

FOOD STAMPS IN AMERICA: HOW AN OCTOGENARIAN PROGRAM CAN STILL MEET THE COUNTRY'S NEEDS

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I. INTRODUCTION

The United States' food supply is so abundant that even after agricultural exports, it provides enough food to sustain everyone in the country twice over.¹ Despite this impressive surplus, however, the United States Department of Agriculture (USDA) reported that almost 15% of U.S. households were "food insecure" during 2008, meaning that approximately 17 million U.S. households were unable to afford enough food at some point during the year.²

The United States currently funds close to seventy federal programs approved to provide domestic food assistance,³ the largest of which is the Supplemental Nutrition Assistance Program (SNAP).⁴ Formerly known as the Food Stamp Program,⁵ SNAP offers a monthly benefit to low-income households with which to buy food.⁶ The program seeks to increase utilization of the country's agricultural abundance by providing those in need of food assistance with aid to achieve adequate levels of nutrition.⁷ Although the USDA administers SNAP through its Food and Nutrition Service (FNS),⁸ actual benefits are distributed by individual states.⁹

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¹ MARION NESTLE, *FOOD POLITICS: HOW THE FOOD INDUSTRY INFLUENCES NUTRITION AND HEALTH* 1 (2002).

² U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-346, *DOMESTIC FOOD ASSISTANCE: COMPLEX SYSTEM BENEFITS MILLIONS, BUT ADDITIONAL EFFORTS COULD ADDRESS POTENTIAL INEFFICIENCY AND OVERLAP AMONG SMALLER PROGRAMS* 13 (2010), available at <http://www.gao.gov/assets/310/303151.pdf> [hereinafter *DOMESTIC FOOD ASSISTANCE*].

³ *Id.* at 7.

⁴ *Id.* at 1.

⁵ See Food and Nutrition Act of 2008, 7 U.S.C. § 2011 (2012) (authorizing the creation of a supplemental nutrition assistance program); see also *id.* § 2012 note (Change of Name).

⁶ Jacob Alex Klerman & Caroline Danielson, *The Transformation of the Supplemental Nutrition Assistance Program*, 30 J. POL'Y ANALYSIS & MGMT. 863, 863 (2011).

⁷ See 7 U.S.C. § 2011.

⁸ See *Supplemental Nutrition Assistance Program (SNAP)*, USDA FOOD AND NUTRITION SERV., <http://www.fns.usda.gov/about-fns/> (last visited Oct. 17, 2013).

⁹ See JAMES C. OHLS & HAROLD BEEBOUT, *THE FOOD STAMP PROGRAM: DESIGN TRADEOFFS, POLICY, AND IMPACT* 12 (1993).

SNAP exists in a unique political environment, which has resulted from the combination of the program's historical origins as well as the American public's sentiment towards hunger and food assistance.¹⁰ The foundation of the country's current federal system of food assistance has its roots in the Great Depression, where widespread poverty and lack of consumer buying power resulted in a large number of Americans unable to purchase food despite a nationwide agricultural surplus.¹¹ More than eighty years later, the country still suffers from this dilemma.¹²

From a social policy standpoint, Americans feel very strongly that in a nation of bountiful resources, having enough food should be a basic right, and that public policy should work to ensure access to food.¹³ The emotional appeal of the hunger issue has amassed support across the political spectrum for SNAP.¹⁴

SNAP also finds appeal with Americans because of the manner in which it provides aid to recipients.¹⁵ The American public is generally wary of cash grant programs, presumably because there is less control over how cash benefits are used by recipients.¹⁶ Unlike cash grant programs, which provide aid in the form of cash directly to recipients, SNAP provides aid as in-kind benefits, which are benefits directly linked to specific goods.¹⁷ These benefits can be used legally only to purchase food.¹⁸ SNAP's ability to provide assistance in a way that ensures that the benefits will be used for their intended purpose makes the program more appealing to the American public.¹⁹

Although the program enjoys general appeal with the American public, in the wake of the recent economic recession and an ever-expanding federal deficit, SNAP has become an increasingly hot topic.²⁰ Indeed, the number

¹⁰ See *id.* at 128.

¹¹ See Marion Nestle, *Hunger in America: A Matter of Policy*, 66 SOC. RES. 257, 269–70 (1999).

¹² See NESTLE, *supra* note 1, at 13; DOMESTIC FOOD ASSISTANCE, *supra* note 2, at 38.

¹³ OHLS & BEEBOUT, *supra* note 9, at 129.

¹⁴ *Id.*

¹⁵ *Id.* at 130.

¹⁶ *Id.* at 129.

¹⁷ *Id.* at 47.

¹⁸ *Id.* at 48.

¹⁹ See *id.* at 130.

²⁰ See generally Richard Fausset, *Food Stamp Bills Seek to Restrict Junk Food*, L.A. TIMES, Jan. 29, 2012, <http://articles.latimes.com/2012/jan/29/nation/la-na-food-stamps-20120130> (citing proposed Florida legislation to restrict food eligible for purchase with food stamps as part of larger trend motivated by health concerns and tight budgets); Editorial, *Food Stamps and the Farm Bill*, N.Y. TIMES, June 12, 2012, <http://www.nytimes.com/2012/06/13/opinion/food-stamps-and-the-farm-bill.html> (suggesting that proposed cuts to SNAP funding in the Farm Bill is “unconscionable” when the Bill also contains “unnecessary giveaways for corporate farming interests”).

of SNAP recipients grew by more than 70% from 2007 to 2011.²¹ The program has been criticized as inefficient due to high costs and suggestions that it breeds government dependency.²² SNAP has also been criticized for failing to fulfill its stated purpose: “Putting healthy food within reach.”²³ While several states have made attempts to implement nutritional restrictions on food items eligible to be purchased by individuals using SNAP funds, these attempts have been consistently unsuccessful.²⁴

Do these criticisms of SNAP suggest that the program is based on outdated principles and can no longer achieve its stated purpose? Arguably, no. This Note argues that the increase in SNAP participation and costs during the recent economic recession and sluggish recovery are proof positive that the program functions as it was designed: as a social safety net to guard against poverty and hardship.²⁵ For this reason, proposals to slash SNAP funding frustrate the program’s intent. Budget cuts would result in the loss or reduction of recipients’ benefits, and the very purpose of the safety net would be compromised.

Attempts to address criticisms of SNAP should instead be tailored to stay within the constraints of the program’s stated purpose. Any changes or improvements to SNAP should work within the program’s unique ideological, institutional, and political framework. Rather than cutting funding and undermining the program’s ability to provide food assistance, cost-saving measures should focus on policing SNAP funds to ensure that the program benefits its intended beneficiaries and not unintended parties.

This Note examines the merits of frequently cited problems with SNAP, as well as attempts at both the federal and state levels to address such problems. Part II explores the unique ideological, institutional, and political framework from which the modern SNAP has emerged. Part II will review the country’s history of food assistance, specifically the ideological intent behind the system and how the program has evolved over

²¹ KATHLEEN FITZGERALD ET AL., CONG. BUDGET OFFICE, THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM 1 (2012), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/04-19-SNAP.pdf>.

²² See Arthur Delaney, *Paul Ryan Poverty Speech Proposes Reforming Programs for the Poor*, HUFFINGTON POST (Oct. 24, 2012, 8:47 AM), http://www.huffingtonpost.com/2012/10/24/paul-ryan-poverty-speech_n_2010827.html?utm_hp_ref=food-stamps.

²³ FNS Outreach Coalition, *Supplemental Nutrition Assistance Program: Putting Healthy Food Within Reach* (Oct. 23, 2008), http://www.fns.usda.gov/snap/outreach/coalition/102308/farm_bill_changes.pdf.

²⁴ See generally MICHELE SIMON, EAT DRINK POLITICS, FOOD STAMPS: FOLLOW THE MONEY: ARE CORPORATIONS PROFITING FROM HUNGRY AMERICANS? 14 (June 2012), available at <http://www.eatdrinkpolitics.com/wp-content/uploads/FoodStampsFollowtheMoneySimon.pdf>.

²⁵ See 7 U.S.C. § 2011 (2012).

the last half century, and will also explore the major challenges facing the program today, including the effect of the recent economic recession and increased scrutiny of the program's lack of nutritional guidelines. Part III analyzes proposed changes to the program that have been made in response to major challenges, in addition to analyzing concerns that the program has increasingly come to support unintended beneficiaries. Part IV offers proposed measures that should be considered by Congress in enacting future legislation, which should seek to address major challenges to SNAP without straying from the program's original intent. The unique ideological, institutional, and political framework from which SNAP has emerged creates a rigid constraint for reform. Proposed reforms to the program outside of this framework are unlikely to succeed.

II. HISTORY OF FOOD STAMPS

A. Ideological Underpinnings

Welfare, loosely defined as the use of public tax money to support the poor, can be traced back to ancient times.²⁶ Aristotle wrote of the Athenian practice of providing a stipend for food to those unable to work due to incapacity.²⁷ In Western society, welfare has historically served multiple, and to an extent contradictory, purposes.²⁸ While welfare provided the poor with food, shelter, and other necessities, it also served to quell rebellion and maintain a work force that could work for low wages in exchange for welfare provisions.²⁹

American welfare policies have existed since the arrival of the country's earliest English settlers.³⁰ Early American welfare systems were based largely on English Poor Laws, which arose in part to address the failures of private charity to support the poor.³¹ The Poor Laws reflected the recognition that the use of public tax money to meet the needs of the indigent was the duty of a civilized society.³² The first American welfare law, passed in the Ohio Territory in 1790, emphasized the English Poor

²⁶ Nestle, *supra* note 11, at 264.

²⁷ Aristotle, *ATHENIAN CONST.* ch. 49, § 4 (H. Rackham trans., Harvard University Press 1952), available at <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0046%3Achapter%3D49%3Asection%3D4>.

²⁸ Nestle, *supra* note 11, at 264–65.

²⁹ *Id.* at 265.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

Law tradition of local control.³³

Early American colonists also brought with them certain prejudices inherent in the English welfare system, particularly the assumption that the poor were inherently less worthy than the rest of society and not merely the victims of hard times or bad luck.³⁴ As a result of these prejudices, harsh penalties were levied on people who received public assistance.³⁵ Recipients of public assistance were deprived of the right to vote, and families were often separated as children of indigent parents were frequently placed in orphanages or required to work.³⁶

The inefficiencies of the early American welfare model, which left the care of the poor to local officials or private charity, did not go unrecognized.³⁷ In 1824, the New York Secretary of State performed a hunger survey at the request of the state legislature to determine the status of the state's poor laws and offer recommendations for new legislation to address problems caused by "pauperism."³⁸ The Secretary of State's report was damning, declaring that New York's "poor laws are manifestly defective in principle, and mischievous in practice."³⁹ The state's poor laws had numerous shortcomings: "They led to cruelty, especially to children; did not provide adequate employment; led to vice, dissipation, disease, and crime; . . . [and] discouraged the care of the mentally ill."⁴⁰ Despite the Secretary of State's recommendation that the state establish more workhouses and provide additional funding, New York's system continued through the nineteenth century with only minor changes.⁴¹

The emphasis on local control of public welfare remained strong throughout the 1800s.⁴² The first federally authorized food relief did not occur until 1874, when federal aid was approved for flood victims in Mississippi and Tennessee.⁴³ Despite this and other minor instances of federal intervention, federal involvement in welfare and food relief was

³³ *Id.* at 266.

³⁴ *Id.* at 265–66.

³⁵ *See id.* at 265–67.

³⁶ *Id.*

³⁷ *See id.*

³⁸ *Id.*

³⁹ *Id.* at 268 (quoting John V. N. Yates, *Report of the Secretary of State in 1824 on the Relief and Settlement of the Poor*, in *POVERTY, U.S.A.: THE HISTORICAL RECORD. THE ALMSHOUSE EXPERIENCE: COLLECTED REPORTS* 939, 951 (David J. Rothman ed., 1971)).

⁴⁰ Nestle, *supra* note 11, at 268 (citation omitted).

⁴¹ *Id.* at 269.

⁴² *See id.*

⁴³ *Id.*

minor until the Great Depression.⁴⁴

As the number of people requiring assistance grew exponentially during the Great Depression, the traditional combination of local efforts and private charity proved inadequate to meet their needs.⁴⁵ The Great Depression presented the country with a unique problem: record unemployment and poverty rates meant that people were starving while farmers produced abundant crop surpluses that could not be sold due to a lack of consumers with buying power.⁴⁶ Congress's solution was to distribute food surplus as relief, thus laying the foundation for the welfare and food assistance programs that still exist today.⁴⁷

The United States' current system of federal food assistance can trace its legislative origins to the Food Stamp Act of 1964.⁴⁸ The Food Stamp Act's declaration of congressional policy reveals the legislation's dual intent.⁴⁹ Congress found that "increased utilization of foods in establishing and maintaining adequate national levels of nutrition will tend to cause the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy."⁵⁰ The Act served not only to provide low-income households with financial aid to buy food, but it also sought to protect farmers and food producers from surplus and falling prices.⁵¹

Since the Food Stamp Act of 1964, subsequent reforms in food stamp legislation have focused largely on eliminating the inefficiencies of the program. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) helped to address concerns that government assistance created perverse incentives for recipients.⁵² Before this reform, most low-wage workers were ineligible for food stamps.⁵³ Because the program's mission was to feed those most in need, unemployed applicants were favored over low-wage workers.⁵⁴ PRWORA implemented reforms that placed limits on the amount of time that recipients could

⁴⁴ See *id.* at 269–70.

⁴⁵ *Id.* at 270.

⁴⁶ *Id.*

⁴⁷ *Id.* at 270–71.

⁴⁸ See Food Stamp Act of 1964, Pub. L. No. 88-525, 78 Stat. 703 (current version codified at 7 U.S.C. §§ 2011–29, 2031–36a (2012)).

⁴⁹ See *id.* § 2 (codified at 7 U.S.C. § 2011).

⁵⁰ *Id.*

⁵¹ See Food Stamp Act of 1964, 78 Stat. 703.

⁵² See David A. Super, *The Quiet "Welfare" Revolution: Resurrecting the Food Stamp Program in the Wake of the 1996 Welfare Law*, 79 N.Y.U. L. REV. 1271, 1295 (2004).

⁵³ *Id.* at 1324.

⁵⁴ *Id.*

receive benefits without employment.⁵⁵ The reforms also promoted work through incentives rather than through sanctions by encouraging states to improve access for low-wage workers.⁵⁶ Then-President Clinton described the legislation as a plan to “end welfare as we know it.”⁵⁷ Clinton’s promise to “end welfare as a way of life and make it a path to independence and dignity”⁵⁸ appealed to the public’s desire to provide the needy with access to food without breeding program dependency.

PRWORA also required all states to move to Electronic Benefit Transfer (EBT) systems by October 1, 2002, thereby eliminating all paper “food stamps.”⁵⁹ The conversion to EBT has helped to improve recipient access to benefits, since the electronic delivery largely avoids the possibility of mail theft, slow mail, and long lines to pick up benefits.⁶⁰ EBT cards are designed to look and operate in much the same way as a regular debit card,⁶¹ which has given recipients a greater sense of privacy and removed some of the stigma associated with the easily identifiable paper food stamps.⁶² The conversion to EBT has also arguably given the public confidence that the program’s benefits are being monitored more closely for fraud.⁶³

The Food and Nutrition Act of 2008 renamed the Food Stamp Program as the “Supplemental Nutrition Assistance Program,” or SNAP,⁶⁴ to reflect the modern program where benefits are issued electronically as opposed to benefits issued as paper stamps.⁶⁵ The name change also better reflects the program’s focus on providing eligible households with the opportunity to obtain a more nutritious diet through the allotment of federal food assistance.⁶⁶

⁵⁵ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 824, 110 Stat. 2105, 2323–24 (current version codified at 7 U.S.C. § 2015(d) (2012)).

⁵⁶ Super, *supra* note 52, at 1271.

⁵⁷ William J. Clinton, President of the United States, Clinton’s Economic Plan, Address Before a Joint Session of Congress (Feb. 17, 1993), in *N.Y. TIMES*, Feb. 18, 1993, at A20.

⁵⁸ *Id.*

⁵⁹ See 7 U.S.C. § 2016(h)(1)(A) (2012).

⁶⁰ Barbara Leyser, *Recipient Concerns with the Use of Electronic Benefit Transfer Systems for the Delivery of State and Federal Benefits*, 32 CLEARINGHOUSE REV. 215, 216 (1998).

⁶¹ See David J. Kennedy, *Due Process in a Privatized Welfare System*, 64 BROOK. L. REV. 231, 267–68 (1998) (citation omitted).

⁶² Leyser, *supra* note 60.

⁶³ Super, *supra* note 52, at 1381 (citation omitted).

⁶⁴ See Food and Nutrition Act of 2008, 7 U.S.C. § 2011 (2012) (authorizing the creation of a supplemental nutritional assistance program); see also *id.* § 2012 note (Change of Name).

⁶⁵ FNS Outreach Coalition, *supra* note 23.

⁶⁶ See 7 U.S.C. § 2013.

B. Institutional Framework

With the implementation and continued expansion of the Food Stamp Program, Congress gave the Agriculture Committees of both houses jurisdiction over domestic food assistance.⁶⁷ The Agriculture Committees' jurisdiction over SNAP stems from the program's historical origin during the Great Depression, where food assistance was tied to the need to increase consumption of agricultural commodities and stabilize prices.⁶⁸ The House and Senate Agriculture Committees retain jurisdiction over SNAP benefits today.⁶⁹ SNAP's tie to agriculture has traditionally made the program more attractive than other forms of public assistance to Republican legislatures with rural constituents.⁷⁰ From its very inception, the Food Stamp Program has been closely tied to the interests of the country's food producers.⁷¹

In addition to their jurisdiction over SNAP, the House and Senate Agriculture Committees also retain jurisdiction over a variety of other topics.⁷² For instance, the Senate Agriculture Committee is in charge of legislation involving agricultural production, marketing, and stabilization of prices, as well as agriculture and agricultural commodities.⁷³ Similarly, the House Agriculture Committee is also responsible for legislation involving the dairy industry and the animal industry.⁷⁴ This diverse jurisdiction can lead to odd tradeoffs.⁷⁵ The Agriculture Committees must often trade off SNAP benefits for agricultural commodities or other issues having nothing to do with food assistance.⁷⁶

The USDA administers SNAP through its Food and Nutrition Service (FNS).⁷⁷ The stated mission of FNS is "to increase food security and reduce hunger by providing children and low-income people access to food, a healthful diet and nutrition education in a way that supports American

⁶⁷ See NESTLE, *supra* note 1, at 98.

⁶⁸ See OHLS & BEEBOUT, *supra* note 9, at 128.

⁶⁹ See *Jurisdiction of the Committee*, HOUSE COMM. ON AGRIC., <http://agriculture.house.gov/about/jurisdiction-committee> (last visited Oct. 17, 2013); *Rules of the Senate: Standing Committees*, U.S. SENATE COMM. ON RULES & ADMIN., <http://www.rules.senate.gov/public/index.cfm?p=RuleXXV> (last visited Oct. 17, 2013) [hereinafter *Rules of the Senate*].

⁷⁰ See OHLS & BEEBOUT, *supra* note 9, at 128.

⁷¹ See generally NESTLE, *supra* note 1, at 97–98.

⁷² See *Jurisdiction of the Committee*, *supra* note 69; *Rules of the Senate*, *supra* note 69.

⁷³ *Rules of the Senate*, *supra* note 69.

⁷⁴ See *Jurisdiction of the Committee*, *supra* note 69.

⁷⁵ See OHLS & BEEBOUT, *supra* note 9, at 161.

⁷⁶ *Id.*

⁷⁷ See *Supplemental Nutrition Assistance Program (SNAP)*, *supra* note 8.

agriculture and inspires public confidence.”⁷⁸

FNS is in charge of licensing retailers to accept SNAP benefits, and also develops and publishes information for retailers regarding SNAP-eligible food.⁷⁹ SNAP benefits can be used to purchase any eligible “food,” which the Food and Nutrition Act of 2008 defines as “any food or food product for home consumption.”⁸⁰ This includes foods for the household to eat, such as breads, cereals, fruits, vegetables, meats, fish, poultry, and dairy products.⁸¹ Benefits can also be used to buy seeds and plants that produce food for the household to consume.⁸²

SNAP benefits may not be used to purchase alcohol or tobacco products, non-food items (i.e. paper products, pet foods, etc.), or vitamins and medicines.⁸³ Benefits also cannot be used to purchase hot foods or foods that are sold for on-premise consumption.⁸⁴ Apart from these restrictions, there are currently no federally enforced nutritional restrictions on the use of SNAP benefits.⁸⁵ The Food and Nutrition Service explains on its website that soft drinks, candy, cookies, snack crackers, ice cream, seafood, steak, and bakery items are all food items, and are therefore eligible for purchase using SNAP benefits.⁸⁶

C. Politicization of the Program

In the United States, welfare has taken on an additional function: the mobilization of political support.⁸⁷ Welfare programs have long been the focus of both liberals and conservatives to make symbolic statements.⁸⁸ Politicians choose to exploit either sympathy for those in need or alternatively capitalize on fears of welfare-recipient dependency to garner

⁷⁸ *About FNS*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/about-fns> (last visited Oct. 17, 2013).

⁷⁹ See FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., SNAP: TRAINING GUIDE FOR RETAILERS 8 (2012), available at http://www.fns.usda.gov/snap/retailers/pdfs/Retailer_Training_Guide.pdf.

⁸⁰ Food and Nutrition Act of 2008, 7 U.S.C. § 2012(k) (2012). See also Food & Nutrition Serv., *Supplemental Nutritional Assistance Program Eligible Food Items*, U.S. DEP’T OF AGRIC., <http://www.fns.usda.gov/snap/retailers/eligible.htm> (last modified July 25, 2013) [hereinafter *SNAP Eligible Food Items*].

⁸¹ *SNAP Eligible Food Items*, *supra* note 80.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ See *id.*

⁸⁶ *Id.*

⁸⁷ Nestle, *supra* note 11, at 265.

⁸⁸ Super, *supra* note 52, at 1271.

votes.⁸⁹ This function has come to increasingly define the public perception of welfare,⁹⁰ and the recent economic recession has proved no exception.

In the wake of the 2008 recession, the need for public food assistance has become higher than ever.⁹¹ Nearly 49 million Americans live in households that struggle to put food on the table.⁹² This number includes one in five children.⁹³

Spending for SNAP jumped from \$30.4 billion in 2007 to \$71.8 billion in fiscal year 2011.⁹⁴ SNAP spending increased again in the 2012 fiscal year, with a record-breaking \$80.4 billion spent on the program.⁹⁵ This drastic increase in spending is a response to the massive swell in the number of SNAP recipients during the economic recession.⁹⁶ The significant job losses that the country suffered during the prolonged recession and sluggish recovery has naturally resulted in a significant increase of SNAP-eligible Americans.⁹⁷

Subsequently, some have pointed to the swelling SNAP budget as an area where costs could be cut.⁹⁸ The issue resulted in political polarization after food assistance emerged as a major campaign issue in the 2012 Republican presidential primary when Newt Gingrich labeled President Obama as the “food stamp president.”⁹⁹ However, the suggestion that the increase in SNAP benefit recipients was somehow the result of the President’s policies is misguided. The reality is the economic downturn has resulted in record poverty levels and a substantial increase in eligible

⁸⁹ Nestle, *supra* note 11, at 265.

⁹⁰ *Id.*

⁹¹ See FITZGERALD ET AL., *supra* note 21, at 1.

⁹² BREAD FOR THE WORLD, *Domestic Nutrition Assistance*, <http://www.bread.org/ol/2012/domestic-nutrition/> (last updated Jul. 10, 2012).

⁹³ *Id.*

⁹⁴ Lisa Baertlein, *Food Stamps For Soda? New Report Stokes Debate Over U.S. Food Stamp Program*, HUFFINGTON POST, http://www.huffingtonpost.com/2012/06/12/food-stamps-soda_n_1588976.html (last updated Jun. 12, 2012, 12:37 PM).

⁹⁵ Patrick Burke, *Federal Food Stamp Program Spent Record \$80.4B in FY 2012*, CNS NEWS (Jan. 4, 2012, 1:48 PM), <http://cnsnews.com/news/article/federal-food-stamp-program-spent-record-804b-fy-2012>.

⁹⁶ See FITZGERALD ET AL., *supra* note 21, at 1.

⁹⁷ Stacy Dean, *Food Stamps a Necessary Lifeline*, CNN, <http://www.cnn.com/2012/01/19/opinion/dean-food-stamp-program/> (last updated Jan. 19, 2012, 1:28 PM).

⁹⁸ See Daniel Imhoff, *Congress Made a Terrible Mistake in Letting the Farm Bill Expire*, SLATE (Oct. 31, 2012, 1:22 PM), http://www.slate.com/articles/news_and_politics/food/2012/10/farm_bill_2012_expiration_why_congress_needs_to_take_food_policy_seriously.single.html.

⁹⁹ Jesse Washington, *Food Stamp Recipients Wish Critics Would Spend Some Time in Their Shoes*, HUFFINGTON POST (Jan. 19, 2012, 6:20 PM), http://www.huffingtonpost.com/2012/01/20/food-stamps_n_1218248.html.

individuals.¹⁰⁰ The increase is not, as Gingrich suggested, the result of policy changes to make access to federal food assistance aid easier.¹⁰¹ In fact, the Congressional Budget Office (CBO) found the contrary in its analysis of why SNAP spending had increased since 2007, noting there were “no significant legislative expansions of eligibility for the program” during this period.¹⁰² Indeed, the CBO found that the primary reason for the sharp increase in SNAP participants was the recession between December 2007 and June 2009, coupled with the subsequent slow recovery.¹⁰³

The American Recovery and Reinvestment Act of 2009 (“Stimulus Bill”) helped to accommodate the increased number of SNAP recipients that resulted from the economic recession.¹⁰⁴ The Stimulus Bill sought to assist those most impacted by the recession and to stabilize state and local government budgets in order to minimize and avoid reductions in essential services.¹⁰⁵ The Stimulus Bill temporarily increased the maximum benefits that SNAP-eligible households could receive by 13.6%.¹⁰⁶ It also temporarily increased federal funding of state administrative costs associated with carrying out the Supplemental Nutrition Assistance Program.¹⁰⁷

The issue of SNAP spending again resulted in political polarization during congressional debate over the 2012 Farm Bill, with the 2008 Farm Bill set to expire at the end of 2012.¹⁰⁸ The first Farm Bill was passed in 1933 as part of the Agricultural Adjustment Act, which provided subsidies to American farmers during the Great Depression in an attempt to decrease supply and stabilize the cost of staple crops.¹⁰⁹ The Farm Bill still serves as

¹⁰⁰ See Ezra Klein, *Gingrich Says Obama is the Food Stamp President—Is He?*, WASH. POST (Jan. 18, 2012, 3:26 PM), http://www.washingtonpost.com/blogs/ezra-klein/post/gingrich-says-obama-is-the-food-stamp-president-is-he/2012/01/18/gIQA1Ino8P_blog.html.

¹⁰¹ See FITZGERALD ET AL., *supra* note 21, at 4.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, § 101, 123 Stat. 115, 120 (codified as amended in scattered sections of 42 U.S.C.).

¹⁰⁵ *Id.* at 123 Stat. 115, 116.

¹⁰⁶ *Id.* § 101(a)(1). The increase in maximum benefits expired on Sept. 30, 2009. *Id.* § 101(a)(2)(A).

¹⁰⁷ *Id.* § 101(c). The increased funding of states’ SNAP administrative costs expired Dec. 31, 2010. *Id.* § 101(c)(1). See also OFFICE OF INSPECTOR GEN., U.S. DEP’T OF AGRIC., CONTROLS OVER OUTSOURCING OF FOOD AND NUTRITION SERVICE’S SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM ELECTRONIC BENEFIT TRANSFER CALL CENTERS 3 (2011), available at <http://www.recovery.gov/Accountability/inspectors/Documents/27703-01-TE.pdf> [hereinafter CONTROLS OVER OUTSOURCING].

¹⁰⁸ See Jennifer Steinhauer, *Deal on a Farm Bill Appears Unlikely*, N.Y. TIMES, Sept. 12, 2012, at A20, available at 2012 WLNR 19460751.

¹⁰⁹ See Earl L. Butz, *The Politics of Agricultural Subsidies*, 25 PROC. ACAD. POL. SCI. 54, 55–56 (1952). See also Agricultural Adjustment Act of 1938, ch. 30, 52 Stat. 31 (codified as amended in

the primary legal framework for agricultural policy,¹¹⁰ and includes funding for SNAP.¹¹¹

SNAP funding was a target during the 2012 Farm Bill proposals for those seeking to cut federal spending.¹¹² The Senate's version of the bill proposed a \$4 billion decrease in spending over the next ten years, while the House's version quadrupled the proposal to over \$16 billion in deductions.¹¹³ Wisconsin Congressman Paul Ryan's budget proposed a staggering \$134 billion in cuts to SNAP funding.¹¹⁴

Opponents of the plan to cut SNAP funding as a means of balancing the federal budget argued that the program operated just as it ought to: as an important strand in the American safety net.¹¹⁵ South Carolina Democratic Representative James Clyburn rationalized the program in this manner: "We are here to clothe the naked, to feed the hungry, to do for those who cannot do for themselves. To set ourselves up as protectors of the wealthy and the well to do . . . is just not what government ought to be about."¹¹⁶ For opponents of the plan to cut SNAP funding, the possibility of cutting federal funds to SNAP undermines the very purpose of the program.¹¹⁷

Whether SNAP funding will be cut remains to be seen, as the Farm Bill debate will continue on into the 113th Congress.¹¹⁸ On December 31, 2012, having failed to reach an agreement and out of time, the 112th Congress voted to renew the 2008 Farm Bill for an additional year.¹¹⁹

D. Nutritional Critiques of SNAP

Even the health and nutritional policies of SNAP have resulted in political polarization.¹²⁰ Although there are currently no nutritional limitations on the use of SNAP benefits,¹²¹ SNAP has increasingly been met

scattered sections of 7 U.S.C.), for the Act's declaration of policy.

¹¹⁰ U.S. DEP'T OF AGRIC., *Farm Bill Resources*, ECON. RES. SERV., <http://www.ers.usda.gov/farm-bill-resources.aspx> (last updated May 1, 2013).

¹¹¹ Imhoff, *supra* note 98.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See Editorial, *A Farm Bill, and Food Stamps*, L.A. TIMES (Sept. 12, 2012), <http://articles.latimes.com/2012/sep/12/opinion/la-ed-farm-bill-food-stamps-20120912>.

¹¹⁶ Lauren Fox, *House Democrats Poised to Fight for Food Stamps in Farm Bill*, U.S. NEWS (July 11, 2012), <http://www.usnews.com/news/articles/2012/07/11/house-democrats-poised-to-fight-for-food-stamps-in-farm-bill>.

¹¹⁷ *See id.*

¹¹⁸ See Charles Abbot & Roberta Rampton, *Fiscal Plan Averts "Dairy Cliff;" Buys Time for Farm Bill*, REUTERS, Jan. 2, 2013, <http://www.reuters.com/article/2013/01/02/us-usa-fiscal-dairy-idUSBR E90008720130102>.

¹¹⁹ *Id.*

¹²⁰ See Fausset, *supra* note 20.

¹²¹ See *SNAP Eligible Food Items*, *supra* note 80.

with health and nutritional concerns.¹²² There are generally two bases for these concerns.¹²³ On the one hand, health-based concerns focus on the program's lack of nutritional guidelines, which some suggest is indicative that recipients are not eating a balanced diet in spite of receiving federal food aid.¹²⁴ On the other hand, there are concerns that the program's lack of nutritional restrictions means that recipients are given carte blanche to buy unhealthy food with federal benefits.¹²⁵ Those with this concern argue that SNAP benefits should be limited to essential food items, and not include "luxury" foods or foods with low-nutritional value.¹²⁶ Implicit in this criticism are remnants of historical prejudices against the recipients of public assistance.

Several states have attempted to enact legislation to address health and nutritional concerns within SNAP.¹²⁷ Because the USDA has jurisdiction over how SNAP benefits are spent, states cannot unilaterally implement changes.¹²⁸ Instead, state bills aimed at enacting nutritional restrictions on the use of SNAP funds have focused on having the appropriate state agency apply to the USDA for a waiver to allow the state to implement these restrictions.¹²⁹ These bills also include the state's plan for how it would improve SNAP purchases, should the waiver be granted.¹³⁰

In 2011, Ronda Storms, a Republican state senator from Florida, proposed a bill that would prohibit the use of food stamp aid to purchase "nonstaple [sic], unhealthy foods."¹³¹ Storms said that she was moved to action after she noticed food stamp recipients were using the funds to buy "unhealthful junk."¹³² She said she was galled by the idea that people were enjoying junk food on the public dime at a time when the state was making cuts to Medicaid, public school funding, and jobs.¹³³ "If we're going to be cutting services across the board," she said, "then people can live without potato chips, without store-bought cookies, without their sodas."¹³⁴

¹²² See Fausset, *supra* note 20.

¹²³ See Editorial, *Food Stamp Police?*, L.A. TIMES, Jan. 31, 2012, <http://articles.latimes.com/2012/jan/31/opinion/la-ed-foodstamps-20120131>.

¹²⁴ See *id.*

¹²⁵ See *id.*

¹²⁶ See Fausset, *supra* note 20.

¹²⁷ SIMON, *supra* note 24, at 12.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Fausset, *supra* note 20.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

Critics of the Florida bill took issue with the previously unprecedented restrictions on SNAP aid, which they argued could lead to further stigma for program participants.¹³⁵ The measure was also criticized as unrealistic, as its definition of “unhealthful” foods seemed to eliminate anything not in the produce or meat aisles of the grocery store.¹³⁶ When a fellow senator pointed out that the bill would prohibit food stamp recipients from buying their child a birthday cake, Ms. Storms replied, “[t]hey can have cake. You can buy flour, eggs and sugar, and that makes a cake. I make my kids their own cakes.”¹³⁷ Ms. Storms’ response—shockingly similar to that of an oft-repeated (and now headless) French queen—assumes that SNAP recipients have the resources, time, and ability to undertake such a task.¹³⁸

Several other states have also attempted to enact legislation similarly aimed at regulating the nutritional content of SNAP-eligible food items. In 2011, a California Senate Bill was introduced which proposed that food benefits could not be used to purchase sweetened drinks with more than ten calories per cup.¹³⁹ Illinois, Iowa, Oregon, Nebraska, Pennsylvania, and Texas have all also attempted to enact legislation designed to devise minimum nutritional standards for foods that could be purchased with SNAP benefits.¹⁴⁰ To date, however, no state has successfully passed a bill to this effect.¹⁴¹

III. ANALYSIS

A. Barriers to Implementation

Whether the push for nutritional guidelines is motivated by health-based concerns or by a sense of unfairness that SNAP recipients can purchase almost any food item with their federal benefits, proposals to implement program-wide nutritional limitations are unlikely to succeed. For practical reasons, the implementation of program-wide nutritional standards for SNAP-eligible food items would be virtually impossible. In 2007, the USDA Food and Nutrition Service (FNS) analyzed the implications of restricting the use of food stamp benefits.¹⁴² The report

¹³⁵ *Id.*

¹³⁶ *Food Stamp Police?*, *supra* note 123.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ See S.B. 471, 2011 Leg., Reg. Sess. (Cal. 2011).

¹⁴⁰ See SIMON, *supra* note 24, at 14 (listing states with proposed SNAP improvement bills).

¹⁴¹ *Id.* at 12.

¹⁴² FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., IMPLICATIONS OF RESTRICTING THE USE OF

found “serious problems with the rationale, feasibility, and potential effectiveness” of such a proposal.¹⁴³

As an initial matter, the report noted that there are no clear standards that exist to define particular foods as either “good” or “bad,” or “healthy” or “unhealthy.”¹⁴⁴ Furthermore, even if an effective standard for distinguishing foods as either “healthy” or “unhealthy” could be developed, the implementation of such a standard would be an appreciable undertaking with potentially staggering costs.¹⁴⁵ For instance, an average of 12,000 new food items were produced every year between 1990 and 2000, and more than 300,000 unique food items are available in the marketplace nationwide.¹⁴⁶ Identifying, evaluating, and tracking the nutritional profile of every food product in the nation would be an enormous undertaking, requiring either a significant expansion of government responsibility, or shifting the cost to private business, and ultimately to the consumer.¹⁴⁷

Even without the logistical challenges that a uniform implementation of nutritional guidelines for SNAP-eligible products would pose, these types of restraints on consumer choice could severely stigmatize SNAP benefit recipients. The implementation of such guidelines is likely to increase the instances of transactions being rejected at the checkout counter for failure to meet nutritional guidelines, thus singling out the SNAP recipient.¹⁴⁸ This effect would contradict progress already made to de-stigmatize the program.¹⁴⁹

For all practical purposes, imposing nutritional guidelines on SNAP-eligible food items will do very little to better achieve the program’s goal of “putting healthy food within reach.” Indeed, reserving cheese puffs and candy bars as indulgences for the financially stable would result in unnecessary class division at a considerable financial cost.

While the implementation of nutritional restrictions on SNAP-eligible food items would be both costly and socially divisive, these proposed regulations also fall outside the boundaries of the program’s ideological and institutional framework. SNAP is intended to provide eligible households with a more nutritious diet,¹⁵⁰ but this goal coincides with the program’s other stated purpose: utilization of the country’s agricultural surplus to

FOOD STAMP BENEFITS (2007), available at <http://www.fns.usda.gov/ora/menu/Published/snap/FILES/ProgramOperations/FSPFoodRestrictions.pdf> [hereinafter RESTRICTING FOOD STAMP BENEFITS].

¹⁴³ *Id.* at Summary.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 3–4.

¹⁴⁶ *Id.* at 3 (citation omitted).

¹⁴⁷ *Id.* at 3–4.

¹⁴⁸ *Id.* at 4–5.

¹⁴⁹ See Leyser, *supra* note 60 and accompanying text.

¹⁵⁰ See 7 U.S.C. § 2011 (2012).

protect farmers and food producers.¹⁵¹ Nutritional restrictions on SNAP-eligible food items would attempt to achieve the program's goal of providing nutritional diets to recipients at the cost of the program's other intended beneficiaries: farmers and producers.

Food producers have long enjoyed a close and influential relationship with the USDA.¹⁵² Food producers and the USDA worked closely together during World War II to promote the national interest, which resulted in food producers viewing the USDA as *their* department.¹⁵³ These two groups, along with the House and Senate Agriculture Committees, came to be regarded as the "agricultural establishment."¹⁵⁴ This establishment was so influential that it could virtually guarantee that any federal policy related to use, commodity distribution, or prices would serve to promote the interests of food producers.¹⁵⁵

The Agriculture Committees of the House and Senate are responsible for policies and programs not only related to domestic food assistance, but also to food producers.¹⁵⁶ In light of this responsibility, it is unlikely that Congress would pass legislation that promotes the interests of SNAP recipients at the cost of farmers and food producers. Given the program's long history of protecting the interests of food producers, regulations restricting the use of benefits are likely to meet heavy opposition from the food producing industry. These proposed regulations are costly, exceed the program's original intent, and are politically polarizing. Because they fail to work within the program's existing framework, they are unlikely to be successful.

B. Unintended Beneficiaries of SNAP

America's food stamp program was originally formed with the dual purposes of providing aid to low-income households and protecting farmers and food producers from the threat of overproduction.¹⁵⁷ However, the program has also resulted in additional unintentional beneficiaries, including food manufacturers, financial institutions, and SNAP-authorized retailers.¹⁵⁸

¹⁵¹ *See id.*

¹⁵² *See* NESTLE, *supra* note 1, at 97–98.

¹⁵³ *Id.* at 97.

¹⁵⁴ *Id.* at 97–98.

¹⁵⁵ *Id.* at 98.

¹⁵⁶ *See id.*

¹⁵⁷ *See* 7 U.S.C. § 2011 (2012).

¹⁵⁸ SIMON, *supra* note 24, at 2.

1. Food Manufacturers

One of the stated purposes of the Supplemental Nutrition Assistance Program, “to achieve a fuller and more effective use of food abundances,”¹⁵⁹ perhaps understates the extent of America’s food surplus. The U.S. food supply is so abundant that even after agricultural exports, it provides enough food to sustain every person in the country twice over.¹⁶⁰ This massive oversupply of food means that the food industry must compete fiercely for every consumer dollar spent on food.¹⁶¹ Proposals to limit the use of SNAP funds for the purchase of certain foods thus pose a significant threat to these manufacturers.

The program’s historical ties with agriculture have meant that SNAP, the largest means-tested food assistance program in the nation, is still tasked to the congressional committees concerned with agricultural markets as opposed to social policy.¹⁶² The result is that the Agriculture Committees must balance the interests of benefit recipients with the interests of other industries over which the Committees have jurisdiction. The interests of SNAP recipients are not always in harmony with the interests of these industries. Agricultural groups and food manufacturers also frequently benefit from the support of powerful lobbyists that work to promote their interests.¹⁶³ Perhaps not surprisingly, the three biggest donors to both the House and Senate Agriculture Committees in the 2011–2012 cycle were the crop production and basic processing industry, the agricultural services and products industry, and the food processing and sales industry, respectively.¹⁶⁴ Noticeably absent among the top twenty donors were donors representing the interests of SNAP recipients.¹⁶⁵

Proposals to ban the purchase of certain non-nutritional foods with SNAP benefits would pose a significant threat to the interests of food manufacturers and have predictably been met with strong resistance from these groups and their lobbyists.¹⁶⁶ For example, proposals to ban the purchase of soft drinks with SNAP funds have been met with heavy

¹⁵⁹ 7 U.S.C. § 2011.

¹⁶⁰ NESTLE, *supra* note 1.

¹⁶¹ *Id.*

¹⁶² See OHLS & BEEBOUT, *supra* note 9, at 161.

¹⁶³ See SIMON, *supra* note 24, at 9.

¹⁶⁴ Michelle Merlin, *Farm Bill Still Hanging: More than 70 Groups Lobby on Food Stamps*, OPEN SECRETS BLOG (Dec. 3, 2012, 1:33 PM), <http://www.opensecrets.org/news/2012/12/more-than-70-groups-in-play-over-sn.html>.

¹⁶⁵ *Id.*

¹⁶⁶ See SIMON, *supra* note 24, at 9–12.

resistance from soft drink manufacturers.¹⁶⁷ Coca-Cola spent \$1.15 million in the fourth quarter of 2011 alone on lobbying the federal government.¹⁶⁸ This amount is exclusive of any financial support that the company may have spent in opposition to local proposals, such as the New York City soda-ban.¹⁶⁹ Candy companies have also acted as powerful lobbyists in response to the proposals to ban soft-drink purchases, presumably because they predict that their interests may also be at stake.¹⁷⁰ These companies lobby against limiting the use of SNAP dollars in favor of “preserving food choice” for the recipients of SNAP funds.¹⁷¹

2. Financial Institutions

Since 2002, SNAP funds have been distributed to recipients through electronic benefit transfers, or EBT.¹⁷² EBT works in much the same way as a bank account: the government directly deposits the recipient’s benefits, and the recipient may withdraw from these benefits through the use of their EBT card, which operates as a debit card.¹⁷³ States contract with large banks, such as JP Morgan, to distribute these funds to recipients.¹⁷⁴ These large banks receive significant fees for these electronic transfers, and the states bear most, if not all, of the administrative costs.¹⁷⁵

According to the USDA’s website, three companies are responsible for the majority of EBT program contracts in forty-nine states: JP Morgan Electronic Financial Services, Inc. (a subsidiary of JP Morgan Chase), Affiliated Computer Services (a subsidiary of Xerox), and eFunds Corporation.¹⁷⁶ Most of the contracts range from five to seven years, and

¹⁶⁷ *See id.* at 10.

¹⁶⁸ *Id.* at 10 (citation omitted).

¹⁶⁹ *Id.* The New York City soda-ban is a proposed plan by New York City Mayor Michael Bloomberg to ban the sale of large sodas and other sugary drinks in restaurants, street carts, and movie theaters in an effort to reduce obesity rates. Not surprisingly, the soft drink industry has lobbied extensively against the measure. *See* Michael M. Grynbaum, *Health Panel Approves Restriction on Sale of Large Sugary Drinks*, N.Y. TIMES, Sept. 13, 2012, http://www.nytimes.com/2012/09/14/nyregion/health-board-approves-bloombergs-soda-ban.html?_r=0.

¹⁷⁰ SIMON, *supra* note 24, at 10.

¹⁷¹ *Id.*

¹⁷² 7 U.S.C. § 2016(h)(1)(A) (2012).

¹⁷³ Kennedy, *supra* note 61, at 268 (citing *Transactive Corp. v. United States*, 91 F.3d 232, 234 (D.C. Cir. 1996)).

¹⁷⁴ *See* SIMON, *supra* note 24, at 19.

¹⁷⁵ *Id.* at 4.

¹⁷⁶ Peter Schweizer, *JP Morgan’s Food Stamp Empire: How the Welfare State Became a Profit Center*, DAILY BEAST (Oct. 1, 2012, 4:45 AM), <http://www.thedailybeast.com/articles/2012/10/01/jp-morgan-s-food-stamp-empire.html>. *See also* U.S. DEP’T OF AGRIC., *Electronic Benefits Status Report*, FOOD & NUTRITION SERV., http://www.fns.usda.gov/snap/ebt/ebt_status_report.htm (last updated July

may be amended based on program participation.¹⁷⁷ However, it is unclear just how lucrative these EBT contracts are for the three largest national providers: total national data on EBT contracts are not reported.¹⁷⁸

Data from individual states, however, suggest that profits from these EBT contracts are substantial.¹⁷⁹ New York's seven-year contract from 2005 through 2012 with JP Morgan was valued at \$112 million.¹⁸⁰ Due to the increase in program participants, the contract was amended in 2012, with New York ultimately paying over \$126 million for the seven-year deal.¹⁸¹ Similarly, Florida's five-year agreement with JP Morgan, due to expire in 2013, was initially worth \$83.5 million. By December 2011, with two years remaining on the contract, fees had already exceeded \$80 million, and are likely to exceed \$100 million by the contract's expiration.¹⁸² Although these state contracts are public record, they do not reveal exactly how much profit these institutions enjoy from electronically distributing taxpayer-funded benefits.¹⁸³

With the recent economic recession resulting in an increase of SNAP recipients, these financial institutions are being presented with an ever-growing pool of individuals in need of EBT benefits.¹⁸⁴ Christopher Paton, JP Morgan's managing director of treasury services, told Bloomberg News in 2011 that the EBT business "is a very important business to JP Morgan."¹⁸⁵ "We are a key part of this benefit delivery mechanism. Right now volumes have gone through the roof in the past couple of years or so."¹⁸⁶

While Mr. Paton correctly noted that the volume of SNAP recipients has "gone through the roof" in recent years, JP Morgan's own business practices have arguably done little to detract from the problem. Various news reports revealed the embarrassing fact that JP Morgan had been outsourcing its EBT customer service calls to India, presumably as a cost-savings measure.¹⁸⁷

In response to public concern that states with high unemployment were

25, 2013).

¹⁷⁷ Schweizer, *supra* note 176.

¹⁷⁸ *Id.*

¹⁷⁹ SIMON, *supra* note 24, at 20.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* See also Schweizer, *supra* note 176.

¹⁸² SIMON, *supra* note 24, at 20.

¹⁸³ *Id.*

¹⁸⁴ See generally FITZGERALD ET AL., *supra* note 21, at 1 (noting that the number of people receiving SNAP benefits grew by 70% between fiscal years 2007 to 2011).

¹⁸⁵ Schweizer, *supra* note 176.

¹⁸⁶ *Id.*

¹⁸⁷ *JP Morgan Profiting Off Hungry Americans*, RT.COM (Feb. 18, 2011, 1:59 AM), <http://rt.com/usa/news/jpmorgan-profiting-hungry-americans-usa/>. See also SIMON, *supra* note 24, at 21.

outsourcing EBT customer service calls to foreign call centers, in 2011 the USDA initiated an audit to determine whether federal funds were being used to fund this outsourcing.¹⁸⁸ The 2009 Stimulus Bill had increased funding of SNAP benefits and also increased funding of state administrative expenses in operating the increased SNAP caseload.¹⁸⁹ The USDA report found that neither the Stimulus Bill nor the Food and Nutrition Service had included limitations to prohibit states from using Stimulus Bill funding to pay for the operation of foreign call centers.¹⁹⁰ While the report found that only five states were using Stimulus Bill funds to operate foreign call centers, additional states were operating foreign call centers without Stimulus Bill funds, which expired at the end of the 2010 fiscal year.¹⁹¹

Additionally, some states' contracts with financial institutions to distribute EBT benefits also include customer service assistance provided by the institution.¹⁹² For example, Washington State's seven-year, \$74.3 million EBT contract with JP Morgan includes customer service assistance through subcontractor offshore call centers in India and Mexico.¹⁹³ Although public reaction to the use of offshore call centers for EBT customer assistance has been strong, it is unclear whether the practice will be eliminated.¹⁹⁴

3. SNAP-Authorized Retailers

In 2011, there were over 231,000 SNAP-authorized retailers in the country.¹⁹⁵ While less than 25% of these eligible retailers were supermarkets and supercenters,¹⁹⁶ 84.3% of all SNAP benefits in 2009 were redeemed at supermarkets and supercenters.¹⁹⁷ This data indicates that super-chains such as Wal-Mart and Kroger reap significant profits from the use of SNAP aid in their stores.¹⁹⁸

¹⁸⁸ See CONTROLS OVER OUTSOURCING, *supra* note 107.

¹⁸⁹ *Id.* at 1.

¹⁹⁰ *Id.* at 2.

¹⁹¹ *Id.* at 2, 5.

¹⁹² See SIMON, *supra* note 24, at 21.

¹⁹³ *Id.* (citation omitted).

¹⁹⁴ *Id.* (citation omitted).

¹⁹⁵ *Id.* at 15; FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., BUILDING A HEALTHY AMERICA: A PROFILE OF THE SUPPLEMENTARY NUTRITION ASSISTANCE PROGRAM 34 (2012), <http://www.fns.usda.gov/ora/MENU/published/snap/FILES/Other/BuildingHealthyAmerica.pdf>.

¹⁹⁶ SIMON, *supra* note 24, at 15.

¹⁹⁷ FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., BENEFIT REDEMPTION PATTERNS IN THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: FINAL REPORT 19 (2011), <http://www.fns.usda.gov/ora/menu/Published/snap/FILES/ProgramOperations/ARRASpendingPatterns.pdf>.

¹⁹⁸ See SIMON, *supra* note 24, at 15–17.

Due to the lack of reporting requirements, however, the extent to which these superstores profit from SNAP purchases is unknown.¹⁹⁹ In considering a retailer's request for approval to accept and redeem SNAP benefits, current legislation requires consideration of the nature and extent of the applicant's food business, the volume of benefit transactions that may be reasonably expected to be conducted by the applicant, and the business integrity and reputation of the applicant.²⁰⁰ The legislation also directs the Secretary of Agriculture to issue regulations for the periodic reauthorization of retail stores.²⁰¹ There are currently no additional reporting requirements for SNAP-authorized retailers to report profits or SNAP purchase profiles.²⁰²

It is not surprising that SNAP recipients spend their benefits at these retail giants.²⁰³ Stores like Wal-Mart offer a wide selection of foods, and also many locations at which SNAP recipients may shop.²⁰⁴ However, SNAP-authorized retailers stand to lose significant profits if SNAP funding is cut, or if limitations on the use of SNAP benefits are approved. This potential is not lost on Wal-Mart, who was among the 389 unique organizations who registered to lobby on the 2012 Farm Bill.²⁰⁵

IV. RESOLUTION

SNAP should be a cornerstone of our nation's domestic policy: a safety net for those who cannot provide for themselves or their children. Proposals to slash funding and expel those who depend on the benefits of SNAP run counter to our nation's sense of collective conscience. This Note proposes that reforms to SNAP work within the program's unique ideological, institutional, and political framework to achieve the program's stated purpose: to establish and maintain adequate national levels of nutrition by promoting the distribution of the country's agricultural abundance.

As an initial matter, although the Agriculture Committees' jurisdiction over SNAP does give rise to a potential conflict of interest with the

¹⁹⁹ *Id.* at 16.

²⁰⁰ 7 U.S.C. § 2018(a)(1) (2012).

²⁰¹ *Id.* § 2018(a)(2)(A).

²⁰² *See id.* § 2018(c).

²⁰³ SIMON, *supra* note 24, at 17.

²⁰⁴ *Id.* at 16–17.

²⁰⁵ *Clients Lobbying on S.3240: Agricultural Reform, Food, and Jobs Act of 2012*, OPENSECRETS.ORG, <http://www.opensecrets.org/lobby/billsum.php?id=135616> (last visited Oct. 17, 2013).

Committees' responsibilities over other industries, SNAP ultimately benefits from the tradeoffs of its unique positioning.²⁰⁶ The advantage to SNAP's unique position under the Agriculture Committees' jurisdiction is that the program tends to enjoy more support than other welfare-based programs from conservative representatives and senators with rural constituents.²⁰⁷ Coupling SNAP benefits with agricultural interests gives the program a wider support base.²⁰⁸

Because of these benefits, the House and Senate Agriculture Committees should retain jurisdiction over SNAP. Although SNAP funding and legislation may be more susceptible to lobbyist groups because of its agricultural ties, the program's placement under the Agriculture Committees helps preserve the in-kind nature of the program, thus ensuring widespread popular support.²⁰⁹ However, this unique positioning also serves to constrain potential reform. Proposed SNAP reforms that would negatively impact the interests of other industries under the jurisdiction of the Agriculture Committees are unlikely to be enacted. Any successful reforms to SNAP will have to work within the program's unique ideological, institutional, and political framework.

In light of SNAP's unique institutional framework, proposed federal regulations designed to limit the eligibility of food items based on nutritional requirements are unlikely to be successful. These proposed regulations are much too costly, and the conflicting interests of food and agricultural industries under the jurisdiction of the Agriculture Committees would virtually ensure that such drastic proposals for change would be dead on arrival. The in-kind nature of SNAP benefits already ensures that the benefits are used as intended.²¹⁰ Program-wide nutritional limitations far exceed this goal and would unfairly restrict SNAP users. Rather than attempting to implement widespread limitations on SNAP-eligible food, Congress should instead focus on enacting legislation to increase program transparency.

While current legislation outlines the process for retailers to obtain approval to redeem SNAP benefits, there are currently no requirements that these retailers report information pertaining to profit from SNAP purchases or SNAP purchase data.²¹¹ To increase program transparency and provide better information concerning the use of SNAP benefits, Congress should

²⁰⁶ OHLS & BEEBOUT, *supra* note 9, at 128.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 162.

²⁰⁹ See OHLS & BEEBOUT, *supra* note 9, at 162.

²¹⁰ See *id.* at 47, 129–30.

²¹¹ See 7 U.S.C. § 2018(a)(1), (c) (2012).

amend this legislation to direct the Secretary of Agriculture to require that retailers applying for approval or reauthorization to accept SNAP benefits be required to provide the USDA with SNAP purchase data. This requirement should be confined to retailers who receive a large amount of SNAP business yearly (a dollar amount which could be determined by the Secretary), so as to shield small retailers who accept SNAP benefits from potentially crippling costs.

A uniform requirement for retailers to report SNAP purchase data would help shed light on the nutritional buying patterns of SNAP recipients. Since this data would only be received from large supermarkets and retailers conducting substantial SNAP business, this information would by no means be conclusive of any program-wide nutritional patterns. However, nutritional concerns regarding SNAP are unlikely to subside, and without program data to substantiate claims that SNAP is failing to “put healthy food within reach,” program-wide limitations will be subject to intense scrutiny as prejudicial to SNAP recipients and an unnecessary exercise of government oversight.²¹² Furthermore, Congress is unlikely to approve any nutritional limitations on the use of SNAP benefits without substantial evidence to merit such action.²¹³

This proposal is made with full awareness that it would only be a small step towards any substantial SNAP reform. However, given the constraints of the program’s unique framework, any nutritional reforms will have to be supported by substantial evidence that SNAP does not meet its goal of “putting healthy food within reach.” If such a pattern were to emerge from the limited data pool of superstores that accept SNAP benefits, it could serve as an impetus for Congress to further explore potential solutions.

SNAP will continue to face scrutiny by merit of its high costs during a time of staggering federal deficit. However, plans to slash the program’s budget would result in a reduction or complete denial of benefits to those in need of food assistance. Given the strength of the hunger issue with the American public,²¹⁴ this outcome would likely be met with considerable criticism. Instead, reforms should focus on improving the efficiency of the program to ensure that it properly works to aid its intended beneficiaries.

Ironically, previous reforms designed to improve SNAP efficiency have at times resulted in unintentional beneficiaries. The decision to switch from paper food stamps to EBT cards was motivated, in part, to decrease

²¹² See RESTRICTING FOOD STAMP BENEFITS, *supra* note 142, at 3–5.

²¹³ See discussion *supra* Part III.A.

²¹⁴ See OHLS & BEEBOUT, *supra* note 9, at 129.

instances of fraud.²¹⁵ However, the switch has also resulted in a boon to the financial institutions that administer EBT benefits as they profit from contracts with individual states to distribute these benefits.²¹⁶

The 2008 Food and Nutrition Act required the Secretary of Agriculture to issue final regulations for the approval of EBT systems.²¹⁷ To ensure that SNAP funds benefit individuals in need of food assistance and not unintentional beneficiaries, Congress should amend this legislation to require the Secretary of Agriculture to establish uniform mandatory reporting requirements for state EBT contracts with private financial institutions. Since there are currently no reporting requirements for state contracts with financial institutions to distribute SNAP benefits, the extent to which financial institutions are profiting by distributing these taxpayer-funded benefits is unclear.²¹⁸ A legislative mandate for states to report this information will help the Secretary of Agriculture and the USDA to determine the efficiency of these contracts. It may be that the private institutions providing EBT benefits to states are performing this service for a fair rate. However, without mandatory reporting requirements, the program risks inefficiency and a windfall to private financial institutions on the public dime.

Congress should also include specific language prohibiting the use of federal funds to fund offshore customer service call centers for EBT customers. While federal funds may be designated to help states pay for the costs of administering SNAP benefits, financial institutions should not be able to use the funds they receive as part of their EBT contracts to pay for offshore customer service centers for their own cost-savings.

PRWORA reforms successfully changed the country's food assistance program to incentivize program recipients to work.²¹⁹ In light of these reforms, it is disconcerting that during a period of economic downturn and high unemployment, financial institutions providing EBT benefits to SNAP recipients have been outsourcing EBT customer service jobs as a cost-savings measure.²²⁰ This practice is fundamentally at odds with the purpose of SNAP. Accordingly, Congress should also include language in SNAP legislation requiring any financial institutions providing EBT benefits through state contracts to provide customer service call centers within the United States. Such a provision would eliminate instances of these

²¹⁵ See Super, *supra* note 52, at 1381 (citation omitted).

²¹⁶ See SIMON, *supra* note 24, at 4.

²¹⁷ 7 U.S.C. § 2016(h)(2) (2012).

²¹⁸ Schweizer, *supra* note 176.

²¹⁹ See Super, *supra* note 52, at 1271.

²²⁰ *JP Morgan Profiting Off Hungry Americans*, *supra* note 187.

companies outsourcing their customer service centers and would also provide job opportunities to Americans.

V. CONCLUSION

The modern Supplemental Nutrition Assistance Program has emerged as the result of the program's unique ideological, institutional, and political framework. The recent economic recession and slow recovery caused a substantial increase in both SNAP participants as well as overall program cost. Although the program has faced an increase in criticism and the emergence of new challenges, SNAP remains a crucial strand in America's safety net. As Congress looks to address these challenges, any changes or improvements made to the current system will have to be narrowly tailored to suit the program's unique character.