on Economic, Social and Cultural Rights.¹⁵⁵ Although the United States as a whole has taken a clear stance on its refusal to recognize food as a right, “[a]dopting the human rights framework for addressing food insecurity seems a natural extension of the progress already made in the health and human rights movement.”¹⁵⁶

Illinois, in its recent amendment to the Illinois’ Public Aid Code, appears to be one of the only states in the nation to recognize an issue with SNAP programs.¹⁵⁷ Through its Restaurant Meals Program, Illinois will soon allow elderly, homeless, and disabled SNAP beneficiaries to redeem food stamps at participating restaurants.¹⁵⁸ Although limited to elderly, disabled, and homeless recipients,¹⁵⁹ the new program addresses a serious problem of SNAP beneficiaries who are simply unable to purchase non-prepared food items and cook them for themselves. The amendment, although rather minor in the grand scheme of local and national SNAP

153. Goodman, *supra* note 13.

154. *U.S. Explanation of Vote on the Right to Food*, U.S. MISSION TO INTERNATIONAL ORGANIZATIONS IN GENEVA (Mar. 23, 2017), geneva.usmission.gov/2017/03/24/u-s-explanation-of-vote-on-the-right-to-food/ [perma.cc/SZ9G-YUPP].

155. *Id.*

156. Mariana Chilton and Donald Rose, *A Rights-Based Approach to Food Insecurity in the United States*, AM J. PUB. HEALTH (July 2009), www.ncbi.nlm.nih.gov/pmc/articles/PMC2696644/ [perma.cc/T7XP-2YT2]. The authors propound that, although the human rights framework itself is not new, since the Universal Declaration of Human Rights of the United Nations, the United States is the only nation besides Australia that “refuses to embrace the right to food, perhaps the most basic form of freedom from want.” *Id.*

157. *See Pandemic EBT Up and Running in Illinois – Disaster relief benefits will help families feed their children*, SHRIVER CENTER ON POVERTY LAW (May 5, 2020), www.povertylaw.org/article/pandemic-ebt-up-and-running-in-illinois/ [perma.cc/F5NS-RLTF] (addressing that, since the COVID-19 pandemic has limited in-person education, adjustments have been made to SNAP benefits to “families with school-aged children who would receive free or reduced-price meals when schools were in session”).

158. Elejalde-Ruiz, *supra* note 95. Although Illinois has amended its Public Aid Code to implement this statewide Restaurant Meals Program, the United States Department of Agriculture has yet to grant federal approving or funding. Chew, *supra* note 100.

159. 305 Ill. Comp. Stat. Ann. 5/12-4.13c (2020).

benefits, seems to be a step in the right direction of recognizing one's need and possible right to food.

IV. PROPOSAL

This Comment proposes a federally implemented Restaurant Meals Program. This Comment agrees with the position that it is very difficult, if not impossible, for homeless, elderly, or disabled individuals to have access to hot meals at farmers markets or grocery stores,¹⁶⁰ where SNAP benefits are currently utilized, and asserts that the ability to utilize SNAP services at restaurants is a step in the right direction of recognizing access to food as a “right.” However, Restaurant Meals Programs only exist in a handful of states and are set to be implemented in Illinois next year.¹⁶¹

Additionally, this Comment proposes that the federally implemented Restaurant Meals Program allow all SNAP beneficiaries to utilize restaurant benefits – not only disabled, elderly, or homeless SNAP beneficiaries. Lastly, this Comment asserts that food insecurity is a challenge that must continuously be combatted, and, although the recognition of food as a “right” in the United States is unlikely, extending Restaurant Meals Programs to all SNAP beneficiaries is one positive way to do so.

A. Federally Implemented Restaurant Meals Program

As of November of 2019, only portions of California, Rhode Island, and Arizona have implemented Restaurant Meals Programs.¹⁶² Previously, Michigan executed its own Restaurant

160. Currently, recipients of SNAP benefits in Illinois can only use the benefits to buy “groceries at retailers.” Elejalde-Ruiz, *supra* note 95. Being able to only purchase groceries and not already prepared food is challenging for homeless individuals without access to cooking supplies or storage space. *Id.* Additional problems exist as well for some elderly or disabled SNAP recipients who may not be able to cook safely in their kitchens at home. *Id.*

161. Weisenstein, *supra* note 98; *SNAP Restaurant Meals Program*, *supra* note 10.

162. See *SNAP Restaurant Meals Program*, *supra* note 10 (providing that the Rhode Island Department of Human Services has approved regulations allowing homeless households, some elderly SNAP recipients, and some disabled SNAP recipients to utilize SNAP benefits to buy prepared restaurant meals); see *Restaurant Meals Program*, ARIZ. DEP'T OF ECON. SECURITY (Oct. 10, 2019), des.az.gov/content/restaurant-meals-program (illustrating that the Restaurant Meals Program in Arizona is a Nutrition Assistance program which allows certain disabled, elderly, and homeless participants to use their EBT cards to purchase prepared meals from participating restaurants); See *Restaurant Meals Program*, CDSS SOCIAL SERVICES, (Nov. 20, 2019), www.cdss.ca.gov/inforesources/calfresh/restaurant-meals-program (providing that the CalFresh Restaurant Meals Program “is an optional county program that allows CalFresh recipients who are 60 years of age or older, disabled, or homeless” to redeem their benefits to purchase lower cost premade meals at

Meals Program but eliminated it in 2013.¹⁶³ Illinois, through its amendment to its Public Aid Code, has recently affected its own SNAP Restaurant Meals Program.¹⁶⁴ Like other states' Restaurant Meals Programs, Illinois's recent amendment permits "individuals who are elderly, persons with a disability, and homeless individuals to redeem their Supplemental Nutrition Assistance Program benefits at private establishments that contract with the Department to offer meals for eligible SNAP recipients at concessional prices."¹⁶⁵

Although the Restaurant Meals Program is sanctioned by the United States Department of Agriculture, there is no mandatory implementation policy for individual states.¹⁶⁶ Arizona, the only state other than Illinois providing a statewide Restaurant Meals Program, provides a Nutrition Assistance program that allows certain disabled, elderly, and homeless participants to use their EBT cards to purchase prepared meals from participating restaurants.¹⁶⁷ The Rhode Island Department of Human Services has also approved regulations allowing homeless households, some elderly SNAP recipients, and some disabled SNAP recipients to utilize SNAP benefits to buy prepared restaurant meals.¹⁶⁸ California has implemented a CalFresh Restaurant Meals Program which "is an optional county program that allows CalFresh recipients who are 60 years of age or older, disabled, or homeless" to redeem their benefits to purchase lower-cost premade meals at participating restaurants in counties that have elected to participate.¹⁶⁹ As such, Illinois will join only a statewide Program in Arizona and county implemented Programs in California and

participating restaurants in counties that have elected to participate).

163. See Alexia Elejalde-Ruiz, *supra* note 158 (referencing Bob Wheaton's, spokesman for the Michigan Department of Health & Human Services, comments stating that the cutting of the Restaurant Meals Program was due to concerns about lack of nutritional options at restaurants and fraud occurring at some locations).

164. 305 Ill. Comp. Stat. Ann. 5/12-4.13c (2020).

165. *Id.*

166. Greg Trotter, *SNAP in restaurants: The case for expanding the program in Illinois*, GREATER CHICAGO FOOD DEPOSITORY (May 17, 2019), www.chicagofoodbank.org/blog/snap-in-restaurants-the-case-for-expanding-the-program-in-illinois/ [perma.cc/YME3-4DLZ].

167. See *Restaurant Meals Program*, ARIZ. DEP'T OF ECON. SECURITY (Oct. 10, 2019), des.az.gov/content/restaurant-meals-program (illustrating that the Restaurant Meals Program in Arizona is a Nutrition Assistance program which allows certain disabled, elderly, and homeless participants to use their EBT cards to purchase prepared meals from participating restaurants).

168. *SNAP Restaurant Meals Program*, *supra* note 10.

169. See *Restaurant Meals Program*, CDSS SOCIAL SERVICES, *supra* note 162 (providing that the CalFresh Restaurant Meals Program "is an optional county program that allows CalFresh recipients who are 60 years of age or older, disabled, or homeless" to redeem their benefits to purchase lower cost premade meals at participating restaurants in counties that have elected to participate).

Rhode Island.¹⁷⁰

Those capable of enrolling in Restaurant Meals Programs, if the state he or she lives in even offers the program, must be homeless, disabled, or elderly.¹⁷¹ However, a large portion of these individuals receiving SNAP benefits are obviously living outside the minority of states offering Restaurant Meals Programs. As such, a federally implemented Restaurant Meals Program is necessary to guarantee homeless, elderly, and disabled SNAP recipients the ability to purchase already prepared food.

For many homeless people, it is likely that he or she does not have a place to store or refrigerate food purchased with food stamps; thus, purchasing perishable food items may not be a viable option.¹⁷² Additionally, many low-income individuals face physical health barriers to preparing their own meals or may lack the space to cook food or store food properly.¹⁷³ The ability to purchase already prepared meals from grocery stores or from participating restaurants for SNAP beneficiaries must be a possibility for all SNAP beneficiaries – not only those in Illinois, Arizona, or parts of Rhode Island and California.¹⁷⁴ As such, a federally fulfilled Restaurant Meals Program that must be instituted in each state – just as SNAP programs are available in each state, this service must be available as well.

Federal funding is used to support a large and diverse range of programs and activities in America.¹⁷⁵ However, domestic food

170. See *SNAP Restaurant Meals Program*, *supra* note 10 (providing that Rhode Island has approved regulations allowing homeless households, some elderly SNAP recipients, and some disabled SNAP recipients to utilize SNAP benefits to buy prepared restaurant meals); See *Restaurant Meals Program*, ARIZ. DEPT OF ECON. SECURITY, *supra* note 162 (asserting that the Restaurant Meals Program in Arizona is a Nutrition Assistance program which allows certain disabled, elderly, and homeless participants to use their EBT cards to purchase prepared meals from participating restaurants); See *Restaurant Meals Program*, CDSS SOCIAL SERVICES *supra* note 162 (providing that the CalFresh Restaurant Meals Program allows CalFresh recipients aged 60 years or older, recipients who are disabled, or recipients who are homeless to redeem their benefits to purchase lower cost premade meals at participating restaurants that have elected to participate).

171. *Id.*

172. *Homelessness Barriers to Using Mainstream Programs*, U.S. Gen. Accounting Office Report Congressional Requesters, 9 (July 2000), www.gao.gov/new.items/rc00184.pdf [perma.cc/B6Q9-XXK9].

173. Trotter, *supra* note 166. Nolan Downey, an attorney for the Sargent Shriver National Center on Poverty Law, led the organization's advocacy efforts on the Illinois Public Aid Code Amendment and stated, "[h]aving that option where they can go to a grocery store and get a rotisserie chicken or go to one of these restaurants and get a meal – it's the difference between eating and not eating." *Id.*

174. See *supra* note 162 and accompanying text (providing descriptions regarding states that have already implemented certain Restaurant Meals Programs).

175. *A Brief Guide to the Federal Budget and Appropriations Process*, AMERICAN COUNCIL ON EDUCATION, www.acenet.edu/Policy-Advocacy/Pages/

assistance funding is secured through a combination of mandatory and discretionary funding.¹⁷⁶ Spending encompassing SNAP benefits is determined by the terms of the authorizing law which will require full funding.¹⁷⁷ That funding “may vary with program participation.”¹⁷⁸ Understandably, the amount of funding required to support this Comment’s proposal would be higher than current funding. However, as the United States already recognizes food assistance programs as mandatory spending, this action taken to combat food insecurity in the United States is necessary to implement positive change.

B. Restaurant Meals Programs Not Limited to Homeless, Elderly, or Disabled Recipients

Once a federally implemented Restaurant Meals Program is implemented, the ability to utilize the Program must be extended to all SNAP recipients – not only homeless, elderly, and disabled recipients. This Comment does recognize that those three groups of people do face significant challenges regarding the ability to prepare their own meals, however, the extension of the Program to all recipients is necessary to assist all beneficiaries.

The Illinois Department of Human Services, the same department that administers SNAP benefits to the nearly 1.8 million individuals who are enrolled in the state, “already screens for people who are elderly, disabled, or experiencing homeless.”¹⁷⁹ Because of this, if an individual who was not elderly, disabled, or homeless attempted to use his or her EBT card to redeem benefits for already prepared food or for a meal at a participating restaurant, the transaction would be denied in real-time.¹⁸⁰ Not only would this be demoralizing for the individual attempting to use SNAP benefits to purchase his or her next meal, but it also eliminates a sale from the restaurant or store.

The circumstances surrounding an individual who receives SNAP benefits are likely unknown. It seems unrealistic to prevent individuals from utilizing his or her SNAP benefits at restaurants and stores that have contractually agreed to participate in a Restaurant Meals Program simply because he or she is not elderly, disabled, or homeless. Additionally, the amount allotted to an individual each month that is eligible for Restaurant Meals

Budget-Appropriations/Brief-Guide-to-Budget-Appropriations.aspx [perma.cc/F5SQ-GL6D] (last visited Feb. 6, 2020).

176. CONG. RESEARCH SERV., R45743, USDA DOMESTIC FOOD ASSISTANCE PROGRAMS: FY2019 APPROPRIATIONS, 2 (May 24, 2019), www.fas.org/sgp/crs/misc/R45743.pdf [perma.cc/FWT2-QDCS].

177. *Id.*

178. *Id.*

179. Trotter, *supra* note 166.

180. *Id.*

Programs under SNAP does not change. The per month allotment remains the same whether or not an individual is purchasing food and redeeming benefits at a grocery store, farmers market, restaurant, or hot foods counter. As such, there is little harm in allowing recipients of SNAP benefits to spend his or her monthly food allowance in whichever way he or she deems fit – whether that be purchasing all locally grown produce at farmers markets, buying groceries at supermarkets, or redeeming benefits for hot meals at participating restaurants or hot food counters.

Critics who object to Restaurant Meals Programs have cited “that the meals available for purchase at the restaurants are low in nutritional value. However, this criticism ignores that [Restaurant Meals Programs are] open to all restaurants who apply to participate and meet certain criteria.”¹⁸¹ Those same critics may fail to recognize that, “for people who are unable to prepare their own meal, hunger is the unacceptable alternative.”¹⁸²

V. CONCLUSION

Although the United States has failed to follow the tradition of many other modern countries in recognizing food as a “right,” its application of federal food programs is no doubt a step in the right direction of addressing the problem of food insecurity. Additionally, individual states and their application of additional services, including Restaurant Meals Programs, have further addressed the devastating issue of food insecurity and the sometimes inability to access or prepare food. An individual in our country should not need to worry about when the next time he or a family member may eat his or her next meal. In conclusion, the ability to purchase already prepared meals from grocery stores or from participating restaurants for SNAP beneficiaries must be a possibility for all SNAP beneficiaries – not only those in Illinois, Arizona, or parts of Rhode Island and California. Further, all individuals receiving SNAP benefits should have the ability to redeem those benefits on hot meals or food items from participating grocery stores and restaurants. The ability to do so must not remain limited to only elderly, homeless, or disabled SNAP recipients. This past year, the United States led the world in financial assets growth and per capita wealth.¹⁸³ Although per capita wealth increased drastically,

181. Jessica Bartholow, *Preventing Hunger Among the Elderly, Disabled & Homeless in the Golden State*, WESTERN CENTER ON LAW AND POVERTY (Feb. 2012), www.wclp.org/wp-content/uploads/2016/11/YGA-12161-SNAP-doc1-1.pdf.

182. *Id.*

183. See Jack Ewing, *United States is the richest country in the world, and it has the biggest wealth gap.*, N.Y. TIMES (Sept. 23, 2020), www.nytimes.com/2020/09/23/business/united-states-is-the-richest-country-in-the-world-and-it-has-the-biggest-wealth-gap.html [perma.cc/NU58-FXGR] (referencing a

the United States has a distribution of wealth more unequal than in any other country.¹⁸⁴ There is no question that wealth inequality is likely here to stay, but the people of the United States should not face hunger as a result of one's socioeconomic status.

study conducted by Allianz, a German insurer, of the world's stocks, bonds, cash, and other assets).

184. *Id.*

