

**VERMONT FOOD ACCESS AND THE “RIGHT TO FOOD”:  
USING THE HUMAN RIGHT TO FOOD TO ADDRESS  
HUNGER IN VERMONT**

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## INTRODUCTION

The greatest health risk in the world today is hunger.<sup>1</sup> One out of nine people in the world do not get enough to eat—meaning they do not get enough calories, nutrients, or both.<sup>2</sup> Hunger and malnutrition threaten global health at a greater rate than AIDS, malaria, and tuberculosis combined.<sup>3</sup>

Hunger is not restricted to developing nations. Fourteen percent of United States households are food insecure—they cannot consistently access enough food for their households.<sup>4</sup> Closer to home, nearly 80,000 Vermonters, more than 20,000 of whom are children, are food insecure.<sup>5</sup> More than a third of Vermonters report they cannot afford to buy nutritious food, or they cannot buy enough food.<sup>6</sup>

The global hunger problem is not a problem of sufficiency. Globally and domestically, there is enough food to feed the world, yet that food does not reach all the people who need it.<sup>7</sup> The problem is food access.

Around the world, political leaders, scholars, and activists have started arguing that food access is a human right.<sup>8</sup> The International Covenant on

1. *Hunger*, WORLD FOOD PROGRAMME, <https://www.wfp.org/hunger> (last visited Nov. 23, 2016).

2. *Id.*

3. *Id.*

4. ALISHA COLEMAN-JENSEN ET AL., U.S. DEP'T OF AGRIC., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2014, at 8 (2015).

5. *Vermont Hunger Facts*, HUNGER FREE VT., <https://www.hungerfreevt.org/learn/what-is-the-issue> (last visited Nov. 23, 2016) (noting that this amounts to about 17% of Vermont's children).

6. *Id.*

7. WORLD FOOD PROGRAMME, *supra* note 1. See also Olivier de Schutter, *The Right to Food: An Overview by Olivier de Schutter*, YOUTUBE (Oct. 22, 2014), <https://www.youtube.com/watch?v=3GWDkenSJMc> (explaining that government recognition of technological advances in agriculture would not solve the hunger problem) [hereinafter de Schutter, *The Right to Food*].

8. LIDIJA KNUTH & MARGRET VIDAR, FOOD & AGRIC. ORG. OF THE U.N., CONSTITUTIONAL AND LEGAL PROTECTION OF THE RIGHT TO FOOD AROUND THE WORLD 32 (2011) (analyzing right-to-food recognition in 106 countries around the world); Olivier de Schutter, Former UN Special Rapporteur on the Right to Food, Inst. for Interdisciplinary Research in Legal Sci., Univ. of Louvain, Visiting Professor of Law at Yale Law Sch., Keynote Address at the Yale Food Systems Symposium: New Alliances that Shape a Food Movement (Oct. 30, 2015) (discussing international approaches to hunger, including the right to food); Michael J. McDermott, *Constitutionalizing an Enforceable Right to Food: A New Tool for Combating Hunger*, 35 B.C. INT'L & COMP. L. REV. 543, 546 (2012); Marc J. Cohen & Mary Ashby Brown, *Access to Justice and the Right to Adequate Food*, 6 SUSTAINABLE DEV. L. & POL'Y 54 (2005); Flavio Luiz Schieck Valente, *The Human Right to Food Movement in Brazil*, in 2 FOOD AND HUMAN RIGHTS IN DEVELOPMENT 182 (Wenche Barth Eide & Uwe Kracht, eds., 2007). See also UVM Food Systems Summit: *The Right to Food: Power, Policy, and Politics in the 21st Century*, UNIV. OF VT., <http://www.uvm.edu/foodsystems/?Page=summit2015.html&SM=summitmenu.html> (last visited Nov. 23, 2016), (presenting food activists advocating for the right to food; particularly useful are

Economic, Social, and Cultural Rights declares that all people have the right “to an adequate standard of living for himself and his family, including adequate food . . . .”<sup>9</sup> More than 100 nations now legally recognize a right to food.<sup>10</sup> The United States does not.<sup>11</sup>

This Note does not address whether the United States should embrace a right to food. This Note argues the right to food is a useful frame for understanding and addressing hunger within the United States, even though the United States does not recognize the right. Historically, the United States has treated hunger as a temporary caloric deficiency.<sup>12</sup> Food stamps and food pantries are reasonable solutions *if hunger is a temporary caloric deficiency*.<sup>13</sup> However, the right to food suggests that hunger and its causes are more complex—that hunger is not only a biological problem but also a social problem.<sup>14</sup> Moreover, as a social problem, hunger exists within a legal architecture, and governments can change that architecture to mitigate hunger.<sup>15</sup>

This Note explores a small sample of laws affecting food access in Vermont as an exercise in illustrating how governments can use the right to food framework to better address hunger. This Note describes the right to

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the works of keynote speakers Raj Patel (<http://rajpatel.org/>) and Smita Narula (<https://twitter.com/SmitaNarula>)).

9. International Covenant on Economic, Social and Cultural Rights art. 11, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter Covenant].

10. KNUTH & VIDAR, *supra* note 8, at 32.

11. Ann M. Piccard, *The United States' Failure to Ratify the International Covenant on Economic, Social and Cultural Rights: Must the Poor Be Always with Us?*, 13 SCHOLAR 231, 232 (2010). See also Linda M. Keller, *The American Rejection of American Rights as Human Rights & the Declaration of Independence: Does the Pursuit of Happiness Require Basic Economic Rights?*, 19 N.Y.L. SCH. J. HUM. RTS. 557, 560–64 (2003) (discussing how the United States refuses to recognize economic, social, and cultural rights).

12. See JOEL BERG, CTR. FOR AM. PROGRESS, DOING WHAT WORKS TO END U.S. HUNGER: FEDERAL FOOD PROGRAMS ARE EFFECTIVE, BUT CAN WORK EVEN BETTER 1 (2010) (discussing how federal nutrition assistance programs have virtually eliminated starvation within the United States); Tatiana Andreyeva et al., *Dietary Quality of Americans by Supplemental Nutrition Assistance Program Participation Status: A Systematic Review*, 49 AM. J. PREVENTATIVE MED. 594, 594 (2015) (“SNAP effectively alleviates food insecurity in terms of caloric, macronutrient, and micronutrient intake.”). See also Telephone Interview with Faye Conte, Advocacy & Educ. Dir., Hunger Free Vt. (Nov. 25, 2015) (on file with author) (discussing how the federal government designed SNAP as *temporary* food assistance); Interview with Michelle Lapine McCabe, Dir. of Cmty. Engagement & Food Access, The Council of Churches of Greater Bridgeport, Inc., in New Haven, Conn. (Oct. 31, 2015) (on file with author) (discussing how communities assume food pantries are *temporary* food sources).

13. Telephone Interview with Faye Conte, *supra* note 12; Interview with Michelle Lapine McCabe, *supra* note 12; Interview with John Sayles, CEO, Vt. Foodbank, in Barre, Vt. (Oct. 23, 2015) (on file with author).

14. See *supra* note 8 (particularly Flavio Luiz Schieck Valente and the work of Smita Narula).

15. *Id.*

food, then uses the right to food framework to examine the current legal architecture of hunger in Vermont.

## I. WHAT IS THE RIGHT TO FOOD?

### A. *History of the Right to Food*

In 1948, the Universal Declaration of Human Rights first affirmed a right to adequate food.<sup>16</sup> In 1976, the International Covenant of Economic, Cultural, and Social Rights (Covenant) further affirmed the right to food as part of a suitable standard of living and placed responsibility on all signatory countries “to ensure the realization of this right . . . .”<sup>17</sup> For 20 years following the Covenant, governments did little to protect or fulfill the right to food, assuming that agricultural production would solve the hunger problem.<sup>18</sup> By the 1990s, however, global leaders saw astonishing increases in agricultural production worldwide, coupled with increased global hunger.<sup>19</sup> The problem was not production, but access.<sup>20</sup>

Consequently, in 1999, the United Nations Committee on Economic, Cultural, and Social Rights published “Comment 12” to the Covenant.<sup>21</sup> Comment 12 affirmed the right to food more aggressively, and it called on nations to address the “disturbing gap” between the Covenant’s “right to adequate food” and the reality of worldwide hunger.<sup>22</sup> As of 2011, 106

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16. Universal Declaration of Human Rights, G.A. Res. 217 (III), art. 25, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), <http://www.un.org/en/documents/udhr/index.shtml#a25> [hereinafter Universal Declaration of Human Rights]; McDermott, *supra* note 8, at 546. *See also* Katherine G. Young, *Freedom, Want, and Economic and Social Rights: Frame and Law*, 24 MD. J. INT’L L. 182, 184–86 (2009) (discussing the right to food in the context of Franklin D. Roosevelt’s “four freedoms”).

17. Covenant, *supra* note 9, art. 11. *See also* McDermott, *supra* note 8, at 546 (introducing Article 11 of the Covenant); Jesse Burgess, *Let Them Eat Cake: Constitutional Rights to Food*, 18 WILLAMETTE J. INT’L L. & DISP. RESOL. 256, 257, 259 (2010) (discussing how the United States signed—but did not ratify—the Covenant); Keller, *supra* note 11, at 562 (discussing how the United States refuses to recognize economic, social, and cultural rights).

18. de Schutter, *The Right to Food*, *supra* note 7; *World Food Summit: 13-17 November 1996 Rome Italy*, FOOD & AGRIC. ORG., [http://www.fao.org/wfs/index\\_en.htm](http://www.fao.org/wfs/index_en.htm) (last visited Nov. 23, 2016).

19. de Schutter, *The Right to Food*, *supra* note 7; *World Food Summit*, *supra* note 18.

20. de Schutter, *The Right to Food*, *supra* note 7.

21. U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 12*, E/C.12/1999/5 (May 12, 1999) [hereinafter *Comment 12*].

22. *Id.* ¶ 5.

countries embraced a right to food in some way, but the United States does not.<sup>23</sup>

### B. Defining the Right to Food

The Covenant defines the right to food as “the right of everyone to an adequate standard of living for himself and his family, including adequate food . . . .”<sup>24</sup> Comment 12 states, “The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.”<sup>25</sup> The right to food is a human right to adequate food access.

#### 1. Food Access as a Human Right

Recognizing food access as a *human right* transforms the conversation about hunger.<sup>26</sup> First, if food access is a human right, then hunger is indivisibly linked with other rights.<sup>27</sup> Comment 12 states, “[T]he right to . . . food is . . . *indispensable for the fulfilment of other human rights* enshrined in the International Bill of Human Rights.”<sup>28</sup> As Nelson Mandela once said, “We do not want freedom without bread, nor do we want bread without freedom.”<sup>29</sup> Civil rights and economic rights are intertwined.

Second, as a human right intertwined with other rights, food access is a social issue.<sup>30</sup> Hunger is not just about scarce calories. Hunger is about failures in food access. Those failures result from social systems. Comment 12 states: “[T]he right to adequate food is . . . *inseparable from social justice*, requiring the adoption of appropriate economic, environmental and social policies . . . oriented to the eradication of poverty and the fulfilment

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23. KNUTH & VIDAR, *supra* note 8, at 32; Piccard, *supra* note 11, at 232. *See also* Keller, *supra* note 11, at 562 (discussing how the United States refuses to recognize economic, social, and cultural rights).

24. Covenant, *supra* note 9, art. 11.

25. Comment 12, *supra* note 21, ¶ 6.

26. *See* Young, *supra* note 16, at 191–92 (“[A] claim of a right to food, clothing, housing, medical care, or education creates the terms under which hunger, indigence, medical neglect, or barriers to schooling can be communicated and understood as injustices, rather than as misfortunes.”); Valente, *supra* note 8, at 182–83.

27. Valente, *supra* note 8, at 182–83; Comment 12, *supra* note 21, ¶ 4; Cohen & Brown, *supra* note 8, at 55.

28. Comment 12, *supra* note 21, ¶ 4 (emphasis added).

29. Cohen & Brown, *supra* note 8, at 55.

30. Comment 12, *supra* note 21, ¶ 4; Valente, *supra* note 8, at 183.

of human rights for all.”<sup>31</sup> Countries cannot mitigate hunger without addressing the ways social systems cause hunger.

Third, the human right to food affirms the fundamental necessity of accessing food with dignity.<sup>32</sup> Comment 12 states, “[T]he right to adequate food is *indivisibly linked to the inherent dignity* of the human person . . . .”<sup>33</sup> As the scholar Flavio Luiz Schieck Valente said, “[T]he right to food is understood as a basic [human right], without which there is no right to life, no citizenship, no right to humanity . . . .”<sup>34</sup> The right to food affirms that food access requiring human degradation is severely inadequate—a violation of human rights.

Furthermore, as an expression of human life with dignity, the primary focus of the right to food is not *being fed* by the government.<sup>35</sup> Instead, the right to food’s primary focus is the right to *feed oneself*.<sup>36</sup> As Valente said, “For a human being to feed her/himself is a cultural act . . . . individuals renew themselves in levels beyond the physical . . . .”<sup>37</sup> The right to food does require governments to provide food when people cannot provide for themselves, but this is a stopgap measure.<sup>38</sup> The main duty the right to food imposes is empowerment: government must create and protect a legal architecture that enables all people to feed themselves adequate food.<sup>39</sup>

## 2. The Right to Food Checklist

This Note reduces the right to food to two checklists. One organizes the types of duties government holds in supporting the right to food, and the other organizes the elements necessary for food access to be adequate.

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31. *Comment 12, supra* note 21, ¶ 4 (emphasis added).

32. *Id.*; Valente, *supra* note 8, at 183. *See also* Burgess, *supra* note 17, at 258 (stating that economic rights “reflect the view that individuals are entitled to protection from natural and economic forces that subject them to lives *below what is required for human dignity*”) (emphasis added).

33. *Comment 12, supra* note 21, ¶ 4 (emphasis added).

34. Valente, *supra* note 8, at 183.

35. *See Comment 12, supra* note 21, ¶ 15 (describing the different duties of government that the right to food imposes); Cohen & Brown, *supra* note 8, at 55 (“[F]ulfilling the right to food does not translate into the direct provision of food to all citizens but, rather, describes a broader commitment by the state to create an institutional framework in which citizens can achieve freedom from hunger.”); DANUTA CHMIELEWSKA & DARANA SOUZA, INT’L POLICY CTR. FOR INCLUSIVE GROWTH, THE FOOD SECURITY POLICY CONTEXT IN BRAZIL 11 (2011) (“The state . . . has the obligation to ensure food and nutrition with dignity to households suffering from hunger or malnutrition because of conditions beyond their control. The state must also seek to guarantee that these households and individuals regain the ability to feed themselves.”).

36. Valente, *supra* note 8, at 183.

37. *Id.*

38. *Comment 12, supra* note 21, ¶ 15; CHMIELEWSKA & SOUZA, *supra* note 35.

39. *See* Valente, *supra* note 8 and accompanying text (acknowledging the relationship between dignity and one’s ability to feed oneself).

The right to food imposes on government three broad duties.<sup>40</sup> First, government must *respect* the right to food.<sup>41</sup> The state must not “take any measures that result in preventing . . . existing access to adequate food . . . .”<sup>42</sup> Second, governments must *protect* the right to food.<sup>43</sup> The state must affirmatively take measures that “ensure that enterprises or individuals do not deprive individuals of their access to adequate food.”<sup>44</sup> Third, governments must *fulfill* the right to food.<sup>45</sup> The responsibility to *fulfill* has two parts: to *facilitate* and to *provide*.<sup>46</sup> The duty to *facilitate* means the state must “pro-actively . . . strengthen people’s . . . means to ensure their livelihood, including food security.”<sup>47</sup> The duty to *provide* comes into play when “an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal . . . .”<sup>48</sup> In those situations, the state has the responsibility to *provide food directly*.<sup>49</sup>

The *duty checklist* summarizes these requirements. It asks whether, in any governmental action, the government is *respecting*, *protecting*, *providing*, or *facilitating* the right to food. Every governmental action should check at least one of these boxes.<sup>50</sup> Although not every governmental action must provide or facilitate the right to food, no governmental action should fail to respect or protect the right to food.<sup>51</sup>

The *adequate food access checklist* (also referred to in this Note as the *food access checklist*) addresses the nature and quality of food access. Comment 12 states, “The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.”<sup>52</sup> The UN Special Rapporteur on the Right to Food elaborated on that definition. He stated the right to food means:

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40. *Comment 12, supra* note 21, ¶ 15. *See also* Young, *supra* note 16, at 191–92 (discussing how the human rights framework imposes duties on duty-holders).

41. *Comment 12, supra* note 21, ¶ 15.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* ¶ 6.

[T]he right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.<sup>53</sup>

In other words, to meet the right to food, *all individuals and groups* must have food access; the food access must be *regular, permanent and unrestricted*; they must have both *economic* and *physical* access; the food must be *quantitatively* and *qualitatively sufficient* (i.e., nutritious); it must be *culturally appropriate*; and people must be able to access food with *dignity*. These elements constitute the *food access checklist*. Food access must meet all of these conditions in order to fulfill the right to food.

### 3. Food Access Checklist Elements

The *food access checklist* elements may require further explanation. *All individuals and groups* highlights that everyone has the right to food, including vulnerable groups like children and the elderly.<sup>54</sup> *Regular, permanent and unrestricted* emphasizes that food access must be secure; occasional or intermittent access to food is inadequate.<sup>55</sup>

*Economic* accessibility addresses the financial barriers to accessing food.<sup>56</sup> Even if a person lives next-door to a co-op full of local, nutritious food, the person may be unable to access that food because she cannot afford it. Moreover, a person does not have economic access (cannot afford the food) if she can only buy adequate food by sacrificing other basic needs, like housing or medicine.<sup>57</sup> *Physical* access, by contrast, refers to the physical ability to obtain food.<sup>58</sup> Children or the elderly, for example, may be physically unable to access a supermarket, even if they have money to buy food.<sup>59</sup> Physical vulnerability also can extend to transportation barriers, particularly for low-income households, who may find it difficult to reach a

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53. KNUTH & VIDAR, *supra* note 8, at 10.

54. *Comment 12*, *supra* note 21, ¶¶ 6, 13.

55. *Id.* ¶ 13.

56. *Id.*

57. *Id.* (“Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised.”).

58. *Id.*

59. *Id.*

store with adequate food.<sup>60</sup> Problems with economic and physical access may appear together, but they are distinct issues, and they may need distinct solutions. For example, offering people money to buy food will not provide adequate food access if those people cannot physically access food sources; the money provides *economic* access but fails to address the obstacle to *physical* access.

Food must be *quantitatively* and *qualitatively* sufficient.<sup>61</sup> In other words, for food access to be adequate, the person must: (1) get a large enough *quantity* of food to meet her caloric and other nutritional needs; *and* (2) the food obtained must be high-*quality*, nutritious food.<sup>62</sup> As Comment 12 states, food is not adequate if it simply meets a person's "minimum package of calories, proteins and other specific nutrients."<sup>63</sup> Instead, adequate food means a "diet as a whole" that meets the "human physiological needs" of that specific individual's person and activity.<sup>64</sup>

It is very useful to hunger efforts to distinguish between *quantitative* and *qualitative* sufficiency. Historically, United States hunger relief programs have effectively met the *quantitative* needs of households.<sup>65</sup> Federal food assistance programs have virtually eliminated starvation within the United States.<sup>66</sup> But these programs have not been effective in meeting the *qualitative* needs of American households.<sup>67</sup> Although low-income households in the United States generally have access to sufficient,

60. For a discussion of rural food deserts in terms of food access, see generally Jesse C. McEntee, *Food Deserts in Vermont: Identifying Inadequate Food Access and the Corresponding Policy Implications* 10 (Aug. 2007) (unpublished M.A. thesis, Tufts University) (available through ProQuest, UMI Number: 1442520). See also *Food Access Research Atlas*, U.S. DEP'T OF AGRIC. ECON. RESEARCH SERV., <http://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas.aspx> (last updated Oct. 19, 2016) (atlas of food deserts in the United States).

61. *Comment 12*, *supra* note 21, ¶¶ 8-9.

62. *Id.* ¶ 8.

63. *Id.* ¶ 6.

64. *Id.* ¶ 9.

65. See *New Food Stamp Facts: 10 Facts on U.S. Hunger and How Federal Programs Such as SNAP (Food Stamps) Effectively Combat It*, N.Y.C. COAL. AGAINST HUNGER, <https://nyccah.org/learn-about-hunger/new-food-stamp-facts> (last visited Nov. 23, 2016) [hereinafter *New Food Stamp Facts*] (Fact #5, discussing how the federal supplemental nutrition programs "succeeded remarkably in achieving their main goal: ending starvation conditions in America"); BERG, *supra* note 12, at 1 (discussing how federal nutrition assistance programs have virtually eliminated starvation within the United States); Andreyeva, *supra* note 12, at 594 ("SNAP effectively alleviates food insecurity in terms of caloric, macronutrient, and micronutrient intake.").

66. See *New Food Stamp Facts*, *supra* note 65 (attributing the expansion of federally funded programs with "ending starvation").

67. COLEMAN-JENSEN ET AL., *supra* note 4, at 8 (In 2014, 14% or 17.4 million households were "food insecure," meaning "they were, at times, unable to acquire adequate food . . . . A majority of food-insecure households avoided substantial reductions or disruptions in food intake, in many cases by . . . reducing variety in their diets.").

or more than sufficient, calories, food with sufficient nutritional content is frequently unavailable to low-income households.<sup>68</sup> Given that disconnect between *quantitative* and *qualitative* sufficiency, it is unsurprising that obesity and malnutrition often coincide.<sup>69</sup>

Moreover, the right to food demands food access that is *culturally appropriate*.<sup>70</sup> Eating is not only a biological act. As the scholar Flavio Luiz Schieck Valente said, eating “is a cultural act linked to tradition, family life, friendship and collective celebrations.”<sup>71</sup> Food access is not adequate if the people cannot access food that conforms to their cultural traditions.

Finally, as discussed above, the right to food requires food access with *dignity*.<sup>72</sup> Indeed, *dignity* may be the cornerstone of the right to food.<sup>73</sup> Comment 12 explicitly grounded the right to food in the “inherent dignity of the human person.”<sup>74</sup> Its fulfilment is “indispensable” and “inseparable” from other human rights.<sup>75</sup> Most importantly, as an expression of the right to human life with dignity, the right to food means not the right to *be fed*, but the right to *feed oneself*.<sup>76</sup>

## II. VERMONT’S LEGAL ARCHITECTURE OF HUNGER & THE RIGHT TO FOOD

Laws related to housing, health care, intellectual property, and many others could constitute food access law.<sup>77</sup> Because this range is too broad to

68. *Supra* notes 65, 67.

69. Sam Dolnick, *The Obesity-Hunger Paradox*, N.Y. TIMES (Mar. 12, 2010), [http://www.nytimes.com/2010/03/14/nyregion/14hunger.html?\\_r=0](http://www.nytimes.com/2010/03/14/nyregion/14hunger.html?_r=0). See also *New Food Stamp Facts*, *supra* note 65 (“Because low-income families have more difficulty affording the most nutritious foods, and because low-income neighborhoods are often ‘food deserts’ that lack healthy food options, hunger and obesity are often flip-sides of the same malnutrition coin.”); *Why Low-Income and Food Insecure People Are Vulnerable to Overweight and Obesity*, FOOD RES. & ACTION CTR., <http://frac.org/initiatives/hunger-and-obesity/why-are-low-income-and-food-insecure-people-vulnerable-to-obesity> (last visited Nov. 23, 2016); Mark Hyman, *How Malnutrition Causes Obesity*, HUFFINGTON POST (May 8, 2012, 8:12 AM), [http://www.huffingtonpost.com/dr-mark-hyman/malnutrition-obesity\\_b\\_1324760.html](http://www.huffingtonpost.com/dr-mark-hyman/malnutrition-obesity_b_1324760.html) (discussing the relationship between malnutrition and obesity).

70. See *supra* notes 32–39, 53 and accompanying text (discussing food access as a human right).

71. Valente, *supra* note 8, at 183.

72. See *supra* Part I.B.1 (explaining human rights through food access).

73. See *supra* Part I.B.1 (analyzing food access through a human rights framework).

74. Comment 12, *supra* note 21, ¶ 4.

75. *Id.*

76. See *supra* Part I.B.1 (using the human rights concept for access to food).

77. For example, if people struggle to access food economically, then housing, health care, or other expenses will affect their food access. See Sharon I. Kirkpatrick & Valerie Tarasuk, *Housing Circumstances Are Associated with Household Food Access Among Low-Income Urban Families*, 88 J. URB. HEALTH 284, 284 (2011) (discussing the relationship between household food security and affordable housing). Intellectual property laws can restrict people from saving seeds from one year to the next, requiring them to purchase seeds, and reducing their ability to feed themselves. See Joe Satran,

discuss here, this Note examines a narrow circle of laws that affect food access in Vermont: 3SquaresVT/SNAP, the school breakfast and lunch programs, Burlington's zoning ordinance, and the minimum wage.

### A. 3SquaresVT/SNAP

#### 1. How 3SquaresVT/SNAP Works

The federal government's major food assistance program is the Supplemental Nutritional Assistance Program (SNAP), called 3SquaresVt in Vermont.<sup>78</sup> State agencies administer the federal program.<sup>79</sup> Congress first authorized a federal food assistance program with the Food Stamp Act of 1964.<sup>80</sup> Congress changed the program in each succeeding decade,

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*Supreme Court Justice: Monsanto Seed Saving by Indiana Farmer like Bank Robbery*, HUFFINGTON POST (Feb. 20, 2013, 1:35 PM EST), [http://www.huffingtonpost.com/2013/02/20/supreme-court-monsanto\\_n\\_2720057.html](http://www.huffingtonpost.com/2013/02/20/supreme-court-monsanto_n_2720057.html) (highlighting the court battle between GMO seed producer Monsanto and an Indiana farmer who saved seeds from crops developed by Monsanto); *Seed-Sharing Snafu*, MOTHER EARTH NEWS (Apr./May 2015), <http://www.motherearthnews.com/organic-gardening/garden-planning/seed-sharing-snafu-zm0z15amzmar.aspx> (reporting that some states ban seed-sharing without a permit); LA VIA CAMPESINA & GRAIN, *Seed Laws That Criminalise Farmers: Resistance and Fight Back* (2015), <https://www.grain.org/article/entries/5175-seed-laws-that-criminalise-farmers-poster-map-tables-and-additional-country-cases> (describing the struggle of "peasant" farmers in the developing world to retain their right to save seeds); Haley Stein, *Intellectual Property and Genetically Modified Seeds: The United States, Trade, and the Developing World*, 3 NW. J. TECH. & INTELL. PROP. 160, 161–69 (2005) (analyzing intellectual property laws and their effect on seed-saving).

78. 7 U.S.C. §§ 2011–2036(c) (2012); INST. OF MED., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: EXAMINING THE EVIDENCE TO DEFINE BENEFIT ADEQUACY: REPORT BRIEF 1 (2013), [http://iom.nationalacademies.org/~media/Files/Report%20Files/2013/SNAP/SNAP\\_RB.pdf](http://iom.nationalacademies.org/~media/Files/Report%20Files/2013/SNAP/SNAP_RB.pdf). For more information on SNAP, see *Supplemental Nutrition Assistance Program (SNAP)*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap> (last updated Aug. 11, 2016), *SNAP: Frequently Asked Questions*, SNAP TO HEALTH!, <http://www.snapttohealth.org/snap/snap-frequently-asked-questions> (last visited Nov. 23, 2016), and *3SquaresVT*, VT. DEP'T FOR CHILDREN & FAMILIES, <http://dcf.vermont.gov/benefits/3SquaresVT> (last visited Nov. 14, 2016). See also *3SquaresVT Outreach and Education*, HUNGER FREE VT., <http://www.hungerfreevt.org/what/3squaresvt> (last visited Nov. 23, 2016) (providing educational resources for 3SquaresVt applicants); *3SquaresVT*, VT. FOODBANK, <https://www.vtfoodbank.org/nurture-people/3squaresvt> (last visited Nov. 23, 2016); RANDY ALISON AUSSENBERG, CONG. RESEARCH SERV., R42505, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP): A PRIMER ON ELIGIBILITY AND BENEFITS (2014), <https://www.fas.org/sgp/crs/misc/R42505.pdf>. For more information on other federal nutrition assistance programs, see FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., HOW TO GET FOOD HELP (2010), <http://www.fns.usda.gov/sites/default/files/ConsumerBrochure.pdf>.

79. 7 U.S.C. § 2013(a); *Supplemental Nutrition Assistance Program (SNAP): To Apply*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/apply> (last updated Aug. 26, 2016).

80. *Supplemental Nutrition Assistance Program (SNAP): A Short History of SNAP*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/short-history-snap> (last visited Nov. 23, 2016).

including changing the name to SNAP; it most recently reauthorized SNAP in the 2014 Farm Bill.<sup>81</sup> SNAP's stated purpose is to give low-income households "an opportunity to obtain a more nutritious diet . . . ."<sup>82</sup> The program operates by giving low-income households money on a debit card, which the household can then use to buy groceries.<sup>83</sup> The amount received depends on many factors, including household size and income.<sup>84</sup> In 2014, 46.5 million people participated in SNAP, 45% of whom were children.<sup>85</sup> Around half of all children in the United States use SNAP at some point during childhood.<sup>86</sup>

In enacting SNAP, Congress set some ground-floor parameters for the program, and it left the remaining details to the discretion of the Secretary of Agriculture, whom Congress authorized to develop and oversee the program.<sup>87</sup> For example, Congress explicitly limited the program to "those households whose incomes and other financial resources . . . are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet,"<sup>88</sup> but it gave the Secretary the authority to decide what constitutes eligibly limited income (currently, 130% of the federal poverty level).<sup>89</sup>

Most significant is Congress's authorization regarding the *thrifty food plan*. Congress stated that a SNAP recipient should receive an amount "equal to the cost to such households of the thrifty food plan reduced by . . . 30[%] of the household's income . . . ."<sup>90</sup> The thrifty food plan is thus the maximum amount a SNAP household can receive.<sup>91</sup> All other rules regarding eligibility, allowances, etc., are deductions from this ceiling. Any analysis of SNAP adequacy should therefore start with the thrifty food plan. If the thrifty food plan is inadequate, all other SNAP provisions will also be inadequate.

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81. See *id.* (giving a brief history of SNAP); Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1853 (changing the name to SNAP and significantly amending the program); Agricultural Act of 2014, Pub. L. 113-79, 128 Stat. 649 (reauthorizing the program with some changes).

82. 7 U.S.C. § 2013(a).

83. *3SquaresVT*, VT. FOODBANK, *supra* note 78.

84. *Id.*; AUSSENBERG, *supra* note 78, at 2.

85. *3SquaresVT*, VT. FOODBANK, *supra* note 78; Andreyeva, *supra* note 12, at 594.

86. Food Res. & Action Ctr., *Replacing the Thrifty Food Plan in Order to Provide Adequate Allotments for SNAP Beneficiaries* 9 (2012), [http://frac.org/pdf/thrifty\\_food\\_plan\\_2012.pdf](http://frac.org/pdf/thrifty_food_plan_2012.pdf).

87. 7 U.S.C. § 2013(a).

88. 7 U.S.C. § 2014(a).

89. 7 U.S.C. § 2014(b); SNAP: *Frequently Asked Questions*, *supra* note 78. Congress did set some restrictions on eligibility. 7 U.S.C. § 2014.

90. 7 U.S.C. § 2017(a).

91. *Id.*

Congress defined the *thrifty food plan* as “the diet required to feed . . . a family of four persons . . . .”<sup>92</sup> The *four persons* are defined as “a man and a woman twenty through fifty,” as well as two children, one who is “six through eight,” and one who is “nine through eleven . . . .”<sup>93</sup> Congress set this cost as the uniform base allotment for all households “regardless of their actual composition . . . .”<sup>94</sup> Without instructing the Secretary how to do so, Congress authorized the Secretary of Agriculture to construct this diet and calculate its cost.<sup>95</sup>

## 2. Assessing SNAP According to the Right to Food Checklists

The SNAP program provides food access to vulnerable populations, so it satisfies the duty checklist and fulfills that part of the right to food. However, the SNAP program seems to fail the adequate food access checklist. The program’s chief deficiency is qualitative sufficiency.<sup>96</sup> Critics argue SNAP does not provide enough money for recipients to buy nutritionally adequate food.<sup>97</sup> SNAP cannot provide enough money because the thrifty food plan—which sets the maximum amount Congress allows SNAP to offer recipients—is unrealistic.<sup>98</sup>

The Secretary for the Department of Agriculture, who has the authority to set the thrifty food plan, delegated that responsibility to the Under Secretary for Food, Nutrition, and Consumer Services.<sup>99</sup> Neither Congress nor the Secretary set guidelines for the Under Secretary governing how Food, Nutrition, and Consumer Services should design the thrifty food plan.<sup>100</sup>

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92. 7 U.S.C. § 2012(u).

93. *Id.*

94. *Id.*

95. *Id.*

96. For a summary of the other elements of the adequate food access checklist, see *infra* notes 135–40.

97. Food Res. & Action Ctr., *supra* note 86, at 1–10; MARK STOVELL, VT. CAMPAIGN TO END CHILDHOOD HUNGER, THE THRIFTY FOOD PLAN AND FOOD COSTS IN VERMONT (2009), <http://www.hungercenter.org/wp-content/uploads/2011/07/The-Thrifty-Food-Plan-and-Food-Costs-in-Vermont-Stovell.pdf>; Andreyeva, *supra* note 12, at 603; Susan Blumenthal et al., *Strategies to Improve the Dietary Quality of Supplemental Nutrition Assistance Program (SNAP) Beneficiaries: An Assessment of Stakeholder Opinions*, PUB. HEALTH NUTRITION, Dec. 2013, at 1, <http://www.foodpolitics.com/wp-content/uploads/SNAP-article-Public-Health-Nutrition-November-2013.pdf>.

98. Food Res. & Action Ctr., *supra* note 86, at 1–10.

99. 7 C.F.R. §§ 2.19(a), 2.19(v) (2016).

100. I could find no congressional law or regulation governing how the thrifty meal plan is designed or calculated.

Food, Nutrition, and Consumer Services designs the plan by creating a virtual food basket and imagining how a household could distribute its monthly allotment among specific foods, such as apples, carrots, and potatoes.<sup>101</sup> The plan takes into account nutritional needs.<sup>102</sup> The plan also takes into account the cost of food, looking at actual food prices as a national average and at the actual amount of money low-income households typically spend on food.<sup>103</sup> Oddly, the plan does not create the market basket and then, based on the market basket, set a minimum dollar amount for buying nutritious food.<sup>104</sup> Instead, the plan starts with the minimum dollar amount, then decides what a household could purchase with that amount.<sup>105</sup> The government first set the minimum dollar amount, then called the “Economy Food Plan,” in keeping with the 1964 Food Stamp Program Act.<sup>106</sup> The U.S. Department of Agriculture (USDA) designed the Economy Food Plan “as a nutritionally adequate diet for short-term or emergency use.”<sup>107</sup> In 1975, when the thrifty food plan replaced the Economy Food Plan, the government replaced the “market baskets” in keeping with new nutritional guidelines, but it retained the same cost limit.<sup>108</sup> The USDA adjusts the cost of the basket to keep with inflation and changing prices, but the baseline—a food basket designed as emergency food in 1964—remains the same.<sup>109</sup>

The thrifty food plan sets the dollar amount necessary for low-income families to buy nutritious food unrealistically low.<sup>110</sup> The plan fails for several reasons. First, the plan fails to recognize that food prices vary across the country.<sup>111</sup> In some parts of the country, it is impossible to buy the thrifty food plan’s food basket with the thrifty food plan’s budget.<sup>112</sup> A 2009 study in Vermont by the Campaign to End Childhood Hunger (now Hunger Free Vermont) found that in order to buy the foods in the thrifty

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101. ANDREA CARLSON ET AL., CTR. FOR NUTRITION POLICY & PROMOTION, U.S. DEP’T OF AGRIC., THRIFTY FOOD PLAN 2006 ES-6-ES-8, 1 (2007), [http://www.cnpp.usda.gov/sites/default/files/usda\\_food\\_plans\\_cost\\_of\\_food/TFP2006Report.pdf](http://www.cnpp.usda.gov/sites/default/files/usda_food_plans_cost_of_food/TFP2006Report.pdf); Food Res. & Action Ctr., *supra* note 86, at 4.

102. CARLSON ET AL., *supra* note 101, at 2.

103. *Id.* at 1–2.

104. *Id.* at 2.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*; Food Res. & Action Ctr., *supra* note 86, at 1.

109. CARLSON ET AL., *supra* note 101, at 2; 7 U.S.C. § 2012(u)(4) (2012); Food Res. & Action Ctr., *supra* note 86, at 2, 7.

110. Food Res. & Action Ctr., *supra* note 86, at 1–10.

111. *Id.* at 7; INST. OF MED., *supra* note 78, at 3.

112. Food Res. & Action Ctr., *supra* note 86, at 7; STOVELL, *supra* note 97, at 6.

food plan's food basket in Vermont food stores, Vermont residents would need an additional \$156 (if shopping in a supermarket) to \$374 (if shopping in a general store) per month.<sup>113</sup>

Second, the plan fails to recognize how people actually shop.<sup>114</sup> For example, the 2006 thrifty food plan estimates that a man will eat 0.07 pounds of cheese per week, or around two slices of cheese—eight slices of cheese per month.<sup>115</sup> In reality, a family would not be able to spread money into such thin slices of variety; buying one item in the market basket (cheese) would exclude buying others (milk, meat, beans).

Third, the plan makes unrealistic assumptions.<sup>116</sup> It assumes more time for food preparation and shopping than most Americans have, of any income type.<sup>117</sup> It assumes time for bargain-shopping at several grocery stores.<sup>118</sup> It assumes ready access to grocery stores.<sup>119</sup> It assumes the food there is fresh or affordable.<sup>120</sup> It assumes access to a reliably working refrigerator, freezer, and stove.<sup>121</sup> In short, it assumes no slack. As the Food Research and Action Center put it, "[T]here is no margin of error included within the [thrifty food plan], which demands perfection across a range of household tasks, access to resources, and other attributes."<sup>122</sup> Any household needs some margin of error, some buffer, for when the stove breaks or a child's sickness puts the parents out of a few days' wages.<sup>123</sup> In a low-income household, there typically is no buffer.<sup>124</sup> This means the

113. STOVELL, *supra* note 97, at 6; *About Us*, HUNGER FREE VT., <http://www.hungerfreevt.org/we/about> (last visited Nov. 23, 2016).

114. Food Res. & Action Ctr., *supra* note 86, at 3.

115. CARLSON ET AL., *supra* note 101, at ES-7; *How Many Ounces Are in a Slice of Cheese?*, REFERENCE.COM, <http://www.reference.com/food/many-ounces-slice-cheese-14dc65ec1efe34b6> (last visited Nov. 23, 2016).

116. Food Res. & Action Ctr., *supra* note 86, at 1–10.

117. *Id.* at 4–5; INST. OF MED., *supra* note 78, at 2; Blumenthal et al., *supra* note 97, at 3.

118. Food Res. & Action Ctr., *supra* note 86, at 4 (“Chef Mario Batali took the SNAP Challenge and reported shopping at four stores to make the budget work”); INST. OF MED., *supra* note 78, at 2. *See also* Project for Pub. Spaces, *Farmers Markets as a Strategy to Improve Access to Healthy Food for Low-Income Families and Communities* 9, 11, <http://www.pps.org/wp-content/uploads/2013/02/RWJF-Report.pdf> (last visited Nov. 23, 2016) (reporting that low-income shoppers frequently need to complete all their shopping at one location).

119. Food Res. & Action Ctr., *supra* note 86, at 5 (arguing the Thrifty Food Plan “[u]nrealistically [a]ssumes [f]ood [a]vailability” because “[l]ow-income neighborhoods frequently lack full-service grocery stores”).

120. *Id.*

121. *Id.* at 4.

122. *Id.* at 3.

123. *Id.*

124. *Id.*

thrifty food plan's stringent requirements—difficult for any household—are virtually impossible for a low-income household.<sup>125</sup>

Finally, the USDA bases the thrifty food plan on what is needed for emergency food.<sup>126</sup> Using emergency food as the baseline creates problems. First, the current law governing SNAP has no language about short-term or emergency food needs.<sup>127</sup> Congress merely said SNAP should “provide[] an opportunity to obtain a more nutritious diet” for those “whose incomes and other financial resources . . . are determined to be a substantial limiting factor” in obtaining that diet.<sup>128</sup> Moreover, as anti-hunger advocates explain, households often need to use SNAP for a long period of time.<sup>129</sup> It is unrealistic to assume SNAP will only serve as short-term assistance.

Furthermore, according to the right to food frame, even if SNAP is an emergency food program, the government must provide *nutritionally adequate* food.<sup>130</sup> Comment 12 states, “[W]henver an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by means at their disposal, States have the obligation to fulfill (provide) that right directly.”<sup>131</sup> The right is to *adequate* food. The right is not to “a minimum package of calories, proteins and other specific nutrients.”<sup>132</sup> The right is to food “in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture . . . .”<sup>133</sup> According to the right to food, whenever individuals or communities are unable to feed themselves, the government has an enforceable obligation to provide food or the means to buy food, and that food must be *nutritionally adequate*—even in an emergency.<sup>134</sup>

As for the other elements of the adequate food access checklist, SNAP offers food access to *all individuals and groups* because it offers food access to those parts of the U.S. population that do not have enough food, facilitating universal food access.<sup>135</sup> The food access is not *regular, permanent, and unrestricted* because the money provided is not enough to meet nutritional needs, and families often run out of money before they can

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125. *Id.*

126. CARLSON ET AL., *supra* note 101, at 2.

127. 7 U.S.C. §§ 2013(a), 2014(a) (2012).

128. 7 U.S.C. §§ 2013(a), 2014(a).

129. Telephone Interview with Faye Conte, *supra* note 12.

130. *Comment 12*, *supra* note 21, ¶¶ 6, 8, 15.

131. *Id.* ¶ 15 (emphasis removed).

132. *Id.* ¶ 6.

133. *Id.* ¶ 8.

134. *Id.* ¶¶ 6, 8, 15.

135. *See supra* notes 52–54 and accompanying text (detailing the adequate food access checklist).

receive more.<sup>136</sup> SNAP provides *economic* access to food.<sup>137</sup> SNAP provides *physical* access to an extent because many locations accept SNAP, including supermarkets, general stores, and farmer's markets, but it does not relieve problems with food deserts, transportation, or mobility and control for some vulnerable populations like children and the elderly.<sup>138</sup> People can choose their own food, so SNAP is probably *culturally appropriate*. However, this element may implicate *physical* access if the recipient can only access culturally inappropriate food.<sup>139</sup> Whether SNAP supports *dignity* is arguable.<sup>140</sup> Culturally, stigma attaches to SNAP assistance, even though around half of all people in the United States, child or adult, receive SNAP at some point during their lives.<sup>141</sup> On the other hand, SNAP recipients shop at the same places and in the same way as other shoppers; they do not necessarily stand out, and often people do not know who SNAP recipients are; and SNAP enables families to meet other household expenses, like paying for housing, clothes, transportation, and school, that support living in a dignified way.<sup>142</sup>

### 3. How the Right to Food Would Improve SNAP

Congress should reauthorize SNAP with the right to food in mind. It does not have to affirm an enforceable right to food within the United States in order to benefit from the right to food framework. The simplest, most direct change Congress can make is to set more specific parameters for the Secretary of Agriculture. Currently, Congress draws no explicit link between SNAP's thrifty meal plan and nutritional requirements.<sup>143</sup> Congress states that, as a generality, SNAP should enable households that need such assistance to "obtain a more nutritious diet"; it says specifically that the Secretary may design and calculate a thrifty meal plan that is the maximum allotment for SNAP; and it says the thrifty meal plan is "the diet

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136. See *supra* notes 55, *infra* notes 137–54, and accompanying text (listing the adequate food access checklist).

137. See *supra* notes 52–53, 56–57, 111–13 and accompanying text (summarizing the adequate food access checklist, explaining the *economic* accessibility requirement, and acknowledging financial faults with the thrifty food plan).

138. See *supra* notes 52–53, 58–60 and accompanying text (discussing the adequate food access checklist's *physical* access requirement).

139. See *supra* notes 52–53, 58–60, 70–71 and accompanying text (summarizing *physical* accessibility under the adequate food access checklist).

140. See *supra* Part I.B.1, notes 72–76 and accompanying text (considering the *dignity* requirement from the adequate food access checklist).

141. Food Res. & Action Ctr., *supra* note 86, at 9.

142. *SNAP: Frequently Asked Questions*, *supra* note 78.

143. 7 U.S.C. §§ 2011, 2013–2014 (2012).

required to feed’ a four-person family.<sup>144</sup> Congress does not require the Secretary to design a thrifty meal plan that can buy a *nutritionally adequate* diet to feed a four-person family.<sup>145</sup> Congress should make this change. Congress should require the Secretary to develop a thrifty meal plan with an amount sufficient to feed a four-person household a nutritionally adequate diet according to the 2015 Dietary Guidelines.<sup>146</sup> Moreover, Congress should require the Secretary to adjust the amount according to geographical purchasing power to reflect actual prices within each region of the country, rather than rely on a national pricing average.<sup>147</sup>

This straightforward change would not solve all of SNAP’s problems. Congress or the Secretary for Agriculture must still address whether the thrifty food plan, even at a higher amount, reflects the following: the actual way people shop, a reasonable amount of time for food preparation, whether people have physical access to healthy foods, and whether SNAP enables food access with dignity.<sup>148</sup> Most of all, even a reformed SNAP may not enable people to feed themselves, which is the crux of the right to food.<sup>149</sup> But creating a baseline requirement for nutritional adequacy would be a major step in the right direction. It also illustrates how the right to food framework better illuminates hunger and its viable solutions, even without requiring the government to fully adopt an enforceable right to food.

## B. School Food Programs

### 1. How the School Food Programs Work

A patchwork of federal and state laws provide food for Vermont students.<sup>150</sup> The major program is the National School Lunch Program.<sup>151</sup>

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144. 7 U.S.C. §§ 2013, 2017(a), 2012(u) (emphasis added).

145. 7 U.S.C. §§ 2011, 2012(u), 2013–2014, 2017(a).

146. U.S. DEP’T OF HEALTH & HUMAN SERVS. & U.S. DEP’T OF AGRIC., DIETARY GUIDELINES FOR AMERICANS: 2015-2020, at xv–xvii (8th ed. 2009), [https://health.gov/dietaryguidelines/2015/resources/2015-2020\\_Dietary\\_Guidelines.pdf](https://health.gov/dietaryguidelines/2015/resources/2015-2020_Dietary_Guidelines.pdf) [hereinafter DIETARY GUIDELINES];

147. *See supra* notes 111–13 and accompanying text (stating how food prices vary across the country).

148. *See supra* Part II.A.2 (discussing the adequate food access checklist and SNAP’s failings).

149. *See supra* notes 35–39 and accompanying text (stipulating the right to food as the right to feed oneself).

150. *See School Nutrition Programs*, VT. AGENCY OF EDUC., <http://education.vermont.gov/student-support/nutrition/school-meals/school-lunch-and-breakfast> (last visited Nov. 23, 2016) (giving an overview of federal and State school nutrition programs); FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., NATIONAL SCHOOL LUNCH PROGRAM (2013), <http://www.fns.usda.gov/sites/default/files/NSLPFactSheet.pdf> (describing the National School Lunch Program); FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., THE SCHOOL BREAKFAST PROGRAM

Congress first authorized the program in 1946 with the National School Lunch Act.<sup>152</sup> Congress stated the Act's purpose was to "safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities" as a "measure of national security."<sup>153</sup> In 1966, Congress expanded the National School Lunch Program with the Child Nutrition Act of 1966.<sup>154</sup> This Act affirmed the "demonstrated relationship between food and good nutrition and the capacity of children to develop and learn . . ."<sup>155</sup> The Child Nutrition Act also authorized a School Breakfast Program.<sup>156</sup> Congress delegated authority to the Secretary of Agriculture for both programs.<sup>157</sup> Congress authorized states to oversee the programs with grants and other assistance from the Secretary.<sup>158</sup>

Congress amended the Child Nutrition Act of 1966 with the Healthy, Hunger-Free Kids Act of 2010.<sup>159</sup> The Healthy, Hunger-Free Kids Act requires the Secretary of Agriculture to create nutritional standards for all foods served and sold in schools that conform to the most recent Dietary Guidelines for Americans.<sup>160</sup> In keeping with the Act, USDA regulations now require, for example, that lunch must offer ½ cup of fruit per day and 2 ½ cups of fruit per week; schools must offer vegetables in all vegetable subgroups during the week (dark green, red/orange, beans and peas, starchy, and other); and all grains must be "whole grain-rich" products.<sup>161</sup> Congress authorized the programs to give free lunches to students at or below 130% of the poverty level, and to give reduced-price lunches to students up to 185% of the poverty level.<sup>162</sup>

The Healthy, Hunger-Free Kids Act also opened a Community Eligibility Provision that enables schools to qualify for free meals for all

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(2013), <http://www.fns.usda.gov/sites/default/files/sbp/SBPfactsheet.pdf> (explaining the National School Breakfast Program).

151. VT. AGENCY OF EDUC., *supra* note 150.

152. National School Lunch Act, Pub. L. No. 79-396, 60 Stat. 230 (1964).

153. *Id.*

154. Children Nutrition Act of 1966, Pub. L. No. 89-642, 80 Stat. 885.

155. *Id.* sec. 2.

156. *Id.* sec. 4.

157. *Id.* sec. 2.

158. *Id.*

159. Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183.

160. *Id.* At the time Congress passed the Act, the most recent dietary guidelines were the 2010 Dietary Guidelines, U.S. DEP'T. OF AGRIC. & U.S. DEP'T OF HEALTH & HUMAN SERVS., DIETARY GUIDELINES FOR AMERICANS 2010 (2010), [http://www.cnpp.usda.gov/sites/default/files/dietary\\_guidelines\\_for\\_americans/PolicyDoc.pdf](http://www.cnpp.usda.gov/sites/default/files/dietary_guidelines_for_americans/PolicyDoc.pdf). The USDA published updated guidelines in 2015. DIETARY GUIDELINES, *supra* note 146.

161. 7 C.F.R. § 210.10(c) (2016).

162. *Id.*

students if at least 40% of students are “directly certified” as eligible, meaning, for example, their households qualify for SNAP.<sup>163</sup> The federal government pays a portion of the meals’ cost, up to 100%, depending on the proportion of directly certified students, and the schools pay the rest.<sup>164</sup> In the 2014–2015 school year, 11 Vermont schools participated in the Community Eligibility Provision, serving 7,386 students.<sup>165</sup> The federal government also funds a Farm to School Grant Program.<sup>166</sup>

Vermont law expands the federal programs’ reach.<sup>167</sup> First, Vermont makes both breakfast and lunch free to students with household incomes at 185% or less of the federal poverty level.<sup>168</sup> Vermont pays the reduced-priced fee to schools on the students’ behalf.<sup>169</sup> Second, Vermont funds the Vermont Farm-to-School Program, which awards Vermont schools money to “help[] Vermont schools develop relationships with local farmers and producers.”<sup>170</sup> Among other things, the grant pays for resources that will “increase use of local foods” in the school food programs, and it pays for local foods and other materials and assistance that will help teachers train students about “nutrition and farm-to-school connections . . . .”<sup>171</sup> Nearly two-thirds of Vermont schools offer farm-to-school programs, and 95% of those schools serve local foods.<sup>172</sup> Vermont school districts spent 16.2% of their food budget on local foods from 2011 to 2012.<sup>173</sup>

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163. § 104, 124 Stat. at 3193.

164. *Id.*

165. BECCA SEGAL ET AL., FOOD RES. & ACTION CTR., COMMUNITY ELIGIBILITY ADOPTION RULES FOR THE 2015-2016 SCHOOL YEAR, INCREASING ACCESS TO SCHOOL MEALS 20, <http://frac.org/pdf/take-up-of-cep-report.pdf> (last updated May 13, 2016). The federal government also offers additional support for improved nutrition programs, such as the Fresh Fruit and Vegetable Program, Farm to School grants, and grants for improving kitchen equipment. *Fresh Fruit and Vegetable Program*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/ffvp/fresh-fruit-and-vegetable-program> (last updated Mar. 1, 2016); *Farm to School Grant Program*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/farmtoschool/farm-school-grant-program> (last updated Mar. 28, 2016) [hereinafter *Farm to School Grant Program*].

166. 42 U.S.C. § 1769(g) (2012); *Farm to School Grant Program*, *supra* note 165.

167. VT. STAT. ANN. tit. 16, § 1264 (2014).

168. *Id.*

169. *Id.*

170. *Id.* tit. 6, § 4721 (2014).

171. *Id.*

172. *What Is Farm to School?*, VT. FEED, <http://vtfeed.org/what-farm-school> (last visited Nov. 23, 2016).

173. *Id.*

## 2. Assessing the School Food Programs According to the Right to Food Checklists

In the duty checklist, the federal and state food programs meet the *provide* element. The school food programs provide food directly to those who cannot feed themselves.<sup>174</sup> Low-income *children*, in particular, are wholly dependent on others for their food.<sup>175</sup> Although many children do manage the household food preparation,<sup>176</sup> in most situations children cannot control their income, housing, transportation, or other necessary parts of food security. In addition, because they are still growing, they are particularly vulnerable to harm from inadequate food.<sup>177</sup> Incomplete nutrition affects brain development, metabolism, and overall growth.<sup>178</sup> Feeding children, therefore, is a particularly strong state obligation under the right to food.<sup>179</sup>

In addition, hunger can severely interfere with education.<sup>180</sup> Hunger and dietary quality strongly correlate with academic performance, which

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174. See *supra* notes 40–49 and accompanying text (discussing governmental obligations the right to food imposes).

175. The Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and the Convention on the Rights of the Child recognize children's special vulnerability, their right to health, and their right to an adequate standard of living, including food and nutrition. Universal Declaration of Human Rights, *supra* note 16 ("Motherhood and childhood are entitled to special care and assistance."); Covenant, *supra* note 9, art. 10 ("Special measures of protection and assistance should be taken on behalf of all children . . ."); Convention on the Rights of the Child, art. 27, Nov. 20, 1989, 1577 U.N.T.S. 3 ("States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development . . . . States . . . shall in case of need provide material assistance . . . particularly with regard to nutrition, clothing and housing."). See also *infra* notes 177–81 and accompanying text (discussing effects of poor diet in childhood).

176. Michelle Lapine McCabe, Director of Community Engagement & Food Access, Council of Churches of Greater Bridgeport, Inc., Panel Address at Yale Food Systems Symposium: New Alliances that Shape a Movement: Community Collaboration for Optimal Collective Impact in Greater Bridgeport (Oct. 31, 2015) (in answering questions after the panel, Ms. McCabe said they had discovered the children among their food pantry clients did a lot of the food preparation).

177. See J. Larry Brown & Ernesto Pollitt, *Malnutrition, Poverty, and Intellectual Development*, SCI. AM., Feb. 1996, at 38–43 (reporting on study that showed negative long-term effects from poor childhood diet); JOHN COOK & KAREN JENG, FEEDING AMERICA, CHILD FOOD INSECURITY: THE ECONOMIC IMPACT ON OUR NATION 10 (2009) (reporting that children from ages 0 to 3 years old are particularly vulnerable to food insecurity); *Child Diet 'Linked to IQ'*, NAT'L. HEALTH SERV. (Feb. 8, 2011) (reviewing a study that showed that a good diet at three years old led to a higher IQ at eight years old); *Child Hunger*, FEEDING AMERICA, <http://www.feedingamerica.org/hunger-in-america/impact-of-hunger> (last visited Nov. 23, 2016) ("Food insecurity is harmful to all people, but it is particularly devastating to children.").

178. Brown & Pollitt, *supra* note 177.

179. See *supra* note 175 (referencing international support for special care for children).

180. See Michelle D. Florence et al., *Diet Quality and Academic Performance*, 76 J. OF SCH. HEALTH 209, 209 (2008) (finding positive correlation between diet quality and academic performance);

can obstruct a student's ability to provide for herself when she becomes an adult.<sup>181</sup> Therefore, the federal and state food programs also *facilitate* the children's right to food.

The programs also largely meet the adequate food access checklist. The programs target school children only, so they do not meet the right to food for *all individuals and groups* in the population; and the programs do not provide food in the evening, on the weekend, or in the summer, so the food access is not *regular and consistent*.<sup>182</sup> But if we evaluate the programs within their scope—asking whether the programs meet the adequate food checklist for school children during the school year—then the programs meet, or nearly meet, the checklist requirements.

First, the programs directly provide food (*economic and physical access*) for all children who need food (*all individuals and groups*).<sup>183</sup> Vermont offers free breakfast and lunch to all students at or below 185% of the federal poverty line.<sup>184</sup> This is considerably broader than the SNAP requirement, which is 130% of the federal poverty line.<sup>185</sup> The 185% level includes families of four that make \$44,863 per year.<sup>186</sup> The 185% standard reaches nearly half of Vermont schoolchildren.<sup>187</sup> Most likely, it reaches virtually all children who need government assistance, which means it better supports the right to food than a 130% standard. Because the programs provide food every school day (breakfast and lunch), the food access is *regular and consistent*.<sup>188</sup>

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*Health & Academics*, CTRS. FOR DISEASE CONTROL & PREVENTION, [http://www.cdc.gov/HealthyYouth/health\\_and\\_academics](http://www.cdc.gov/HealthyYouth/health_and_academics) (last visited Nov. 23, 2016) (discussing link between education and poor health, including poor diet); FOOD & NUTRITION INFO. CTR., ROLE OF NUTRITION IN LEARNING AND BEHAVIOR: A RESOURCE LIST FOR PROFESSIONALS (2011) (summarizing several studies that found correlations between diet and academic performance); COOK & JENG, *supra* note 177, at 22–26 (reporting on studies showing negative effects from childhood diet, including poor academic performance).

181. *Supra* note 180.

182. *See supra* notes 52–60 and accompanying text (discussing the adequate food access checklist).

183. *See supra* notes 52–60 and accompanying text (discussing the adequate food access checklist).

184. VT. STAT. ANN. tit. 16, § 1264 (2014).

185. *SNAP: Frequently Asked Questions*, *supra* note 78.

186. Child Nutrition Programs—Income Eligibility Guidelines, 80 Fed. Reg. 17,026, 17,027 (Mar. 31, 2015).

187. SEGAL ET AL., *supra* note 165 (reporting that 50% of Vermont students were eligible for free or reduced-price lunches during the 2014–2015 school year, taken as a state-wide average).

188. *See supra* notes 52–53, 55 and accompanying text (discussing the adequate food access checklist).

The provided food is of sufficient *quantity* and nutritional *quality*.<sup>189</sup> Unlike with SNAP, Congress explicitly required the Secretary of Agriculture to develop nutritional requirements for school food programs, and Congress grounded those requirements in federal nutrition guidelines.<sup>190</sup> The Food and Nutrition Board of the National Research Council of the National Academy of Sciences publishes these guidelines.<sup>191</sup> The regulations include a requirement that schools offer a variety of fruits, vegetables, whole grains, meat or a meat alternative (like beans), and dairy, with specific minimum amounts.<sup>192</sup> The regulations also prohibit trans fats and require foods low in sodium and sugar.<sup>193</sup> In addition, the federal and state farm-to-school programs augment the nutritional requirements with local food procurement.<sup>194</sup> Local food tends to be fresher, which means it offers more nutrients and taste.<sup>195</sup> The farm-to-school programs also foster a locavore culture in the school's community, improving support for nutritional school meals and an interest in healthy foods.<sup>196</sup> Together, the programs provide a sufficient quantity of nutritionally adequate food.

Perhaps the only significant failure of the school food programs is the stigma attached to receiving free meals.<sup>197</sup> *Dignity* is an essential element to the right to food.<sup>198</sup> If a direct provision program communicates shame or indignity, it has not fully met the right to food. The Community Eligibility Provision is an excellent solution to the stigma problem. The Community Eligibility Provision provides food to *all* students at that school, regardless

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189. 7 C.F.R. § 210.10(f)(1) (2016). *See also supra* Part II.B.1 (discussing school program nutritional requirements).

190. Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3214. For more information on the Dietary Guidelines, see DIETARY GUIDELINES, *supra* note 146, at 1.

191. § 201, 124 Stat. at 3214; DIETARY GUIDELINES, *supra* note 146, at 1.

192. 7 C.F.R. § 210.10(c).

193. 7 C.F.R. §§ 210.10(a)(3), 210.10(b)(1)(ii), 210.10(b)(2)(iii), 210.10(f)(3).

194. *See supra* Part II.B.1 (citing sources regarding the farm to school programs).

195. *See* REBECCA DUNNING, CTR. FOR ENVTL. FARMING SYS., N.C., RESEARCH-BASED SUPPORT AND EXTENSION OUTREACH FOR LOCAL FOOD SYSTEMS 10–15, 40 (2013), <https://cefs.ncsu.edu/wp-content/uploads/research-based-support-for-local-food-systems.pdf?x47549> (noting studies that show food nutritional content decreases after harvest; also notes a study that showed that student gardens may increase willingness to taste vegetables and fruits).

196. *See What Is Farm to School?*, *supra* note 172 (“Schools with farm to school programs report twice the national average in vegetable consumption.”); NAT’L FARM TO SCH.NETWORK, THE BENEFITS OF FARM TO SCHOOL 2, <http://www.farmtoschool.org/Resources/BenefitsFactSheet.pdf> (reporting farm to school programs were related to an “[i]ncrease in community awareness and interest about purchasing local foods and foods served in school cafeterias” and an “[i]ncrease in ability and interest in incorporating healthier foods in family diets”) (last visited Nov. 23, 2016).

197. Telephone Interview with Faye Conte, *supra* note 12 (on file with author) (Ms. Conte discussed how Hunger Free Vermont advocates for universal free meals for schoolchildren partly because of the stigma attached to receiving free and reduced-priced meals).

198. *See supra* Part I.B.1 (discussing dignity as foundational to the right to food).

of need, so free meals are not stigmatized.<sup>199</sup> Faye Conte of Hunger Free Vermont reported that their studies on the effects of the Community Eligibility Provision are incomplete (the program started in the 2014–2015 school year), but anecdotally, the program has been extremely positive.<sup>200</sup> The program completely removes stigma from eating school lunches.<sup>201</sup> School lunch participation has increased for students of all income types; the food workers can spend more time on preparing meals, rather than dealing with payments and paperwork; and administrations have fewer administrative burdens.<sup>202</sup>

### 3. How the Right to Food Would Improve the School Food Programs

The school food programs, taken on their own,<sup>203</sup> already perform well under the right to food.<sup>204</sup> They *provide* food directly to vulnerable populations that cannot feed themselves and thereby *facilitate* self-provision in adulthood.<sup>205</sup> The programs provide high-quality food *regularly and consistently*, two times a day, every school day. Congress explicitly requires the food be sufficient in both *quantity* and *quality*, that is, nutritious.<sup>206</sup> The farm-to-school programs and the Community Eligibility Provision foster a positive food culture and mitigate possible *indignity* in receiving free meals.<sup>207</sup> The right to food would point to one significant improvement: to expand universal school meals to all schools.

199. *See supra* notes 163–65 (discussing the Community Eligibility Provision).

200. Telephone Interview with Faye Conte, *supra* note 12.

201. *Id.* *See also* Patti Daniels, *Kids Eat Free: School Lunch Program Combats Hunger, Stigma*, VT. PUBLIC RADIO 4:25 (Oct. 14, 2015), <http://digital.vpr.net/post/kids-eat-free-school-lunch-program-combats-hunger-stigma#stream/0> (reporting that the Community Eligibility Provision eliminates stigma in receiving free lunch for schools participating in the program).

202. *Id.* *See also* FRAC Facts: *Community Eligibility Provision*, FOOD RES. & ACTION CTR. 1–2, [http://frac.org/pdf/community\\_eligibility\\_amazing\\_new\\_option\\_schools.pdf](http://frac.org/pdf/community_eligibility_amazing_new_option_schools.pdf) (last visited Nov. 23, 2016) (listing the benefits of the community eligibility program).

203. As mentioned, the school food programs necessarily only reach a segment of the vulnerable population (school-age children enrolled in school) for just a portion of their food needs (breakfast and lunch on school days during the school year). Assessing the food programs within those parameters, however, the programs perform well.

204. Critics will point out that unless children consistently access adequate food, they do not fulfill the right to food. This is true. If children do not access adequate food at home, on weekends, and in the summer, then they do not fulfill their right to food. However, the school lunch programs, in themselves, are congruent with the right to food.

205. *See supra* notes 46–51 and accompanying text (explaining the duty checklist of the right to food).

206. *See supra* notes 52–55, 61–69 and accompanying text (discussing the quantity and quality requirements from the adequate food access checklist).

207. *See supra* notes 26–39, 52–53, 72–76, 163–66, 197–203 and accompanying text (discussing the right to food’s dignity requirement and the Community Eligibility Provision).

### C. Burlington Zoning

#### 1. How Burlington Zoning Works

In 2014 and 2015, the Burlington City Council amended the Burlington Comprehensive Zoning Ordinance, providing enormous support to urban food production.<sup>208</sup> The Ordinance exempts from permitting requirements “[a]ccepted agricultural and silvicultural practices, including the construction of farm structures. . . .”<sup>209</sup> More specifically, the Ordinance exempts “[a]ll structures of 24 square feet or less and no taller than 15 feet”; “[c]old frames of 6 feet in height or less”; “[u]p to 2 seasonal hoop houses, each 200 square feet or less, without foundations”; and “[u]rban agricultural uses or structures located on building rooftops.”<sup>210</sup> Structures must comply with setback requirements.<sup>211</sup> The Ordinance also exempts from permitting the “[s]ale of food produced onsite or at an individual’s community garden plot not to exceed \$1,000 per year.”<sup>212</sup> The Ordinance allows residents to process food for sale within their own kitchens.<sup>213</sup>

The Ordinance permits community gardens nearly everywhere in the city: in all residential zones, neighborhood mixed use zones, enterprise zones, and the institutional zone, as well as most of the downtown mixed use zones, the agricultural zone, and the recreation/greenspace zone.<sup>214</sup> The

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208. Burlington, Vt., Burlington Comprehensive Development Ordinance art. 3, sec. 3.1.2(c) (Mar. 31, 2016) [hereinafter Burlington Zoning Ordinance]; Burlington, Vt., Burlington Comprehensive Development Ordinance, Urban Agriculture Standards ZA-14-08 (Jan. 25, 2015) [hereinafter Burlington Urban Agriculture Standards]; *Recently Adopted Amendments*, CITY OF BURLINGTON, VT., <https://www.burlingtonvt.gov/PZ/CDO/Recently-Adopted-Amendments> (last visited Nov. 23, 2016); Sandy Levine, *Local Livestock in Burlington, Vermont*, CONSERVATION LAW FOUND. (Oct. 14, 2015), <http://www.clf.org/blog/vermont/local-livestock-in-burlington-vermont/>. For more information on Burlington’s zoning changes, see Andy Bromage, *Burlington Couple Busted for Gardening Structures in Yard*, SEVEN DAYS (May 11, 2012), <http://www.sevendaysvt.com/vermont/burlington-couple-busted-for-gardening-structures-in-front-yard/Content?oid=2177050> (reporting that the City of Burlington said residents’ hoop houses violated Burlington’s zoning ordinance). See also *Urban Agriculture Task Force*, BURLINGTON FOOD COUNCIL, <http://burlingtonfoodcouncil.org/our-projects/uatf> (last visited Nov. 14, 2016) (“The Urban Agriculture Task Force was created in March, 2011, by Burlington City Council to study issues of urban agriculture and provide policy recommendations for issues around keeping livestock, composting, urban gardening, and more.”); Kathryn Flagg, *Burlington to Update Its Ag and Livestock Rules*, SEVEN DAYS (June 25, 2014), <http://www.sevendaysvt.com/vermont/burlington-to-update-its-ag-and-livestock-rules/Content?oid=2389170>.

209. Burlington Urban Agriculture Standards, *supra* note 208.

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. Burlington Zoning Ordinance, *supra* note 208, art. 4, sec. 4.3.1.

Ordinance also allows “Agricultural Use” in much of the city, including the agricultural zone, the recreation/greenspace zone, the institutional zone, one of the enterprise zones, and, conditionally, in the conservation zone.<sup>215</sup> The Ordinance allows open-air markets in downtown mixed-use areas, neighborhood mixed-use areas, enterprise areas, and the agricultural zone, opening a huge part of the city to farmer’s markets.<sup>216</sup>

## 2. Assessing the Burlington Ordinance According to the Right to Food Checklists

The Ordinance illustrates how government shapes the space in which communities access food. Not one of the rules in the Burlington Ordinance provides food to low-income households.<sup>217</sup> Nor do the rules require government to provide food.<sup>218</sup> Yet the Ordinance powerfully supports the right to food because it ensures that government and private entities *respect* (not obstruct) the ability of Burlington residents to feed themselves.<sup>219</sup> As a result, home gardens, community gardens, farmers’ markets, and rooftop gardens are free to proliferate. The rules also *fulfill* and *facilitate* the right to food by making it easy for residents to build gardening structures, create community gardens, and start small garden stands. They also incentivize developers to include space for community gardens.<sup>220</sup> Thus, the Ordinance meets the duty checklist in the right to food.

The Ordinance also performs well in the adequate food access checklist. The Ordinance allows substantial gardening activity—not just a small plot, or a chicken or two, which would not be enough to feed a family—but sufficient gardening such that a household could provide itself with a significant portion of its food.<sup>221</sup> Residents can also provide a significant quantity of high-quality food to others.<sup>222</sup> Because residents

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215. *Id.* “Agricultural Use” is “defined by the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation . . . .” Burlington Zoning Ordinance, *supra* note 208, art. 3, sec. 3.1.2(a). “Urban agriculture” refers to “all agricultural activities not included in ‘agriculture’ as defined in this ordinance.” Burlington Zoning Ordinance, *supra* note 208, art. 13, sec. 13.1.1.

216. Burlington, Vt., Burlington Comprehensive Development Ordinance app. A (Mar. 31, 2016).

217. Burlington Zoning Ordinance, *supra* note 208.

218. *Id.*

219. *See supra* notes 40–49 (describing governmental duties under the right to food).

220. Burlington, Vt., Burlington Comprehensive Development Ordinance, Community Gardens Impact Fee Incentive and Off-Site Improvements Impact Fee Inclusion ZA #15-07 (Jul. 17, 2015). *See also supra* notes 40–49 (describing governmental duties under the right to food).

221. Burlington Zoning Ordinance, *supra* note 208, art. 3, sec. 3.1.2(c). *See also* Bromage, *supra* note 208 (describing how the previous Ordinance obstructed gardening and livestock management sufficient to feed a household).

222. Burlington Zoning Ordinance, *supra* note 208, art. 3, sec. 3.1.2(c).

grow and raise the food on-site, that food is also fresh and nutritious.<sup>223</sup> Thus, the Ordinance *respects and facilitates* the ability of *all individuals and groups* to feed themselves *regular and consistent* food to which they have *economic and physical access* that is *quantitatively and qualitatively sufficient* in a way that promotes *dignity*.<sup>224</sup> Because the residents may control what food they produce, they can also ensure that food is *culturally appropriate*.<sup>225</sup>

### 3. How the Right to Food Can Improve the Burlington Zoning Ordinance

The Burlington Ordinance has one relevant failure. The Ordinance lists a series of objectives, such as “to encourage the use and development of lands in Burlington in a manner which will promote the public health, safety and welfare; . . . to encourage the continued economic growth and vitality of the city;” and “to create a model city for people to live and work in.”<sup>226</sup> Food access, food security, or self-provision for low-income families, or any variant of these, are lacking.<sup>227</sup> If Burlington applied the right to food framework when revising the Ordinance, it would bring food security to the forefront of city planning. A more comprehensive ordinance would address whether the city rules enable low-income families physical and economic access to adequate food.

#### D. Minimum Wage

##### 1. About the Minimum Wage

Anti-hunger advocates frequently argue that hunger is a poverty problem, not a food problem, and one suggested solution is to raise the minimum wage.<sup>228</sup> The federal minimum wage in 2015 was \$7.25 per

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223. See *supra* note 195 and accompanying text (discussing how local, fresh food tends to be tastier and more nutritious).

224. See *supra* Parts I.B.2 and I.B.3 (discussing the *duty* and adequate food access checklists).

225. See *supra* notes 52–53, 70–71 and accompanying text (describing *culturally appropriate* within the adequate food access checklist).

226. Burlington Zoning Ordinance, *supra* note 208, art. 1, §§ 1.1.2(a), (h), (i).

227. Alternatively, we could find a food security goal implicitly in “public health and welfare,” “economic growth,” and “model city.” But where food security has so long taken a backseat to other public goals, assuming food security as an implicit priority does not make sense.

228. Interview with John Sayles, *supra* note 13; Telephone Interview with Faye Conte, *supra* note 12; Alana Semuels, *When Raising the Minimum Wage Isn't Enough*, ATLANTIC (Nov. 25, 2014), <http://www.theatlantic.com/business/archive/2014/11/when-raising-the-minimum-wage-isnt-enough/383116>.

hour.<sup>229</sup> In Vermont in 2016, the minimum wage is \$9.60 per hour.<sup>230</sup> It will increase to \$10.00 in 2017 and \$10.50 in 2018.<sup>231</sup> Vermont's minimum wage is the third-highest in the country.<sup>232</sup> However, according to the Vermont Joint Fiscal Office, \$13.00 per hour is the amount a single, full-time worker with full medical benefits would need to meet her needs while living in a two-person household without children.<sup>233</sup> A single adult with one child living in a rural area would need to earn \$24.57 per hour.<sup>234</sup> Neither minimum wage law provides a reason for setting those amounts, and neither requires the minimum wage to meet any particular living standard.<sup>235</sup>

## 2. Assessing the Minimum Wage According to the Right to Food

That wages are a hunger issue is congruent with the right to food framework. The right to food looks at hunger in a systemic way.<sup>236</sup> It assumes that hunger is not an isolated issue or an uncontrollable, inevitable problem.<sup>237</sup> If a significant portion of the American population cannot consistently access adequate food, the right to food framework instructs us to look for a broader problem, a problem that *causes* food insecurity. That broader problem, perhaps, is insufficient wages.<sup>238</sup> Brazil seems to have reasoned this way; Brazil recognizes the right to food as a function of the constitutional right to a minimum wage.<sup>239</sup>

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229. 29 U.S.C. § 206 (2006).

230. VT. STAT. ANN. tit. 21, § 384 (2015).

231. *Id.* The Vermont legislature is considering a bill that would raise the minimum wage to \$15 per hour. H.B. 260, Gen. Assemb., Reg. Sess. (Vt. 2015–2016).

232. Memorandum from Kavet, Rockler & Assocs., LLC, to Steve Klein, Legislative Joint Fiscal Office 3 (Mar. 13, 2014) <http://www.leg.state.vt.us/jfo/reports/Memo%20Minimum%20Wage%20031314.pdf>.

233. VT. LEGISLATIVE JOINT FISCAL OFFICE, BASIC NEEDS BUDGETS AND THE LIVABLE WAGE 1 (2015), <http://www.leg.state.vt.us/jfo/reports/2015%20Basic%20Needs%20Budget%20report%2001-15-2015.pdf>.

234. *Id.* at 5.

235. 29 U.S.C. § 206 (2006); VT. STAT. ANN. tit. 21, § 384.

236. *See supra* notes 8, 12–15, 30–31 and accompanying text (addressing hunger as a systemic, human-made problem).

237. *See supra* notes 8, 12–15, 26–39 and accompanying text (suggesting ways to look at hunger). I recall Smita Narula saying at the 2015 UVM Food Systems Summit that food insecurity is not something that happens to people, but something *that is done to them*.

238. Interview with John Sayles, *supra* note 13; Telephone Interview with Faye Conte, *supra* note 12; Semuels, *supra* note 228.

239. KNUTH & VIDAR, *supra* note 8, at 16.

In a right to food framework, the federal and state minimum wage laws must *respect, protect, provide, or facilitate* the right to food.<sup>240</sup> If the government allows employers to pay a wage so low that reasonable people cannot provide adequate food for themselves, the government fails to *protect* the right to food.<sup>241</sup> An unreasonably low minimum wage fails the duty checklist of the right to food.

Whether the minimum wage is unreasonably low depends on the adequate food access checklist. Can an employee gain adequate food access with minimum-wage pay? According to the Vermont Joint Fiscal Office, the Vermont minimum wage is insufficient to meet basic needs.<sup>242</sup> The Vermont Joint Fiscal Office was not working with the right to food checklist in making its estimates, but it is fair to assume that if a minimum-wage employee cannot meet her basic needs, she also cannot gain adequate food access with those wages. Therefore, the minimum wage is unreasonably low, and both the federal and Vermont governments fail the duty and adequate food access checklists under the right to food. Facts bear out this reasoning: in Vermont, working families receive 55% of federal public assistance and 54% of Vermont public assistance.<sup>243</sup> It could make more financial sense for the government to raise the minimum wage and ensure families do not need the government "hand-out" at all.<sup>244</sup>

### 3. How the Right to Food Could Improve Minimum Wage

The right to food affirms the ability to access food—including *economic* access to food—as a basic human right, indivisible from other rights, and derived from human dignity.<sup>245</sup> Therefore, a minimum wage that cannot provide adequate economic access to food fails to meet a human right.<sup>246</sup> If governments legislated minimum wage laws according to the right to food framework, they would begin by asking, what do households

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240. See *supra* notes 40–49 and accompanying text (discussing the duties the right to food imposes on government).

241. See *supra* notes 40–49 and accompanying text (commenting on governmental obligations arising from the right to food).

242. See VT. LEGISLATIVE JOINT FISCAL OFFICE, *supra* note 233, at 1 (stating \$13.00 per hour as the minimum amount a single, full-time worker with a roommate requires to meet basic needs in Vermont; a single parent living in a rural area with one child needs \$24.57 per hour).

243. KEN JACOBS ET AL., U.C. BERKLEY LABOR CTR., *THE HIGH PUBLIC COST OF LOW WAGES* 7–8 (2015), <http://laborcenter.berkeley.edu/pdf/2015/the-high-public-cost-of-low-wages.pdf>.

244. Interview with John Sayles, *supra* note 13.

245. See *supra* notes 26–39, 52–76 and accompanying text (outlining the right to food, including *economic* accessibility).

246. See *supra* notes 26–39, 52–76 and accompanying text (detailing the right to food).

need in order to obtain *quantitatively* and *qualitatively* sufficient food?<sup>247</sup> Anything less would fail governmental duty.<sup>248</sup> The right to food, in other words, would provide a rational basis for providing a higher minimum wage than currently exists, and it would suggest a legislative process grounded in what households *actually need* in order to access food. In addition, using the right to food framework would ensure legislators set a wage sufficient not just to buy *quantitatively* sufficient food, but food that is nutritionally adequate (*qualitatively* sufficient), in a way that supports human *dignity*.<sup>249</sup> Federal and state minimum wage laws should require that a fiscal office, like Vermont's Joint Fiscal Office, calculate what a full-time worker would need to earn per hour to meet a basic standard of living, including the ability to obtain adequate food, as defined by the right to food. The minimum wage should meet that threshold amount.

#### CONCLUSION

The nation's most straightforward route to fulfilling the right to food is constitutionally affirming a right to food.<sup>250</sup> However, even without explicitly embracing an affirmative right to food, governments can use the right to food framework to structure their policies. Governments can recognize the right to food as a directive principle intended to guide policymaking, but without enforceability.<sup>251</sup> Governments can also require that in passing laws, legislatures assess how the law will affect food access, according to the right to food checklists. Considering the components of food access that the right to food articulates would increase the visibility of food access and address some of its problems.<sup>252</sup> Even better, governments can pass framework laws bringing together the different government sectors that affect food access, such as family and child services, education, land use planning, housing, and labor, and address hunger cohesively.<sup>253</sup>

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247. See *supra* notes 26–39, 52–76 and accompanying text (outlining the right to food).

248. See *supra* notes 40–49, 52 and accompanying text (summarizing duties that the right to food imposes on governments).

249. See *supra* notes 26–39, 52–76 and accompanying text (outlining the right to food).

250. KNUTH & VIDAR, *supra* note 8, at 16; McDermott, *supra* note 8.

251. See KNUTH & VIDAR, *supra* note 8, at 18 (“Directive principles . . . often represent the values to which a society aspires . . . Very often these constitutional provisions guide governmental action, particularly in the socioeconomic field, but are not considered to provide for individual or justiciable rights.”).

252. The National Environmental Policy Act (NEPA) affirms this principle. National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970).

253. The U.N. Food and Agriculture Organization recommends implementing the right to food through a framework law, which sets a directive that coordinating branches fulfill, along with targets, benchmarks, and consequences for governmental failures. de Schutter, *The Right to Food*, *supra* note 7;

The right to food does not need to impose a significant burden. While it does impose the duty to provide food to those who cannot provide for themselves, the right to food does not demand that government feed all of its citizens.<sup>254</sup> It does demand that the government create the legal architecture for people to support themselves with dignity.<sup>255</sup> This is a reasonable requirement, and federal, state, and local governments should embrace this duty.

—K. Heather Devine<sup>\*†</sup>

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KNUTH & VIDAR, *supra* note 8, at 30–32 (“Framework legislation lays down general principles and obligations, and leaves it to implementing legislation and the competent authorities to determine specific measures to be taken so as to realize such obligations . . .”).

254. *See supra* notes 35–39 and accompanying text (discussing how the right to food is the right to feed oneself, not the right to be fed).

255. *See supra* notes 35–39 and accompanying text (discussing governmental obligations in upholding the right to feed oneself).

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