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## Let Them Eat Kale: The Misplaced Narrative of Food Access

Nathan A. Rosenberg

Nevin Cohen

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# LET THEM EAT KALE: THE MISPLACED NARRATIVE OF FOOD ACCESS

*Nathan A. Rosenberg\* & Nevin Cohen\*\**

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\* Adjunct Professor, University of Arkansas School of Law.

\*\* Associate Professor, City University of New York (“CUNY”) Graduate School of Public Health and Research Director, CUNY Urban Food Policy Institute.

## INTRODUCTION

In recent years, policymakers, nongovernmental organizations, and activists have supported policies to eliminate disparities in access to healthy food and, by doing so, reduce diet-related chronic diseases. These efforts have involved a wide range of interventions, from the creation of new farmers' markets to programs encouraging convenience stores to sell fresh produce. One of the most prominent food access interventions uses incentives to lure supermarkets to so-called "food deserts," communities deemed to have insufficient full-service food retail.<sup>1</sup> Federal, state, and municipal governments have invested hundreds of millions of dollars to subsidize supermarket development through such programs.<sup>2</sup> However, research has shown that merely expanding access to food retail has no appreciable effect on shopping patterns, food choices, health, obesity, or diet-related diseases.<sup>3</sup> Support for these interventions has nonetheless continued to grow—obscuring underlying issues and detracting from more effective strategies.

This Article examines the emergence of food access as a policy issue, current approaches to increasing food access, and possible alternatives. Part I discusses the development of the current food access narrative, focusing on its appeal to policymakers, urban planners, and public health officials. Part II describes policies to increase access to food retail. Part III reviews research on the relationship between food retail and health outcomes. Part IV

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1. *See infra* Part I. The first large-scale intervention of this type in the United States was the Pennsylvania Fresh Food Financing Initiative, which used over \$145 million in loans and grants to finance eighty-eight retail projects between 2004 and 2010. THE FOOD TRUST, HEALTHY FOOD ACCESS IN PENNSYLVANIA: BUILDING ON SUCCESS, REINVESTING IN COMMUNITIES, CREATING JOBS 2 (2015). In 2010, President Obama created a multi-agency federal program modeled after the Pennsylvania initiative. Press Release, U.S. Dep't of the Treasury, Obama Administration Details Healthy Food Financing Initiative (Feb. 19, 2010), <https://www.treasury.gov/press-center/press-releases/Pages/tg555.aspx> [<https://perma.cc/GJJ7-Q5RG>]. The Obama administration pledged to commit more than \$400 million to the new program, called the Healthy Food Financing Initiative ("HFFI"). *Id.* Several states and municipalities have also created similar initiatives to expand supermarket development, often using seed capital from HFFI. Memorandum from the 6th Annual Convening on Healthy Food Access: HFFI Messaging and Talking Points (May 3, 2017), [http://www.healthyfoodaccess.org/sites/default/files/HFFI%20TPs%202017\\_FINAL.pdf](http://www.healthyfoodaccess.org/sites/default/files/HFFI%20TPs%202017_FINAL.pdf) [<https://perma.cc/2FTA-NNCZ>].

2. *See infra* Part II. The federal government alone has distributed more than \$500 million through the HFFI. Brian Elbel et al., *Assessment of a Government-Subsidized Supermarket in a High-Need Area on Household Food Availability and Children's Dietary Intakes*, 18 PUB. HEALTH NUTRITION 2881, 2882 (2015).

3. *See infra* Part III.

examines why increasing food access persists as a policy goal despite its demonstrated failure to reduce health inequities. Finally, Part V proposes alternative strategies for reducing economic and health disparities within food systems.

### I. THE FOOD ACCESS NARRATIVE

The concept of food access was originally applied to dynamics within developing countries with severely malnourished populations.<sup>4</sup> It was meant to reorient anti-hunger efforts away from a simplistic focus on food availability—the physical supply of food—toward one that also considered the ability of people to secure, or access, that food.<sup>5</sup> By the late 1970s, recognizing that the Green Revolution failed to end famines and malnourishment despite increasing agricultural yields,<sup>6</sup> food security scholars and practitioners increasingly emphasized the need to match food availability with food access.<sup>7</sup> Economist and philosopher Amartya Sen popularized the concept of food access in the early 1980s, demonstrating that famines were not the result of insufficient food availability, but rather of policies dictating how people acquired and controlled food, which often deprived the poor of the means to access otherwise plentiful food supplies.<sup>8</sup> Conventional forms of food assistance, which focused on distributing surplus food to impoverished countries, were challenged for perpetuating dependency on donor countries.<sup>9</sup> A 1986

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4. This Article focuses on the narrative of “food access” as used and applied in the Global North. There remains a distinct literature on access to food in developing countries that is grounded in different methodologies and concerns, and accordingly offers a different set of interventions.

5. Per Pinstrup-Andersen, *Food Security: Definition and Measurement*, 1 FOOD SECURITY 5, 5 (2009).

6. The Green Revolution, which lasted between 1966 and 1985, tripled the production of cereal crops—with only a thirty percent increase in land area cultivated—through substantial public expenditures on agricultural research, technology, and infrastructure. Prabhu L. Pingali, *Green Revolution: Impacts, Limits, and the Path Ahead*, 109 PROC. NAT’L ACAD. SCI. 12302, 12302 (2012).

7. *Id.* Writing in 1977, for example, the development scholar Peter Timmer argued for increased research on the dynamics of food access in order to understand why “the hungriest parts of the population” of “poor countries” remained malnourished despite the Green Revolution. C. Peter Timmer, *Access to Food: The Ultimate Determinant of Hunger*, 300 ANNALS N.Y. ACAD. SCI. 59, 60–61 (1977).

8. See AMARTYA SEN, POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION 1–8 (1981).

9. Anne C. Bellows & Michael W. Hamm, *International Effects on and Inspiration for Community Food Security Policies and Practices in the USA*, 13 CRITICAL PUB. HEALTH 107, 111 (2003).

World Bank report on food security in developing countries summarized the new conventional wisdom:

The world has ample food. The growth of global food production has been faster than the unprecedented population growth of the past forty years. . . . Yet many poor countries and hundreds of millions of poor people do not share in this abundance. They suffer from a lack of food security, caused mainly by a lack of purchasing power.<sup>10</sup>

The report defined “food security” as “access by all people at all times to enough food for an active, healthy life” and “food insecurity” as “the lack of access to enough food.”<sup>11</sup>

### A. Third Way Politics and Food Access

By the early 1990s, policymakers and social movements in the Global North began to focus on food access within their own countries. Tony Blair’s government in the United Kingdom played a critical role in shaping discourse on food access in Europe and North America by emphasizing the availability of conventional food retailers to the exclusion of other factors. “Improved access” quickly became defined as “improved access to food retail”—despite the emergence of social movements that sought to address food disparities in a more comprehensive way.<sup>12</sup> Food insecurity in advanced economies thus became framed as a market failure that could be addressed, it was believed, through incentives for, and private-public partnerships with, food retailers.<sup>13</sup> This narrative

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10. WORLD BANK, POVERTY AND HUNGER: ISSUES AND OPTIONS FOR FOOD SECURITY IN DEVELOPING COUNTRIES 1 (1986), <http://documents.worldbank.org/curated/en/166331467990005748/pdf/multi-page.pdf> [<https://perma.cc/8EJB-ZWLD>].

11. *Id.*

12. The environmental justice movement, for example, called for both distributive and procedural equity in all aspects of the environment, including food systems. *See* Robert Gottlieb & Andrew Fisher, *Community Food Security and Environmental Justice: Searching for a Common Discourse*, 3 AGRIC. & HUM. VALUES 23, 23–25 (1996). The community food security movement, which grew to prominence in the mid-1990s, sought to accomplish long-term food security that included adequate income, food quality and cultural appropriateness, affordability, and sustainability.

13. The first major publicly-funded program in the United States to incentivize supermarket development was spurred, in part, by a 2001 campaign by The Food Trust called “Food for Every Child,” which sought to address dietary disparities exclusively through expanded access to food retail. *See* THE FOOD TRUST, SPECIAL REPORT: THE NEED FOR MORE SUPERMARKETS IN PHILADELPHIA 1 (2001). As part of the campaign, The Food Trust released a report arguing that market failure had left lower-income neighborhoods bereft of supermarkets, resulting in significant disparities in nutrition and diet-related disease. *Id.* at 1, 6. Their solution was simple:

proved particularly attractive to municipal policymakers, who sought to entice investors back into capital-starved cities, and public health officials, who were eager to identify environmental factors in the emerging obesity “epidemic.” The concept of food access, which Sen had used to explain that poverty and property entitlements were the root causes of food insecurity, had, by the late 1990s, been recast in such a way so as to obscure those very issues.

Tony Blair won a commanding majority in the United Kingdom’s 1997 general election, bringing Labour to power for the first time in eighteen years. Like Bill Clinton, his ideological counterpart in the United States, Blair rejected wealth redistribution, government intervention in markets, and increased public spending as outmoded ideological solutions.<sup>14</sup> Branding his politics as the “Third Way”—between conservative Tories and the “hard left”—Blair portrayed himself as a pragmatist capable of achieving progressive outcomes through private sector growth, public-private partnerships, and policies that encouraged individual responsibility and opportunity.<sup>15</sup> “What counts,” Blair emphasized during the election, is not “outdated ideology,” but “what works.”<sup>16</sup>

Blair had seized on the growing health divide between the rich and poor as a campaign issue and promised to make reducing health inequalities a central goal of his new government.<sup>17</sup> Blair appointed

state and local governments must “take the lead in developing a public-private response” and “invest in supermarket development.” *Id.* at 1.

14. See Curtis Atkins, *The Third Way International*, JACOBIN MAG. (Feb. 11, 2016), <https://www.jacobinmag.com/2016/02/atkins-dlc-third-way-clinton-blair-schroeder-social-democracy> [https://perma.cc/JT8D-6MAW]. While Bill Clinton did not take up food access as a major issue during his presidency, many of his fellow centrist “New Democrats” were major proponents of market-based food access interventions during the Obama administration. See generally, e.g., JOEL BERG, PROGRESSIVE POL’Y INST., GOOD FOOD, GOOD JOBS: TURNING FOOD DESERTS INTO JOBS OASES (2010), [http://www.progressivefix.com/wp-content/uploads/2009/12/PPI-Policy-Report\\_BERG-Good-Food-Good-Jobs.pdf](http://www.progressivefix.com/wp-content/uploads/2009/12/PPI-Policy-Report_BERG-Good-Food-Good-Jobs.pdf) [https://perma.cc/2XRJ-TT9V].

15. ANTHONY GIDDENS, THE THIRD WAY: THE RENEWAL OF SOCIAL DEMOCRACY 65 (1998) (suggesting “no rights without responsibilities” as a “prime motto” for the movement); Atkins, *supra* note 14; Patrick Butler, *Public-Private Partnerships: The Issue Explained*, GUARDIAN (June 25, 2001, 10:55 AM), <https://www.theguardian.com/society/2001/jun/25/ppp1> [https://perma.cc/XTA5-GEVA] (discussing New Labour’s affinity for public-private partnerships).

16. Tim Harford, *In Praise of Pragmatism*, INDEPENDENT (June 6, 2011, 11:00 PM), <http://www.independent.co.uk/news/world/politics/in-praise-of-pragmatism-2293820.html> [https://perma.cc/Y8H3-84LS]; see THE LABOUR PARTY, NEW LABOUR BECAUSE BRITAIN DESERVES BETTER (1997).

17. Mary Shaw et al., *Health Inequalities and New Labour: How the Promises Compare with Real Progress*, 330 BRITISH MED. J. 1016, 1016 (2005); see also

Tessa Jowell as his public health minister and established an Independent Inquiry into Inequalities in Health led by the National Health Services' former chief medical officer, Sir Donald Acheson.<sup>18</sup> Both Jowell and the Acheson Inquiry identified the proliferation of so-called "food deserts," communities with insufficient healthy food retail, as a major problem and advocated for improving food access as the solution.<sup>19</sup> While the phrase "food desert" was first used in the early 1990s by public housing residents in Scotland,<sup>20</sup> the term was included in a U.K. government report published in 1995, and the new Labour government popularized it, warning that food deserts were a "real problem" that gave rise to "virtually every major illness."<sup>21</sup> The British media repeated such claims, often uncritically,<sup>22</sup> while funding for such research increased, resulting in a number of studies purporting, at least initially, to link limited food access with poor diet and health outcomes.<sup>23</sup>

Food deserts appeared to be a problem perfectly suited to Blair's Third Way approach. By working with the private sector to expand food retail options, Labour promised a win-win for businesses and low-income residents. "It's the Third Way applied to shopping," as one advocate told *The Guardian* in 1999, describing a pilot project to bring locally-owned corner stores to food deserts.<sup>24</sup> While the corner

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Michael G. Marmot, *Tackling Health Inequalities Since the Acheson Inquiry*, 58 J. EPIDEMIOLOGY & COMMUNITY HEALTH 262, 262 (2004).

18. RAY EARWICKER, *Progress in Tackling Health Inequalities: A Policy Maker's Reflections*, in CHALLENGING HEALTH INEQUALITIES: FROM ACHESON TO 'CHOOSING HEALTH' 17, 17 (Elizabeth Dowler & Nick Spencer eds., 2007).

19. ELIZABETH DOWLER, MARTIN CARAHER & PAUL LINCOLN, *Inequalities in Food and Nutrition: Challenging 'Lifestyles'*, in CHALLENGING HEALTH INEQUALITIES: FROM ACHESON TO 'CHOOSING HEALTH', 127, 139 (Elizabeth Dowler & Nick Spencer eds., 2007).

20. Steven Cummins et al., "Food Deserts"—Evidence and Assumption in Health Policy Making, 325 BRITISH MED. J. 436, 436 (2002).

21. Valerie Elliott, 'Food Deserts' Threaten Health of Poor and Old, TIMES, Nov. 5, 1997, at 10.

22. See, e.g., *id.*; Martin Hickman, 'Food Deserts' Depriving Towns of Fresh Fruits and Vegetables, INDEPENDENT, Dec. 13, 2007, at 12; Geraint Smith, *Parents Expected to Outlive Children as Obesity Spreads*, EVENING STANDARD, Sept. 9, 2002, at 15.

23. See Steven Cummins et al., *Large Scale Food Retailing as an Intervention for Diet and Health: Quasi-Experimental Evaluation of a Natural Experiment*, 59 J. EPIDEMIOLOGY COMMUNITY HEALTH 1035 (2005) (providing a literature review of early studies).

24. Martin Wainwright, *Fresh Fruit and Veg Herald a Fresh Start for the Corner Stop*, GUARDIAN (Apr. 1, 1999), <https://www.theguardian.com/uk/1999/apr/02/martinwainwright> [<https://perma.cc/8KSF-LN6Q>].

store pilot program garnered positive press, supermarkets were the main beneficiaries of the push to expand food retail options. In late 1999, for example, large grocery chain Tesco announced a partnership with Blair's "New Deal" welfare to work program to create two thousand jobs by building new stores in food deserts,<sup>25</sup> which became part of Tesco's broader strategy to expand in low-income and depressed areas through "regeneration partnerships" with local organizations and authorities.<sup>26</sup> Tesco's promise to revitalize food deserts helped propel its rapid growth: between 1990 and 2005 its market share in the United Kingdom nearly doubled, jumping from sixteen to thirty percent.<sup>27</sup>

### B. The Emergence of Food Access in the United States

In the 1990s, researchers and policymakers in the United States increasingly focused on the ability of individuals to purchase food through conventional distribution channels.<sup>28</sup> Although activist groups had addressed hunger and malnourishment for decades,<sup>29</sup> advocates in the United States increased their efforts to improve food access. Government cuts to welfare and food assistance programs, as well as economic restructuring, had rapidly increased food insecurity.<sup>30</sup> The rise in food insecure populations consequently

25. Lucy Baker, *Tesco in Partnership Deal to Create 2,000 Jobs in Most Deprived Areas*, INDEPENDENT (Oct. 18, 1999), <https://www.independent.co.uk/news/business/news/tesco-in-partnership-deal-to-create-2000-jobs-in-most-deprived-areas-740510.html> [<https://perma.cc/V8Q2-UC3Q>].

26. See Steven Cummins et al., *Healthy Cities: The Impact of Food Retail-Led Regeneration on Food Access, Choice and Retail Structure*, 31 BUILT ENV'T. 288, 289 (2005) (describing Tesco's "particularly active" 'regeneration' strategy); see also Judith Nelson, *See How Our Regeneration Partnership Scheme Helps People Back into Work*, TESCO (Mar. 29, 2012), <https://www.ourtesco.com/2012/03/29/946/> [<https://perma.cc/8NPV-4BAK>] (advertising the opening of Tesco's forty-second "Regeneration Partnership" store since 2000).

27. See U.K. % Market Share of Supermarkets - Groceries Market, FOODDESERTS.ORG [hereinafter U.K. Market Share], <http://www.fooddeserts.org/images/supshare.htm> [<https://perma.cc/EFQ8-329Q>].

28. See, e.g., Barbara E. Cohen, *Food Security and Hunger Policy for the 1990s*, 25 NUTRITION TODAY 23, 25 (1990).

29. See, e.g., GARRET BROAD, MORE THAN JUST FOOD: FOOD JUSTICE AND COMMUNITY CHANGE 131-46 (2016) (discussing the Black Panther Party's food programs); Janet Poppendieck, *Hunger in America: Typification and Response*, in EATING AGENDAS: FOOD AND NUTRITION AS SOCIAL PROBLEMS 11-34 (Donna Maurer & Jeffery Sobal eds., 1995) (analyzing "discoveries" of hunger in the United States during the 1930s, 1960s, and 1980s).

30. See Saskia Sassen, *Economic Restructuring and the American City*, 16 ANN. REV. SOC. 465, 466-67 (1990).



overwhelmed the nation's emergency food system.<sup>31</sup> At the same time, the migration of supermarkets and grocery stores away from low-income neighborhoods often made acquiring affordable food difficult for the urban poor.<sup>32</sup> Newly emerging social movements, including the community food security and environmental justice movements, integrated the concept of food access into their own agendas and activism.<sup>33</sup> In reports, academic articles, and advocacy materials, members of these movements broadened the notion to encompass equity and the entire food supply chain.<sup>34</sup> Nonetheless, the policies and programs that emerged to improve access often used the narrower definition of food access that highlighted the availability of conventional food retail.<sup>35</sup>

This limited definition appealed to urban policymakers and public health officials because it framed the problem of food insecurity and diet-related health disparities as a market failure that could be cured through policy interventions such as subsidies to for-profit food retailers.<sup>36</sup> Access quickly came to be defined by “the presence of conventional food markets in low-income neighborhoods or close by.”<sup>37</sup> It was not until the early 2000s, however, that U.S. organizations and researchers, following the U.K. model, began to systematically “document” food deserts and advocate for additional food retail.

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31. Between 1970 and 1986, the purchasing power of Aid to Families with Dependent Children (“AFDC”), the federal government’s main welfare program, declined by thirty-three percent. STAFF OF COMM. ON HUNGER, 100TH CONG., OBTAINING FOOD: SHOPPING CONSTRAINTS ON THE POOR 2 (Comm. Print 1987). The amount of food distributed through the emergency food system increased from 25 million pounds in 1979 to over 450 million pounds in 1990. LINDA ASHMAN ET AL., SEEDS OF CHANGE: STRATEGIES FOR FOOD SECURITY FOR THE INNER CITY 15 (1993).

32. See STAFF OF COMM. ON HUNGER, *supra* note 31, at 4.

33. See Robert Gottlieb & Andrew Fisher, “*First Feed the Face*”: *Environmental Justice and Community Food Security*, 28 ANTIPODE 193, 193 (1996); ROBERT GOTTLIEB, FORCING THE SPRING: THE TRANSFORMATION OF THE AMERICAN ENVIRONMENTAL MOVEMENT 16–18 (rev. ed. 2005).

34. See Gottlieb & Fisher, *supra* note 33, at 200.

35. See, e.g., Renee E. Walker et al., *Disparities and Access to Healthy Food in the United States: A Review of Food Deserts Literature*, 16 HEALTH & PLACE 876, 876 (2010).

36. The fact that supermarkets, for example, inaccurately gauged market demand was emphasized. *Id.* at 877.

37. Cohen, *supra* note 28, at 25.

### C. Municipal Politics and Food Access

Food access became politically salient in cities as elected officials, urban “growth coalitions,”<sup>38</sup> the food retail sector, urban planners, and public health practitioners sought to reverse the loss of conventional food retailers from cities.<sup>39</sup> Over the past century, policies of residential discrimination and segregation, bank redlining, urban renewal, federal highway construction, and federal housing policies prompted disinvestment in communities of color, exacerbating wealth inequality by shifting dollars to more affluent, white suburban communities.<sup>40</sup> These policies facilitated the shift of chain supermarkets to the suburbs, and by underwriting the flight of middle class and affluent white residents from cities, led to the decline of the independent grocers that remained.<sup>41</sup> In the 1970s, low income zip codes had more supermarkets than high income zip codes, but by the 1980s and 1990s this ratio had been reversed.<sup>42</sup> Between 1970 and 1988, Los Angeles, Chicago, and the New York City boroughs of Manhattan and Brooklyn lost half of their large grocery stores.<sup>43</sup>

By the 1980s, however, cities began to reinvest in neighborhoods that had been neglected for decades. City administrations and real estate developers recognized that new middle and high income residential projects depended on the presence of supermarkets (along with refurbished playgrounds, schools, and other amenities) to attract the affluent residents who were being enticed to move into (and gentrify) low-income neighborhoods, and that tax revenue was being lost as city residents spent food dollars in adjacent suburbs.<sup>44</sup> By the

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38. See generally Harvey Molotch, *The City as a Growth Machine: Toward a Political Economy of Place*, 82 AM. J. SOC. 309 (1976).

39. See generally Kameshwari Pothukuchi, *Attracting Supermarkets to Inner-City Neighborhoods: Economic Development Outside the Box*, 19 ECON. DEV. Q. 232 (2005).

40. See generally REBUILDING URBAN NEIGHBORHOODS: ACHIEVEMENTS, OPPORTUNITIES, AND LIMITS (W. Dennis Keating & Norman Krumholz eds., 1999); David R. Williams, *Race, Socioeconomic Status, and Health: The Added Effects of Racism and Discrimination*, 896 ANN. N.Y. ACAD. SCI. 173 (1999).

41. Elizabeth Eisenhauer, *In Poor Health: Supermarket Redlining and Urban Nutrition*, 53 GEOJOURNAL 125, 126–27 (2001); Pothukuchi, *supra* note 39.

42. Jarrett Thibodeaux, *A Historical Era of Food Deserts: Changes in the Correlates of Urban Supermarket Location, 1970–1990*, 3 SOC. CURRENTS 186, 188, 196–97 (2015).

43. Marilyn Lavin, *Supermarket Access and Consumer Well-Being: The Case of Pathmark in Harlem*, 33 INT’L J. RETAIL & DISTRIBUTION MGMT. 388, 388 (2005).

44. See generally NEIL SMITH, *THE NEW URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY* (1996). National retail and real estate studies provided evidence to support policies to attract food retail to cities by documenting unmet grocery demand and the “leakage” of inner-city food dollars to suburban stores. See

1990s, food retailers that had saturated suburban markets in the 1970s viewed cities as new business frontiers.<sup>45</sup> Seizing this market opportunity, retailers reconfigured their business models and physical layouts to fit smaller spaces in gentrifying neighborhoods, often with the support of municipal officials.<sup>46</sup>

#### D. Food Access and the “Obesity Epidemic”

Food access was also positioned as a solution to the rising incidence of obesity, which was described in a 1985 report of the National Institutes of Health as a major public health threat.<sup>47</sup> By 2001, the Surgeon General issued a “call to action” to decrease the incidence of overweight and obesity, which he said had reached “nationwide epidemic proportions.”<sup>48</sup> Attention to obesity led academics, advocates, and policymakers to focus on measuring the problem, its causes, and potential solutions. Research in public health and urban planning examined the relationship between food access and obesity.<sup>49</sup> Aided by the wider availability of mapping software and increasing popularity of geospatial analysis, this research caused a proliferation of studies suggesting that the lack of healthy food was associated with obesity and diet-related diseases.<sup>50</sup> The focus on food access coincided with a shift in public health towards framing the causes of obesity as the result of environmental factors, such as marketing practices and unhealthy food environments, rather than personal behavior and biology.<sup>51</sup> Food access captured the imagination of progressive planners and public health practitioners in large part because it addressed food insecurity through a social ecological model emphasizing the neighborhood environment, including the physical availability of food retailers.<sup>52</sup> It also appeared

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also Michael E. Porter, *New Strategies for Inner-City Economic Development*, 11 ECON. DEV. Q. 11, 14 (1997).

45. Porter, *supra* note 44, at 14.

46. See Pothukuchi, *supra* note 39, at 234; Betsy Donald, *Food Retail and Access After the Crash: Rethinking the Food Desert Problem*, 13 J. ECON. GEOGRAPHY 231, 235 (2013).

47. NAT'L INSTS. OF HEALTH, HEALTH IMPLICATIONS OF OBESITY 7 (1985).

48. U.S. DEP'T OF HEALTH AND HUM. SERVS., THE SURGEON GENERAL'S CALL TO PREVENT ACTION AND DECREASE OVERWEIGHT AND OBESITY, at v (2001).

49. Jerry Shannon, *Food Deserts: Governing Obesity in the Neoliberal City*, 38 PROGRESS HUM. GEOGRAPHY 248, 248–66 (2014).

50. *Id.* at 248–55.

51. Regina G. Lawrence, *Framing Obesity: The Evolution of News Discourse on a Public Health Issue* 56–75 (Harvard Int'l J. Press/Politics, Working Paper No. 2004-5, 2004).

52. See Shannon, *supra* note 49, at 255.

to offer a politically feasible solution to a long-running problem. The idea that government, working hand-in-hand with industry, could address diet-related health disparities through the expansion of retail grocery stores resonated in an era when policymakers increasingly viewed well-managed economic markets as the solution to social problems—and sought to transform the poor into “[self-reliant] market actors.”<sup>53</sup>

## II. FOOD ACCESS POLICIES

Federal, state, and local governments in the United States have long implemented a wide range of policies to provide access to food, from the Supplemental Nutrition Assistance Program (“SNAP”) to school food, congregate meal programs for seniors, support for food pantries and emergency feeding programs, and other food assistance programs. Governments have also facilitated various forms of private sector food retail access, from building public markets for food vendors during the Progressive Era to creating farmers’ markets in the 1970s.<sup>54</sup> Most cities in the United States regulate grocers through zoning, building codes, and health regulations, and have used direct subsidies, publicly owned land, tax abatements, and zoning incentives to attract supermarkets.<sup>55</sup> For much of the last century, however, urban planners and policymakers have considered food retail to be market driven and did not seek to directly subsidize grocers.<sup>56</sup> This laissez-faire approach began to change in the 1990s as a result of several efforts to support the development of conventional food retailers in low-income communities. It was not until the 2000s, however, that the new food access paradigm led to widespread policy change. The perceived success of the Pennsylvania Fresh Food Financing Initiative, a public-private partnership started in 2004 to expand food retail in food deserts,<sup>57</sup> as well as earlier developments in the United Kingdom, spurred substantial interest in retail-focused food access interventions among U.S. policymakers, philanthropists, and researchers.

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53. See JOE SOSS ET AL., *DISCIPLINING THE POOR: NEOLIBERAL PATERNALISM AND THE PERSISTENT POWER OF RACE* 22 (2011).

54. Gregory A. Donofrio, *Feeding the City*, 7 *GASTRONOMICA* 30, 35–39 (2007).

55. Pothukuchi, *supra* note 39, at 232.

56. See Kameshwari Pothukuchi & Jerome L. Kaufman, *Placing the Food System on the Urban Agenda: The Role of Municipal Institutions in Food Systems Planning*, 16 *AGRIC. & HUM. VALUES* 213, 213–24 (1999).

57. See, e.g., Allison Karpyn et al., *Policy Solutions to the ‘Grocery Gap,’* 29 *HEALTH AFF.* 473, 473–80 (2010) (describing the Pennsylvania Fresh Food Initiative as a model for other state and national programs).

### A. The Retail Initiative

The Retail Initiative, an early effort to address food access concerns, was led by the Local Initiative Support Corporation (“LISC”), a national non-profit primarily involved in helping communities build affordable housing and commercial developments. In 1994, LISC created a \$24 million fund financed by ten large financial institutions to help community organizations in major U.S. cities develop supermarkets in underserved neighborhoods.<sup>58</sup> The initiative’s first project was to invest \$1.5 million, along with \$1.1 million in public money and below-market city land, to build a large-scale Pathmark supermarket in East Harlem, New York.<sup>59</sup>

### B. State and Local Fresh Food Financing Initiatives

Most large programs to finance new supermarkets in low-income communities have been organized at the state level. Expanding on the work of The Retail Initiative, in 2001, The Food Trust of Philadelphia advocated for improving supermarket access in low-income Philadelphia communities, which the Philadelphia City Council responded to with the creation of a Food Marketing Task Force to address the insufficient number of supermarkets.<sup>60</sup> This effort, in turn, led to a statewide supermarket campaign and the creation of the Pennsylvania Fresh Food Financing Initiative in 2004 to use New Market Tax Credits and philanthropic financing to incentivize supermarket developers to locate their stores in low-income neighborhoods.<sup>61</sup> Between 2004 and 2010, the Pennsylvania Fresh Food Financing Initiative provided \$145 million in loans and grants to support eighty-eight food retail projects.<sup>62</sup> The Food Trust eventually promoted its financing initiative outside of Pennsylvania, leading to the creation of similar programs in other states, including Ohio, Illinois, Louisiana, New Jersey, and New York.<sup>63</sup> These efforts

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58. Marilyn Lavin, *Problems and Opportunities of Retailing in the US “Inner City,”* 7 J. RETAILING & CONSUMER SERVS. 47, 54 (2000).

59. *Id.*

60. Tracey Giang et al., *Closing the Grocery Gap in Underserved Communities: The Creation of the Pennsylvania Fresh Food Financing Initiative*, 14 J. PUB. HEALTH MGMT. & PRACTICE 272, 274 (2008).

61. See Karpyn et al., *supra* note 57, at 479–80.

62. THE FOOD TRUST, *supra* note 1, at 2.

63. *Healthy Food Financing Programs Across the Country*, FOOD TRUST, [http://thefoodtrust.org/uploads/media\\_items/healthy-food-financing-programs-table.original.pdf](http://thefoodtrust.org/uploads/media_items/healthy-food-financing-programs-table.original.pdf) [https://perma.cc/E3RX-VUS6]. See generally Laura Wolf-Powers, *Food Deserts and Real-Estate-Led Social Policy*, 41 INT’L J. URB. & REGIONAL RES. 414 (2017).

also led to municipal policies in cities like New Orleans and New York City to provide financial and zoning incentives to spur supermarket development.<sup>64</sup>

### C. Federal Healthy Food Financing Initiative

The proliferation of state and local healthy food financing initiatives encouraged President Obama to create a federal version of the Pennsylvania Fresh Food Financing Initiative in 2010, called the Healthy Food Financing Initiative (“HFFI”), which was subsequently included in the 2014 Farm Bill.<sup>65</sup> In addition to bolstering his administration’s efforts to improve nutrition and reduce obesity, HFFI was designed to spur local economic development in the wake of the 2007–2008 global financial crisis.<sup>66</sup> Like the state financing initiatives, the federal program supported the development and expansion of supermarkets and other full service grocery stores in low-income neighborhoods under-served by food retailers, distributing more than \$500 million in new and existing funds from the Departments of Treasury, Agriculture (“USDA”) and Health and Human Services (“HHS”).<sup>67</sup> The HFFI, combined with state and local programs, has supported approximately 126 new supermarket projects.<sup>68</sup>

### D. Advocacy, Philanthropic, and Research Support

Healthy food financing policies spread rapidly in large part due to the efforts of advocacy organizations, funders, and academics. The Pennsylvania Food Financing Initiative, for example, was developed with a broad coalition of advocates, public health officials, and private and non-profit development interests.<sup>69</sup> Think tanks such as PolicyLink issued reports describing both the dearth of supermarkets

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64. SARAH TREUHAF & ALLISON KARPYN, *THE GROCERY GAP: WHO HAS ACCESS TO HEALTHY FOOD AND WHY IT MATTERS*, POLICYLINK & THE FOOD TRUST 22 (2010).

65. Wolf-Powers, *supra* note 63, at 418; *see also* 7 U.S.C.A. § 6953 (West 2017).

66. U.S. Dep’t of the Treasury, *supra* note 1 (noting that the initiative was part of a broader effort by the administration to promote economic recovery).

67. Elbel et al., *supra* note 2, at 2882; *see also* Heather Tirado Gilligan, *Food Deserts Aren’t the Problem*, SLATE (Feb. 10, 2014), [http://www.slate.com/articles/life/food/2014/02/food\\_deserts\\_and\\_fresh\\_food\\_access\\_aren\\_t\\_the\\_problem\\_poverty\\_not\\_obesity.html](http://www.slate.com/articles/life/food/2014/02/food_deserts_and_fresh_food_access_aren_t_the_problem_poverty_not_obesity.html) [<https://perma.cc/Q6V8-RZJS>] (examining HFFI’s effectiveness).

68. Benjamin W. Chrisinger, *Taking Stock of New Supermarkets in Food Deserts: Patterns in Development, Financing, and Health Promotion* 1, 4–5 (Fed. Res. Bank of S.F., Working Paper 2016-04).

69. Giang et al., *supra* note 60, at 272.

in low-income communities and the connection between insufficient food retail and diet-related diseases.<sup>70</sup>

Philanthropic organizations also supported these initiatives by underwriting incentive programs and the evaluation of their impacts. The Robert Wood Johnson Foundation, for example, invested \$12 million in New Jersey's Food Access Initiative.<sup>71</sup> The Kellogg Foundation provided \$3 million in partnership with NCB Capital Impact to fund several food access ventures.<sup>72</sup> The California Endowment made a \$30 million investment in the California FreshWorks Fund to finance healthy food retailers.<sup>73</sup> The Reinvestment Fund created a \$120 million financing program for fresh food retail establishments.<sup>74</sup> This philanthropic and advocacy support helped to reinforce the link between supermarkets and food access, nutrition, and health.

Government and academic research was also instrumental in framing the issue of malnourishment and obesity in terms of retail food access by generating data that policymakers used to design and implement food access programs. For example, in the 2008 Farm Bill, Congress required the USDA to study the causes, effects, and strategies to eliminate food deserts that included "incentives for retail food market development, including supermarkets, small grocery stores, and farmers' markets . . ."<sup>75</sup> Despite raising questions about the use of supermarkets and proximity as measures of access,<sup>76</sup> the USDA nevertheless created an online Food Access Research Atlas that defined food deserts as areas lacking full-service food retailers, framing the problem of food access in terms of the spatial distribution of supermarkets.<sup>77</sup>

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70. Karpyn et al., *supra* note 57, at 473.

71. Philanthropy News Digest, *Robert Wood Johnson Foundation Pledges \$12 Million to New Jersey Food Access Initiative* (Apr. 2, 2012), <https://philanthropynewsdigest.org/news/robert-wood-johnson-foundation-pledges-12-million-to-new-jersey-food-access-initiative> [<https://perma.cc/C68U-PKU3>].

72. Grantwatch, *Foundations Aim to Foster Nourishment and Banish 'Food Deserts'*, 31 HEALTH AFF. 1119, 1119–1120 (2012).

73. *Id.*

74. IRA GOLDSTEIN ET AL., THE REINVESTMENT FUND, CDFI FINANCING OF SUPERMARKETS IN UNDERSERVED COMMUNITIES: A CASE STUDY 5 (2008).

75. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, § 7527, 122 Stat. 1278.

76. U.S. DEP'T AGRIC., ECON. RES. SERV., ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES 28 tbl.2.7 (2009), [https://www.ers.usda.gov/webdocs/publications/42711/12716\\_ap036\\_1\\_.pdf?v=41055](https://www.ers.usda.gov/webdocs/publications/42711/12716_ap036_1_.pdf?v=41055) [<https://perma.cc/5UUE-EQDD>].

77. "[L]ow access to healthy food is defined as being far from a supermarket, supercenter, or large grocery store ('supermarket' for short)." *Documentation*, U.S.

The federal government funded additional food access research and planning through the Communities Putting Prevention to Work national grant program (“CPPW”). This program was administered by the Centers for Disease Control and Prevention (“CDC”) and in 2010 provided over \$400 million to fifty communities, including many large cities, to implement “policy, systems, and environmental” interventions to reduce obesity and diet-related health problems.<sup>78</sup> Many of these grants financed food systems research and planning projects that focused attention on increasing access to healthier food, and approximately half of the grant recipients developed interventions to enhance access to healthy food retail or healthier retail food.<sup>79</sup>

Academic researchers have continued to focus on the geospatial distribution of food retailers, attempting to find associations between access and health outcomes. Many of these studies have analyzed spatial disparities in access to healthy food and how these disparities could affect an individual’s health.<sup>80</sup> Much of this food access research has attempted to measure the impacts of food deserts on diet-related diseases and the effects of new food retailers on food choices and health outcomes.<sup>81</sup> This research has typically analyzed the proximity and density of “retail food outlets” in communities, frequently using supermarkets as proxies for access to healthy, affordable food.<sup>82</sup> In supporting and carrying out this research, funders and academics have helped to perpetuate the theory that access to supermarkets is a critical factor in health disparities.

As this section has shown, local, state, and federal policies have been implemented to support the development of new supermarkets based on assumptions that they improve access to healthy food and thus address malnourishment and diet-related diseases. The narrative underlying such policies—that communities with insufficient food retail will become healthier as a result of new supermarkets—has

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DEP’T AGRIC., ECON. RES. SERV., <https://www.ers.usda.gov/data-products/food-access-research-atlas/documentation> [<https://perma.cc/S4ZC-ZE6P>].

78. Rebecca Bunnell et al., *Fifty Communities Putting Prevention to Work: Accelerating Chronic Disease Prevention Through Policy, Systems and Environmental Change*, 37 J. COMMUNITY HEALTH 1081, 1081–82 (2012).

79. *Id.* For example, Cook County, Illinois used these funds to create a program to encourage corner stores to sell healthier food. See Latetia Moore, *Supporting Healthful Eating Through Retail Environmental Change: Communities Putting Prevention to Work*, 10 PREVENTING CHRONIC DISEASE, No. E189, Nov. 2013, at 2.

80. Shannon, *supra* note 49, at 248.

81. *Id.*

82. *Id.* at 255.



been reinforced by food advocates, philanthropic organizations, the USDA, and research aimed at testing this relationship. However, as the following section illustrates, researchers have found little empirical evidence to support the theory that new supermarkets lead to improved health.

### III. LIMITATIONS OF RETAIL FOOD ACCESS POLICIES

When the Blair government first popularized the phrase “food desert” in the late 1990s and claimed, prematurely, that food deserts were responsible for major health disparities, research on the effects of food access in advanced economies was in its infancy. Early research suggested a link between proximity to food retailers and healthier eating, and advocates for food access interventions summarized these studies to support supermarket incentive programs.<sup>83</sup> A 2013 report by PolicyLink and the Food Trust, for example, asserted that “[l]iving closer to healthy food retail is associated with better eating habits and decreased risk for obesity and diet-related diseases.”<sup>84</sup>

However, more recent research suggests that there is little to no relationship between proximity to retailers of healthy food and increased purchasing or consumption of healthy food.<sup>85</sup> A 2016 study using store-level sales data not only looked at whether people lived near retail food stores, but also tracked what products those stores carried and what store customers purchased.<sup>86</sup> The study, which was the first of its kind, found that physical proximity to retail food stores with nutritious food accounted for less than 3% of the nutrition gap between low-income and high-income households.<sup>87</sup> A systematic review of forty-two studies of retail grocery store interventions designed to promote healthier food consumption, including interventions that coupled new food retail with programs like

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83. See, e.g., JUDITH BELL ET AL., POLICYLINK & THE FOOD TRUST, ACCESS TO HEALTHY FOOD AND WHY IT MATTERS: A REVIEW OF THE RESEARCH 4 (2013).

84. *Id.* at 12.

85. Steven Cummins et al., *New Neighborhood Grocery Store Increased Awareness of Food Access but Did Not Alter Dietary Habits or Obesity*, 33 HEALTH AFF. 283, 283 (2017); Tamara Dubowitz et al., *Diet and Perceptions Change with Supermarket Introduction in a Food Desert, but Not Because of Supermarket Use*, 34 HEALTH AFF. 1858, 1858 (2015).

86. Jessie Handbury, *Is the Focus on Food Deserts Fruitless? Retail Access and Food Purchases Across the Socioeconomic Spectrum* 1, 5–7 (Becker Friedman Inst. Working Paper, No. 2016-08, 2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2854329](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2854329) [<https://perma.cc/5V56-WFLB>].

87. *Id.* at 38.

nutrition education and discounts for fruits and vegetables, found mixed results.<sup>88</sup> A review of fifty-one studies examining the relationship between obesity and the presence of food retailers, proximity to stores, and the number and types of stores within given areas, found that only 32% of associations were in the expected direction, 10% were in the opposite direction, and 58% showed no association.<sup>89</sup> Furthermore, recent studies measuring the impact of a new supermarket on residents of underserved communities have also shown no significant change in food buying or eating patterns.<sup>90</sup> For example, while a new supermarket in Philadelphia, financed by the Pennsylvania Fresh Food Financing Initiative, improved residents' perceptions of food access, it did not lead to reported increased consumption of fruits and vegetables or decreases in body mass indexes.<sup>91</sup> A quasi-experimental study in Pittsburgh found similar results: significant improvements in perceptions of healthy food access but no significant changes in food buying practices.<sup>92</sup> Another study found that a year after the opening of a new supermarket in an underserved South Bronx neighborhood, residents reported no significant change in fruit or vegetable consumption or overall dietary quality compared to a control community.<sup>93</sup> These studies indicate that new supermarkets may improve perceptions of healthy food access but do not appear to change shopping and buying practices, and that supermarkets, which sell both unhealthy and healthy products, do not necessarily change the balance of unhealthy and healthy items purchased and consumed. Other studies have found inconsistent relationships between proximity to supermarkets and measures of food insecurity.<sup>94</sup>

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88. Abdulfatah Adam & Jørgen Jensen, *What is the Effectiveness of Obesity Related Interventions at Retail Grocery Stores and Supermarkets?—A Systematic Review*, 16 BMC PUB. HEALTH 1247, 1249, 1252–57 (2016).

89. Ryan J. Gamba et al., *Measuring the Food Environment and Its Effects on Obesity in the United States: A Systematic Review of Methods and Results*, 40 J. COMMUNITY HEALTH 464, 468 (2015).

90. See Francine Rodier et al., *Food Deserts: Is It Only About a Limited Access?*, 119 BRITISH FOOD J. 1495, 1503 (2017); see also Adam Drewnowski et al., *Food Environment and Socioeconomic Status Influence Obesity Rates in Seattle and in Paris*, 38 INT'L J. OBESITY 306, 310 (2014).

91. Cummins et al., *supra* note 85, at 5.

92. See Madhumita Ghosh-Dastidar et al., *Does Opening a Supermarket in a Food Desert Change the Food Environment?*, 46 HEALTH & PLACE 249, 250 (2017).

93. Brian Elbel et al., *The Introduction of a Supermarket via Tax-Credits in a Low-Income Area: The Influence on Purchasing and Consumption*, 31 AM. J. HEALTH PROMOTION 59, 59 (2015).

94. Compare Andrea S. Richardson et al., *Can the Introduction of a Full-Service Supermarket in a Food Desert Improve Residents' Economic Status and Health?*, 27

While the majority of high-quality studies examining the relationship between healthy food retail and health outcomes have not found an association between the two, proponents of food access interventions nonetheless continue to rely on the minority of studies showing such a connection.<sup>95</sup> This has important policy implications. As long as governments and activists continue to assert that access to food retail is a determinant of healthy food purchasing, diets, and health, initiatives to address the financial and logistical obstacles to healthy food consumption will be more difficult to advance. The food access narrative persists—despite increasing evidence to the contrary—for several reasons outlined in the following section.

#### IV. THE PERSISTENCE OF RETAIL FOOD ACCESS POLICIES

National food access programs like the Healthy Food Financing Initiative and local policies like New York City's Food Retail Expansion to Support Health still retain considerable support. In fact, many policymakers and nonprofit organizations continue to advocate for more aggressive funding for food retail-focused interventions. A bipartisan group of four U.S. senators, for example, introduced a bill in 2017,<sup>96</sup> which they claimed would “target food deserts by incentivizing food service providers . . . to help eradicate these areas.”<sup>97</sup> The bill, dubbed the Healthy Food Access for All Americans Act, was endorsed by a wide range of groups, including Feeding America, the Food Trust, the American Diabetes Association, Environmental Working Group, the National Grocers Association, and the U.S. Conference of Mayors.<sup>98</sup> Three factors help explain the appeal of such interventions despite overwhelming evidence that they fail to improve health or dietary outcomes: self-promotion by food retailers, the political appeal of supermarket development, and analytical weaknesses.

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ANN. EPIDEMIOLOGY 771, 771 (2017), with Scott W. Allard et al., *Neighborhood Food Infrastructure and Food Security in Metropolitan Detroit*, 51 J. CONSUMER AFF. 566, 566 (2017).

95. See, e.g., BELL ET AL., *supra* note 83, at 12; see also Cummins et al., *supra* note 85, at 284.

96. The Healthy Food Access for All Americans Act, S. 1724, 115th Cong. (2017).

97. Press Release, Senator Mark Warren, Sens. Warner, Moran Introduce First Comprehensive Senate Bill to Encourage Food Service Providers to Help Eradicate Food Deserts (Aug. 3, 2017) (on file with authors).

98. *Id.*

### A. Self-Promotion by Food Retailers

The supermarket industry, long criticized for price-gouging low-income consumers and abandoning cities for the suburbs, successfully repositioned itself as key to urban revitalization and community health in the 1990s and early 2000s. The industry portrayed itself as ready and able to open new, redesigned, small-footprint grocery stores in underserved communities at a scale that independent grocers could not match, enabling these chains to secure public subsidies.<sup>99</sup> Tesco, for example, the fastest growing food retailer in terms of market share in the United Kingdom between 1990 and 2005 (nearly doubling its market share from approximately sixteen percent to approximately thirty percent),<sup>100</sup> capitalized on concerns about food deserts to garner positive press and win over government officials. As discussed above, the company announced a partnership with Blair's "New Deal" welfare-to-work program in 1999 to create two thousand jobs in new stores in "towns that were previously labelled 'food deserts.'" <sup>101</sup> By investing in "inner cities and industrial towns" with limited retail food options, Tesco promised to regenerate poor neighborhoods while bringing jobs and food to areas which had previously been known as food deserts.<sup>102</sup> Tesco was also able to deflect criticism that its stores (which, like Walmart, carry a variety of non-food products), would put locally-owned, independent shops out of business by emphasizing the benefits they would create by increasing food access.<sup>103</sup>

When Tesco expanded to the United States in 2006, they seized on food access as their primary public relations strategy, telling

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99. See generally Karina Christiansen, Reframing "Food Deserts": The History of Urban Supermarket Access and Its Public Policy Discourse (Aug. 2016) (unpublished Ph.D. dissertation, Johns Hopkins University) (on file with authors).

100. See *U.K. Market Share*, *supra* note 27.

101. Baker, *supra* note 25. In 2015, Tesco articulated a plan that would plausibly lead to the chain closing or abandoning nearly one hundred stores in the United Kingdom. Zoe Wood, *Tesco Chief Unveils Dramatic Shakeup at Troubled Supermarket*, *GUARDIAN* (Jan. 8, 2015), <https://www.theguardian.com/business/2015/jan/08/tesco-chief-unveils-dramatic-shake-up-troubled-supermarket> [<https://perma.cc/AGB2-QAWW>]. It is unclear how many of these abandoned or closed stores were in locations with limited retail food options. See *Tesco Names 43 UK Store Closures*, *BBC* (Jan. 28, 2015), <http://www.bbc.com/news/business-31023136> [<https://perma.cc/ZFE7-KLSU>].

102. See Baker, *supra* note 25.

103. Tesco CEO Sir Terry Leahy responded to such criticism by stating, "Government and other people were wringing their hands [about food deserts.] Tesco came up with a perfect solution. It's a surprise that the perfect solution prompted so much criticism." SARAH RYLE, *THE MAKING OF TESCO: A STORY OF BRITISH SHOPPING* 244-45 (2013).

journalists, politicians, and the public that their new chain, Fresh & Easy, would bring fresh food and groceries to food deserts, leading to news headlines like “Tesco launch stirs high hopes in U.S. ‘food deserts.’”<sup>104</sup> Tesco’s head of operations in the United States, Tim Mason, told the *Observer*, “[o]ne of the reasons we appeal to American politicians is because we have said we will go back into neighborhoods that have become ‘food deserts.’”<sup>105</sup> Yet despite Tesco’s pledge, only ten of its first ninety-eight U.S. stores were located in areas where the poverty rate was significantly higher than that of the relevant county (notably, the data indicates that Tesco “has generally established its sites in areas with greater rather than lesser food security”).<sup>106</sup> In fact, at the outset, Tesco focused on “middle-income customers and suburban locations” with a comparable “store size, price, and to a certain extent product mix” as Trader Joe’s.<sup>107</sup> Even if Fresh & Easy stores had opened in food deserts, their presence would likely have been short-lived: Tesco announced that it was withdrawing from the U.S. market in 2012, and the last Fresh & Easy was scheduled to close in 2015.<sup>108</sup>

Like Tesco, Walmart, which relied on physically large “big box” retail stores since its inception, saw a business opportunity in small-format urban and small town stores to address saturation in existing locations. In August 2008, Walmart created a new small-format store, which it branded “Marketside,” to compete primarily with Fresh & Easy.<sup>109</sup> Walmart closed its four Marketside stores just three years later, announcing the creation of another small-store format called Walmart Express.<sup>110</sup> In 2011, Walmart experienced one of its worst

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104. Tim Gaynor, *Tesco Launch Stirs High Hopes in U.S. ‘Food Deserts’*, REUTERS (Aug. 21, 2007), <https://www.reuters.com/article/businesspro-retail-usa-tesco-dc/tesco-launch-stirs-high-hopes-in-u-s-food-deserts-idUSN2128683620070822?pageNumber=1> [<https://perma.cc/E5KT-N6BC>].

105. See ROBERT GOTTLIEB & ANUPAMA JOSHI, FOOD JUSTICE 50 (2010).

106. AMANDA SHAFFER ET AL., URBAN & ENV’T’L POL’Y INST., SHOPPING FOR A MARKET: EVALUATING TESCO’S ENTRY INTO LOS ANGELES AND THE UNITED STATES 31 (2007).

107. GOTTLIEB & JOSHI, *supra* note 105, at 50.

108. Julia Finch & Fiona Walsh, *Tesco’s American Dream Over as US Retreat Confirmed*, GUARDIAN (Dec. 12, 2006), <https://www.theguardian.com/business/2012/dec/05/tesco-american-dream-retreat-us-fresh-easy> [<https://perma.cc/2YUT-ZZAG>]; Shan Li, *Billionaire Investor Ron Burkle Says Bankrupt Fresh & Easy ‘Was in a Free Fall’*, L.A. TIMES (Nov. 7, 2015), <http://www.latimes.com/business/la-fi-ron-burkle-yucaipa-fresh-easy-20151107-story.html> [<https://perma.cc/6F4S-NG87>].

109. Alessandro Bonanno, *An Empirical Investigation of Wal-Mart’s Expansion into Food Retailing*, 26 AGRIBUSINESS 220, 239 (2010).

110. See Max Jarman, *Walmart Closes Its 4 Marketside Stores in Phoenix Area*, ARIZ. REPUBLIC (Oct. 16, 2011), <http://archive.azcentral.com/arizonarepublic/>

slumps in U.S. sales.<sup>111</sup> That year, Walmart promised that Walmart Express would allow the retailer to expand into urban areas and rural towns that couldn't support larger stores, and would therefore increase access to healthy food.<sup>112</sup>

The month following the opening of the first Walmart Express in Gentry, Arkansas, First Lady Michelle Obama announced a plan by Walmart, along with Walgreens, SuperValu, and three regional chains, to open or expand 1500 stores in food deserts across the country.<sup>113</sup> The supermarket and pharmacy chains received positive press for this agreement, yet there was little to no news coverage when they failed to meet their commitments.<sup>114</sup> A 2013 investigation found that Walgreens still needed to build or convert about 900 of the stores they had committed to build or renovate in food deserts.<sup>115</sup> In 2015, Walgreens claimed that it had started to offer fruits and vegetables in 300 stores “in or around food deserts,” but this claim was never independently evaluated and the chain never revealed if it had made any additional progress.<sup>116</sup> While Walmart claimed to open or renovate 392 stores in or around food deserts by 2016, exceeding

business/articles/2011/10/16/20111016biz-walmart1016.html [https://perma.cc/4EN9-K74E].

111. See Miguel Bustillo, *Wal-Mart Tries to Recapture Mr. Sam's Winning Formula*, WALL ST. J. (Feb. 22, 2011), <https://www.wsj.com/articles/SB10001424052748703803904576152753111788930> [https://perma.cc/U4SM-432Q].

112. See Allison Lin, *Walmart, Other Big Boxes Try Small Boxes*, MSNBC (June 6, 2011), <http://www.nbcnews.com/id/4341411/ns/business-retail/t/wal-mart-other-big-boxes-try-out-smaller-boxes/#.Wlbd1Q-eU0> [https://perma.cc/TAX8-5KWT].

113. Bridget Huber, *Walmart's Fresh Food Makeover*, NATION (Sept. 14, 2011), <https://www.thenation.com/article/walmarts-fresh-food-makeover/> [https://perma.cc/P8VH-3T98]; Alissa Skelton, *Wal-Mart to Test Small Store Format*, N.Y. TIMES (June 2, 2011), <https://www.nytimes.com/2011/06/03/business/03walmart.html> [https://nyti.ms/2HisnYR].

114. See, e.g., Yian Q. Mui, *First Lady, Grocers Vow to Build Stores in 'Food Deserts'*, WASH. POST (July 20, 2011), [https://www.washingtonpost.com/business/economy/first-lady-grocers-vow-to-build-stores-in-food-deserts/2011/07/20/gIQA9LHROI\\_story.html?utm\\_term=.144f25b6cf11](https://www.washingtonpost.com/business/economy/first-lady-grocers-vow-to-build-stores-in-food-deserts/2011/07/20/gIQA9LHROI_story.html?utm_term=.144f25b6cf11) [https://perma.cc/527T-WUV7]; Jessica Wohl, *Chains and Michelle Obama Team on "Food Deserts"*, REUTERS (July 20, 2011), <https://www.reuters.com/article/us-grocers-whitehouse/chains-and-michelle-obama-team-on-food-desert-stores-idUSTRE76J5S420110720> [https://perma.cc/8WBA-JM4T]; Press Release, Walmart, First Lady Michelle Obama Celebrates Walmart's Progress on Making Food Healthier and More Affordable (Feb. 28, 2013) (on file with author) (providing helpful context to the proposition which the published news stories more directly support).

115. See Brigid Sweeney, *Walgreen's Unmet Promise (So Far) in Food Deserts*, CRAIN'S CHI. BUS. (July 12, 2014), <http://www.chicagobusiness.com/article/20140712/ISSUE01/307129981/walgreens-unmet-promise-so-far-in-food-deserts> [https://perma.cc/R5EZ-4G3P].

116. See P'SHIP FOR A HEALTHIER AM., IN IT FOR GOOD: 2015 ANNUAL PROGRESS REPORT 76 (2015).

its commitment by 117 stores,<sup>117</sup> it abandoned its Express concept later that year, closing 154 stores in the United States, many of them in food deserts.<sup>118</sup>

### B. Political Appeal of Supermarket Development

New supermarkets are politically appealing to city elected officials attempting to increase residential development in low-income communities because they are favored by developers and more affluent residents. In justifying New York City's FRESH initiative, for example, the former New York City Planning Commissioner stressed the importance of supermarkets to the city's redevelopment plans, claiming:

If you're thinking of moving your family to the Lower Concourse [a large manufacturing area in the South Bronx that the commission rezoned to include residential buildings] you're going to say, like, "Wow, there is no grocery store here. I'm not going to move here."<sup>119</sup>

Community organizations, food policy councils, non-profit development groups, and labor unions also often lobby for new supermarkets.<sup>120</sup> With the exception of chain retailers like Walmart that are perceived to unfairly compete with existing locally owned businesses and depress wages, supermarkets are often well-received by residents, the business and development communities, labor unions, and other stakeholders.<sup>121</sup> For example, in New York City, residents of East Harlem, a predominantly low-income Latino and African American neighborhood, waged a multi-year advocacy

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117. PARTNERSHIP FOR A HEALTHIER AMERICA, IN IT FOR GOOD: 2016 ANNUAL PROGRESS REPORT 29 (2016).

118. Sarah Halzack, *Walmart Is Ending Its Express Concept and Closing 269 Stores*, WASH. POST (Jan. 15, 2016), [https://www.washingtonpost.com/news/business/wp/2016/01/15/walmart-is-ending-its-express-concept-and-closing-269-stores/?utm\\_term=.f99854df2642](https://www.washingtonpost.com/news/business/wp/2016/01/15/walmart-is-ending-its-express-concept-and-closing-269-stores/?utm_term=.f99854df2642) [<https://perma.cc/TB3Q-DPNB>]; see Philip Lucas & Mike Schneider, *Wal-Mart's Store Closures Create New Food Desert*, ASSOCIATED PRESS (Jan. 30, 2016), <http://www.columbian.com/news/2016/jan/30/wal-marts-store-closures-create-new-food-deserts/> [<https://perma.cc/TXX9-YC3F>].

119. Diane Cardwell, *A Plan to Add Supermarkets to Poor Areas, with Healthy Results*, N.Y. TIMES (Sept. 23, 2009), <http://www.nytimes.com/2009/09/24/nyregion/24super.html> [<https://nyti.ms/2lrntdR>].

120. See Lavin, *supra* note 43, at 388.

121. For examples of activism to attract a new supermarket, see generally MARK WINNE, *CLOSING THE FOOD GAP: RESETTling THE TABLE IN THE LAND OF PLENTY* (2008); Lavin, *supra* note 43.

campaign to bring a new supermarket to the community.<sup>122</sup> In response, city officials provided land at a below-market price to a church-based community development company, the Abyssinian Development Corporation, to open a Pathmark supermarket on the site for ten years, and as noted above, LISC provided financing.<sup>123</sup> Soon after the Pathmark opened, it reported 30,000 customers a week, and by 2014 sales totaled \$64 million.<sup>124</sup> Neighborhood histories might also play a role in generating demand for new supermarkets, emphasizing the need to address food access through food retail. For example, in communities that have lost a popular supermarket, residents often feel a very strong need to replace it, and that need may be based on concerns about the community's identity and its ability to thrive.<sup>125</sup> Bringing a new supermarket to a community enables government officials to promise an easy, even if unrealistic, fix to the complex problems of poverty, community underinvestment, malnourishment, and health disparities, all of which require substantial and prolonged government investment.

### C. Analytical Weaknesses

Despite the often-stated goal of evidence-based policymaking, programs are frequently advanced because they appeal to intuitive assumptions or models about consumer preferences and decision-making that may be untested or simply wrong.<sup>126</sup> Simple theories, such as that living very close to a supermarket that sells healthy food will cause people to buy more of that food, have intuitive appeal, and may win out over theories that attempt to address the complexities of economic decision-making, choice architectures, and the

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122. N.Y.C. FOOD POLICY CTR. AT HUNTER COLL., BEYOND PATHMARK: ASSURING ACCESS TO HEALTHY AFFORDABLE FOOD IN EAST HARLEM 1 (2015).

123. *Id.*

124. *See id.* In April 2014, however, the Abyssinian Development Corporation sold the property for \$39 million to Extell Development Corporation. *Id.* Soon thereafter, Pathmark's parent company, A & P Supermarkets, went bankrupt, forcing it to close the East Harlem store and other supermarkets around the region, prompting protests from community residents and raising concerns about supermarket closures throughout New York City. *See generally id.*

125. *See* Benjamin W. Chrisinger, If You Build It, Will They Come, and What Will They Eat? Investigating Supermarket Development in Food Deserts 15 (Jan. 1, 2015) (unpublished Ph.D. dissertation, University of Pennsylvania), <http://repository.upenn.edu/edissertations/1029> [<https://perma.cc/Q54J-CMRE>].

126. *See generally* Crystal C. Hall, *Assumptions About Behavior and Choice in Response to Public Assistance*, 1 POL'Y INSIGHTS BEHAV. & BRAIN SCI. 137 (2014).



interconnected social practices that drive behaviors like food shopping, buying, and eating.<sup>127</sup>

By starting with the assumption that close physical proximity to healthy food is necessary for healthy eating, food access advocates have been able to ignore or dismiss studies showing that proximity has little to no effect on diet.<sup>128</sup> Moreover, when studies show that an intervention has failed to change behavior, policymakers often seek to redesign the intervention (e.g., adding informational “nudges” to encourage shoppers to buy healthier food at the supermarket),<sup>129</sup> rather than questioning the underlying approach of addressing malnourishment through increased retail. Researchers also tend to conduct studies that are feasible to carry out, resulting in the proliferation of research measuring easy-to-analyze variables, such as area studies that attempt to associate proximity between population centroids and food retailers.<sup>130</sup> The proliferation of Geographic Information Systems (“GIS”) tools, and the relative accessibility of data on poverty and food retail locations, has made it easy to measure neighborhood-level variables, despite the fact that these studies do not distinguish where individual households actually shop and what they choose to purchase.<sup>131</sup>

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127. See generally Nevin Cohen & Kristen Cribbs, *The Everyday Food Practices of Community-Dwelling Lesbian, Gay, Bisexual, and Transgender (LGBT) Older Adults*, 41 J. AGING STUD. 75 (2017).

128. See, e.g., Yael Lehmann, *Neighborhood Grocery Stores Combat Obesity and Improve Food Perceptions*, HEALTH AFF. BLOG (Mar. 12, 2014), <https://www.healthaffairs.org/doi/10.1377/hblog20140312.037646/full/> [<https://perma.cc/XTA9-P3Y9>] (“Do we really believe that people will be able to eat healthfully if they can’t buy healthy food in their communities?”); see also Tamara Bucher et al., *Nudging Consumers Towards Healthier Choices: A Systematic Review of Positional Influences on Food Choice*, 115 BRIT. J. NUTRITION 2252, 2253 (2016).

129. See Deborah N. Archer & Tamara Belinfanti, *We Built It and They Did Not Come: Using New Governance Theory in the Fight for Food Justice in Low-Income Communities of Color*, 15 SEATTLE J. SOC. JUST. 307, 312 (arguing “that true access should include both *physical* access (in short, proximity) and *cultural* access (in short—the availability of grocery stores that feel a part of the community)”); Emily Broad Leib, *All (Food) Politics Is Local: Expanding Food Access Through Local Government Action*, 7 HARV. L. & POL’Y REV. 321, 323 (2013) (maintaining that “local input is vital to successfully expand food access”); *Evaluating HFFI*, FOOD TRUST, <http://thefoodtrust.org/what-we-do/administrative/hffi-impacts/evaluating-hffi> [<https://perma.cc/T8X4-AGF4>] (asserting the importance of “nutrition education programs” and “in-store marketing environments” in creating behavioral change).

130. MICHELE VER PLOEG ET AL., ECON. RES. SERV., U.S. DEP’T AGRIC., BULLETIN NO. 138, WHERE DO AMERICANS USUALLY SHOP FOR FOOD AND HOW DO THEY TRAVEL TO GET THERE? INITIAL FINDINGS FROM THE NATIONAL HOUSEHOLD FOOD ACQUISITION AND PURCHASE SURVEY 13–15 (2015).

131. See Leslie A. Lytle & Rebecca L. Sokol, *Measures of the Food Environment: A Systematic Review of the Field, 2007–2015*, 44 HEALTH & PLACE

The existence of contradictory evidence creates uncertainty, which, combined with diverse research methods, variable data quality, and different theoretical models, makes interpreting and evaluating research results difficult. Understanding and properly applying the results can be especially challenging for legislative staff who may not have expertise in evaluation research methods and data analysis. Complexity enables policy proponents to shape the interpretation of those studies and couch their arguments in the language of evidence-based public health and policymaking. The Food Trust, for example, asserts that “HFFI policy and efforts to improve food access are rooted in more than 300 studies published between 1995 and 2013,”<sup>132</sup> yet without parsing these studies for reliability and validity, it is difficult for political decision-makers to evaluate the evidence.

Another barrier is the persistent use by public health practitioners of downstream interventions (e.g., cooking classes) rather than upstream interventions that address economic and social disparities. Even approaches based on socio-ecological models often “drift downstream” to variables that influence individual behaviors.<sup>133</sup> The notion that behaviors such as food buying, cooking, and eating result from choices that can be modified through environmental interventions like a new supermarket has an easily-grasped intuitive appeal that has been reinforced by the social psychology and behavioral economics literatures.<sup>134</sup> These interventions also gain political support because they fit neoliberal ideologies, avoid challenging corporate business models, and sidestep the complexities of solving social determinants of health like structural racism or poverty, which have a significant effect on whether and to what extent people are able to eat healthy food.<sup>135</sup> Addressing the upstream, root

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18–34 (2017); *see also* MICHELE VER PLOEG ET AL., ECON. RES. SERV., U.S. DEP’T AGRIC., BULLETIN NO. 180, THE INFLUENCE OF FOODSTORE ACCESS ON GROCERY SHOPPING AND FOOD SPENDING 2 (2017).

132. *Evaluating HFFI*, *supra* note 129.

133. Jennie Popay et al., *Injustice Is Killing People on a Large Scale—But What Is to Be Done About It?*, 32 J. PUB. HEALTH 148, 148 (2010).

134. *See, e.g.*, Bucher et al., *supra* note 128, at 2553. The work of a leading proponent of the “libertarian paternalist” approach to influencing dietary choices, Brian Wansink, is being reevaluated in response to revelations that he and his co-authors regularly manipulated data to achieve desired results. *See, e.g.*, Stephanie M. Lee, *The Inside Story of How an Ivy League Food Scientist Turned Shoddy Data into Viral Studies*, BUZZFEED (Feb. 25, 2018), [https://www.buzzfeed.com/stephaniemlee/brian-wansink-cornell-p-hacking?utm\\_term=.jqmLO8dWm#.ekk8VaEwJ](https://www.buzzfeed.com/stephaniemlee/brian-wansink-cornell-p-hacking?utm_term=.jqmLO8dWm#.ekk8VaEwJ) [<https://perma.cc/8L5N-ZPWP>].

135. *See, e.g.*, Fran Baum & Matthew Fisher, *Why Behavioural Health Promotion Endures Despite Its Failure to Reduce Health Inequities*, 36 SOC. HEALTH & ILLNESS 213, 213, 217 (2014); Sara Glasgow & Ted Schrecker, *The Double Burden of*

causes of malnourishment, specifically poverty, time constraints, stress, and other factors, is much more complex and politically fraught.

The potential consequences of the downstream focus are serious. If policymakers in housing, planning, economic development, or social welfare fail to consider the results of their “upstream” policy decisions on food security or chronic diseases, they may miss opportunities to maximize the effects of these broader progressive policies on population health and food system sustainability, or may not recognize and take steps to avoid unintended negative consequences to the food system.<sup>136</sup> They may also overlook the potential for interventions in the food system—from universal school lunch to food cooperatives—to play a role in alleviating upstream concerns about economic and social inequality. Intervening downstream to change behaviors or improve neighborhood food environments may narrowly benefit a particular population, but the effects, if any, may be more limited in scale, scope, and duration than if policies are focused on class, race, or gender oppression.<sup>137</sup>

## V. UPSTREAM ALTERNATIVES

Public health debates remain focused on downstream issues at both the national and local levels.<sup>138</sup> However, over the past decade, a number of U.S. cities have responded to widening inequality and structural racism by adopting political agendas that emphasize equality and social justice. They have taken steps to increase wages and improve working conditions, address the high cost of housing, provide better public services to low-income residents, and address structural racism.<sup>139</sup> These interventions target macro-scale factors like wealth, education, social capital, and security that are the primary causes of negative population health outcomes. Rather than support ineffective downstream interventions, policymakers, public health

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*Neoliberalism? Noncommunicable Disease Policies and the Global Political Economy of Risk*, 39 HEALTH & PLACE 204, 205, 207 (2016); Michael P. Kelly & Mary Barker, *Why Is Changing Health-Related Behaviour So Difficult?*, 136 PUB. HEALTH 109, 110 (2016).

136. Jason Corburn et al., *Health in All Urban Policy: City Services Through the Prism of Health*, 91 J. URB. HEALTH 623, 623 (2014).

137. See generally Nicholas Freudenberg et al., *New Approaches for Moving Upstream: How State and Local Health Departments Can Transform Practice to Reduce Health Inequalities*, 42 HEALTH EDUC. & BEHAV. 46S (2015).

138. *Id.* at 46S.

139. KATHERINE LEVINE EINSTEIN, DAVID M. GLICK & CONOR LEBLANC, BOS. UNIV. INITIATIVE ON CITIES, 2016 MENINO SURVEY OF MAYORS 9 (2017).

professionals, and advocates should instead advance these upstream strategies that address the root causes of food insecurity and diet-related health disparities. The following sections offer some promising upstream strategies.

### A. Increasing the Minimum Wage

The federal minimum wage, currently at \$7.25, is significantly below the living wage, even in the poorest parts of the country. According to MIT's Living Wage Calculator, which provides for a "low-cost" and "nutritionally adequate" diet,<sup>140</sup> the living wage for Buffalo County, South Dakota—the poorest county in the nation—was \$10.11 an hour in 2016 for a single adult, while the national living wage was \$15.84.<sup>141</sup> The federal minimum wage is also significantly below its inflation-adjusted high of \$11.18 in 1968 despite large increases in worker productivity since that time.<sup>142</sup> The minimum wage would be well over \$18 if it had kept pace with productivity increases since 1968.<sup>143</sup> The Fight for \$15 campaign and other efforts to increase the minimum wage have proven popular and, at least at the state level, effective: twenty-one states and Washington, D.C. have raised their minimum wages since 2014.<sup>144</sup> A national minimum of \$15 would raise the wages of millions of people among the working poor and improve their ability to procure healthy food.

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140. CAREY ANNE NADEAU, MASS. INST. TECH., LIVING WAGE CALCULATOR, USER'S GUIDE/TECHNICAL NOTES: 2017 UPDATE 5 (2017), <http://livingwage.mit.edu/resources/Living-Wage-User-Guide-and-Technical-Notes-2017.pdf> [<https://perma.cc/QS7X-6PTH>].

141. CAREY ANNE NADEAU, MASS. INST. TECH., LIVING WAGE CALCULATOR, LIVING WAGE CALCULATION FOR BUFFALO COUNTY, SOUTH DAKOTA 1, <http://livingwage.mit.edu/counties/46017> [<https://perma.cc/9EYH-TLET>]; AMY K. GLASMEIER & CAREY ANNE NADEAU, MASS. INST. TECH., LIVING WAGE CALCULATOR, RESULTS FROM THE 2016 DATA UPDATE 1, <http://livingwage.mit.edu/articles/23-results-from-the-2016-data-update> [<https://perma.cc/ME84-VEHD>].

142. See Christopher Ingraham, *The U.S. Has One of the Stingiest Minimum Wage Policies of Any Wealthy Nation*, WASH. POST: WONKBLOG (Dec. 29, 2017), [https://www.washingtonpost.com/news/wonk/wp/2017/12/29/the-u-s-has-one-of-the-stingiest-minimum-wage-policies-of-any-wealthy-nation/?utm\\_term=.871f514b11a5](https://www.washingtonpost.com/news/wonk/wp/2017/12/29/the-u-s-has-one-of-the-stingiest-minimum-wage-policies-of-any-wealthy-nation/?utm_term=.871f514b11a5) [<https://perma.cc/U8WA-XPQS>]; see also LAWRENCE MISHÉL ET AL., ECON. POLICY INST., WAGE STAGNATION IN NINE CHARTS 10 (2015).

143. See MISHÉL ET AL., *supra* note 142, at 10.

144. *Minimum Wage Tracker*, ECON. POLICY INST., <https://www.epi.org/minimum-wage-tracker/> [<https://perma.cc/R5PY-5EQ2>].

## B. Strengthening Labor Protections

The working poor often contend with job insecurity, unpredictable hours, and unpaid sick leave, in addition to low wages.<sup>145</sup> Precarious employment reduces workers' ability to plan meals or shop for healthy food while increasing stress levels, which can lead to a cascade of negative dietary and health outcomes.<sup>146</sup> Food security advocates should not only support stronger labor protections at the state and federal level, but should also campaign for federal legislation repealing state "right-to-work" laws that weaken workers' ability to organize. At the municipal level, policies like paid sick leave, enforcement against tipped wage theft, and requirements that employers regularize shift workers' schedules ("fair workweek laws")<sup>147</sup> create job stability and improve the wellbeing of low-wage workers. Such policies would enable these workers to better provide for the nutritional needs of their households.

## C. Expanding the Welfare State

Increasing wages and protections for the working poor, while important, will not substantially improve the material living conditions of many Americans. Around half of the United States' population does not work and roughly eighty percent of the poor do not work.<sup>148</sup> Additionally, the majority of the non-working population are members of vulnerable groups, including children, the elderly, and the disabled, who either cannot or should not work.<sup>149</sup> To ensure that the majority of the people in poverty are food secure and financially stable, the federal government should expand benefits

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145. *E.g.*, Joan Benach & Carles Muntaner, *Precarious Employment and Health: Developing a Research Agenda*, 61 J. EPIDEMIOLOGY & COMMUNITY HEALTH 276, 276–77 (2007); Julia R. Henly & Susan J. Lambert, *Unpredictable Work Timing in Retail Jobs: Implications for Employee Work-Life Conflict*, 67 ILR REV. 986, 986–94, 1010–12 (2014); Emile Tompa et al., *Precarious Employment Experiences and Their Health Consequences: Towards a Theoretical Framework*, 28 WORK 209, 213 (2007).

146. *See, e.g.*, Benach & Muntaner, *supra* note 145; Maria Carlota Borba Brum et al., *Shift Work and Its Association with Metabolic Disorders*, 7 DIABETOLOGY & METABOLIC SYNDROME 45, 45–51 (2015); Tompa et al., *supra* note 145, at 214.

147. Press Release, City of New York, Mayor de Blasio, Speaker Mark-Viverito Announces that New York City Is the Largest City to End Abusive Scheduling Practices in the Fast Food and Retail Industries (May 30, 2017), <http://www1.nyc.gov/office-of-the-mayor/news/372-17/mayor-de-blasio-speaker-mark-viverito-that-new-york-city-the-largest-city-end/#/0> [<https://perma.cc/G95K-YHTL>].

148. Matt Bruenig, *Who Was Poor in 2016 and Why Our System Keeps Failing Them*, PEOPLE'S POL'Y PROJECT (Sept. 12, 2017), <https://peoplespolicyproject.org/2017/09/12/who-was-in-poverty-in-2016/> [<https://perma.cc/R5CF-KB89>].

149. *Id.*

for people outside of the workforce, focusing on the unemployed, children, the elderly, the disabled, caretakers, and students.<sup>150</sup>

#### D. Protecting and Expanding SNAP

SNAP is one of the United States' most important social programs, providing about forty million Americans with benefits each month in 2017.<sup>151</sup> To receive these benefits, individuals and households must be at or below the poverty line, or in some cases, no more than slightly above it.<sup>152</sup> SNAP should be protected from proposals in Congress to reduce the program's budget or to transform it into a block grant, which would result in deep cuts and make the program less responsive during economic downturns.<sup>153</sup> Additionally, the program's meager benefits should be increased; the average beneficiary only received \$126 a month or \$1.40 per meal in 2017.<sup>154</sup> A 2016 study found that raising monthly SNAP benefits by only \$30 per person would increase the consumption of healthy foods, reduce the consumption of fast foods, and increase food security.<sup>155</sup>

#### E. Protecting and Expanding Universal Free School Lunch

The nation's school lunch (and breakfast) programs provide nutritious meals that, for low-income households, meet a large portion of the caloric needs of school-age children and save parents the cost of these meals.<sup>156</sup> The federal community eligibility provision allows school districts with high percentages of students who qualify for free meals to serve meals free to all students in the school.<sup>157</sup> Ensuring that this program is not cut and encouraging more school districts to use the community eligibility provision to expand universal

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150. *See id.*

151. CTR. ON BUDGET & POLICY PRIORITIES, POLICY BASICS: INTRODUCTION TO SNAP 1 (2017).

152. *Id.* at 3.

153. DOROTHY ROSENBAUM, CTR. ON BUDGET & POLICY PRIORITIES, BLOCK-GRANTING SNAP WOULD ABANDON DECADES-LONG FEDERAL COMMITMENT TO REDUCING HUNGER 2-8 (2017).

154. CTR. ON BUDGET & POLICY PRIORITIES, *supra* note 151, at 3.

155. PATRICIA M. ANDERSON & KRISTIN F. BUTCHER, CTR. ON BUDGET & POLICY PRIORITIES, THE RELATIONSHIPS AMONG SNAP BENEFITS, GROCERY SPENDING, DIET QUALITY, AND THE ADEQUACY OF LOW-INCOME FAMILIES' RESOURCES 1, 3, 5-14 (2016).

156. Craig Gundersen, *Food Assistance Programs and Child Health*, 25 FUTURE OF CHILDREN 91, 92 (2015).

157. MADELEINE LEVIN & ZOË NEUBERGER, CTR. ON BUDGET & POL'Y PRIORITIES, COMMUNITY ELIGIBILITY: MAKING HIGH-POVERTY SCHOOLS HUNGER FREE 5 (2013).

free school lunch throughout the country would help provide free, healthy meals to all children and reduce the stigma associated with free lunch.<sup>158</sup>

### CONCLUSION

Food policy remains dominated by a “Let Them Eat Kale” perspective that has emphasized subsidizing conventional food retailers to increase food access while shifting attention from the more fundamental upstream causes of malnourishment and health disparities: social inequality, race, gender, class oppression, and poverty. These types of food access policies persist because they fit neoliberal and conservative ideologies that privilege market solutions to social problems, are politically popular by addressing justifiable community desires for new, full-service supermarkets, and promise a relatively simple fix to the complex problems of obesity, malnourishment, and diet-related diseases. They are often described as food justice initiatives even if they do not address the underlying injustices of economic inequality, poverty, and oppression. However, a growing body of evidence reveals that mere access does not provide such a fix and that eliminating diet-related health disparities requires moving far upstream. Some might argue that debates over the effectiveness of expanding food retail may be interesting but are ultimately irrelevant; having a supermarket in one’s community is always better than none, and in the current political climate, in which basic support programs like SNAP are threatened, it is better to move forward with programs that at least improve the retail environment in low-income neighborhoods. However, in creating the perception of change—without actually addressing inequality—downstream interventions like new supermarkets may diminish pressure for broader social change.

The goal should be to create policies that build capital within communities and distribute our country’s substantial wealth more equitably, while providing living wages and labor standards so that people have time and money to provide for their needs. These steps may be more difficult to achieve politically than expanding access to supermarkets, but only by looking beyond food can we build a society in which everyone has the ability to eat well. There are no shortcuts to eliminating food poverty.

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158. *See generally* JANET POPPENDIECK, FREE FOR ALL: FIXING SCHOOL FOOD IN AMERICA 190 (2011).