

# The 2014 Farm Bill: Farm Subsidies and Food Oppression

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## I. INTRODUCTION

The 2014 Farm Bill ushered in some significant and surprising changes. One of these was that it rendered the identity of all the recipients of farm subsidies secret. Representative Larry Combest, who is now a lobbyist for agribusiness, first introduced a secrecy provision into the bill in 2000.<sup>1</sup> The provision, however, only applied to subsidies made in the form of crop insurance.<sup>2</sup> Until 2014, the majority of subsidies were direct payments and the identity of the people who received them was public information. In fact, the Environmental Working Group's release of the list of recipients led to a series of scandals because it featured celebrities Bruce Springsteen and Jimmy Carter, members of the House and Senate,<sup>3</sup> and a considerable number of billionaires, including founders of high-profile companies such as Microsoft and Charles Schwab.<sup>4</sup>

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1. Nancy Watzman, *Farm Bill Allows Congress to Keep Crop Subsidies Secret*, SUNLIGHT FOUND. (Feb. 7, 2014), <http://sunlightfoundation.com/blog/2014/02/07/farm-bill-allows-congress-to-keep-crop-subsidies-secret/>.

2. See 7 U.S.C. § 1502(c)(4)(B) (2014); 7 U.S.C. § 1502(c)(1)(2014).

3. These include U.S. Rep. Stephen Fincher, who collected nearly \$3.5 million in subsidies 1999–2012, and Iowa Senator Joni Ernst. Ron Nixon, *Farm Subsidy Recipient Backs Food Stamp Cuts*, N.Y. TIMES (May 22, 2013), [http://www.nytimes.com/2013/05/23/us/politics/farm-subsidy-recipient-backs-food-stamp-cuts.html?\\_r=0](http://www.nytimes.com/2013/05/23/us/politics/farm-subsidy-recipient-backs-food-stamp-cuts.html?_r=0;); Luke Brinker, *Joni Ernst's Family Received Nearly Half a Million Dollars in Federal Farm Subsidies*, SALON (Jan. 22, 2015), [http://www.salon.com/2015/01/22/joni\\_ernsts\\_family\\_received\\_nearly\\_half\\_a\\_million\\_dollars\\_in\\_federal\\_farm\\_subsidies/](http://www.salon.com/2015/01/22/joni_ernsts_family_received_nearly_half_a_million_dollars_in_federal_farm_subsidies/).

4. The list of billionaires includes Paul Allen, cofounder of Microsoft; Charles Ergen, cofounder of DISH Network; Philip Anschutz, owner of Anschutz Entertainment Group and cofounder of Major League Soccer; Leonard Lauder, son of Estee Lauder and former CEO of the Estee Lauder Companies Inc.; Jim Kennedy, Chairman of Cox Enterprises; S. Truett Cathy, founder of Chick-fil-A; Leslie Wexner, CEO of L Brands Inc., which owns Victoria's Secret; Charles Schwab, founder of brokerage firm Charles Schwab Corporation; Stewart and Lynda Resnick, owners of POM Wonder-

The resulting outcry against the corruption represented by these payments<sup>5</sup> increased support for the elimination of direct payments. The Bill consequently replaced these payments with two new crop insurance programs, thereby extinguishing public access to the list of farm subsidy recipients.<sup>6</sup> This move was particularly disturbing in an era where transparency in the food system is commonly viewed as desirable and even necessary.<sup>7</sup>

Another dramatic aspect of the Bill was that it cut \$8 billion from the food stamp program, affecting approximately 1.7 million people. What it did not do, however, is alter the allocation of agricultural subsidies that has been in place since the Bill's first incarnation in 1933. This is surprising in light of evolving medical insights into nutrition and shifting national health priorities. This resistance to change suggests that health and nutrition are not driving the Farm Bill. Instead, it appears that large agribusiness has succeeded in capturing the majority of resources allocated to farm support. Although farm subsidies comprise only 14% of the Farm Bill,<sup>8</sup> they are highly controversial because, not only do they determine which agricultural industries are likely to thrive and survive, they guide the nation's consumption patterns. The health of farmers and individuals are therefore both at stake in each Farm Bill.

Corn, wheat, and soy receive the highest percentage of farm subsidies.<sup>9</sup> Additionally, the Farm Bill provides support for the milk and dairy

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ful, Fiji Water, and Teleflora; David Rockefeller, Sr., former chair and chief executive of Chase Manhattan Bank; and Penny Pritzker, U.S. Secretary of Commerce. Alex Rindler, *Forbes Fat Cats Collect Taxpayer Funded Farm Subsidies*, ENVTL. WORKING GRP. (Nov. 7, 2013), <http://www.ewg.org/research/forbes-fat-cats-collect-taxpayer-funded-farm-subsidies>.

5. See, e.g., Debbie Stabenow, *Farm Bill Ends Direct Payment Subsidies*, U.S. SENATE COMM. ON AGRIC., NUTRITION & FORESTRY (Jan. 28, 2014), <http://www.ag.senate.gov/newsroom/press/release/farm-bill-ends-direct-payment-subsidies>. On the other hand, critics point to equal, if not worse, potential for corruption in the crop insurance programs. See, e.g., David J. Lynch, *Fraud Stealing \$100 Million Shows Flaws in U.S. Crop Insurance*, BLOOMBERG BUSINESS (Sept. 10, 2013), <http://www.bloomberg.com/news/articles/2013-09-11/fraud-stealing-100-million-shows-flaws-in-u-s-crop-insurance>.

6. See 7 U.S.C. § 9016 (2014); 7 U.S.C. § 9017 (2014).

7. See Andrea Freeman, *Transparency for Food Consumers: Nutrition Labeling and Food Oppression*, 41 AM. J.L. & MED. (forthcoming 2015).

8. *U.S. Farm Bill: Frequently Asked Questions*, SNAP TO HEALTH, <http://www.snapttohealth.org/farm-bill-usda/u-s-farm-bill-faq/> (last visited Mar. 24, 2015).

9. AMY RADICAN-WALD, CTR. FOR MISS. PUB. HEALTH, FROM FIELD TO FITNESS: ALIGNING FARM POLICY WITH HEALTH POLICY TO IMPROVE NUTRITION AND HEALTH 5 (2014), available at [http://www.researchgate.net/publication/265125183\\_From\\_Field\\_to\\_Fitness\\_Aligning\\_Farm\\_Policy\\_with\\_Health\\_Policy\\_to\\_Improve\\_Nutrition\\_Health](http://www.researchgate.net/publication/265125183_From_Field_to_Fitness_Aligning_Farm_Policy_with_Health_Policy_to_Improve_Nutrition_Health) ("Corn was the most highly subsidized commodity at 44.6 percent, followed by wheat at 24 percent, soybeans at 14 percent, rice at 9.0 percent, grain sorghum at 4.2 percent, and all other food crops (including fruits and vegetables) at 3.9 percent.").

industries.<sup>10</sup> As a result, the United States Department of Agriculture (USDA), the agency that administers the Bill, has a significant stake in selling these foods to consumers, often through secondary markets, such as soft drinks and other beverages sweetened with high fructose corn syrup, and processed, packaged foods containing high levels of fats derived from soybeans. The USDA's investment in the success of these markets conflicts, however, with its mandate to promote health and nutrition.

The USDA and the Department of Health and Human Services publish the federal Dietary Guidelines every five years.<sup>11</sup> They advise individuals to consume several servings of fruits and vegetables daily, and to eat a diet rich in whole grains.<sup>12</sup> Nonetheless, the Farm Bill provides only minimal support for these healthy foods. Consequently, the USDA, in order to meet its mandate to support subsidized agricultural industries, primarily promotes non-nutritious foods.<sup>13</sup> The Farm Bill and the demands it makes on the USDA thus make it extremely difficult for most people to eat in accordance with the national nutritional recommendations.

The USDA's responsibility to support subsidized commodities also appears to influence policies related to the nutrition programs that the agency administers, including the Child Nutrition Program (school lunchrooms), Supplemental Nutrition Assistance to Women and Children (WIC), and the food stamp program (the Supplemental Nutrition Assistance Program or SNAP).<sup>14</sup> For example, school meals contain a significant amount of processed foods and very few fresh fruits and vegetables,

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10. See Chuck Gill, *Producers Weighing Dairy Policy Shift in New Farm Bill*, PENN ST. NEWS (Mar. 12, 2014), <http://news.psu.edu/story/307552/2014/03/12/producers-weighing-dairy-policy-shift-new-farm-bill> ("Another provision in the farm bill established the new, margin-based Dairy Product Donation Program. Under this program, USDA will create demand by purchasing dairy products to donate to food banks or similar nonprofit organizations only if margins fall below \$4 for two consecutive months. The purchases will occur for three consecutive months or until margins rebound above \$4.").

11. *Dietary Guidelines for Americans, 2015*, U.S. DEP'T HEALTH & HUMAN SERVS., <http://www.health.gov/dietaryguidelines/2015.asp> (last visited May 4, 2015) ("[T]he Dietary Guidelines for Americans is reviewed, updated, and published every 5 years in a joint effort between the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Agriculture (USDA).").

12. *Dietary Guidelines Consumer Brochure*, U.S. DEP'T OF AGRIC., <http://www.choosemyplate.gov/print-materials-ordering/dietary-guidelines.html> (last visited Mar. 24, 2015).

13. Tamar Haspel, *Farm Bill: Why Don't Taxpayers Subsidize the Foods That Are Better for Us?*, WASH. POST (Feb. 18, 2014), [http://www.washingtonpost.com/lifestyle/food/farm-bill-why-dont-taxpayers-subsidize-the-foods-that-are-better-for-us/2014/02/14/d7642a3c-9434-11e3-84e1-27626c5ef5fb\\_story.html](http://www.washingtonpost.com/lifestyle/food/farm-bill-why-dont-taxpayers-subsidize-the-foods-that-are-better-for-us/2014/02/14/d7642a3c-9434-11e3-84e1-27626c5ef5fb_story.html).

14. SNAP became the new name for the program in 2008. Architects of the name change intended it to signal the program's focus on participants' nutrition and transition to healthy lifestyles. RADICAN-WALD, *supra* note 9, at 6.

despite a growing movement to introduce gardening and farming curricula into schools.<sup>15</sup> Even at public schools where children produce their own organic harvest, regulations prevent lunchrooms from feeding children the products of their labor.<sup>16</sup> Instead, public schools dispense tater tots and corn dogs.<sup>17</sup> Similarly, WIC distributes processed foods to women and children in need, including infant formula, the primary ingredient of which is one of two subsidized commodities—milk or soy.<sup>18</sup> Participants in the WIC program breastfeed at lower rates than other women.<sup>19</sup> These low breastfeeding rates are linked to a host of health problems for mothers and infants.<sup>20</sup> Additionally, SNAP allows participants to spend money on unhealthy foods that contain subsidized commodities, but not on necessary items such as toilet paper.<sup>21</sup>

Agribusinesses' influence over the Farm Bill thus appears not only to contribute to poor health outcomes in the United States generally,<sup>22</sup> but also to cause disproportionate harm to individuals that participate in federal nutrition programs. All WIC and SNAP recipients are impoverished, as they must meet low-income eligibility requirements to qualify for these programs. Also, although students across a range of incomes eat meals at school, the detrimental effects of corporate influence fall heaviest on poor children. Students who eat school-provided meals receive up

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15. See, e.g., LESLIE F. BODEN, GREEN THUMB, GROWING SCHOOL AND YOUTH GARDENS IN NEW YORK CITY (2009), available at [https://www.nycgovparks.org/sub\\_about/partners/greenthumb/school\\_garden\\_resource\\_guide.pdf](https://www.nycgovparks.org/sub_about/partners/greenthumb/school_garden_resource_guide.pdf).

16. See, e.g., Monica Eng, *Most School Garden Produce is Forbidden Fruit in CPS Lunchrooms*, CHI. TRIB. (Oct. 19, 2010), [http://articles.chicagotribune.com/2010-10-19/health/ct-met-school-gardens-20101019\\_1\\_cps-spokeswoman-monique-bond-chartwells-thompson-school-garden](http://articles.chicagotribune.com/2010-10-19/health/ct-met-school-gardens-20101019_1_cps-spokeswoman-monique-bond-chartwells-thompson-school-garden).

17. See, e.g., *School Lunch Menus*, VICTORIA ADVOCATE (Feb. 28, 2015, 8:21 PM), <https://www.victoriaadvocate.com/news/2015/feb/28/school-lunch-menus/>.

18. See Andrea Freeman, *"First Food" Justice: Racial Disparities in Infant Feeding*, 83 FORDHAM L. REV. 3053 (2015).

19. George Kent, *The High Price of Infant Formula in the United States*, 17 AGROFOOD INDUSTRY HIGH TECH. 6 (2006).

20. See Freeman, *"First Food" Justice*, *supra* note 18, at 3061.

21. SNAP beneficiaries can purchase breads and cereals; fruits and vegetables; meats, fish, and poultry; and dairy products. *Supplemental Nutrition Assistance Program (SNAP): Eligible Food Items*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/snap/eligible-food-items> (last visited Mar. 24, 2015).

22. INST. OF MED., U.S. HEALTH IN INTERNATIONAL PERSPECTIVE: SHORTER LIVES, POORER HEALTH (REPORT BRIEF) (2013), available at [http://www.iom.edu/~media/Files/Report%20Files/2013/US-Health-International-Perspective/USHealth\\_Intl\\_PerspectiveRB.pdf](http://www.iom.edu/~media/Files/Report%20Files/2013/US-Health-International-Perspective/USHealth_Intl_PerspectiveRB.pdf) ("The U.S. health disadvantage spans many types of illness and injury. When compared with the average of peer countries, Americans as a group fare worse in at least nine health areas: 1. infant mortality and low birth weight 2. injuries and homicides 3. adolescent pregnancy and sexually transmitted infections 4. HIV and AIDS 5. drug-related deaths 6. obesity and diabetes 7. heart disease 8. chronic lung disease 9. disability.").

to 50% of their daily calories from them.<sup>23</sup> For poor children, these calories are likely to be the day's most nutritious ones, because of a lack of access to healthy food in low-income neighborhoods. Additionally, structural factors, such as the need to work multiple jobs and limited means of transportation, prevent parents from travelling to other areas to shop or eat out. The USDA's use of government programs to increase consumption of subsidized commodities thus negatively affects low-income individuals, particularly children, while having minimal, if any, impact on people in higher income brackets.

Race, in addition to class, plays a part in the disproportionate harm to health of the USDA's policies. Racialized groups, particularly blacks, are disproportionately represented in the nutrition programs.<sup>24</sup> Low-income blacks and members of other racially marginalized communities also tend to live in neighborhoods dominated by fast food restaurants. These establishments can sell unhealthy food at low cost in great part due to farm subsidies.<sup>25</sup> Cheap prices and lack of alternatives often make fast food the only choice. Unfortunately, members of these communities experience higher rates of nutrition-related deaths and diseases, such as diabetes, high blood pressure, heart disease, and cancer.<sup>26</sup> Unhealthy diets contribute to these health disparities, alongside other factors such as

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23. Mary Story et al., *Schools and Obesity Prevention: Creating School Environments and Policies to Promote Healthy Eating and Physical Activity*, 87 *MILLBANK Q.* 71, 73 (2009).

24. "Race data show that Whites are the largest group of WIC participants (58.2 percent) followed by Blacks or African Americans (19.8 percent)." U.S. DEP'T OF AGRIC., WOMEN, INFANTS, AND CHILDREN (WIC) PARTICIPANT AND PROGRAM CHARACTERISTICS 2012: SUMMARY 1 (2013), available at [http://www.fns.usda.gov/sites/default/files/WICPC2012\\_Summary.pdf](http://www.fns.usda.gov/sites/default/files/WICPC2012_Summary.pdf). Blacks are only 13.2% of the U.S. population. *State and County QuickFacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/00000.html> (last revised Feb. 5, 2015). In 2010, 31.9% of TANF recipients were black and 85.2% were women. See U.S. DEP'T HEALTH & HUMAN SERVS., CHARACTERISTICS AND FINANCIAL CIRCUMSTANCES OF TANF RECIPIENTS, FISCAL YEAR 2010, at tbl.A (Aug. 8, 2012), available at <http://www.acf.hhs.gov/programs/ofa/resource/character/fy2010/fy2010-chap10-ys-final>; Z. Fareen Parvez, *Women, Poverty, and Welfare Assistance* (Jan. 2009) (unpublished manuscript), available at [http://www.socwomen.org/wp-content/uploads/2010/05/fact\\_00-2009-welfare.pdf](http://www.socwomen.org/wp-content/uploads/2010/05/fact_00-2009-welfare.pdf).

25. See Andrea Freeman, *Fast Food: Oppression Through Poor Nutrition*, 95 *CAL. L. REV.* 2221, 2221 (2007).

26. African Americans have a 26% greater incidence of cancer (36% greater for prostate cancer), while an African American woman is 67% more likely to die of breast cancer than her white counterparts. African Americans have a 40% higher incidence of hypertension. Latinas suffer from heart disease at twice the rate of white women, and African American and Chicanas face a 45% greater incidence of obesity. Latinos are 53% more likely to suffer from diabetes, African American men are 69% more likely to suffer from diabetes, and African American and Native American women face more than two and three times higher rates of diabetes than white women. John Robbins, *Racism, Food and Health*, *JOHNROBBINS.INFO* (Apr. 18, 2010), <http://johnrobbins.info/blog/racism-food-and-health/>.

inadequate recreational opportunities,<sup>27</sup> insufficient or no health insurance,<sup>28</sup> and racial disparities in treatment by health providers.<sup>29</sup>

To deconstruct the racial and socioeconomic harms of subsidized commodities, it is useful to analyze farm subsidies using the lens of food oppression theory. Food oppression theory examines how facially neutral food policy and law can physically debilitate members of marginalized and subordinated groups, creating and perpetuating racial and socioeconomic health disparities. Food oppression theory considers how corporate influence can lead to policy that prioritizes industry over health. Further, it explores how racial stereotypes and myths about personal responsibility create apathy toward health disparities, making them appear natural and irremediable, rather than products of structural inequalities that law and policy have created and thus have the potential to dismantle.

Employing a food oppression lens, I begin by providing a brief history of farm subsidies and describing how these subsidies affect health and consumption patterns. I then apply the elements of food oppression to the practice of subsidizing agricultural commodities. Next, I assess whether new aspects of the 2014 Farm Bill serve to improve health outcomes, both generally and across racial and socioeconomic lines. Finally, I briefly discuss proposals that would represent progress toward mitigating or eliminating both the general and disparate harms of subsidized commodities.

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27. Latetia V. Moore, *Availability of Recreational Resources in Minority and Low Socioeconomic Status Areas*, 34 AM. J. PREVENTIVE MED. 16, 16 (2008) (“Minority neighborhoods were significantly more likely than white neighborhoods not to have recreational facilities . . . . Low-income neighborhoods were 4.5 times more likely to not have facilities than high-income areas . . .”).

28. HENRY J. KAISER FAMILY FOUND., HEALTH CARE AND THE 2008 ELECTIONS 1 (2008), available at <https://kaiserfamilyfoundation.files.wordpress.com/2013/01/7830.pdf> (“At least 1 in 3 nonelderly Latinos (36%) and [American Indians or Alaskan Natives] (33%) is uninsured, as compared with 22% of African Americans, 17% of Asian and Pacific Islanders, and 13% of Whites.”).

29. See, e.g., Rob Stein, *Race Gap Persists in Health Care, Three Studies Say*, WASH. POST (Aug. 18, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/17/AR2005081701437.html> (“Black Americans still get far fewer operations, tests, medications and other life-saving treatments than whites . . . [B]lack remain much less likely to undergo heart bypasses, appendectomies and other common procedures. They receive fewer mammograms and basic tests and drugs for heart disease and diabetes, and they have fallen even further behind whites in controlling those two major killers, according to the first attempts to measure the last decade’s efforts to improve equality of care.”); Vanessa Ho, *Doctors Treated Black Patients Worse in UW Study*, SEATTLE PI (Mar. 19, 2012, 9:00 PM), <http://www.seattlepi.com/local/article/Doctors-treated-black-patients-worse-in-UW-study-3419063.php> (“Studies have shown that white patients are more likely to get pain medication—and be in less pain—than minority patients.”).

## II. HISTORY AND HEALTH EFFECTS OF FARM SUBSIDIES

Congress enacted the first Farm Bill, the Agricultural Act of 1933, in response to agricultural distress brought on by the Great Depression.<sup>30</sup> Initially, the dual goals of the Act were to provide financial support to farmers and nutritious food to an ailing population.<sup>31</sup> Subsidies in the 1933 Agricultural Act went primarily to farmers of corn, wheat, soy, rice, and cotton. The selection of these particular commodities led to a racially imbalanced distribution of subsidies, with 98% of the financial support allocated in the Bill going to white farmers.<sup>32</sup> In this regard, the Farm Bills are part of a larger pattern of discrimination against black and Latino farmers that has persisted from 1933 to the present.<sup>33</sup>

After World War II, hunger and malnutrition, especially among children, were the most salient public health issues.<sup>34</sup> Accordingly, Farm Bills following World War II emphasized rural development, national security, and hunger prevention nationally and internationally.<sup>35</sup> Based on medical research published at the beginning of the century, federal food policy encouraged farmers to grow commodity crops that would provide growing children with essential fats and sugars after being processed into convenience foods.<sup>36</sup> The USDA correspondingly continued

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30. RADICAN-WALD, *supra* note 9, at 3.

31. Michael Heiligenstein, *A Brief History of the Farm Bill*, SATURDAY EVENING POST (Apr. 17, 2014), <http://www.saturdayeveningpost.com/2014/04/17/culture/politics/a-brief-history-of-the-farm-bill.html>.

32. See PETE DANIEL, *DISPOSSESSION* (2015) (tracing the history of discrimination against black farmers by the USDA). The first farm subsidies allowed the white owners of large farms to invest in machines and chemicals, leading to their growth, while small farms operated by blacks received no assistance in the quest to modernize. *Id.* at 9. In 2007, after many years of documented discrimination against black and Latino farmers by the USDA and other federal agencies, farm owners were ninety-eight percent white. Dorothy A. Brown, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790, 815 (2007). See also CIVIL RIGHTS ACTION TEAM, U.S. DEP'T OF AGRIC., *CIVIL RIGHTS AT THE UNITED STATES DEPARTMENT OF AGRICULTURE* (1997), available at <http://www.federationsoutherncoop.com/pigford/research/CRAT%20Report%201997.pdf>; Jim Chen, *Of Agriculture's First Disobedience and its Fruit*, 48 VAND. L. REV. 1261, 1307 (1995).

33. A lawsuit challenging this discrimination, *Pigford v. Glickman*, resulted in a settlement between the USDA and some minority farmers. *Pigford v. Glickman*, 206 F.3d 1212, 1217–18 (D.C. Cir. 2000) (holding that district court did not abuse its discretion in approving consent decree settling class action for race discrimination in allocation of federal farm loans because class members bore the risk that federal regulations might change before execution). See also DANIEL, *supra* note 32, at 71, 79 (describing the domination of farm services and agencies by whites that perpetuated discrimination); Joy Milligan, *Protecting Disfavored Minorities: Toward Institutional Realism*, UCLA L. REV. (forthcoming 2016). Farming has one of the highest percentages of white owners in any American business. Brown, *supra* note 32, at 815.

34. *Food Distribution: FDD—History and Background*, U.S. DEP'T OF AGRIC. (Nov. 12, 2013), <http://www.fns.usda.gov/fdd/fdd-history-and-background>; RADICAN-WALD, *supra* note 9, at 5.

35. RADICAN-WALD, *supra* note 9, at 15.

36. *Id.*

to offer the most support to growers of corn, wheat, and soy, and farmers strove to “farm[] to the bill the way teachers teach to a test.”<sup>37</sup> Subsidies thus ensured that foods high in fat and sugar became affordable for and accessible to impoverished communities, setting in motion government and individual preferences for consumption of these foods, even after the country’s foremost nutritional problem shifted from hunger to obesity.

National attention to the obesity problem originated in a Life Magazine story, published in 1954. The article, entitled “The Plague of Overweight,” began with the sentence: “The most serious health problem in the U.S. today is obesity.”<sup>38</sup> Despite this bold and prescient pronouncement, obesity did not become an urgent public health issue until late in the twentieth century.<sup>39</sup> In 1990, doctors classified approximately 15% of the United States population as obese.<sup>40</sup> By 2010, over one in three, 36% of American adults, received obesity diagnoses, and medical professionals labeled 69% of American adults as overweight.<sup>41</sup>

Some diagnoses were particularly disturbing. For example, in 2014, doctors labeled 82% of black women and 77.2% of Latinas obese, compared to 63.2% of white women.<sup>42</sup> These racial disparities in obesity diagnoses evoked both concern and criticism.<sup>43</sup> Similarly, the rise in obesity diagnoses in children caused great alarm, as research linked childhood

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37. Haspel, *supra* note 13.

38. Snezana Farberov, *Genesis of a National Plague*, DAILY MAIL (July 19, 2013), <http://www.dailymail.co.uk/news/article-2371051/How-modern-Americas-obesity-epidemic-began-1950s.html>.

39. *See, e.g.*, OBESITY (Scott Barbour ed., 2011); A.H. BARNETT & SUDHESH KUMAR, OBESITY AND DIABETES (2004); MABEL BLADES, OBESITY (2005); ALEXANDRA A. BREWIS, OBESITY (2010); JEFFERY KOPLAN ET AL., PREVENTING CHILDHOOD OBESITY: HEALTH IN THE BALANCE (2005); PROGRESS IN PREVENTING CHILDHOOD OBESITY (Jeffrey P. Koplan et al. eds., 2007); OBESITY (Gerald Litwack ed., 2013); NAT’L INST. OF HEALTH, CLINICAL GUIDELINES ON THE IDENTIFICATION, EVALUATION, AND TREATMENT OF OVERWEIGHT AND OBESITY IN ADULTS (1998); F. SASSI, ORG. FOR ECON. COOPERATION & DEV., OBESITY AND THE ECONOMICS OF PREVENTION (2010); David Arterburn, *Obesity*, 66 AM. FAM. PHYSICIAN 1279 (2002); Richard Barnett, *Obesity*, 366 LANCET 984 (2005); Per Björntorp, *Obesity*, 350 LANCET 423 (1997); Adam Gildeen Tsai & Thomas A. Wadden, *Obesity*, 159 ANNALS OF INTERNAL MED. ITC3-1 (2013); David W. Haslam & W. Phillip T. James, *Obesity*, 366 LANCET 1197 (2005); Michael Rosenbaum et al., 337 NEW ENGLAND J. MED 396 (1997); Susan Z. Yanovski & Zack A. Yanovski, *Obesity*, 346 NEW ENGLAND J. MED. 591 (2002).

40. *An Epidemic of Obesity: U.S. Obesity Trends*, HARVARD SCH. PUB. HEALTH, <http://www.hsph.harvard.edu/nutritionsource/an-epidemic-of-obesity/> (last visited Mar. 23, 2015).

41. *Id.*

42. *Overweight and Obesity in the U.S.*, FOOD RES. AND ACTION CENTER, <http://frac.org/initiatives/hunger-and-obesity/obesity-in-the-us/> (last visited March 24, 2015).

43. Some critics understand these diagnoses as an indication of a desire for social control over black and brown bodies. *See, e.g.*, JULIE GUTHMAN, WEIGHING IN: OBESITY, FOOD JUSTICE, AND THE LIMITS OF CAPITALISM (2011); ABIGAIL SAGUY, WHAT’S WRONG WITH FAT? (2014); Jeanne Firth, *Healthy Choices and Heavy Burdens: Race, Citizenship and Gender in the Obesity Epidemic*, 13 J. INT’L WOMEN’S STUD. 33 (2012).



obesity to a host of health problems in children and adults, including diabetes, high blood pressure, heart disease, and cancer.<sup>44</sup> Generally, leading up to and during the prolonged period of debate over the 2014 Farm Bill,<sup>45</sup> obesity held the prominent place in national discussions of health, and became the center of a national health campaign spearheaded by First Lady Michelle Obama.<sup>46</sup>

Additionally, in 2013, poor diet was one of the greatest causes of death in the United States, responsible for 17% of deaths, behind only cigarettes at 18%.<sup>47</sup> Nonetheless, regardless of the consequent health problems, farm subsidies continue to support the same foods that they have since 1933, when the government sought to promote weight gain by facilitating the highest intake of calories possible. Farmers of corn, wheat, soy, rice, and cotton continue to receive the greatest percentage of

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44. Claudio Nigg, *Adolescent At-Risk Weight (Overweight and Obesity) Prevalence in Hawai'i*, 70 HAW. MED. J. SUPP. 1, 4 (2011) (“60% of overweight/obese children show at least one cardiovascular disease risk factor and an estimated 1/3 of all US children are expected to eventually develop type 2 diabetes. . . . Additionally, persistently elevated blood pressure occurred approximately nine times more frequently among overweight/obese children compared to normal weight children. Overweight/obese children are also more likely to experience negative social and psychological consequences, including discrimination, stigmatization, and low self-esteem. If weight gain continues through adolescence, there is a significantly high likelihood these youth will become obese adults. Obese adults are at increased risk for the premature development of several chronic diseases, including heart disease, stroke, osteoarthritis, and various forms of cancer.”).

45. For a description of the debates that delayed the 2014 Farm Bill by two years, see Neil D. Hamilton, *The 2014 Farm Bill: Lessons in Patience, Politics, and Persuasion*, 19 DRAKE J. AGRIC. L. 1, 9 (2014).

46. See LET’S MOVE, <http://www.letsmove.gov/> (last visited May 4, 2015). Further, obesity diagnoses are not necessarily grounded in sound medical practice or research. Body mass index (BMI) provides the measurement of overweight and obesity. BMI is calculated by dividing a person’s weight in kilograms by that person’s height in meters squared, resulting in an estimate of a “healthy” weight for a person of that height: a measure of less than 18.5 is “underweight”; 18.5–25 is “normal”; 25–30 is “overweight”; greater than 30 is considered “obese”; and greater than 40 is seen as “morbidly obese.” BMI does not directly measure body fat. Firth, *supra* note 43, at 37 n.11. BMI measurement also fails to take into account individual characteristics such as bone density and larger physical frames, both of which are often associated with specific racial groups. Higher bone density and larger frames are associated with being African American, as is obesity. Bruce Ettinger et al., *Racial Differences in Bone Density Between Young Adult Black and White Subjects Persist After Adjustment for Anthropometric, Lifestyle, and Biochemical Differences*, 82 J. CLINICAL ENDOCRINOLOGY & METABOLISM 429, 429 (1997). The scientific inaccuracy of this measurement bolsters suspicions that obesity diagnoses play a role in society beyond measuring health and implicating relevant treatment. Obesity may in fact be a socially constructed illness that has little medical meaning aside from the illnesses and conditions with which it is associated. See Peter Conrad & Kristin K. Barker, *The Social Construction of Illness: Key Insights and Policy Implications*, 51 J. HEALTH & SOC. BEHAVIOR, SUPP. S67 (2010).

47. Laura Collins, *The 2014 Farm Bill Subsidy Reforms Don’t Go Far Enough*, AM. ACTION F. (Feb. 7, 2014), <http://americanactionforum.org/research/the-2014-farm-bill-subsidy-reforms-dont-go-far-enough>.

farm subsidies.<sup>48</sup> Therefore, in the modern era, instead of solving our most pressing public health issues, farm subsidies exacerbate them.

#### A. Corn

The evolution of corn production illustrates how subsidies cause harm to health by contributing to obesity and food-related mortality. Farmers initially grew corn—which receives the greatest amount of support in the Farm Bill<sup>49</sup>—for people to eat as a vegetable. The availability of agricultural subsidies for corn growers, however, fueled an exponential increase in corn planting, and supply quickly exceeded demand. Ironically, the agricultural techniques that allow for higher yields of corn crops render much of the harvest unpalatable for human consumption, requiring conversion of corn into something other than pure food.<sup>50</sup> Farmers therefore sell their corn to meat producers as animal feed, to gas consumers in the form of ethanol,<sup>51</sup> or to producers of sweetened beverages in the form of high fructose corn syrup. A decline in meat production in 2014 significantly reduced the demand for animal feed, however, leading the USDA to focus most of its efforts to sell surplus corn on producers of high fructose corn syrup.<sup>52</sup> These efforts further invest the USDA in promoting the products that contain this sweetener, primarily soft, sports, and energy drinks, and processed foods.<sup>53</sup> The USDA thus holds an increasingly significant stake in these secondary markets.

#### B. Soy

Soybean subsidies similarly invest the USDA in the sale of unhealthy foods. Although consuming soy in the form of (ideally organic) tempeh, miso, tofu, edamame, or soymilk appears to promote health, eating processed forms of soy, including soy protein isolates and texturized vegetable proteins, contributes to poor health outcomes.<sup>54</sup> Additionally,

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48. *Id.*

49. RADICAN-WALD, *supra* note 9, at 5.

50. See KING CORN (Mosaic Films 2007).

51. Since 2005, the Renewable Fuel Standard has required gasoline companies to blend ethanol with regular gas, raising the price of gas for consumers. See Robert Bryce, Op-Ed., *End the Ethanol Rip-Off*, N.Y. TIMES (Mar. 10, 2015), [http://www.nytimes.com/2015/03/10/opinion/end-the-ethanol-rip-off.html?\\_r=0](http://www.nytimes.com/2015/03/10/opinion/end-the-ethanol-rip-off.html?_r=0).

52. Tony Dreibus & Jesse Newman, *U.S. Farmers Are Up to Their Ears in Corn*, WALL ST. J. (Aug. 17, 2014), <http://www.wsj.com/articles/u-s-farmers-are-up-to-their-ears-in-corn-1408318910>.

53. *Id.*

54. See AICR's *Foods That Fight Cancer: Soy*, AM. INST. FOR CANCER RES., <http://www.aicr.org/foods-that-fight-cancer/soy.html> (last visited Apr. 22, 2015); Mark Hyman, *How Soy Can Kill You or Save Your Life*, DRHYMAN.COM (Feb. 25, 2013), <http://drhyman.com/blog/2010/08/06/how-soy-can-kill-you-and-save-your-life/#close>. See also, e.g., Margaret Adgent, *Early Life Soy Exposure and Age at Menarche*, 26 PAEDIATRIC PERINATAL EPI-

food manufacturers convert soybeans into a variety of fats and oils, including partially hydrogenated oils, also known as trans fats.<sup>55</sup> Although the Food and Drug Administration (FDA) may classify trans fats as unsafe for human consumption in 2016,<sup>56</sup> this development occurs almost twenty years after medical research first revealed significant links between trans fats and deaths from heart disease.<sup>57</sup> Perhaps in part due to the need to sell surplus soy in the form of trans fats, the FDA did not ban them during this twenty-year period, and the USDA continued to provide food products containing trans fats to students in school lunchrooms and to other recipients of federal nutrition assistance.

### *C. Fruits and Vegetables*

Of all foods, fresh fruits and vegetables, which are rich in vitamins and minerals, provide the greatest health benefits. Nonetheless, no Farm Bill has directly subsidized their growth. In contrast, some previous Farm Bills penalized farmers who grew fruits and vegetables on land that qualified for subsidies.<sup>58</sup> Consequently, the price of fruits and vegetables has increased significantly over time, while the price of subsidized foods and their secondary products has steadily decreased. For example, between 1985 and 2000, the price of soft drinks fell 18%, the price of fats and oils fell 13%, the price of sugar and sweets fell 9%, the price of poultry fell 4%, the price of red meat fell 3%, and the price of dairy products decreased by 1%.<sup>59</sup> Over the same years, the price of all fruits and vegeta-

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DEMIOLGY 163 (2012) (finding that feeding of soy-based infant formula may increase the likelihood of early onset of puberty); Melissa A. Cimafranca et al., *Acute and Chronic Effects of Oral Genistein Administration in Neonatal Mice*, 83 BIOLOGICAL REPRODUCTION 114 (2010) (finding serum genistein concentrations mimicking those in soy formula-fed human infants produced estrogenic effects on the organs of mice); Susan Goodin et al., *Clinical and Biological Activity of Soy Protein Powder Supplementation in Healthy Male Volunteers*, 16 CANCER EPIDEMIOLOGY BIOMARKERS PREVENTION 829 (2007) (finding that soy protein powder decreases serum testosterone levels in healthy men by approximately 19%).

55. *Hidden in Plain Sight: Trans Fats Hidden in Many Foods*, ENVTL. WORKING GRP. (May 22, 2015), <http://www.ewg.org/research/hidden-plain-sight/trans-fats-hidden-many-foods>.

56. See Ashley Hayes, *Put Down That Doughnut: FDA Takes on Trans Fats*, CNN (Nov. 13, 2013), <http://www.cnn.com/2013/11/07/health/fda-trans-fats/#>.

57. A 1995 paper entitled “Trans Fatty Acids and Coronary Heart Disease Risk” published in the *American Journal of Clinical Nutrition* is widely considered one of the first studies to make the link between trans fats and heart disease. Penny M. Kris-Etherton, *Trans-Fats and Coronary Heart Disease*, 50 FOOD, SCI. & NUTRITION 29, 29 (2010).

58. Haspel, *supra* note 13 (“Specialty growers supported the rules that, until now, prevented commodity growers from devoting some acreage to fruits and vegetables; this year’s farm bill allows commodity farmers to use up to 15 percent of their acreage for specialty crops without losing benefits.”).

59. MICHAEL CAROLAN, CHEAPONOMICS: THE HIGH COST OF LOW PRICES 65 (2014).

bles rose approximately 20% and the price of fresh vegetables increased approximately 40%.<sup>60</sup>

Price appears to correlate to consumption. From 1997 to 2007, consumption of fruits and vegetables declined,<sup>61</sup> while the demand for fats, oils, and sweeteners increased.<sup>62</sup> Consumption of corn products, in particular, rose dramatically. Since 1970, daily calories from corn sweetener have increased by 359%.<sup>63</sup> These consumption patterns, in turn, lead to poor health outcomes, evident in rising incidences of food-related health conditions and mortality rates.<sup>64</sup> Fortunately, these trends are not inevitable or irreversible. On the contrary, research shows that relatively minor increases in the intake of fruits and vegetables—just two servings a day—and a switch from “regular” to whole grains, would significantly reduce the risk of major illnesses such as cancers, heart disease, diabetes, hypertension, and Alzheimer’s, in addition to mortality.<sup>65</sup>

Under the current agricultural subsidy system, however, increasing the daily intake of fruits and vegetables grown on American soil is not possible. The United States does not currently have the agricultural capacity to provide each individual with enough servings of fruits and vegetables to meet the federal Dietary Guidelines’ recommendations. In order to increase supply to meet this demand, farmers would need to devote thirteen million more acres to fruits and vegetables, which they are unlikely to do absent subsidies.<sup>66</sup> Fruit intake would have to increase by

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60. RADICAN-WALD, *supra* note 9, at 16.

61. *Id.* at 1.

62. INST. FOR AGRIC. & TRADE POLICY, FOOD WITHOUT THOUGHT (2006), available at <http://www.nffc.net/Learn/Fact%20Sheets/Obesity%20and%20Ag.pdf>.

63. Roland Sturm & Ruopeng An, *Obesity and Economic Environments*, 64 CA: A CANCER J. FOR CLINICIANS 337, 347 (2014).

64. See, e.g., Ryan T. Hurt, *The Obesity Epidemic: Challenges, Health Initiatives, and Implications for Gastroenterologists*, 50 GASTROENTEROLOGY & HEPATOLOGY 780, 780 (2010) (“The incidence of obesity has risen in the United States over the past 30 years; 60% of adults are currently either obese or overweight. Obesity is associated with a higher incidence of a number of diseases, including diabetes, cardiovascular disease, and cancer.”); WORLD HEALTH ORG., OBESITY AND OVERWEIGHT (2003), available at [http://www.who.int/dietphysicalactivity/media/en/gsfbs\\_obesity.pdf](http://www.who.int/dietphysicalactivity/media/en/gsfbs_obesity.pdf) (“Increased consumption of more energy-dense, nutrient-poor foods with high levels of sugar and saturated fats, combined with reduced physical activity, have led to obesity rates that have risen three-fold or more since 1980 in some areas of North America . . .”).

65. Studies have shown that increasing fruit and vegetable servings by just two per day can lower the risk of developing cancer by 4%. Whole-grain and fiber-intensive diets may reduce the risk of heart disease, diabetes, and hypertension. Consumption of whole grains is also correlated with reduced risk of obesity and its health consequences. Replacing white rice with brown rice can reduce the risk of type 2 diabetes by 16%. Replacing processed grains with whole grains can reduce the risk of type 2 diabetes by 36%. Increasing the intake of fruits and vegetables and other nutrient-rich foods while lowering the intake of high-fat foods, including fatty meats, significantly reduced the risk of dementia in patients with Alzheimer’s. RADICAN-WALD, *supra* note 9, at 17.

66. *The United States Needs 13 Million More Acres of Fruits and Vegetables to Meet the RDA*, ARIZ. ENERGY (July 7, 2010), [http://arizonaenergy.org/News\\_10/News\\_July10/The%20United%20](http://arizonaenergy.org/News_10/News_July10/The%20United%20)

132%, requiring over four million more acres of harvest, and vegetable intake would need to rise 31%, necessitating almost nine million more harvest acres.<sup>67</sup> New priorities in farm support are therefore necessary to create and maintain an agricultural program that both assists vital segments of the agricultural industry and improves health outcomes.

The following Part considers how the present system, in addition to fomenting poor health generally, contributes to and exacerbates health disparities.

### III. FARM SUBSIDIES AND FOOD OPPRESSION

The policy choice to support foods high in calories and low in nutritional value, and the resulting injuries to health, affects all Americans,<sup>68</sup> but it causes disproportionate harm to communities that experience marginalization or subordination along race and class lines. This disproportionate harm is an indication that farm subsidies may be an example of food oppression. Food oppression has five elements: (1) facially neutral food-related law, policy, or action; (2) disproportionately harmful impact of this law, policy, or action on the health of a socially marginalized group or groups; (3) health disparities in food-related conditions between these groups and the dominant one or ones; (4) corporate/industry influence over the government that causes or contributes to the enactment or continuation of the law, policy, or action; and (5) the existence of cultural values and racial stereotypes that make health disparities appear natural and frustrate efforts to institute structural reform.<sup>69</sup>

Farm subsidies, as incorporated into the Farm Bill, are facially neutral in terms of race, class, and other social categories. According to the text of the law and regulations, the allocation of subsidies depends on the type and amount of harvest produced. In reality, however, these factors serve as proxies for race and wealth. For example, prioritizing corn, wheat, and soy grown on large farms run by agribusiness has led to almost 95% of farm subsidies going to white farmers.<sup>70</sup> There is also a class imbalance in subsidy distribution. The richest 10% of corporate

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States%20Needs%2013%20Million%20More%20Acres%20of%20Fruits%20and%20Vegetables%20to%20Meet%20the%20RDA.htm.

67. RADICAN-WALD, *supra* note 9, at 19.

68. The USDA's subsidy choices also have an international impact because they affect trade. See *Ag Economy; Trade; Biotech; Farm Bill; Budget; and, Biofuels*, FARMPOLICY.COM (Feb. 2, 2015), <http://farmpolicy.com/2015/02/02/ag-economy-trade-biotech-farm-bill-budget-and-biofuels-monday/#more-16865>.

69. Freeman, *Fast Food*, *supra* note 25, at 2245–47.

70. Jessica Hoffman, *Farm Subsidies Overwhelmingly Support White Farmers*, COLORLINES (Jan. 29, 2009), [http://www.colorlines.com/archives/2009/01/farm\\_subsidies\\_overwhelmingly\\_support\\_white\\_farmers.html](http://www.colorlines.com/archives/2009/01/farm_subsidies_overwhelmingly_support_white_farmers.html).

farmers get 75% of the subsidies, in annual amounts in the hundreds of thousands of dollars, while 80% of recipients—the owners of small farms—only receive five thousand dollars a year.<sup>71</sup> Nonetheless, because the Bill distinguishes only by commodity and acreage, making no explicit mention of race or class, it satisfies the first element of food oppression by being facially neutral.

The second element, disproportionate harm to the health of members of marginalized communities, requires an examination of how a facially neutral law or policy can affect communities differently depending on their social position. As discussed above, farm subsidies have a disparate impact on individuals and groups that experience poverty and racial othering. First, in terms of simple economics, federal food policy ensures that the foods that receive the most subsidies are relatively inexpensive. These foods therefore represent the most prudent food selections for low-income individuals. For example, corn subsidies make sweetened beverages such as sodas, sports drinks like Gatorade, and energy drinks cheaper than healthy drinks, including juice, coconut water, and bottled water. Consequently, a person can stretch a dollar further by quenching her thirst with Coke instead of water. The low cost of these drinks also ensures their ubiquity in corner stores, fast food restaurants, and places of entertainment, because they provide a high profit margin for vendors.

Second, as described above, the USDA's need to promote the sale of subsidized commodities through secondary markets leads it to use federal nutrition programs to increase those markets.<sup>72</sup> For example, individuals can use food stamps to buy soda but not necessities such as soap or diapers.<sup>73</sup> Also, high fructose corn syrup and additives such as soy lecithin are present in many foods served in public school cafeterias.<sup>74</sup> Further, the government's need to promote corn products influences public schools' choices to allow vending machines containing

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71. James Stewart, *Richer Farmers, Bigger Subsidies*, N.Y. TIMES (July 19, 2013), [http://www.nytimes.com/2013/07/20/business/richer-farmers-bigger-subsidies.html?\\_r=0](http://www.nytimes.com/2013/07/20/business/richer-farmers-bigger-subsidies.html?_r=0).

72. For an analysis of the USDA's policy of dealing with the milk surplus and its effect on marginalized communities, see Andrea Freeman, *The Unbearable Whiteness of Milk: Food Oppression and the USDA*, 3 U.C. IRVINE L. REV. 1251 (2013).

73. Items eligible for SNAP include breads and cereals; fruits and vegetables; meats, fish, and poultry; and dairy products. For more information, see *Supplemental Nutrition Assistance Program*, *supra* note 21.

74. See Eleanor Yang Su, *School Meals Face Rules on Fat, Meat, Veggies – But No Limits on Sugar*, CTR. FOR INVESTIGATIVE REPORTING (Oct. 3, 2013), <http://cironline.org/reports/school-meals-face-rules-fat-meat-veggies-%E2%80%93-no-limits-sugar-5323>.

sweetened beverages on school grounds, even when the same schools ban these drinks from their cafeterias.<sup>75</sup>

In the evenings, when residents of low-income urban communities eat out, they usually have only fast food restaurants within walking distance and no time or means of transportation to venture to neighborhoods with healthier dining options.<sup>76</sup> The cost of fast food is artificially low in part because it contains most of the subsidized commodities: corn (primarily in the form of sweeteners), soybeans (in oils), wheat, meat, and dairy.<sup>77</sup> Therefore, for residents of low-income neighborhoods, fast food is the most frugal, even if not always the only, choice.

Fast food companies such as McDonalds also woo black and Latino customers through racially targeted websites and other race-specific marketing techniques.<sup>78</sup> For example, McDonald's reconfigures their seating arrangements to accommodate larger families in Latino neighborhoods and features menu items such as tacos and burritos designed to appeal to Latinos.<sup>79</sup> From a consumer perspective, blacks, Latinos, and other individuals who experience the daily effects of racism often enjoy eating in fast food restaurants due to their egalitarian nature.<sup>80</sup> In these environments, with posted prices and seat-yourself dining arrangements, there are fewer opportunities for racial indignities to insert themselves into the dining-out experience.<sup>81</sup>

Residents of low-income communities also face few options when shopping for food to make meals at home. Grocery stores selling healthier foods generally flee low-income areas.<sup>82</sup> The stores that remain in the-

75. See Alice Park, *Banning Sugared Drinks in Schools Doesn't Lower Student Consumption*, TIME (Nov. 8, 2011), <http://healthland.time.com/2011/11/08/banning-sugared-drinks-in-schools-doesnt-lower-student-consumption/>.

76. See Freeman, *Fast Food*, *supra* note 25, at 2227.

77. *Health v. Pork: Congress Debates the Farm Bill*, 16 GOOD MED. 11, 11 (2007), available at <http://www.pcrm.org/images/gm/autumn2007/gm07autumn.pdf>.

78. McDonald's targets Latino customers through its "Me Encanta" website. See ME ENCANTA, <http://www.meencanta.com> (last visited Feb. 27, 2013). African Americans are targeted through the McDonald's 365 Black website. See 365 BLACK, <http://www.mcdonalds.com/365black/en/home.html> (last visited Feb. 27, 2013) ("Deeply rooted in the community 365 days a year!").

79. Jonathan S. Goldman, Comment, *Take That Tobacco Settlement and Super-Size It!: The Deep-Frying of the Fast Food Industry?*, 13 TEMP. POL. & CIV. RTS. L. REV. 113, 118 (2003). This strategy backfired when one of their advertisements disrespected tamales, a highly valued Mexican food eaten primarily to mark special occasions. See Adam Chandler, *A Briefing on the Eating of Tamales*, THE ATLANTIC (Feb. 5, 2015), <http://www.theatlantic.com/national/archive/2015/02/a-briefing-on-the-eating-of-tamales/385196/>.

80. See Regina Austin, "Bad for Business": *Contextual Analysis, Race Discrimination, and Fast Food*, 34 J. MARSHALL L. REV. 207, 227 (2000).

81. *Id.* at 228-29.

82. SARAH TREUHAFT & ALLISON KARPYN, THE GROCERY GAP: WHO HAS ACCESS TO HEALTHY FOOD AND WHY IT MATTERS 11 (2010), available at <http://thefoodtrust.org/uploads/>

se neighborhoods stock their shelves with items high in subsidized commodities, both because they are cheaper and because they often contain harmful preservatives that allow for longer shelf lives.<sup>83</sup> These stores raise their profit margins even higher by imposing a “ghetto tax” on consumers who cannot afford to shop elsewhere, exploiting the absence of supermarkets in economically depressed neighborhoods.<sup>84</sup> Farm subsidies thus determine what food is available to poor people from local stores and restaurants and at their public schools, contributing to a diet extremely high in unhealthy, processed foods, while others have access to and can afford both unhealthy and healthy foods.<sup>85</sup>

Farm subsidies appear to cause the most harm to individuals who experience marginalization across several axes of their intersectional identities, including race, class, gender, sexual orientation, and disability.<sup>86</sup> For example, blacks are disproportionately represented in all of the federal nutrition programs and among the poor<sup>87</sup> due to racial discrimination that began with slavery and continues to manifest itself in almost every area of life, including employment, housing, education, and the criminal justice system.<sup>88</sup>

Similarly, residents of Puerto Rico and Hawaii, two islands that experienced forms of colonization by the United States, have diets heavy in

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media\_items/grocerygap.original.pdf (“Beginning in the 1960s and 1970s, white, middle-class families left urban centers for homes in the suburbs, and supermarkets fled with them.”).

83. Jeff Smith, *Food Justice Discussion Generates Local Campaign Idea*, GRAND RAPIDS INST. FOR INFO. DEMOCRACY (July 15, 2012), <http://griid.org/2012/07/15/food-justice-discussion-generates-local-campaign-idea>.

84. Erik Eckholm, *Study Documents “Ghetto Tax” Being Paid by the Urban Poor*, N.Y. TIMES (July 19, 2006), [http://www.nytimes.com/2006/07/19/us/19poor.html?\\_r=0](http://www.nytimes.com/2006/07/19/us/19poor.html?_r=0).

85. Another factor that contributes to unhealthy eating among the poor is insufficient storage space for food. RADICAN-WALD, *supra* note 9, at 17.

86. For more information on intersectional identities, see Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1245 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1989).

87. In 2010, 27.4% of African Americans and 26.6% of Hispanics were poor, compared to 9.9% of whites and 12.1% of Asians. *Poverty in the United States*, NAT’L POVERTY CENTER, <http://www.npc.umich.edu/poverty/> (last visited Mar. 24, 2015).

88. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW* (2012); Michelle Adams, *Separate and [Un]equal: Housing Choice, Mobility, and Equalization in the Federally Subsidized Housing Program*, 71 TUL. L. REV. 413, 413 (1996) (“The history of racial discrimination and inequality in the federally subsidized housing program is extensive and well-documented.”); Margalynne Armstrong, *Desegregation for Private Litigation: Using Equitable Remedies to Achieve the Purposes of the Fair Housing Act*, 64 TEMP. L. REV. 909 (1991); Gil Kujovich, *Desegregation in Higher Education: The Limits of a Judicial Remedy*, 44 BUFF. L. REV. 1 (1996); Jesse B. Semple, *Invisible Man: Black and Male Under Title VII*, 104 HARV. L. REV. 749 (1991); Brando Simeo Starkey, *You’re an Uncle Tom!: The Behavioral Regulation of Blacks on the Right Side of the Criminal Justice System*, 15 BERKELEY J. AFR.-AM. L. & POL’Y 37 (2013); Peggie R. Smith, *Separate Identities: Black Women, Work, and Title VII*, 14 HARV. WOMEN’S L.J. 21 (1991).



subsidized commodities. On both of these islands, colonization led to a dismantling of traditional agricultural methods and priorities, and a transition to eating habits associated with the destruction of culture that accompanies attempts at assimilation of indigenous peoples.<sup>89</sup> On these previously sovereign island nations, the United States has sought to replace traditional foods with an American diet imported from the “mainland.”<sup>90</sup> Additionally, the Farm Bill does not subsidize the growth of traditional foods, such as kalo (taro) in Hawai‘i. Colonization has also led to the proliferation of American fast food establishments on the islands.<sup>91</sup> The disproportionate harm caused to members of marginalized communities by farm subsidies satisfies the second element of food oppression.

The third element, health disparities in food-related illnesses and deaths, is easily met. For example, blacks, Latinos, Native Americans/Indians, and Pacific Islanders all suffer from greater incidences than whites of type 2 diabetes.<sup>92</sup> Blacks experience high blood pressure, heart disease, and cancer at much higher rates than whites.<sup>93</sup> Health disparities also exist between Native Hawaiians and non-Hawaiian residents of the islands in almost every category of food-related illness.<sup>94</sup> Additionally,

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89. See, e.g., LARRY D. PARNELL, *TRANSCULTURAL HEALTH CARE: A CULTURALLY COMPETENT APPROACH* 416 (2012) (“[M]ore acculturated Puerto Ricans are changing their traditional food practices and often follow mainland U.S. dietary practices.”); Andrew R. Carl, *Method Is Irrelevant: Allowing Native Hawaiian Traditional and Customary Subsistence Fishing to Thrive*, 32 U. HAW. L. REV. 203 (2009); WORLD HEALTH ORG., *DIET, FOOD SUPPLY AND OBESITY IN THE PACIFIC* (2003), available at [http://www.wpro.who.int/publications/docs/diet\\_food\\_supply\\_obesity.pdf](http://www.wpro.who.int/publications/docs/diet_food_supply_obesity.pdf).

90. See, e.g., *EATING ASIAN AMERICA: A FOOD STUDIES READER* 326 (Robert Ji-Sun Ku et al. eds., 2013).

91. Hawaii has 3.0444 fast food restaurants per 10,000 people as compared to 2.9961 for California and 1.9049 for New York. Kate Bratskeir, *The U.S. States With The Most Fast Food Restaurants Per Capita*, Huffington Post (Mar. 6, 2015), [http://www.huffingtonpost.com/2015/03/06/most-fast-food-in-america\\_n\\_6808452.html](http://www.huffingtonpost.com/2015/03/06/most-fast-food-in-america_n_6808452.html). See also Taina Rosa, *The Fast-Food Industry: The Possibility of Market Saturation and a Scarcity of Premier Locations Aren't Putting a Damper on Fast-Food Chains' Local Expansion Plans*, PUERTO RICO HERALD (Jul. 27, 2005), <http://www.puertoricoherald.org/issues2/2005/vol09n30/CBFastFood.html>.

92. CTRS. FOR DISEASE CONTROL & PREVENTION, *NATIONAL DIABETES STATISTICS REPORT*, 2014, at 9 (2014), available at <http://www.cdc.gov/diabetes/pubs/statsreport14/national-diabetes-report-web.pdf> (“African Americans, Hispanics/Latinos, American Indians, some Asians, and Native Hawaiians or other Pacific Islanders are at particularly high risk for type 2 diabetes and its complications.”).

93. Richard S. Cooper, *Genetic Factors in Ethnic Disparities in Health*, in *CRITICAL PERSPECTIVES ON RACIAL AND ETHNIC DIFFERENCES IN HEALTH IN LATE LIFE* 273 (Norman Anderson et al. eds., 2004) (“[B]lack Americans experience higher rates of all the major causes of death except chronic obstructive pulmonary disease and liver disease. The excess rates of cardiovascular disease (CVD) have long been recognized as being secondary to the high prevalence of hypertension. . . . Rates of coronary heart disease in blacks now exceed whites. . . . The black excess is found in all the common forms of cancer except myeloma, and the differences are particularly marked in the younger age groups.”).

94. *Pacific Islander Diet*, DIET.COM, <http://www.diet.com/g/pacific-islander-diet> (last visited Mar. 23, 2015) (“Anemia, riboflavin deficiency, and calcium deficiency are common nutritional

there are health disparities along class lines in rates of diabetes and related complications, obesity, high blood pressure, and cancers.<sup>95</sup> Gender is also a factor in health disparities.<sup>96</sup> These racial, socioeconomic, and gender health disparities fulfill the third requirement of food oppression.

Corporate influence over food policy, the fourth element of food oppression, results from campaign contributions to politicians, money spent on lobbying efforts, and a revolving door between positions held by people in the food, agricultural, and insurance industries, and in the administration. Corporations and individuals in the agricultural sector gave \$93 million to politicians during the 2012 presidential campaign.<sup>97</sup> Later, in 2013, as debate surrounding the Farm Bill intensified,<sup>98</sup> 325 companies and organizations registered as lobbyists associated with the Senate's Farm Bill, representing the fifth largest group of lobbyists working on any legislation.<sup>99</sup> The same year, agribusiness spent \$111.5 million on lobbying, more than the defense industry and the labor unions spent on any of their lobbying efforts.<sup>100</sup> It appears that these contributions and lobbying efforts were successful. After the 2014 Farm Bill passed, agricultural companies continued to receive the bulk of farm subsidies.<sup>101</sup> Moreover, the transparency that previously helped to keep imbalances and corruption in check became impossible under the secrecy provisions.

Agribusiness was not the only industry to gain from political expenditures on the Farm Bill. Insurance companies that cover farming enterprises also devoted considerable resources to campaign contributions

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problems in the rural and urban areas of many islands, while heart disease, hypertension, type 2 diabetes, obesity, and other chronic diseases are on the rise. This is primarily due to a transition from traditional nutritious diets of fresh fruits, vegetables, poultry, and seafood to a diet with large amounts of imported and highly refined Western foods that are low in fiber and high in fat and sugars.”).

95. See Mark Hyman, *Not Having Enough Food Causes Obesity and Diabetes*, DRHYMAN.COM (last updated Sept. 17, 2010), <http://drhyman.com/blog/2010/09/17/not-having-enough-food-causes-obesity-and-diabetes/#close>.

96. See, e.g., *Fast Facts: Obesity and Gender*, STOP OBESITY ALLIANCE, [http://www.stopobesityalliance.org/wp-content/themes/stopobesityalliance/pdfs/FastFacts\\_ObesityandGender5-2010.pdf](http://www.stopobesityalliance.org/wp-content/themes/stopobesityalliance/pdfs/FastFacts_ObesityandGender5-2010.pdf) (last visited Mar. 24, 2015) (“In 2007–2008, the prevalence of obesity was 32.2 percent among adult men and 35.5 percent among adult women.”).

97. Marion Nestle, *The Farm Bill Promotes Fruits and Vegetables? Really?*, FOOD POLITICS (Mar. 10, 2014), <http://www.foodpolitics.com/2014/03/the-farm-bill-promotes-fruits-and-vegetables-really/>.

98. See generally Hamilton, *supra* note 45.

99. Alan Bjerga & Julie Bykowicz, *Farm Bill Fruitful For Giants*, VALLEY NEWS (Jan. 29, 2014), <http://www.vnews.com/news/nation/world/10428605-95/farm-bill-fruitful-for-giants>.

100. *Id.*

101. See *New Farm Bill Contains Massive Taxpayer Handouts to Big Ag, Last Minute Deal Removed Even Modest Taxpayer Savings*, U.S. PIRG (Jan. 28, 2014), <http://www.uspirg.org/news/usp/new-farm-bill-contains-massive-taxpayer-handouts-big-ag-last-minute-deal-removed-even>.

and lobbying in the lead-up to the 2014 Farm Bill.<sup>102</sup> The outcome of these efforts was that all farm subsidies now go through insurance companies.<sup>103</sup> This system results in considerable profits for these corporations.<sup>104</sup> For example, for every dollar that went to farmers in crop insurance between 2005 and 2009, insurance companies got \$1.44.<sup>105</sup> Also, in 2011, agricultural insurance companies received \$1.3 billion for administrative expenses.<sup>106</sup> The extent to which corporate interests drive the content of the Farm Bill satisfies the fourth element of food oppression.

The fifth element, the existence of social and cultural values in addition to racial stereotypes that obscure the structural harms inflicted by farm subsidies, is also present. Popular paradigms of personal responsibility, including healthism, biomedical individualism, and dispositionism, deflect attention away from the structural and situational factors that lead to poor health, placing fault squarely on individuals. Both healthism and biomedical individualism identify health outcomes as the product of an individual's good or bad choices, which, in turn, reflect the deeper nature of that person's character. For example, under the healthism framework, a person who is fat is a bad person because his girth is an outer manifestation of his laziness, stupidity, and lack of will power.<sup>107</sup>

Similarly, under the biomedical individualism paradigm, a person who is sick deserves to be ill because she brought the disease upon herself through irresponsible behavior.<sup>108</sup> Accordingly, there is little incentive for the state to intervene to heal the ill, first because it is wrong to

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102. See David Steinbach, *Crop Insurance Figured as Key Issue in Farm Bill Debate*, CENTER FOR RESPONSIVE POLITICS (June 21, 2013), <http://www.opensecrets.org/news/2013/06/crop-insurance-funding-characterize/>; Robbie Feinberg, *Special Interests Heavily Involved in Farm Bill Maneuvering*, CENTER FOR RESPONSIVE POLITICS (Jan. 30, 2014), <http://www.opensecrets.org/news/2014/01/special-interests-heavily-involved/>.

103. Direct payments to farmers were repealed. See 7 U.S.C. § 8713 (repealed); 7 U.S.C. § 8753 (repealed). They were replaced with two new insurance-based programs. See 7 U.S.C. § 9016 (2014); 7 U.S.C. § 9017 (2014).

104. See David Dayden, *Farm Bill 2014: It's Even Worse Than the Old Farm Bill*, NEW REPUBLIC (Feb. 4, 2014), <http://www.newrepublic.com/article/116470/farm-bill-2014-its-even-worse-old-farm-bill>.

105. *A Trillion in the Trough*, ECONOMIST (Feb. 8, 2014), <http://www.economist.com/news/ united-states/21595953-congress-passes-bill-gives-bipartisanship-bad-name-trillion-trough>.

106. Romina Boccia, *Farm Bill Should End Secrecy in Crop Insurance Subsidies*, HERITAGE FOUND. (July 23, 2012), <http://www.heritage.org/research/reports/2012/07/2012-farm-bill-and-crop-insurance-subsidies>.

107. See JULIE GUTHMAN, *WEIGHING IN: OBESITY, FOOD JUSTICE, AND THE LIMITS OF CAPITALISM* 52–55 (2011) (describing the origin and evolution of the term “healthism,” and crediting sociologist Robert Crawford with originally coining the phrase).

108. This view was particularly prevalent and harmful during the AIDS epidemic. See Elizabeth Fee & Nancy Krieger, *Understanding AIDS: Historical Interpretations and the Limits of Biomedical Individualism*, 83 AM. J. PUB. HEALTH 1477, 1481 (1993).

spend the money of good (skinny, healthy) taxpayers to correct the mistakes and weaknesses of (fat, sick) would-be freeloaders. Second, government intervention would be futile because the freeloaders, not having suffered the consequences of their bad choices by paying to correct them, would simply make these choices again and repeat this cycle endlessly. These frameworks persist as the prevailing attitudes toward health, despite ardent critiques that they ignore social and structural determinants of health.<sup>109</sup>

Similarly, most people attribute choices that affect health to individual characteristics when they are, instead, almost entirely determined by external circumstances. Specifically, dispositionism is “the tendency to exaggerate the role of disposition, personality, or choice and to underappreciate the role of situation, environment and context in accounting for human behavior.”<sup>110</sup> In the food context, research reveals that food selection and even the visceral experience of hunger arise from food’s availability, size, and messaging, not rational thought or physical cues.<sup>111</sup> With these insights in mind, corporations employ tactics to encourage maximum consumption of their products that include wafting music into restaurants; appealing to patriotism by self-servingly defining the ideal American meal; portraying eating in fast food restaurants as quality family time; super sizing portions; and placing their products widely.<sup>112</sup> Consumers are highly susceptible to these strategies. Nonetheless, in the self-interest of preserving a belief in individual autonomy, they consider themselves solely responsible for their choices. This stubborn belief in the capacity to resist corporate manipulation leads to the rejection of regulation, even when market freedom has serious health consequences.

Similarly, racialized portrayals of recipients of government assistance undermine the urgency of the need for structural reform of food

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109. See, e.g., WOMEN AND HEALTH (Marlene B. Goldman et al. eds., 2d. ed. 2013); JENNIE J. KRONENFELD, SOCIAL DETERMINANTS, HEALTH DISPARITIES AND LINKAGES TO HEALTH AND HEALTH CARE (2013); SOCIAL DETERMINANTS OF HEALTH (Michael Marmot & Richard G. Wilkinson eds., 2006); SHERI R. NOTARO, HEALTH DISPARITIES AMONG UNDER-SERVED POPULATIONS: IMPLICATIONS FOR RESEARCH, POLICY AND PRAXIS (2012); HENRIE M. TREADWELL ET AL., SOCIAL DETERMINANTS OF HEALTH AMONG AFRICAN-AMERICAN MEN (2d. ed. 2012); Jennifer K. Cheng, *Confronting the Social Determinants of Health—Obesity, Neglect, and Inequity*, 367 NEW ENGLAND J. MED. 1976 (2012); Lisa C. Ikemoto, *Abortion, Contraception and the ACA: The Realignment of Women’s Health*, 55 HOW. L.J. 731, 746 (2012); Michael Marmot, *Universal Health Coverage and Social Determinants of Health*, 382 LANCET 1227 (2013); Ted Schrecker, *Can Health Equity Survive Epidemiology? Standards of Proof and Social Determinants of Health*, 57 PREVENTIVE MED. 741 (2013); Margaret Whitehead & Jennie Popay, *Swimming Upstream? Taking Action on the Social Determinants of Health Inequalities*, 71 SOC. SCI. & MED. 1234 (2010).

110. Adam Benforado, Jon Hanson & David Yosifon, *Broken Scales: Obesity and Justice in America*, 53 EMORY L. J. 1645, 1657–58 (2004).

111. *Id.* at 1681–85.

112. *Id.* at 1694–98.

policy. For example, the image of the “welfare queen” has come to represent all government benefit recipients.<sup>113</sup> A welfare queen is a constructed identity with many components: a (1) black (2) poor (3) woman who is (4) not married, (5) has a child or children, and (6) takes money from the government.<sup>114</sup> As political scientist Ange-Marie Hancock explains, these multiple identities contain several coded messages about welfare queens specifically and welfare recipients generally, including their status as moral degenerates, deviants, and human debits to society.<sup>115</sup> Allowing this image to stand in, falsely, for the real identities of the recipients of public benefits, such as the federal nutrition programs, creates a “politics of disgust” that discourages efforts to improve the health of society’s most marginalized citizens.<sup>116</sup> Traditional stereotypes of blacks as lazy and unintelligent<sup>117</sup> also feed into an understanding of health as a manifestation of culture, not structural conditions. Both popular values and racialized beliefs therefore drive attitudes toward health disparities.

With all five of the elements of food oppression satisfied, it is clear that farm subsidies are an example of food oppression: a facially neutral policy that disproportionately harms marginalized communities by creating and perpetuating health disparities along race and class lines.

#### IV. THE 2014 FARM BILL

Two aspects of the 2014 Farm Bill garnered the most attention from supporters and critics: the elimination of transparency regarding farm subsidy recipients, and cuts to the food stamp program.<sup>118</sup> Additionally, a

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113. See VIVYAN CAMPBELL ADAIR, FROM GOOD MA TO WELFARE QUEEN (2000); ANGE-MARIE HANCOCK, THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN (2004); DAVID ZUCCHINO, MYTH OF THE WELFARE QUEEN (1997); Rose Ernst, *Localizing the “Welfare Queen” Ten Years Later: Race, Gender, Place, and Welfare Rights*, 11 RACE, GENDER & CLASS 181 (2008); Carly Hayden Foster, *The Welfare Queen: Race, Gender, Class, and Public Opinion*, 15 RACE, GENDER & CLASS 162 (2008); Ange-Marie Hancock, *Contemporary Welfare Reform and the Public Identity of the “Welfare Queen”*, 10 RACE, GENDER & CLASS 31 (2003); Karen Johnson, *Myth of the Welfare Queen*, 25 ESSENCE 42 (1995); Premilla Nadasen, *From Widow to “Welfare Queen”: Welfare and the Politics of Race*, 1 BLACK WOMEN, GENDER & FAMILIES 52 (2007); John Blake, *Return of the “Welfare Queen”*, CNN (Jan. 23, 2012), <http://www.cnn.com/2012/01/23/politics/welfare-queen/>; Beth Reinhard, *The Return of the Welfare Queen*, NAT’L J. (Dec. 12, 2013), <http://www.nationaljournal.com/magazine/the-return-of-the-welfare-queen-20131212>; Ashley Sayeau, *The Myth of the Welfare Queen*, NEWSTATSMAN (Aug. 9, 2010, 9:18 AM), <http://www.newstatesman.com/society/2010/08/welfare-women-work-coalition>.

114. See Hancock, *Contemporary Welfare Reform*, *supra* note 113, at 31.

115. *Id.* at 6–7.

116. ANGE-MARIE HANCOCK, THE POLITICS OF DISGUST, *supra* note 113, at 43.

117. See *e.g.*, RACE, ETHNICITY, GENDER, AND CLASS: THE SOCIOLOGY OF GROUP CONFLICT AND CHANGE 90 (Joseph F. Healy & Eileen O’Brien eds., 2012).

118. See *e.g.*, Ron Nixon, *Farm Subsidy Recipient Backs Food Stamp Cuts*, N.Y. TIMES (May 22, 2013), <http://www.nytimes.com/2013/05/23/us/politics/farm-subsidy-recipient-backs-food>

central debate surrounding the Bill was whether replacing the previous system of direct payments to farmers with new crop insurance programs would reduce the potential for corruption and save taxpayers money, as advocates of the change claim.<sup>119</sup> Either way, the new subsidization method does not appear to have a significant impact on health, as it keeps the previous allocation of subsidies largely intact. However, reduced funding to SNAP and other, much more minor aspects of the bill do have some health effects.

Financial assistance to farmers through the Farm Bill takes many forms, including crop insurance, loans, disaster relief, conservation programs, and the former direct commodities payments.<sup>120</sup> Countercyclical programs provide a safety net to farmers when prices drop below seasonal market price target levels set in the Farm Bill.<sup>121</sup> To qualify for these types of payments, farms must plant at least ten “base acres.”<sup>122</sup> A base acre represents the average acres of commodity crops that a participating farm historically planted.<sup>123</sup> This substantial acreage requirement, in addition to the particular crops selected to receive these payments, ensures that the majority of subsidies go to large farms, run primarily by agribusiness.<sup>124</sup> Under the 2008 Farm Bill, 44.6% of the agricultural subsi-

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stamp-cuts.html?\_r=0; Arthur Delaney, *Food Stamp Cuts Backed By Farm Subsidy Beneficiaries*, HUFFINGTON POST (May 23, 2013), [http://www.huffingtonpost.com/2013/05/23/food-stamp-cuts\\_n\\_3324418.html](http://www.huffingtonpost.com/2013/05/23/food-stamp-cuts_n_3324418.html); Rachel Manteuffel, *PostScript: Milbank and Snipping SNAP*, WASH. POST (July 12, 2013), <http://www.washingtonpost.com/blogs/post-partisan/wp/2013/07/12/postscript-milbank-and-snipping-snap/>; Niraj Chokshi, *Why the Food Stamp Cuts in the Farm Bill Affect Only a Third of States*, WASH. POST (Feb. 5, 2014), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/02/05/why-the-food-stamp-cuts-in-the-farm-bill-affect-only-a-third-of-states/>; Nancy Watzman, *Farm Bill Allows Congress to Keep Crop Subsidies Secret*, SUNLIGHT FOUND. (Feb. 7, 2014), <https://sunlightfoundation.com/blog/2014/02/07/farm-bill-allows-congress-to-keep-crop-subsidies-secret/>; Boccia, *supra* note 106; Steinbach, *supra* note 102; George Ford, *Iowa Farmers: \$1.3 Billion in Subsidies*, THE GAZETTE (Mar. 31, 2014), <http://thegazette.com/2012/06/28/iowa-farmers-1-3-billion-in-subsidies>.

119. See *At the Trough*, ECONOMIST (June 1, 2013), <http://www.economist.com/news/usa/21578688-awful-farm-bill-faces-opposition-trough>.

120. Agricultural Act of 2014, Pub. L. No. 113-79, 128 Stat. 649 (2014). Farmers in the United States received \$240.1 billion in subsidies during 1995–2009. Food crop commodities received the majority of Farm Bill funding at \$153.5 billion, other farm programs received \$48.6 billion, cotton subsidies totaled \$29.7 billion, and livestock and dairy subsidies were \$8.3 billion. RADICAN-WALD, *supra* note 9, at 4.

121. *Farm Subsidy Primer*, ENVTL. WORKING GRP., <http://farm.ewg.org/subsidyprimer.php> (last visited Apr. 23, 2015).

122. 7 U.S.C. § 9014(d)(1) (2014) (“Notwithstanding any other provision of this chapter, a producer on a farm may not receive price loss coverage payments or agriculture risk coverage payments if the sum of the base acres on the farm is 10 acres or less, as determined by the Secretary.”).

123. See 7 U.S.C. § 7911(a)(1)(A)–(B) (2002).

124. The wealthiest farmers with the largest farms receive up to \$1 million per year in subsidies while the lower 80% of farmers receive an average of \$5,000 each per year. Stewart, *Richer Farmers, Bigger Subsidies*, *supra* note 71.

dies went to corn growers, followed by 24% for wheat, 14% for soybeans, 9% for rice, 4.2% for grain sorghum, and the remaining 3.9% for every other crop combined.<sup>125</sup>

The 2014 Farm Bill eliminates direct payments and replaces them with two new crop insurance programs.<sup>126</sup> Under this new regime, farmers can select either Agricultural Risk Coverage or Price Loss Coverage to protect their harvest.<sup>127</sup> Agricultural Risk Coverage guarantees a pre-determined revenue for the sale of all covered commodities combined.<sup>128</sup> Under Price Loss Coverage, the government pays farmers the difference between a commodity's pre-selected "reference price" and the actual market price if the market price falls below the reference price.<sup>129</sup> The Bill also provides new forms of support for the meat and dairy industries that affect the structure, but not the degree, of their subsidization.<sup>130</sup> Several alleged benefits of the new crop insurance programs are controversial. For example, the actual cost of these new programs depends on the future price of commodities and is consequently in no way certain. In fact, many experts predict that the new programs will cost the same as or more than direct payments.<sup>131</sup>

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125. RADICAN-WALD, *supra* note 9, at 5.

126. See 7 U.S.C. § 8713 (repealed); 7 U.S.C. § 8753 (repealed); 7 U.S.C. § 9016 (2014) (Price Loss Coverage); 7 U.S.C. § 9017 (2014) (Agriculture Risk Coverage).

127. See 7 U.S.C. § 9015(a)(2014).

128. *Agricultural Risk Coverage (ARC)*, U.S. DEP'T AGRIC., <http://www.fsa.usda.gov/FSA/fbapp?area=home&subject=fmsn&topic=arc> (last updated Mar. 12, 2014).

129. See 7 U.S.C. § 9016 (2014). For example, the reference price for corn is \$3.70 a bushel and the reference price for soybeans is \$8.40 a bushel. 7 U.S.C. § 9011(18)(B) and (H)(2014).

130. In the case of dairy, the 2014 Farm Bill repealed three major programs. These include: the Dairy Product Price Support Program (DPPSP), the Milk Income Loss Contract (MILC), and the Dairy Export Incentive Program (DEIP). The two new programs are the Margin Protection Program for Dairy Producers (MPP) and the Dairy Product Donation Program (DPDP). The MPP is a voluntary program that will pay participating farmers when a national benchmark for milk income divided by the cost of animal feed (that actual dairy production margin or ADPM) falls below a certain variable insured level. The DPDP requires the Secretary of Agriculture to purchase from farmers and distribute approved dairy products when the ADPM falls below the lowest level specified for the MPP. These dairy products would be distributed to low-income family and food assistance programs. See MARIN BOZIC ET AL., DAIRY MKTS. & POLICY, THE DAIRY SUBTITLE OF THE AGRICULTURAL ACT OF 2014 2-3 (2014), available at <http://dairymarkets.org/PubPod/Pubs/IL14-01.pdf>. Meat is widely considered to have lost out with the 2014 Farm Bill due to the passage of Country of Origin Labeling (COOL) provisions. See Bill Tomson & Tarini Parti, *Plenty of Winners and Losers in New Farm Bill*, POLITICO (Jan. 28, 2014), <http://www.politico.com/story/2014/01/farm-bill-review-102726.html>.

131. See Mary Ellen Kustin, *Falling Crop Prices Mean Big Payouts*, ENVTL. WORKING GRP. (Feb. 25, 2014), <http://www.ewg.org/agmag/2014/02/falling-crop-prices-mean-big-payouts>; Craig Cox, ENVTL. WORKING GRP., *Bait and Switch on Steroids*, in PUMPED UP: HOW SUPPLEMENTAL INSURANCE COULD SWELL FARM SUBSIDIES (2013), available at [http://static.ewg.org/pdf/2013\\_sco\\_crop\\_insurance\\_final.pdf](http://static.ewg.org/pdf/2013_sco_crop_insurance_final.pdf).

From a health perspective, the most important change introduced by the Bill is the reduction of funding for food stamps provided by the Supplemental Nutrition Assistance Program (SNAP).<sup>132</sup> The 2014 Farm Bill cut over \$8 billion from SNAP.<sup>133</sup> These cuts affected approximately 1.7 million people across fifteen states, with participants losing an average of \$90 per month in benefits.<sup>134</sup> This loss is particularly significant because food stamps already do not, by design, cover monthly food expenses.<sup>135</sup> By forcing families and individuals to stretch benefits even further than before, these cuts compel the poor to spend a higher percentage of their food budget on subsidized processed and junk foods, increasing their risk of suffering from related health conditions.<sup>136</sup> The reduction in benefits may also drive low-income families into cycles of debt that will entrench them further in poverty and increase their vulnerability to health disparities associated with socioeconomic class.<sup>137</sup> More specifically, health experts anticipate that these cuts will lead to disease-related complications for diabetics, and a retardation of child and adolescent development.<sup>138</sup> They also foresee an increase in food insecurity that will tax the capacity of soup kitchens and other service providers to the poor.<sup>139</sup>

On the brighter side, the 2014 Farm Bill does contain some new provisions intended to increase access to healthy foods, both in federal nutrition programs and more generally. Several of these new provisions directly affect SNAP recipients. For example, one new provision allows farmers markets, community supported agriculture programs, and online retailers to accept food stamps.<sup>140</sup> Another provides funding for the Healthy Incentives Program Pilot, which motivates SNAP participants to purchase fruits and vegetables by matching dollars spent on them, result-

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132. RADICAN-WALD, *supra* note 9, at 6.

133. Ed O'Keefe, *Farm Bill Passes After Three Years of Talks*, WASH. POST (Feb. 4, 2014), <http://www.washingtonpost.com/blogs/post-politics/wp/2014/02/04/farm-bill-passes-after-three-years-of-talks/>.

134. Ron Nixon, *Senate Passes Long-Stalled Farm Bill, With Clear Winners and Losers*, N.Y. TIMES (Feb. 4, 2014), [http://www.nytimes.com/2014/02/05/us/politics/senate-passes-long-stalled-farm-bill.html?\\_r=0](http://www.nytimes.com/2014/02/05/us/politics/senate-passes-long-stalled-farm-bill.html?_r=0).

135. See *Overweight and Obesity in the U.S.*, *supra* note 42.

136. Studies link inadequate benefits to increased hospital admissions. *Id.*

137. See Andrea Freeman, *Payback: A Structural Analysis of the Credit Card Problem*, 55 ARIZ. L. REV. 151 (2013).

138. *Doctors Say Food Stamp Cuts Will Result in Higher Healthcare Costs*, PBS NEWS DESK (Jan. 10, 2014), <http://www.pbs.org/newshour/rundown/doctors-say-food-stamp-cuts-will-result-in-higher-healthcare-costs/>.

139. See Willy Blackmore, *More Cuts to SNAP Are Coming, and Food Banks Can't Cope*, TAKE PART (Jan. 24, 2014), <http://www.takepart.com/article/2014/01/24/food-banks-cannot-cope-next-round-snap-cuts>.

140. *The 2014 Farm Bill and Obesity Prevention*, STATE OF OBESITY, <http://stateofobesity.org/farm-bill/> (last visited Mar. 24, 2015).



ing in an increase in benefits for individuals who select these healthier foods.<sup>141</sup> The Food Insecurity Nutrition Incentive also puts aside grant money for other fruit and vegetable incentive programs.<sup>142</sup> Additionally, the Bill implements a minor increase in requirements for SNAP retailers—including small corner stores—to increase their offerings of healthy foods to SNAP participants.<sup>143</sup> The Bill expands the SNAP Education program to allow participants to use funds for physical activity.<sup>144</sup> Finally, perhaps to counter in part the effects of the cuts to SNAP, the Bill increases funding for The Emergency Food Assistance Program (TEFAP).<sup>145</sup>

In schools, the Bill funds a pilot program that introduces beans and lentils into school lunches.<sup>146</sup> It also increases access to tribal, kosher, and halal meals for school children and TEFAP recipients.<sup>147</sup> For farmers, the Bill marginally increases funding for a block grant program for specialty crops—which include fruits and vegetables—and for research and support for specialty crop farmers. These provisions fall short of subsidizing fruits and vegetables, but represent a slightly increased level of support for farmers who grow them.<sup>148</sup> The Bill also offers some small benefits to organic farmers.<sup>149</sup> Additionally, it launches a new micro-lending program for farmers and ranchers, including ones who qualify as

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141. Clare Fleishman & Nick Green, *Market Match Program Encourages EBT Spending at Farmers Markets*, CAL. HEALTHCARE FOUND. (Apr. 25, 2014), <http://centerforhealthreporting.org/article/market-match-program-encourages-ebt-spending-farmers-markets>.

142. *Agricultural Act of 2014: Highlights and Implications: Local and Regional Foods*, U.S. DEP'T OF AGRIC., <http://www.ers.usda.gov/agricultural-act-of-2014-highlights-and-implications/local-and-regional-foods.aspx> (last visited Mar. 24, 2015).

143. Sadaf Knight, *New USDA Rules Will Require Healthy Foods at Convenience Stores*, SUPPORT CENTER (Mar. 21, 2014), <http://thesupportcenter-nc.org/news/small-business/new-usda-rules-will-require-healthy-foods-at-convenience-stores>.

144. *The 2014 Farm Bill and Obesity Prevention*, *supra* note 140. See also *Supplemental Nutrition Assistance Program Education (SNAP-Ed)*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-education-snap-ed> (last visited May 4, 2015).

145. *2014 Farm Bill Highlights*, U.S. DEP'T OF AGRIC., <http://www.usda.gov/documents/usda-2014-farm-bill-highlights.pdf> (last visited Mar. 24, 2015).

146. Alba J. Collart & Keith Coble, *Highlights of the Agricultural Act of 2014 for Specialty Crops*, CHOICES (2014), <http://www.choicesmagazine.org/choices-magazine/theme-articles/deciphering-key-provisions-of-the-agricultural-act-of-2014/highlights-of-the-agricultural-act-of-2014-for-specialty-crops> (“[P]ulse products such as dry beans, dry peas, lentils, and chickpeas, will be incorporated into the National School Lunch and National School Breakfast programs.”).

147. Meredith Freeman, *What Does the Farm Bill Mean For an Urban Community Like Detroit?*, FAIR FOOD NETWORK (Mar. 18, 2014), <http://fairfoodnetwork.org/connect/blog/what-does-farm-bill-mean-urban-community-detroit>.

148. RENEE JOHNSON, CONG. RESEARCH SERV., R43632, SPECIALTY CROP PROVISIONS IN THE 2014 FARM BILL (P.L. 113-79) (2014), available at <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43632.pdf>.

149. *Id.* at 9.

socially disadvantaged.<sup>150</sup> This program may signal an attempt to reverse the long history of racial discrimination against minority farmers. To benefit communities, the Bill expands funding for the Farmers Market and Local Food Promotion Program; Community Food Projects, including urban agriculture and access to healthy food in underserved communities; and the Healthy Food Financing Initiative, which provides grants and loans to healthy food retail outlets.<sup>151</sup>

Despite all of these encouraging aspects of the 2014 Farm Bill, however, the Bill makes no fundamental changes to the basic structure and priorities of agricultural subsidies. The Bill also harms thousands of families in need through its cuts to the SNAP program. Therefore, it has an overall detrimental effect on health that exacerbates existing health disparities and fails to reverse or mitigate the oppression that arises from farm subsidies.

#### V. CONCLUSION: LOOKING AHEAD

There is no easy or obvious solution to the problem of health disparities that arise in part from farm subsidies, largely because of the complexity of the issues involved. Poverty, for example, is one of the most important factors contributing to health disparities. Poverty is also foundational to the capitalist system upon which American society is based. Therefore, absent the dismantling of this system and its replacement with another societal model, health disparities will likely persist. Similarly, racism is entrenched in both the history and present structure of the United States so deeply that it may be impossible to eliminate it from common understandings of how American society does and should operate.

Nonetheless, it is possible that incremental steps toward a food policy framework designed to improve health outcomes and reduce health disparities could bring about some positive change. For example, the administrative structure of the USDA is partially responsible for the agency's lack of commitment to health-related objectives. Problematically, the USDA is a federal agency tasked with conflicting mandates.<sup>152</sup> One of its primary tasks is to protect the agricultural sector, which it does by providing support for subsidized commodities and their secondary

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150. *2014 Farm Bill Drill Down: Beginning and Socially Disadvantaged Farmers*, NAT'L SUSTAINABLE AGRIC. COAL. (Feb. 5, 2014), <http://sustainableagriculture.net/blog/2014-drilldown-bfr-sda/>.

151. *Healthy Food Financing Funds*, HEALTHY FOOD ACCESS PORTAL, <http://www.healthyfoodaccess.org/funding/healthy-food-financing-funds> (last visited Mar. 24, 2015).

152. For an analysis of how federal agencies tend to approach conflicting tasks, see Eric Biber, *Too Many Things to Do: How to Deal with the Dysfunctions of Multiple-Goal Agencies*, 33 HARV. ENVTL. L. REV. 1 (2009).

markets. At the same time, it is responsible for promoting health and nutrition through the federal Dietary Guidelines. Unfortunately, under the present farm subsidy system, these two mandates appear to be irreconcilable. Therefore, the simple act of removing these conflicting tasks from the agency's purview could result in clearer policy decisions. Until now, agricultural subsidies have clearly triumphed over health in the USDA's priorities. If, however, another agency became entirely responsible for health, perhaps the resulting interagency battles would result in more victories for health-motivated food policy choices.

Of all the potential pathways to eliminating food oppression arising from farm subsidies, the most likely to succeed is a reduction of corporate influence on food policy. Corporate influence over government decision-making, however, appears to be gaining, not losing, strength, as evidenced by the Supreme Court decision in *Citizens United* and its progeny.<sup>153</sup>

Eliminating subsidies altogether would have an interesting, if unpredictable, effect on this problem. It is unclear how the market would drive food preferences in the absence of subsidies. At the very least, however, future Farm Bills should remove the secrecy shrouding subsidy recipients to make accountability more likely. Fruit and vegetable growers should receive subsidies designed to increase production to the point where American farmers can provide them at the levels recommended by the federal Dietary Guidelines. These guidelines should also be free from corporate influence. Food stamp benefits should reflect need, not satisfy demands for spending cuts, and should therefore increase, not decrease, until structural reforms designed to reduce poverty and racism are in place. Lastly, at the very least, the government should provide public school students with nutritious meals designed to help counter challenges to healthy eating they might encounter beyond the school day.

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153. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2009). *See also* *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434 (2014); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).