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Creating Oases Throughout America's Food Deserts

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Creating Oases Throughout America’s Food Deserts

Hannah M. Dahle*

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INTRODUCTION

A *food desert* is an area or region of the United States that features a large proportion of households with lower income, inadequate access to transportation, and limited food retailers to

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provide fresh produce to consumers.¹ Though food deserts are often unheard of by communities with access to food and other retail opportunities, these food deserts appear disproportionately in low-income *minority* communities—not just areas with low income. While many grocers open shop on every corner in most mid- to high-income neighborhoods, food deserts leave low-income minority communities lacking in resources. For many minorities, where they live is not so much about location preference as it is about affordability. Food deserts are often hidden because of the belief that Americans *choose* where they live.² In most cases, there is a causal connection between affordability of homes and the now-illegal zoning and redlining actions of the past.³ Even before the use of redlining by local governments, minorities did not get a seat at the table in rich, up-and-coming neighborhoods, and continually lost out on all kinds of retail opportunities.⁴ Although the Fair Housing Act of 1968 sought to eliminate housing discrimination based on race, color, sex, religious beliefs, and other classes of identification, discrimination caused by zoning and redlining pushed these protected groups farther from access to fresh food. In turn, this lack of food access divided and continues to divide groups of people—creating even more of a disparity between races. Now, at federal and state levels, the government is seeking to repair the dry spells within food deserts that leave many minority communities without access to find and eat nutritious food. This Note argues that food deserts are a remnant of housing segregation based on race and, as such, continue to create racial, economic, and health disparities. Although the United States has started to remedy these actions, the country can still do more by

1. PAULA DUTKO, MICHELE VER PLOEG & TRACEY FARRIGAN, CHARACTERISTICS AND INFLUENTIAL FACTORS OF FOOD DESERTS (2012), https://www.ers.usda.gov/webdocs/publications/45014/30940_err140.pdf.

2. N.Y. L. SCH. RACIAL JUST. PROJECT, UNSHARED BOUNTY: HOW STRUCTURAL RACISM CONTRIBUTES TO THE CREATION AND PERSISTENCE OF FOOD DESERTS. (WITH AMERICAN CIVIL LIBERTIES UNION) 23 (2012), https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1002&context=racial_justice_project [hereinafter UNSHARED BOUNTY].

3. See Palma Joy Strand, *The Invisible Hands of Structural Racism in Housing: Our Hands, Our Responsibility*, 96 U. DET. MERCY L. REV. 155, 157 (2019) (“Investment fueled the development and empowerment of predominantly White neighborhoods. At the same time, disinvestment and exploitation led to disempowered and isolated neighborhoods for people of color.”).

4. See Natasha M. Trifun, *Residential Segregation After the Fair Housing Act*, 36 HUM. RTS. 14, 15-16 (2009).

unifying its actions and spreading out its aid. Part I addresses what a food desert is, the power of food, and the impacts that come from living in food deserts around the country. Part II addresses the causes of food deserts—zoning and redlining—and how the Fair Housing Act initiated change, but how it could not undo what had already occurred. Part III addresses what the country has done at federal and state levels to eliminate and mitigate food deserts, and how the country can continue to remedy them.

I. CORRECTLY IDENTIFYING FOOD DESERTS IN OUR COMMUNITIES

About 23.5 million Americans live in food deserts.⁵ Still, unless an individual lives in a food desert, it is unlikely the average American knows what the term *food desert* means. This Part describes a food desert in greater detail—including the debate on the correct terminology for the problem. This Part will also go into detail on the importance of food in our lives, not only for nutrition, but as a cultural connection. Further, this Part will address the health and economic problems that arise from living in a food desert.

A. Defining Food Deserts

Although *food desert* is the most commonly used term to describe a community's lack of access to food, several other titles for this phenomenon exist. Food desert implies a natural drought of food that has no human manipulation.⁶ In fact, many critics of the term food desert explain that “food desert carries an implication of being a natural and perhaps unavoidable phenomenon.”⁷ That said, many scholars use different definitions and terminology by focusing on the artificiality of the desert—using terms like *food*

5. DUTKO et al., *supra* note 1, at 1.

6. Jennifer Szende, *Thriving in the Desert: Theorizing Food, Justice, and Climate Change*, in *FOOD, ENVIRONMENT, AND CLIMATE CHANGE: JUSTICE AT THE INTERSECTIONS* 77, 78 (Erinn Gilson & Sarah Kenahan eds., 2018).

7. *Id.*; see also Kate Meals, *Nurturing the Seeds of Food Justice: Unearthing the Impact of Institutionalized Racism on Access to Healthy Food in Urban African-American Communities*, 15 *SCHOLAR* 97, 108 n.55 (2012) (“[T]hese neighborhoods are not empty deserts, wastelands devoid of people or hope—or wealth for that matter . . . [T]hey are areas of social, political and economic discrimination.”) (quoting Eric Holt-Gimenez, *Grabbing the Food Deserts*, *FOOD FIRST: INST. FOR FOOD & DEV. POL’Y* (Apr. 1, 2011), <https://foodfirst.org/publication/grabbing-the-food-deserts/>).

*insecurity*⁸ or *food apartheid*.⁹ By doing so, scholars bring attention to the racial and political facets that come from unequal access to food.

While many scholars prefer the term *food insecurity* to food desert, food insecurity generally focuses more on a case-by-case basis. A food desert entails a lack of access to quality foods for entire communities. On the other hand, food insecurity occurs in households when there is a consistent lack of access to *enough* food for a healthy lifestyle.¹⁰ Still, homes with low or very low food security¹¹ are often found within food deserts because quality food and resources are not readily available.

Further, many scholars argue that *food apartheid* is a more appropriate term for a food desert because the term *apartheid* “represents the man-made political and economic systems that have discriminated and segregated” groups of people based on race.¹² While a desert connotes a person’s lack of opportunity to fight against or come up with solutions for his or her oppressive atmosphere, apartheid recognizes the continued political legacy of discriminatory behavior and structure in the community.¹³ Because food desert is the term used by the USDA, and is most commonly recognized by most Americans, I will be using it to describe a community’s lack of access to food.¹⁴ No matter the terminology, food deserts continue to exist and create problems for low-income minority communities.

8. Meals, *supra* note 7, at 110.

9. *Id.* at 108 n.55.

10. *Understand Food Insecurity: What is Food Insecurity?*, FEEDING AM.: HUNGER + HEALTH, <https://hungerandhealth.feedingamerica.org/understand-food-insecurity/> (last visited Oct. 19, 2021).

11. Households fall within four categories of food security: (1) high food security, (2) marginal food security, (3) low food security, or (4) very low food security. *Id.*

12. Isabel Lu, *Food Apartheid: What Does Food Access Mean In America?*, T. COLIN CAMPBELL CTR. FOR NUTRITION STUD. (Sept. 3, 2021), <https://nutritionstudies.org/food-apartheid-what-does-food-access-mean-in-america/>; see also Katharine Bradley & Ryan E. Galt, *Practicing Food Justice at Dig Deep Farms & Produce, East Bay Area, California: Self-Determination as a Guiding Value and Intersections with Foodie Logics*, 19 *LOC. ENV’T* 172, 173 (2014).

13. See, e.g., ASHANTÉ M. REESE, *BLACK FOOD GEOGRAPHIES: RACE, SELF-RELIANCE, AND FOOD ACCESS IN WASHINGTON, D.C.* 16 (2019).

14. While *food desert* is the term used throughout this Note, it is important to recognize the power the term holds. Through education of what a food desert is, we can recognize the social and political impact that comes with the terminology.

B. Qualifying as a Food Desert

According to the USDA, to qualify as part of a food desert tract, an area must meet two requirements.¹⁵ First, poverty in the community¹⁶ must be “greater than or equal to 20 percent OR [the] median family income does not exceed 80 percent statewide (rural/urban) or metro-area (urban) median family income.”¹⁷ Second, “at least 500 people or 33 percent of the population [are] located more than 1 mile (urban) or 10 miles (rural) from the nearest supermarket or large grocery store.”¹⁸ Although not considered a requirement, qualification as a food desert also includes access to transportation and the ability to get to grocery stores and supermarkets.¹⁹

Applying those requirements, food deserts are found within every state in the country. Food deserts exist in both rural and urban areas, impacting many Americans regardless of where they call home. Still, it appears there are more urban food deserts than rural food deserts.²⁰ Usually, minority communities tend to fall into the food desert classification, leading them to greater problems discussed more fully within this Part.

C. Access to Healthy Food Matters

We need food – not only for survival but also to provide social and emotional understanding about each other and our communities. One scholar described the importance of nutrition and health as “fundamental to every aspect of life.”²¹ He continued: “[W]ithout

15. DUTKO et al., *supra* note 1, at 6.

16. Poverty is determined using poverty thresholds and guidelines. Poverty thresholds are updated yearly by the Census Bureau and are used mostly for statistical purposes, like estimating the number of Americans in poverty every year. Poverty Guidelines are simplifications of poverty thresholds used for administrative purposes, like determining financial eligibility for federal programs. The poverty guideline for a family of four in 2021 is \$26,500. *2021 Poverty Guidelines*, ASPE, <https://aspe.hhs.gov/2021-poverty-guidelines#guidelines> (last visited Oct. 2, 2021).

17. DUTKO et al., *supra* note 1, at 6.

18. *Id.*

19. *Id.* at 14.

20. *Id.* at 6. A 2012 report estimated about 4,175 urban food deserts and 2,204 rural food deserts existed in the continental U.S. The USDA has not updated its information on food deserts since then.

21. Andrea Freeman, *Fast Food: Oppression Through Poor Nutrition*, 95 CAL. L. REV. 2221, 2222 (2007) (quoting MICHAEL K BROWN, MARTIN CARNOY, ELLIOT CURRIE, TROY DUSTER,

health, a student cannot do well in school; a worker cannot hold a job, much less excel at one; a family member cannot be an effective parent or spouse. Health crises and the staggering costs they impose are critical underlying causes of poverty, homelessness[,] and bankruptcy.”²² As bodies receive proper nutrients, brain function, mood, and overall health improves.²³ Food is also a prime channel for introducing others to different cultures and bringing people together.²⁴

Although a one-size-fits-all diet does not work for everyone, choosing healthier foods, combined with exercise, can prevent the onset of many diseases.²⁵ According to the Dietary Guidelines for Americans 2020–2025, “[t]he foods and beverages that people consume have a profound impact on their health.”²⁶ The Dietary Guidelines encourages Americans to follow four points.²⁷ First, “[f]ollow a healthy dietary pattern at every life stage.”²⁸ Second, “[c]ustomize and enjoy nutrient-dense food and beverage choices to reflect personal preferences, cultural traditions, and budgetary considerations.”²⁹ In doing so, the framework creates a useful standard regardless of race, ethnicity, age, or current health status.³⁰ Third, meet “food group needs with nutrient-dense foods and beverages, and stay within calorie limits.”³¹ The core elements of a healthy diet include vegetables, fruits, grains, dairy,³² protein

DAVID B. OPPENHEIMER, MARJORIE M. SCHULTZ & DAVID WELLMAN, *WHITEWASHING RACE: THE MYTH OF A COLOR-BLIND SOCIETY* 24 (2003)).

22. *Id.*

23. See Laura Lachance & Drew Ramsey, *Food, Mood, and Brain Health: Implications for the Modern Clinician*, 112 *MO. MED.* 111 (2015).

24. Karin Nordström, Christian Coff, Håkan Jönsson, Lennart Nordenfelt & Ulf Görman, *Food and Health: Individual, Cultural, or Scientific Matters?*, 8 *GENES & NUTRITION* 357, 359 (2013).

25. U.S. DEP’T OF AGRIC., *DIETARY GUIDELINES FOR AMERICANS, 2020–2025* 93 (Ninth ed. 2020).

26. *Id.* at 3.

27. *Id.* at 17.

28. *Id.* at 17–18.

29. *Id.*

30. *Id.*

31. *Id.*

32. With the increasing number of allergies to dairy, and with about 90 percent of Americans not meeting dairy recommendations, it is surprising that the Dietary Guidelines still encourage Americans to ingest dairy. Though there are many dairy alternatives, only fortified soy alternatives match the nutrient makeup found in dairy. *Id.* at 33.

foods, and oils.³³ Last, “[l]imit foods and beverages higher in added sugars, saturated fat, and sodium, and limit[ing] alcoholic beverages.”³⁴ If an individual were to follow the other guidelines given, there is not a lot of room for foods and beverages higher in sugar, saturated fat, sodium, or alcohol.³⁵ By following all of the Dietary Guidelines, adults can lower their risk of cancer, obesity, cardiovascular diseases, and mortality.³⁶ Even so, avoiding unhealthy food can be difficult for many people, especially those living in food deserts.

Perhaps less obviously, food has the power to influence the way we behave because of its social and cultural power to bring people together. Many people associate food with memories and traditions, and food often has an important role in specific events.³⁷ Furthermore, food can provide learning opportunities ranging from nutrition and health to money management and smart shopping.³⁸

Food acts as a “way to give structure to daily life and to ritualistically mark the passages from one formal life stage . . . or informal life stage . . . to another.”³⁹ In many families, sitting around the dining table and talking about the day is a way to debrief and check in with each other. Especially in a society that revolves around up-and-coming technological advances, family dinner time brings families back together while likely improving dietary intake, decreasing obesity, resulting in fewer eating disorders, and facilitating higher levels of overall wellbeing.⁴⁰ Unfortunately, healthy or more traditional practices “give[] way to less nutritious habits as a result of migration, immigration, changes in social status, and the availability and convenience of more

33. *Id.* at 18.

34. *Id.*

35. *Id.*

36. *Id.* at 24.

37. Dawn Cassidy, *Directions: The Importance of Food in Families*, NAT'L COUNCIL ON FAM. RELS. (May 18, 2018), <https://www.ncfr.org/cfle-network/spring-2018-families-and-food/directions-importance-food-families>.

38. *Id.*

39. Nordström et al., *supra* note 24, at 358.

40. See Nicole Larson, Rich MacLehose, Jayne A. Fulkerson, Jerica M. Berge, Mary Story & Dianne Neumark-Sztainer, *Eating Breakfast and Dinner Together as a Family: Associations with Sociodemographic Characteristics and Implications for Diet Quality and Weight Status*, 113 J. ACAD. NUT. & DIETETICS 1601 (2013).

harmful foods.”⁴¹ In communities with a lack of access to fresh food, rituals surrounding food still exist but financial constraints and access to transportation usually drive those rituals instead of the celebration of cultural or traditional ideas.

Food is also a source of power and as such can define an individual’s place in society.⁴² Often, those without food are powerless in society. Those in control of the food others eat maintain a controlling force in the lives of those they feed.⁴³ For minorities living in food deserts, they lack the power to choose nutritious food and find themselves lacking in economic and educational opportunities. Unfortunately, patterns have shown that access to food and access to affordable housing seem to be one in the same. When families and individuals do not have the resources to live in areas of wealth, access to nutritional food disappears, too. The implementation of segregation-initiated divisions in housing and food, leaving minorities with whatever affordable options were left and removing the *actual* power to choose.

D. The Food Desert Experience

Because food plays such a major role in nutrition as well as society, living in food deserts creates more disadvantages for families and individuals. Retail often follows grocery stores, so without food, economic problems arise. When shopping opportunities are limited, there are fewer businesses to hire workers and provide employment. Further, fast food restaurants become the most common food alternative, leaving these families without the nutrition they need and often increasing chances of health problems, like obesity.

As “anchors” to a community, grocery stores and supermarkets provide access to food, which increase property values, retail activities, and employment rates.⁴⁴ Even farmers markets can offer

41. Freeman, *supra* note 21, at 2232.

42. Nordström et al., *supra* note 24, at 359; see also CAROLE M. COUNIHAN, *THE ANTHROPOLOGY OF FOOD AND BODY* 8 (Routledge 1996) (“One’s place in the social system is revealed by what, how much, and with whom one eats.”).

43. Nordström et al., *supra* note 24, at 359.

44. NAT’L CTR. FOR CHRONIC DISEASE PREVENTION & HEALTH PROMOTION, *STATE INITIATIVES SUPPORTING HEALTHIER FOOD RETAIL: AN OVERVIEW OF THE NATIONAL LANDSCAPE 1*, https://www.cdc.gov/obesity/downloads/healthier_food_retail.pdf [hereinafter *STATE INITIATIVES*].

selections of fresh fruits and vegetables. Still, in a food desert, access to these foods is usually limited to corner stores, gas stations, or fast-food restaurants.⁴⁵ These store options are more incomplete than the average grocery store outside a food desert.⁴⁶ This phenomenon became more pronounced after the “White flight” of the twentieth century, when White Americans left inner cities, ensuring segregation and taking much of the commodities with them.⁴⁷ This left the people remaining in these communities with dwindling services, “perpetuating the cycle of urban decay.”⁴⁸ More often today, issues of gentrification harm minority communities through displacement and being priced out of neighborhoods—again leaving minorities in undesirable neighborhoods.⁴⁹

Minorities in food deserts also have higher health risks because of their lack of proper nutrients. Because groceries are so limited, living in food deserts equates to a higher intake of processed foods.⁵⁰ The Dietary Guidelines suggested by the USDA are almost impossible to follow in food deserts due to the community’s lack of access to affordable nutritious food. Additionally, pricing in a convenience store—often one of the only options for shopping in a food desert—is significantly higher than in an average grocery store.⁵¹ If an individual in a food desert is trying to focus on eating healthy food, the high cost of such food is often enough to deter that individual from consistently buying healthier food. Because processed foods come in bulk and a low immediate cost, it is not difficult to see why a poor individual would gravitate towards processed food over healthy food that comes in smaller, more expensive quantities. Even outside food deserts, healthy food is

45. See Trifun, *supra* note 4, at 16; *Food Deserts*, FOOD EMPOWERMENT PROJECT, <https://foodispower.org/access-health/food-deserts/> (last visited Sept. 21, 2021).

46. See generally Freeman, *supra* note 21 (arguing that the fast-food industry drives supermarkets out of low-income minority communities, leaving these communities with fewer food choices and increasing the population’s intake on processed foods).

47. Whitney Thomas, *Making Lemonade When You Can’t Afford a Lemon: The Push for Inexpensive Healthy Food in America’s Food Deserts*, 5 J. RACE GENDER & POVERTY 213, 218–19 (2014); Trifun, *supra* note 4.

48. Trifun, *supra* note 4, at 16.

49. Matthew Jerzyk, *Gentrification’s Third Way: An Analysis of Housing Policy & Gentrification in Providence*, 3 HARV. L. & POL’Y REV. 413, 413–14 (2009).

50. See Freeman, *supra* note 21, at 2222.

51. *Food Deserts in America (Infographic)*, TUL. U. SCH. OF SOC. WORK (May 10, 2018), <https://socialwork.tulane.edu/blog/food-deserts-in-america>.

generally more expensive than unhealthy food.⁵² Unfortunately, a diet of mostly processed foods usually results in more health problems and increased medical bills later on.

According to the CDC, about forty-two percent of US adults were considered obese in 2017–2018.⁵³ Studies also found that minorities are impacted more than others, with higher rates of obesity and being overweight.⁵⁴ The CDC explains that “[n]on-Hispanic Black adults (49.6%) had the highest age-adjusted prevalence of obesity, followed by Hispanic adults (44.8%), non-Hispanic White adults (42.2%) and non-Hispanic Asian adults (17.4%).”⁵⁵ Obesity can boost a person’s risk of morbidity from many diseases, including diabetes, hypertension, stroke, coronary heart disease, respiratory problems, or many different cancers.⁵⁶ A recent study on living in food deserts and assorted health concerns found that living in food deserts created higher risks of heart attack and higher mortality rates for individuals with coronary artery disease.⁵⁷ Added health problems cause further strain on a family’s ability to afford fresh food because of healthcare costs. As such, it perpetuates the cycle of cheap, unhealthy food and forces minorities to continue purchasing processed food.

While scholars with competing views debate the proper terminology, food deserts create social, economic, and nutritional problems for minority communities across the United States. As a result, many minorities turn to fast, processed food to feed

52. David M. Kern, Amy H. Auchincloss, Mark F. Stehr, Ana V. Diez Roux, Latetia V. Moore, Genevieve P. Kanter & Lucy F. Robinson, *Neighborhood Prices of Healthier and Unhealthier Foods and Associations with Diet Quality: Evidence from the Multi-Ethnic Study of Atherosclerosis*, 14 INT’L J. ENV’T RSCH. & PUB. HEALTH 1, 2 (2017) (“Healthier foods have been found to be more expensive than less healthy foods, when measured per calorie or per serving . . .”).

53. *Adult Obesity Facts*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/obesity/data/adult.html> (last visited Sept. 13, 2021); see also U.S. DEP’T OF AGRIC., *supra* note 25, at 5 (stating that according to Dietary Guidelines, seventy-four percent Americans are overweight or obese).

54. Thomas, *supra* note 47, at 224.

55. *Adult Obesity Facts*, *supra* note 53.

56. See U.S. DEP’T OF AGRIC., *supra* note 25, at 5 (noting almost 90 percent of adults that have diabetes are overweight or obese); Thomas, *supra* note 47, at 224.

57. Heval M. Kelli, Jeong Hwan Kim, Ayman Samman Tahhan, Chang Liu, Yi-An Ko, Muhammad Hammadah, Samaah Sullivan, Pratik Sandesara, Ayman A. Alkhoder, Fahad K. Choudhary, M. Mazen Gafeer, Keyur Patel, Saqib Qadir, Tene T. Lewis, Viola Vaccarino, Laurence S. Sperling & Arshed A. Quyyumi, *Living in Food Deserts and Adverse Cardiovascular Outcomes in Patients With Cardiovascular Disease*, 8 J. AM. HEART ASS’N 1, 1 (2019).

themselves and their families. Unfortunately, this cycle has appeared throughout America's history by secluding minorities and segregating races from one another.

II. THE CREATION OF FOOD DESERTS

Since the founding of the United States, racial segregation has woven itself into communities and cultures in diverse ways, including disputes about land use and prime building locations, which inadvertently contributed to the food desert crisis. "What began as a means of improving the blighted physical environment in which people lived and worked, [zoning] was transformed into a device for protecting property values and excluding the undesirable."⁵⁸ Although attempts to cure segregation exist, established infrastructures likely influence the lack of access to essential commodities—like food—in many areas where minorities live. This Part explains the history of racial zoning and redlining, the impact it had on minorities and the creation of food deserts, and the efforts the United States made to attempt eliminating discrimination through the Fair Housing Act. This Part also argues that the discriminatory actions of the past impact minorities' access to healthy food today by limiting housing opportunities and forcing minorities into food deserts.

A. The Power of Zoning

For many, zoning is linked to the success of *Euclid*⁵⁹ and a city's ability to exercise its police powers to provide safe, healthy communities. While many Americans focus on the benefits of zoning, social justice issues about zoning lurk just below the surface. Unfortunately, zoning has been used as a device to maintain segregation.

In 1910, Baltimore enacted the first racial zoning ordinance after a Black Yale Law School graduate bought a home in a previously all-White neighborhood.⁶⁰ Following Baltimore, many states like

58. Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of Euclid*, in *ZONING AND THE AMERICAN DREAM: PROMISES STILL TO KEEP* 101, 105 (Charles M. Haar & Jerold S. Kayden eds., 1989).

59. *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

60. Garrett Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910-1913*, 42 MD. L. REV. 289, 298 (1983).

Georgia, Kentucky, North Carolina, South Carolina, and Virginia enacted similar laws.⁶¹ Many times these statutes were created to help “prevent[] conflict and ill feeling between the White and colored races”⁶² Fortunately, the Supreme Court delegitimized these misplaced ideals in 1917.⁶³ In *Buchanan*, the Supreme Court rejected a Louisville, Kentucky, ordinance, stating that the ordinance prohibiting Blacks from purchasing homes on any block where a majority of Whites lived violated the Fourteenth Amendment through its discriminatory lack of due process and equal protection.⁶⁴

On its face, *Buchanan* appeared to resolve the use of discriminatory ordinances against minority communities. Still, communities tried to endorse these ordinances.⁶⁵ Ten years after *Buchanan*, the Supreme Court addressed another municipal ordinance in *Harmon v. Tyler*.⁶⁶ Here, the Court struck down attempts to prohibit Black Americans living in White communities and White Americans living in Black communities.⁶⁷ Although this ordinance included an exception with “the written consent of a majority of the persons of the opposite race inhabiting such community,”⁶⁸ the Supreme Court reversed per its authority from *Buchanan*.⁶⁹ Three years later, the Fourth Circuit affirmed judgment against discriminatory ordinances based on intermarriage.⁷⁰ Time after time, cities and communities attempted to maintain segregation through zoning powers, which helped to confine minorities into communities that do not have access to resources like affordable healthy food.

61. *Id.* at 289.

62. *Id.* (quoting Baltimore, Md. Ordinance 692 (May 15, 1911)).

63. *Buchanan v. Warley*, 245 U.S. 60, 82 (1917).

64. *Id.* at 72-73.

65. See Power, *supra* note 60, at 314.

66. *Harmon v. Tyler*, 273 U.S. 668 (1927).

67. *Id.*

68. *Tyler v. Harmon*, 104 So. 200, 200 (La. 1925).

69. *Harmon v. Tyler*, 273 U.S. 668 (1927).

70. *City of Richmond v. Deans*, 37 F.2d 712 (4th Cir. 1930) (explaining that an attempt to distinguish by basing the argument on intermarriage instead of race or color still has the same legal analysis as *Buchanan*).

B. Redlining

Not only were ordinances working to keep Americans separated racially, but federal agencies and other programs participated through mortgage lending and “redlining,” too. Following the Great Depression, the Federal Housing Administration (FHA) and the Home Owner’s Loan Corporation (HOLC) initiated mortgage insurance programs that supported the housing market.⁷¹ As part of the New Deal initiatives, the HOLC surveyed 239 cities and rated them on a graded scale based on the neighborhood’s perceived credit risk.⁷² This scale consisted of four categories with color assignments of green, blue, yellow, and red, respectively.⁷³ The categories then determined neighborhood boundaries, which in turn showed the areas *worthy* of investments by developers, lenders, and the FHA.⁷⁴ The FHA also created graded scales, and both programs assumed that areas where Black Americans and other protected groups lived were “too risky” for federal government aid.⁷⁵ As a result, the FHA crossed these neighborhoods out on maps with red ink.⁷⁶

During this time, the FHA engaged in many other racially discriminatory processes.⁷⁷ The FHA regularly refused to insure mortgages that would introduce “inharmonious racial groups” into neighborhoods.⁷⁸ While distributing large portions of federally assisted housing, the FHA⁷⁹ also regularly denied many minorities approval for the housing. Housing opportunities became more exclusive—leaving minorities homeless or with fewer options for housing. The FHA also required restrictive covenants in deeds for homes bought with FHA-insured mortgages.⁸⁰ Racially discriminatory FHA policies were usually unchallenged and Black

71. Leonard S. Rubinowitz & Ismail Alsheik, *A Missing Piece: Fair Housing and the 1964 Civil Rights Act*, 48 HOW. L.J. 841, 854 (2005); JACOB KRIMMEL, PERSISTENCE OF PREJUDICE: ESTIMATING THE LONG TERM EFFECTS OF REDLINING 1 (2016).

72. KRIMMEL, *supra* note 71, at 1.

73. *Id.* at 1, 6.

74. *Id.* at 7.

75. Rubinowitz & Alsheik, *supra* note 71, at 857.

76. *Id.*

77. *Id.* at 858.

78. *Id.* at 856–57.

79. *Id.*

80. *Id.*

Americans were consistently vulnerable and excluded from participation in housing initiatives for much of the first two decades of the FHA's existence.⁸¹

C. *The Fair Housing Act of 1968*

When Congress enacted the Fair Housing Act (the Act) in 1968,⁸² discrimination based on race was rampant across the country. Despite actions to unite the communities through other aspects of life, like education,⁸³ the National Advisory Commission on Civil Disorders claimed the nation was “moving toward two societies, one [B]lack, one [W]hite—separate and unequal.”⁸⁴ Passing the Act allowed the federal government to, “within constitutional limitations, [provide] fair housing throughout the United States.”⁸⁵

The Act was created largely to combat the segregation within the housing sphere, but it also served as a memorial of Dr. Martin Luther King, Jr.⁸⁶ One of King's priorities was fair housing and he, alongside many other activists, participated in the open house marches in Chicago up until his assassination.⁸⁷ Following Dr. King's death, President Johnson urged Congress to pass the bill in honor of King—Congress passed the Act seven days later.⁸⁸

As a step in the right direction for Civil Rights activists, the Act was an effort to bar housing discrimination based on race, color, religion, sex, or national origin.⁸⁹ The 1988 Fair Housing Amendment Act later added “handicap” and “familial status” to the group of protected classes.⁹⁰ In addition, the Secretary of Housing and Urban Development (HUD) has the primary

81. *Id.* at 905.

82. The codified Fair Housing Act may be found in 42 U.S.C. §§ 3601–3631.

83. *Brown v. Board of Educ.*, 349 U.S. 294 (1955).

84. NAT'L ADVISORY COMM'N ON CIV. DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 1 (1968).

85. 42 U.S.C. § 3601.

86. Douglas S. Massey, *The Legacy of the 1968 Fair Housing Act*, 30 SOCIO. F. 571, 571 (2015).

87. Editors of Encyclopaedia Britannica, *Fair Housing Act*, BRITANNICA (Apr. 4, 2021), <https://www.britannica.com/topic/Fair-Housing-Act>.

88. *Id.*

89. 42 U.S.C. § 3604.

90. James A. Kushner, *The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing*, 42 VAND. L. REV. 1049, 1092–95 (1989).

responsibility for enforcing the Act.⁹¹ The Act voided many past discriminatory practices. For example, refusal to sell, lack of notice, and blockbusting all became illegal practices.⁹² The act also created a catchall provision to increase the scope of the Act's power.⁹³

At first, the Act was largely ineffective because it lacked a proper enforcement mechanism.⁹⁴ HUD investigations could only use "informal methods of conference, conciliation, and persuasion" to resolve disputes.⁹⁵ Private parties or housing organizations had the burden of primary enforcement responsibility.⁹⁶ This repeatedly discouraged enforcement because many litigants did not have the proper funding for a successful suit.⁹⁷

In 1988, the Fair Housing Amendment Act (FHAA) amended the enforcement scheme of the Act.⁹⁸ While the FHAA kept the enforcement actions of the Act available, it expounded on the HUD's overall power.⁹⁹ Additional judicial review became available, including HUD-initiated action by the Attorney General, administrative law hearings, and review at state levels.¹⁰⁰ Through the efforts of the Act and the FHAA, many public discriminatory practices, like collective practices of discrimination by broker agencies and other real estate institutions, have decreased.¹⁰¹ Even though some discriminatory practices have decreased,

91. 24 C.F.R. § 100.1.

92. See 42 U.S.C. §§ 3604-3606.

93. See *id.* ("[O]therwise make unavailable or deny . . .").

94. H.R. REP. NO. 100-711, at 16 (1988).

95. *Id.*

96. *Id.*

97. *Id.*

98. See generally Kushner, *supra* note 90 (giving the history of the FHAA).

99. Keith Aoki, *Fair Housing Amendments Act of 1988*, 24 HARV. C.R.-C.L. L. REV. 249, 249 (1989).

100. *Id.* at 255.

101. Kimberly Ferrari, *The State of Disparate Impact Under the Fair Housing Act: Interpreting Robust Causality After Inclusive Communities*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L. 327, 329 n.13 (2020) ("[T]he effects of the [Act] . . . 'largely end[ing] collective practices of discrimination by brokers and other real estate institutions, and along with private litigation and changes in social norms, dramatically lower[ing]—but certainly did [sic] not end[ing]—private discrimination.' This resulted in higher Black mobility but subsequent decreases in segregation varied among urban areas depending on if Black mobility 'was diffused among outlying neighborhoods and a diverse range of border areas, or whether it was disproportionately concentrated in a few border areas.'" (quoting RICHARD H. SANDER, YANA A KUCHEVA & JONATHAN M. ZASLOFF, *MOVING TOWARD INTEGRATION* 9-10, 411-12 (2018)).

discriminatory practices still exist and the impacts on minority communities and their health have lingered.

D. The Impact of Discriminatory Segregation

Even with the Fair Housing Act eliminating many public discriminatory actions, several private discriminatory practices still exist. Because racially discriminatory practices are deeply embedded within the lives and culture of American citizens around the country, it enables people to keep minorities in the same neighborhoods and within food deserts.

Although public institutions are largely recognized for discriminatory practices, housing discrimination still happens regularly at a private level.¹⁰² Political economists David M. Cutler, Edward L. Glaeser, and Jacob L. Vigdor furthered this point by suggesting racial preferences continue to drive residential living patterns.¹⁰³ They stated, “Whites still prefer to live with other [W]hites more than [B]lacks prefer to live in [W]hite areas.”¹⁰⁴ As individuals and families search for homes, many real estate agents tend to “steer” them towards neighborhoods and communities with similar racial populations.¹⁰⁵ Though this practice is racial steering, it can often parade as informational and class steering.¹⁰⁶ Typically, renters and buyers are looking for advice from agents on neighborhoods, so steering can be especially difficult to recognize “because victims are often not aware that it is taking place.”¹⁰⁷ Thus, White buyers stay in White neighborhoods and Black buyers stay in Black neighborhoods. Because low-income minority communities are frequently relegated to older, cheaper parts of cities, the proper infrastructure for retail and

102. *Id.*

103. David M. Cutler, Edward L. Glaeser & Jacob L. Vigdor, *The Rise and Decline of the American Ghetto*, 107 J. POL. ECON. 455, 496 (1999).

104. *Id.* Though Cutler, Glaeser, and Vigdor recognized the division in 1999, it still rings true in many neighborhoods today. Following the racial injustices of summer 2020, many communities still racially segregate and are willing to murder for the cause. See Nicquel Terry Ellis, *What We Know About Community Where Ahmaud Arbery Was Shot: 911 Caller Reported ‘Black Guy’ on Property*, USA TODAY (May 8, 2020), <https://www.usatoday.com/story/news/2020/05/08/ahmaud-arbery-shooting-what-we-know-satilla-shores-community/3096389001/>.

105. Trifun, *supra* note 4, at 16.

106. *Id.*

107. *Id.*

food is often nonexistent. This leaves minorities living in places with both decreased property values and inefficient public transportation.¹⁰⁸ Since retail is not encouraged to enter these areas, grocery stores do not exist.

In many ways, “food deserts are . . . manifestation[s] of structural inequities that have been solidified over time.”¹⁰⁹ As zoning and structural influences impacted where minorities live, food distribution inevitably followed. Still, policymakers often attempt to pin the inequity on choice,¹¹⁰ rather than recognize how historical policies enabled disparities in housing and access to food. One USDA economic research article states, “[c]onsumers’ demographic and economic characteristics, buying habits, and tastes also may explain why stores do not locate in some areas or carry particular foods.”¹¹¹ That said, it is clear that food deserts are linked to racial discrimination in housing.

III. LEGISLATION CREATING OASES

As food deserts continue to plague communities across the country, federal, state, and local programs seek to combat and cure inaccessibility to fresh food. Still, not every attempt is a success. Some bills pass with flying colors, while others fail in committees. Having the proper funding to provide fresh produce is crucial to community development. This Part discusses the different efforts launched by the government at federal and state levels. This Part also addresses gaps in the governmental efforts and argues how these efforts, though slow, are affecting minority communities positively.

A. Federal Legislation

In 2010, as part of Michelle Obama’s “Let’s Move” initiative, the Healthy Food Financing Initiative (HFFI) was created to supply underserved rural and urban communities with funding and aid to

108. *See id.*

109. UNSHARED BOUNTY, *supra* note 2, at 19.

110. *Id.* at 23.

111. Michele Ver Ploeg, *Access to Affordable, Nutritious Food Is Limited in “Food Deserts,”* U.S. DEP’T OF AGRIC.: ECON. RSCH. SERV. (Mar. 1, 2010), <https://www.ers.usda.gov/amber-waves/2010/march/access-to-affordable-nutritious-food-is-limited-in-food-deserts/>.

access fresh food.¹¹² The HFFI included a \$400 million proposal in the 2011 fiscal budget, not only to provide better nutrition, but to “create jobs and economic development, and establish market opportunities for farmers and ranchers.”¹¹³ The Treasury Department, the Department of Agriculture, and the Department of Health and Human Services all worked as resources on the initiative, in hopes that they could eliminate food deserts in seven years.¹¹⁴

Though eradication of food deserts did not happen like many had hoped, the HFFI did create change. Between 2011 and 2015, 958 food access projects had been created or supported.¹¹⁵ Organizations have been able to work on projects in over thirty-five states and some tribal communities.¹¹⁶ That said, by “2014, 48 million Americans . . . lived in [homes] experiencing food insecurity.”¹¹⁷ Almost half of those Americans were likely living in or near a food desert.¹¹⁸

After the campaign, many organizations continued to vocalize support for the HFFI and for the USDA to include the HFFI in the Agricultural Act of 2014 (2014 Farm Bill).¹¹⁹ The 2014 Farm Bill’s purpose was to enhance the USDA’s authority to:

[S]upport efforts to provide access to healthy food by establishing an initiative to improve access to healthy foods in underserved areas, to create and preserve quality jobs, and to revitalize low-income communities by providing loans and grants to eligible

112. Lexington Souers, *Farm to Food Desert: A Look at How the Agriculture and Nutrition Act of 2018 Affects Food Insecurity and Access to Fresh Fruits and Vegetables*, 12 KY. J. EQUINE, AGRIC. & NAT. RES. L. 388, 392, 402 (2019).

113. Press Release, U.S. Dep’t of the Treasury, Obama Administration Details Healthy Food Financing Initiative (Feb. 19, 2010).

114. *Id.*

115. *The Success of HFFI*, FOOD TR., <http://thefoodtrust.org/administrative/hffi-impacts/the-success-of-hffi> (last visited Sept. 17, 2021) (citation omitted).

116. *Id.*

117. Ashley Blackwell, *Best Practices for Creating a Sustainable and Equitable Food System in the United States*, CTR. FOR AM. PROGRESS (May 12, 2016), <https://www.americanprogress.org/issues/poverty/reports/2016/05/12/137306/best-practices-for-creating-a-sustainable-and-equitable-food-system-in-the-united-states/>.

118. *See id.* Blackwell states that 48 million Americans live in homes dealing with food insecurity, but separately states that about 18 million Americans live in food deserts. While the two statistics are used separately, there is likely some overlap between them.

119. *The Success of HFFI*, *supra* note 115.

fresh, healthy food retailers to overcome the higher costs and initial barriers to entry in underserved areas.¹²⁰

Thus, the HFFI became a legislatively mandated program, authorizing \$125 million to carry out its purpose.¹²¹

In December 2018, President Trump signed the Agriculture Improvement Act of 2018 (2018 Farm Bill) into law.¹²² The 2018 Farm Bill, the renewal to the 2014 Farm Bill, had the same purpose in enhancing the USDA's authority, but further broadened eligibility for HFFI aid by including "enterprises" alongside "healthy food retailers."¹²³ Unfortunately, the 2018 Farm Bill failed to include a definition on what *enterprises* means.¹²⁴ Interpretations on how to define enterprise range from "purposeful activity" to a "developed business organization."¹²⁵ Even so, by including enterprises in the scope of who can receive access, other investment opportunities outside established retailers may arise in areas where food access is especially scarce.¹²⁶

Creating legislation for the HFFI has allowed the initiative to grow in many places around the country. By 2017, three projects in New Jersey have received HFFI funding.¹²⁷ In Michigan, the HFFI awarded \$3 million as a partner of Capital Impact Partners which "has financed [fifteen] projects and leveraged \$27 million in additional investments."¹²⁸ Ohio founded Health Food for Ohio (HFFO) in 2016 and, combined with \$2 million from the HFFI, earned another \$8 million from private investors, supporting five projects statewide.¹²⁹

120. Agricultural Act of 2014, Pub. L. No. 113-79, § 4206, 128 Stat. 649, 824 (codified at 7 U.S.C. § 6953).

121. *Id.*

122. See Agricultural Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490.

123. *Id.* at 132 Stat. 4656.

124. See *id.*

125. Souers, *supra* note 112, at 403-04 (citing *Enterprise*, MERRIAM-WEBSTER <https://www.merriamwebster.com/dictionary/enterprise> [<https://perma.cc/EV2K-8WZZ>]).

126. *Stay Informed About the 2018 Farm Bill*, HEALTHY FOOD ACCESS, <https://www.healthyfoodaccess.org/take-action-now-farm-bill-101> (last visited Oct. 6, 2021).

127. *The Healthy Food Financing Initiative: An Innovative Public-Private Partnership Sparking Economic Development and Improving Health*, CTR. FOR HEALTHY FOOD ACCESS (Oct. 2017), https://d3n8a8pro7vhmx.cloudfront.net/foodtrust/pages/357/attachments/original/1556139550/HFFI_Brochure_October_2017_Update.pdf?1556139550.

128. *Id.*

129. *Id.*

While the HFFI has led to a lot of success, it is difficult to analyze how and if food deserts are improving as a whole because the government has not updated most of its research for food deserts since 2015.¹³⁰ Since the 2018 Farm Bill was only passed three years ago, more time will be necessary to see whether or not including enterprises has actually encouraged more applications for HFFI funding.

Other legislative attempts have not been as fortunate in their presentation as the HFFI. In 2017, Representative Andre Carson introduced the Food Deserts Act of 2017.¹³¹ The bill intended to create additional discretion for the Secretary of Agriculture to make grants for the establishment and support of grocery stores in underserved communities.¹³² It also intended to “plac[e] raw or unprocessed healthful foods at prices at or below market value, rather than just placing grocery stores in low-income areas.”¹³³ By decreasing prices of healthy food, the bill intended to provide greater accessibility to healthy food for minorities in food deserts. With only one cosponsor for the bill, it struggled to gain any footing, first going to the committee on agriculture, “then the subcommittee on nutrition, but it never left [the] [sub]committee.”¹³⁴ Another bill for food deserts was later introduced in 2017. The bipartisan Healthy Food Access for All Americans Act (HFAAA) intended to create tax credits and additional grants for businesses to support communities in food deserts.¹³⁵ Even with bipartisan support, the bill did not receive a

130. See Alana Rhone, Michele Ver Ploeg, Chris Dicken, Ryan Williams & Vince Breneman, *Low-Income and Low-Supermarket-Access Census Tracts, 2010–2015*, U.S. DEP’T OF AGRIC.: ECON. RSCH. SERV. (Jan. 2017), <https://www.ers.usda.gov/webdocs/publications/82101/eib-165.pdf?v=4247.8>. On April 27, 2021, the USDA updated its Food Access Research Atlas to include data indicators, like low-income, low-access, and both low-income and low-access, that came from 2019. That said, the majority of food desert analysis still comes from data prior to 2019. See *Food Access Research Atlas*, U.S. DEP’T OF AGRIC.: ECON. RSCH. SERV., <https://www.ers.usda.gov/data-products/food-access-research-atlas/> (last visited Sept. 25, 2021).

131. Food Deserts Act of 2017, H.R. 3104, 115th Cong. (1st Sess. 2017).

132. See *id.* at § 2.

133. Souers, *supra* note 112, at 411.

134. *Id.*

135. Press Release, Congressman Tim Ryan Introduces Legislation to Eradicate Food Deserts (Nov. 6, 2017).

vote and died.¹³⁶ On February 3, 2021, the Senate reintroduced the HFAAA for the second time.¹³⁷ Currently, it has been referred to the committee on finance.¹³⁸

B. State Legislation

Alongside federal aid, some states have enacted legislation to combat food deserts. Many state legislatures enacted such legislation within the last ten years,¹³⁹ but without data on where food deserts are improving, it is difficult to measure how successful these programs are.¹⁴⁰ At least one food desert can be found in every state,¹⁴¹ and most states haven't implemented legislation to start resolving the issue.¹⁴² Some use federal aid from the HFFI or other private programs, while others have no support for food deserts at all.¹⁴³ This section compares the approaches different states take.

1. Combining state and federal legislation

Only ten states, including Washington D.C.,¹⁴⁴ around the country have passed legislation to provide some degree of funding or assistance to individuals in food deserts and other low-income communities.¹⁴⁵ In general, most statutes provide the state with the

136. S. 1724 (115th): *Healthy Food Access for All Americans Act*, GOVTRACK, <https://www.govtrack.us/congress/bills/115/s1724> (last visited Oct. 6, 2021).

137. *Id.* The HFAAA was first reintroduced March 13, 2019. *Id.*

138. *Healthy Food Access for All Americans Act*, S. 203, 117th Cong. (2021).

139. See sources cited *infra* note 144.

140. See Rhone et al., *supra* note 130.

141. See *Food Access Research Atlas*, *supra* note 130.

142. *But see* sources cited *infra* note 144.

143. See discussion *infra* Sections III.B.2, 3.

144. This list includes Alabama, California, Florida, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, New York, and Washington D.C. See *Healthy Food Financing Fund*, ALA. CODE § 41-23-152 (2015); *California Healthy Food Financing Initiative*, CAL. HEALTH & SAFETY CODE § 104663 (2012); *Healthy Food Financing Initiative*, FLA. STAT. § 500.81 (2016); *Healthy Food Retail Act*, LA. STAT. ANN. § 3:296 (2009); MD. CODE ANN., HOUS. & CMTY. DEV. § 6-308.3 (West 2017); *Massachusetts Food Trust Program*, MASS. GEN. LAWS ch. 23A, § 65 (2016); *Good Food Access Program*, MINN. STAT. § 17.1017 (2016); MISS. CODE ANN. § 57-10-707 (2019); N.Y. UNCONSOL. LAW § 6266-s (McKinney 2019); D.C. CODE § 2-1212.21 (2011).

145. This data is current as of my research in 2021. In STATE INITIATIVES, *supra* note 44, the CDC provided a non-exhaustive search of budget bills and general appropriations, but

ability to approve and provide financial assistance through loans or grants; still, the bills vary widely as some provide specific loan amounts,¹⁴⁶ durations for the bill, and how the communities are described.¹⁴⁷ Adding legislation creates an added incentive to attract full-service grocers to underserved communities and revitalize quality of food in corner stores. That said, state legislation comes with some downfalls, like duration¹⁴⁸ and where funding may come from.¹⁴⁹ By incorporating federal and state legislation together into initiatives, a state can create a more robust program to aid food deserts.

In 2009, Louisiana was the first state to implement legislation to create a structure for funding in food deserts.¹⁵⁰ After the flooding and damage caused by Hurricane Katrina, the state needed ways to increase access to food, and later passed the Healthy Food Retail Act.¹⁵¹ In cooperation with private and public sector partners, the Healthy Food Retail Act tasked the Louisiana Department of Agriculture and Forestry with developing a financing program to provide one-time donations to eligible projects.¹⁵² Regardless, major funding under the act was slow and wasn't established until six years after passing the Healthy Food Retail Act.¹⁵³

In addition to the Healthy Food Retail Act, Louisiana also used the ASI Federal Credit Union (ASI) to create the Health Foods Revolving Loan Fund.¹⁵⁴ This fund, funded by HFFI loans, was

many appear to have been one-time grants of funding that were not renewed. As such, this Note attempts to provide a more current and thorough list of states with grants and funding.

146. Maryland's statute was recently amended—increasing loans from \$50,000 to \$100,000. S.B. 365, 442d Gen. Assemb., Reg. Sess. (Md. 2021); *see also* MD. CODE ANN. HOUS. & CMTY. DEV. § 6-308.3 (West 2021).

147. Many statutes vary on the terminology they use to describe food deserts. In some circumstances they use food desert, while others focus on low-income communities. *Compare* MINN. STAT. § 17.1017 (2016), *with* Massachusetts Food Trust Program, MASS. GEN. LAWS ch. 23A, § 65 (2016).

148. *See, e.g.*, CAL. HEALTH & SAFETY § 104664 (2017).

149. *See, e.g.*, MISS. CODE ANN. § 57-10-707(3) (2021).

150. *See* Healthy Food Retail Act, LA. STAT. ANN. § 3:296 (2009); *see also* statute enactment dates in *supra* note 144.

151. *Louisiana*, HEALTHY FOOD ACCESS, <https://www.healthyfoodaccess.org/louisiana> (last visited Sept. 3, 2021).

152. Healthy Food Retail Act, *supra* note 150.

153. KATHLEEN J. FITZGERALD, HUNGRY AT THE BANQUET: FOOD INSECURITY IN LOUISIANA 2018, at 2 (2018).

154. *Louisiana*, *supra* note 151.

used “to strengthen the food distribution network” in New Orleans.¹⁵⁵ ASI also partnered with the New Orleans Food Co-op, becoming the first food co-op in the city.¹⁵⁶ The co-op has been able to focus on production and access to food in the sixty-six identified food deserts throughout the New Orleans area.¹⁵⁷ The Hope Enterprise Corporation and the Low Income Investment Fund have also used HFFI funds and leveraged those funds into other opportunities to assist on more than sixty projects—providing financial aid to several food retailers.¹⁵⁸ This financing appears to be helping people living in food deserts. The Low Income Investment fund alone has provided over 200,000 people with greater food access.¹⁵⁹

California has also increased access to healthy food by using both state and federal funding. In 2011, California enacted the California Healthy Food Financing Initiative.¹⁶⁰ The initiative created duties to develop financing programs from public and private resources, established minimums and maximums of financial assistance, and partnered with other programs.¹⁶¹ One of those programs was the California FreshWorks Fund (CAFWF).¹⁶² The CAFWF has supported almost seventy projects throughout California—increasing access to healthy food for more than 800,000 Californians.¹⁶³

Through help from the HFFI, California has also worked with several community programs.¹⁶⁴ In Oakland, Mandela Partners¹⁶⁵ used HFFI financing to support a revolving loan fund for business expansion, which created ownership positions in grocery

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *California, HEALTHY FOOD ACCESS*, <https://www.healthyfoodaccess.org/california> (last visited Apr. 15, 2021).

161. *About the California Healthy Food Financing Initiative Council (CHFFIC)*, CAL. HEALTHY FOOD FIN. INITIATIVE COUNCIL, <https://www.treasurer.ca.gov/chffic/> (last visited Sept. 3, 2021).

162. *Case Study: California*, FOOD TR., <http://thefoodtrust.org/administrative/hffi-impacts/hffi-impacts-case-studies/california> (last visited Sept. 3, 2021).

163. *Id.*

164. *California*, *supra* note 160.

165. Formerly Mandela Marketplace.

stores, supported under-resourced farmers, and increased sales of healthy foods by 50 percent.¹⁶⁶ In Los Angeles, Poverty Solutions, Inc. used its \$800,000 grant to make loans for nine separate food businesses.¹⁶⁷

While a combination of federal and state legislation has enticements like tax incentives and broad loan opportunities, legislation has some downsides. For one, many states establish a duration on how long the legislation lasts. Some legislation requires renewal,¹⁶⁸ which takes time and approval that is often overlooked. In other states, programs only allow a one-time loan. In Mississippi, funding cannot come from the state at all.¹⁶⁹ Instead, it must come from other organizations.¹⁷⁰ This requires a lot of participation from members in the community to voice where funding and aid should go.¹⁷¹ Though it can help many, it is not a blanket to cover the entire state because the aid typically focuses on one specific project. This leaves many still waiting for funding that is slow or may never come at all.

2. State initiatives and programs

Though a combination of state and federal funding provides states with many options, some states simply focus on initiatives and programs run by public and private institutions.¹⁷² Most states and communities appear to maximize these opportunities, likely because public and private programs can still receive federal funding, but do not involve state government intervention.

166. *California*, *supra* note 160.

167. *Id.*

168. *See, e.g.*, CAL. HEALTH & SAFETY § 104664 (2017).

169. *See, e.g.*, MISS. CODE ANN. § 57-10-707(3) (2021).

170. *Id.*

171. Interestingly, Mississippi is identified as one of the most food insecure states in the country. *See Mapping the Effect of COVID-19 on Food Insecurity Across the Country*, UNITED WAY OF THE NAT'L CAP. AREA, <https://unitedwaynca.org/stories/food-insecurity-statistics/> (last visited Oct. 12, 2021). Still, the statute only allows funding from programs outside of state funding. *See* MISS. CODE ANN. § 57-10-707(3) (2021).

172. In many instances, these programs still have access to HFFI funding. This section is distinguishable from section 1 because these states have no state legislation in place, so actions are led by the community.

Since these programs are not statewide, they generally focus on specific cities and areas.¹⁷³

One of the first state initiatives was the Pennsylvania Fresh Food Financing Initiative (FFFI), in 2004.¹⁷⁴ The FFFI was a public-private partnership between the Commonwealth of Pennsylvania, Reinvestment Fund, The Food Trust, and Urban Affairs Coalition.¹⁷⁵ The FFFI funded eighty-eight projects received approved financing and created more than \$85 million in grants and loans.¹⁷⁶ Unfortunately, in 2010 FFFI's funds were depleted and FFFI closed.¹⁷⁷ The Reinvestment Fund, one of FFI's partners, has since continued working as an administrator for the program and manages a revolving fund for businesses in Pennsylvania.¹⁷⁸ In 2018, the Reinvestment Fund prepared a Limited Supermarket Access (LSA) analysis which showed that funding has increased the number of Americans, especially minorities, with access to fresh food.¹⁷⁹

In 2014, the Ohio Regional Convergence Partnership and Finance Fund worked alongside The Food Trust to identify food deserts and areas lacking healthy food.¹⁸⁰ After a taskforce formed recommendations to eliminate the lack of food, the Healthy Food for Ohio (HFFO) program was born.¹⁸¹ The HFFO program has funded eight projects—five in the first ten months of HFFO's creation alone.¹⁸²

Another program provides service to a region of the United States: The Cooperative Fund of New England (CFNE). A

173. Often this can be seen as a downside because efforts are driven based on communities with the loudest voices and populations.

174. *Pennsylvania Fresh Food Financing Initiative*, REINVESTMENT FUND, <https://www.reinvestment.com/success-story/pennsylvania-fresh-food-financing-initiative/> (last visited Oct. 4, 2021).

175. *Id.*

176. *Id.*

177. *Id.*

178. *See id*; *Equitable Food Systems*, REINVESTMENT FUND, <https://www.reinvestment.com/initiatives/equitable-food-systems/> (last visited Oct. 4, 2021).

179. REINVESTMENT FUND, *ASSESSING PLACE-BASED ACCESS TO HEALTHY FOOD: THE LIMITED SUPERMARKET ACCESS (LSA) ANALYSIS 5, 7* (2018), https://www.reinvestment.com/wp-content/uploads/2018/08/LSA_2018_Report_web.pdf.

180. *Case Study: Ohio*, FOOD TR., <http://thefoodtrust.org/administrative/hffi-impacts/hffi-impacts-case-studies/ohio> (last visited Oct. 4, 2021).

181. *Id.*

182. *Id.*

community development financial institution (CDFI),¹⁸³ the CFNE “makes loans to cooperatives, employee owned [*sic*] businesses, and community based [*sic*] nonprofits.”¹⁸⁴ In 2011 and 2012, the CFNE received a combined \$3 million from the HFFI, which allowed the CFNE to create nine food co-ops in food deserts within New England.¹⁸⁵

More generally, many communities around the country profit from community food projects. These projects focus on allowing communities to “become[] self-sustaining after a one-time contribution from the federal government and aim[] to help the food needs of low-income individuals through distribution, community outreach, and education.”¹⁸⁶ Unfortunately, the 2018 Farm Bill amended funding from \$9 million a year to \$5 million starting in 2019 and continuing every year thereafter.¹⁸⁷ Many community food projects cannot sustain programs without federal funding. Especially now, with a four million dollar decrease in annual funding, the USDA is forced to distribute funds only to those areas with the greatest need.¹⁸⁸

Much of the funding from state legislation and local programs has improved the circumstances minorities and those living in food deserts face. The 2018 LSA analysis *has* shown that there is a decrease of people, including minorities, living in food deserts throughout the country, but time, funding, and land shortages continue to slow down improvement projects. Improvements are not statewide, largely because of funding, and many communities are still considered the food deserts they have always been. Data from analyses like the 2018 LSA analysis should be included in

183. CDFIs are institutions, like banks or capital providers, intended to foster and encourage economic improvement and revitalization of communities and neighborhoods. *What Are CDFIs?*, U.S. DEP’T OF THE TREAS.: CDFI FUND, https://www.cdfifund.gov/sites/cdfi/files/documents/cdfi_infographic_v08a.pdf (last visited Oct. 4, 2021).

184. *Frequently Asked Questions*, COOP. FUND OF NEW ENG., https://www.cooperativefund.org/about_us/frequently_asked_questions_faqs (last visited Oct. 4, 2021).

185. *Profile: Cooperative Fund of New England*, HEALTHY FOOD ACCESS PORTAL, https://d3n8a8pro7vhm.cloudfront.net/foodtrust/pages/329/attachments/original/1556828655/Cooperative_Fund_of_New_England_Profile.pdf?1556828655 (last visited Oct. 4, 2021).

186. Souers, *supra* note 112, at 400.

187. *Id.*

188. *Id.* at 402.

financial investments because it can help organizations to strategically plan investments and maximize the impact those investments make.

3. States without initiatives and additional concerns for those that do

While a lot of progress has been made through federal and state initiatives, there are still several states with no programs.¹⁸⁹ Curiously, most states all but ignore food access in their policies and planning.¹⁹⁰ These states appear to be slower in their efforts to eliminate food deserts or simply rely on aid from the community by taking donations for food banks. In states where a version of a program exists, many communities still lack the funding necessary to create change for the entire state, instead focusing on areas more easily accessed or having higher populations. In states with legislation and program initiatives, many city planners and policy makers simply wait for grocers to propose plans rather than encouraging them into underserved communities.¹⁹¹ These gaps are important to fill. Encouraging communities to identify food deserts and address the racial, nutritional, and social effects may best happen through education, awareness, and changes to the city and community infrastructure.

Communities first need to educate themselves on how to recognize what a food desert is and the ramifications these deserts create for minorities. Many Americans are still unfamiliar with the term *food desert* and therefore do not fully appreciate all that is entailed. As such, food deserts are an invisible problem for many. Understanding this lack of visibility is an initial step. That said, food deserts require addressing many complex layers. Not only do

189. Surprisingly, Alaska, Arkansas, Delaware, Hawaii, Idaho, North Dakota, South Dakota, Utah, Washington, Wisconsin, and Wyoming do not receive any federal or state funding. This could be due to several reasons, including budgetary constraints, size of food deserts in the state, or just a lack of awareness as to the size of food desert issues. See *View Policy Efforts by State*, HEALTHY FOOD ACCESS, <https://www.healthyfoodaccess.org/take-action-now-policy-efforts-impacts> (last visited Oct. 4, 2021).

190. FITZGERALD, *supra* note 153, at 14.

191. Samina Raja, Changxing Ma & Pavan Yadav, *Beyond Food Deserts: Measuring and Mapping Racial Disparities in Neighborhood Food Environments*, 27 J. PLANNING EDU. & RSCH. 469, 480 (2008); see also Tess Feldman, *Re-Stocking the Shelves: Policies and Programs Growing in Food Deserts*, 16 PUB. INT. L. REP. 38, 41-42 (2010) (explaining that private grocers are often reluctant to build where it seems like it would be unprofitable, therefore disincentivizing companies to move into food deserts).

they involve matters of food and nutrition, but food deserts also highlight the racial and financial problems that those living in a food desert face. Local government leaders need to be encouraged to take the initiative to recognize food deserts and educate their communities and constituencies about the fact that not all communities provide the same food access to Americans. Because racial segregation played a large role in the creation of food deserts, the nation's current dialogue about racial awareness provides a prime opportunity for government leaders to educate the public about food deserts and the signature lack in these areas.

It is also important to provide education on the value of a variety of healthy food options, especially to those in food deserts. Though the basis of a food desert is the lack of choices based on affordability or location, the choices made by families and individuals play a role in a community's overall health.¹⁹² Stefania Patinella of the Children's Aid Society explained:

[P]eople's food choices are basically determined by their food environment. When people are in a situation with a restricted set of choices, and then expected to make the hardest possible choice—to go out and travel far distances to find fresh foods, bring it home [sic], and prepare it [sic]—it's hardly surprising that we have the unhealthy communities that we have.¹⁹³

If governments and local programs educate people about the importance of healthy food, it is likely that demands for nutritious food would increase.¹⁹⁴ In New York City, the Children's Aid Society works to increase demand for healthy food by teaching families how to cook and the importance of nutritious food.¹⁹⁵ The CDC also encourages opportunities to educate children about the importance of healthy food by incorporating lessons into school

192. UNSHARED BOUNTY, *supra* note 2, at 32.

193. *Id.*

194. This isn't to say that all individuals living in food deserts do not understand the importance to healthy food. In many cases, individuals are aware but simply lack access to fresh food. When tasked between choosing food that is cheaper, faster, and more processed versus food that is more expensive, further away, and fresher, most people choose the convenient option.

195. UNSHARED BOUNTY, *supra* note 2, at 32.

curriculums.¹⁹⁶ That said, opportunities like school gardens or farm-to-school activities may not always be viable, especially in food deserts where available land is sparse.

Because resolving food deserts in higher populated, urban areas often takes higher priority, many rural food deserts around the country often go without essential aid. This could be because of city planners waiting for grocers to propose plans, instead of proactively preparing to add supermarkets and grocers into communities themselves.¹⁹⁷ Still, many grocers instead focus on the money they can earn rather than supplying a community that needs food. And unfortunately, grocers have a harder time making money and running their businesses when they set up shop in poorer communities. According to Program Coordinator, Laura Fox:

Grocers say that as the month goes on, the shopping goes down. Almost everyone uses [food stamps] in the first two weeks. Think about how hard it is to have enough food in stock – and then your sales plummet the second half. It is difficult for them as businessmen . . . stocking is easier in good neighborhoods.¹⁹⁸

Because of aid disparities in rural communities, options like community gardens and using food surpluses may be beneficial. Community gardens help “invite[] the entire community to focus their diets on nutritious food while simultaneously establishing environmentally sustainable actions.”¹⁹⁹ They often require willing volunteers prepared to come together to start the garden from the ground up. Even so, volunteers are hard to find, and gardens can end up neglected or exploited without individuals running the garden.²⁰⁰ Another alternative is to take advantage of food surpluses from other cities and communities. These food surpluses can provide food through donations to families in food deserts while decreasing massive amounts of food waste.²⁰¹ Still, surplus

196. *Healthy Eating Learning Opportunities*, CTRS. FOR DISEASE CONTROL & PREVENTION: CDC HEALTHY SCHS., https://www.cdc.gov/healthyschools/npao/healthy_eating_learning_opportunities.htm (last visited Oct. 4, 2021).

197. See Raja et al., *supra* note 191.

198. Feldman, *supra* note 191, at 42 (modifications in original).

199. See Souers, *supra* note 112, at 406.

200. See Katie Lorah, *Why Community Gardens Fail & How Yours Can Succeed*, IOBY (Mar. 20, 2018), <https://blog.ioby.org/why-community-gardens-fail-how-yours-can-succeed/>.

201. Souers, *supra* note 112, at 407–10.

food donations are dependent on restaurants and individuals willingly donating excess food.

Through government initiatives and programs, change has begun to improve food desert situations. Though some programs are more successful than others, the willingness of a community to come together to create change is crucial to improving food deserts that otherwise lack resources.

CONCLUSION

The power of food is something more than just filling a belly – it allows people to come together and learn how to create harmony between differences. Still, portions of the country lack access to fresh food because of the inequitable access to housing and funds created by discriminatory actions of the past. These food deserts create even more disparity for minorities by increasing health problems and taking economic opportunities away. Although many of the discriminatory practices like redlining and racial zoning are now illegal, the government has a great responsibility to give back to protected groups because the harmful government actions of the past are still affecting these groups today. Federal and state legislation, as well as other businesses and non-profits, have provided opportunities to start eradicating food deserts. There is still much work to be done, but if government and communities come together in a unified way, the country can find its way to equalizing access to fresh food.