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# Free for All: Eliminating Food Insecurity and Stigma in Arkansas Public Schools

A. Mills Bryant

## I. Introduction

Schools serve millions of students daily as one of the largest food distribution sites in the United States.<sup>1</sup> However, more than 13.1 million children in the United States, and almost 150,000 in Arkansas, are food insecure.<sup>2</sup> Before the COVID-19 pandemic, most Arkansas schools offered free and reduced lunch to students at or below the poverty line through participation in the National School Lunch Program (“NSLP”).<sup>3</sup> While schools, and indirectly the Federal Government, using the NSLA provided free or reduced lunch

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<sup>1</sup> See Robbie Economou, *States Step in as Free School Meal Waivers Looms*, NAT'L CONF. STATE LEGISLATURES (July 29, 2022), <https://www.ncsl.org/news/details/states-step-in-as-end-of-free-school-meal-waivers-looms>.

<sup>2</sup> See *The Lasting Impact of Food Insecurity on Children*, MOVE FOR HUNGER, [https://moveforhunger.org/just-hunger-lasting-impact-food-insecurity-children?gclid=CjwKCAiA2fmdBhBpEiwa4CcHzSflmiyCGhRT2so\\_xHc6rlagZSMIIHzBXUf\\_ZQ5kvAIK2T9RiG8-nhoCRjEQAvD\\_BwE](https://moveforhunger.org/just-hunger-lasting-impact-food-insecurity-children?gclid=CjwKCAiA2fmdBhBpEiwa4CcHzSflmiyCGhRT2so_xHc6rlagZSMIIHzBXUf_ZQ5kvAIK2T9RiG8-nhoCRjEQAvD_BwE) (last visited Dec. 19, 2023); *What Hunger Looks Like in Arkansas*, FEEDING AM., <https://www.feedingamerica.org/hunger-in-america/arkansas> (last visited Dec. 19, 2023).

<sup>3</sup> See *National School Lunch Program*, ARK. DEP'T HUM. SERV., <https://dhs.arkansas.gov/dcecece/snp/NSLPInfoM.aspx#:~:text=The%20National%20School%20Lunch%20Program%20is%20a%20federally%20assisted%20meal, and%20residential%20child%20care%20institutions> [<https://web.archive.org/web/20220625154145/https://dhs.arkansas.gov/dcecece/snp/NSLPInfoM.aspx>] (Last visited Dec. 19, 2023).

for a great number of students, the program fell well short of eliminating food insecurity in Arkansas schools.<sup>4</sup>

During COVID-19, Congress passed The Families First Coronavirus Response Act (“FFCRA”) and The Coronavirus Aid, Relief, and Economic Security Act (“CARES”) (hereinafter “The Acts”).<sup>5</sup> This legislation effectively eliminated food insecurity in participating American public schools, including many in Arkansas, as it provided free lunch to all students, regardless of household income.<sup>6</sup> During the pandemic, families no longer had to contemplate financial hurdles in order to ensure their children were fed and nourished at school. Families no longer had to decide whether to provide money to feed their kids because Congress effectively eliminated the need for that decision. These COVID nutrition waivers allowed by The Acts were created by the USDA to help schools and youth organizations feed children amidst stressful financial burdens at home.<sup>7</sup> Families who commonly faced insurmountable financial issues were given significant reprieve by The Acts. For roughly the past two years, before the expiration of The Acts, meals at school were completely free for every public-school student.<sup>8</sup>

Now, as COVID-19 has largely subsided, Congress has eliminated the funding allowed by The Acts and many states, including Arkansas, have reverted to pre-COVID-19 funding mechanisms using the NSLP.<sup>9</sup> This reversion unfortunately re-introduces numerous student food insecurity problems in Arkansas schools. These problems include increased hunger, re-introduction of

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<sup>4</sup> See Tiffany Lee, *Arkansas families having to apply for free lunch program*, 5 NEWS ONLINE (July 21, 2022, 5:55 PM CDT), <https://www.5news.com/article/money/families-having-pay-school-lunches-again/527-7b61f62f-ae8-4405-9448-f8edf1fdc810>.

<sup>5</sup> See *School Meals*, U.S. DEP’T OF AGRIC., <https://www.usda.gov/coronavirus/school-meals#:~:text=The%20Families%20First%20Coronavirus%20Response,children%20to%20receive%20these%20meals> (last visited Dec. 19, 2023).

<sup>6</sup> See *id.*

<sup>7</sup> See Ashley Godwin, *Federal pandemic food waivers set to expire leaving Arkansas students without free meals*, 5 NEWS ONLINE, <https://www.5news.com/article/life/food/federal-pandemic-food-waivers-set-to-expire-free-meals/91-38d34e98-0912-4afa-bea0-4618cb65ccfc> (last updated March 8, 2022, 10:21 PM CST).

<sup>8</sup> See Lee, *supra* note 4.

<sup>9</sup> See *id.*

social stigma, decreased academic performance, and economic downturn. Once again, parents and families must balance their children's nourishment at school with significant financial burdens at home. "Do I send the kids with lunch money or use it to pay the bills?" is a question completely within the realm of possibility for lower-income Arkansas families. Inevitably, some students' nourishment will take a back seat to other costs and will not get past monthly budget cuts. This significant burden on Arkansas families, when viewed alongside the capability of the Arkansas General Assembly to act, is largely unnecessary.

School lunches in Arkansas currently cost anywhere from \$3.50 to \$3.75 per student per day.<sup>10</sup> Breakfast costs \$2.50 per day per student.<sup>11</sup> The maximum annual household income to qualify for reduced price meals under the NSLP for a family of four is \$51,338.<sup>12</sup> Essentially, children whose parents' income does not fall beneath this line are required to pay full price for their children's breakfast and lunch every day.<sup>13</sup> Essentially, a plausible scenario includes a single mother with three children who earns slightly above this threshold being required to pay almost \$16.00 per day for her children to eat at school. Budgeting for that expense requires a \$320.00 a month, or over \$3,000.00 per year to feed her children one meal a day. Additionally, if her children eat breakfast at school, that adds an additional \$7.50 per day, \$150.00 per month, and \$1,500.00 per year. This would accrue to a total of \$4,500.00 per year to feed her children two meals a day, but does not include costs for weeknights, weekends, holidays, and summer break. Broken down, the reduced lunch income level requires those close, but slightly over the line, to expend almost 10% of their yearly gross income exclusively on feeding their children at school.

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<sup>10</sup> See *Meal Prices*, PULASKI CNTY. SPECIAL SCH. DIST., <https://www.pcssd.org/page/meal-prices> (last visited Dec. 19, 2023) (showing a large Arkansas school district's current charge for school breakfast and lunch based on the purchaser's status in the district).

<sup>11</sup> See *id.*

<sup>12</sup> See *School Meal Changes are Coming in the 2022-23 School Year*, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV. (Jun. 29, 2022), <https://www.fns.usda.gov/cn/2022-23-parent-faqs> [<https://web.archive.org/web/20230728064158/https://www.fns.usda.gov/cn/2022-23-parent-faqs>].

<sup>13</sup> See *id.*

Students who exclusively rely on but are totally incapable of controlling their parents' financial decisions remain largely unprotected by the Arkansas General Assembly. Because Arkansas public schools' participation in the NSLA is funded solely by the Federal Government, the requirement of parents to pay for school lunch evidences the Arkansas General Assembly's unwillingness to step in and fill the gap. Students who do not receive free or reduced lunch through the NSLP effectively have two ways to receive nourishment at school: (1) bring it from home, or (2) purchase it from school. There are no other options. Both situations present insurmountable roadblocks for families who lack financial resources, including (1) students lacking access or ability to prepare food at home because of financial constraints, and (2) lack of funds to purchase food at school.

These problems are completely contingent on parents' financial decisions and evidence an inevitable effect: the Arkansas General Assembly's allowance of students to remain food insecure. The wider consequence of allowing this problem to persist is simple: students remain hungry, food insecurity is perpetuated, and social stigma continues, which has devastating effects on children and families. There is no safeguard for this commonly occurring situation in Arkansas. Students are suffering the consequences of food insecurity and paying the price that should be covered by the Arkansas General Assembly. At least, a conservative view of this problem is that this gap places the burden on Arkansas' families, and the cost is evaded by the Arkansas General Assembly. The problem and solution, simply put, is this: Arkansas families are financially strained by school lunch costs, and the Arkansas General Assembly should relieve that strain by absorbing these costs and making school lunch free for all students.

The Arkansas General Assembly must utilize its current tax surplus, or alternatively increase taxes to fund a state-wide subsidy to the NSLP. In turn, the subsidy will decrease the negative effects of ineligibility under the NSLP, eliminate food insecurity for Arkansas students, and eliminate large school lunch debts many Arkansas schools have incurred. The focus of this legislation must be to feed students and take partisan and financial decisions out of the hunger equation. This is a call for the Arkansas General Assembly to act to care for its most vulnerable citizens: hungry school children.

The remainder of this article provides an overview of federal school lunch laws and how those laws changed over the pre-pandemic, pandemic, and post-pandemic periods. It lays out the status quo for states concerning school lunch funding and delves into the attitudes of Congress, the Arkansas General Assembly, and civilians concerning who should bear the cost of school lunch. Lastly, it highlights various states, other than Arkansas, which are implementing state-funded subsidies to the NSLP that provide free school lunch to all children and proposes the same remedy to the Arkansas General Assembly.

## II. Background

### A. *Overall Food Insecurity and Social Stigma Problems that Improved During the Pandemic*

COVID-19 caused major financial, physical, and mental hardship for children and families.<sup>14</sup> However, concerning school lunch and food insecurity, it created a necessity that produced great headway towards providing nourishment for all students in public schools.<sup>15</sup> The Acts providing school lunch indiscriminately to all students during COVID proved to eliminate social stigma and food insecurity, and improved academic performance. Allowing food insecurity to persist by reverting to pre-COVID mechanisms, when the positive effects of providing free lunch to all students were evident during COVID-19, inadequately serves those in society's most vulnerable population.

Food insecurity problems that were present before the pandemic were significantly reduced when Congress passed The Acts, providing sweeping legislation to respond to worsening effects of food insecurity caused by the pandemic.<sup>16</sup> By passing The Acts, Congress demonstrated its belief that food insecurity should not be a

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<sup>14</sup> *The Financial Impact of the Pandemic on Families with Children*, AM. ACAD. OF PEDIATRICS (Mar. 24, 2021), <https://www.aap.org/en/patient-care/family-snapshot-during-the-covid-19-pandemic/the-financial-impact-of-the-pandemic-on-families-with-children/>.

<sup>15</sup> See Lestina Dongo & Lindsay Monte, *Less Hunger in At-Risk Households During Pandemic Expansion of School Meals Program*, U.S. CENSUS BUREAU (Apr. 4, 2022), <https://www.census.gov/library/stories/2022/04/less-hunger-in-at-risk-households-during-pandemic-expansion-of-school-meals-program.html>.

<sup>16</sup> See *id.*

problem families should have to worry about during a nationwide crisis.<sup>17</sup> While that is true, a further contention should be that food insecurity of children is *never* worth taking a chance on, and any action necessary to prevent it should be taken. The global pandemic did exacerbate financial, physical, and mental hardship but it definitely did not create these problems, nor did it create food insecurity. Such problems existed long before and will continue to exist without intervention.

If hunger itself were not a high enough price to pay, there are significant problems presented to children by food insecurity at school concerning learning.<sup>18</sup> Students are severely limited in their capacity to learn when they are hungry.<sup>19</sup> Students that are not fed at school can experience devastating, long-term effects, and going hungry for significant periods of time can cause permanent damage.<sup>20</sup> The effects of food insecurity are particularly alarming in children as they include severe developmental, behavioral, and psychological impacts.<sup>21</sup> When children are hungry it can curb their physical development, inhibit their ability to focus and perform, and negatively affect brain development.<sup>22</sup> Children who do not have access to, or who cannot afford, nutritious foods are more likely to develop slowly, have problems learning, and experience depression due to social stigma.<sup>23</sup> These devastating effects occur because these children do not have fuel to allow their bodies to grow or their brains to think.

Unfortunately, health and development concerns are not the only worries of food insecure children in schools. Food insecurity also causes changes in behavior, causing students to act out in class which tends to isolate them socially.<sup>24</sup> Students who are hungry and act out in class are commonly labeled “bad kids” which is a label that

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<sup>17</sup> *See id.*

<sup>18</sup> *See Child hunger keeps kids from reaching their full potential*, FEEDING AM., <https://www.feedingamerica.org/hunger-in-america/child-hunger-facts> (last visited Dec. 19, 2023).

<sup>19</sup> *See id.*

<sup>20</sup> *See* Alyssa Cogan, *How Does Hunger Affect Learning?*, HEIFER INT’L (Oct. 29, 2021), <https://www.heifer.org/blog/how-does-hunger-affect-learning.html#:~:text=This%20can%20have%20devastating%20%E2%80%94%20and,limiting%20their%20future%20achievements.>

<sup>21</sup> *See The Lasting Impact of Food Insecurity on Children*, *supra* note 2.

<sup>22</sup> *See* Cogan, *supra* note 20.

<sup>23</sup> *See id.*

<sup>24</sup> *See id.*

sticks permanently. These socioeconomic and social barriers, all remnants of food insecurity, limit students' ability to participate in activities in and outside of school.<sup>25</sup> Students with frequent disciplinary action are likely unable to participate in sports or extracurricular activities, and, even if they could, would lack nutrition and energy to perform adequately. The costs of remedying food insecurity in schools are far outweighed by the costs hungry students in public schools will and do pay. By requiring students to sacrifice their health and long-term wellbeing, the Arkansas General Assembly is merely able to cut its costs.

Congress and state legislatures have had differing responses to the end of the pandemic and the expiration of The Acts. Congress's response has caused some states to act while others lay idly by.

### *B. General Legislative Responses*

During the pandemic, Congress's passage of The Acts afforded free lunch to all public-school students nationwide, including all Arkansas public schools.<sup>26</sup> The Acts' program that eliminated widespread food insecurity by providing students free lunch expired on September 30, 2022.<sup>27</sup> This abrupt ending caused families, school districts, and legislators to scramble to deal with new financial burdens and allowed pre-pandemic food insecurity problems to resurface.<sup>28</sup> This scramble caused undue financial burdens, which coupled with lingering pandemic burdens, created even greater hardships for families.<sup>29</sup> Without these extra federal school lunch funds, and without subsidy from the Arkansas General Assembly, public schools in Arkansas had no choice but to return to charging families for school meals.<sup>30</sup>

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<sup>25</sup> See *The Lasting Impact of Food Insecurity on Children*, *supra* note 2.

<sup>26</sup> Ivy Winfrey & John Daley, *End of nationwide federal free lunch program has some states scrambling*, NPR (Oct. 26, 2022, 5:00 AM ET), <https://www.npr.org/2022/10/26/1129939058/end-of-nationwide-federal-free-lunch-program-has-some-states-scrambling#:~:text=Massachusetts%2C%20Vermont%2C%20and%20Nevada%20have,Colorado%20is%20trying%20to%20do.>

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> See Lee, *supra* note 4.



Though the Arkansas General Assembly has not passed a comprehensive school lunch bill, multiple states have legislated to combat this issue of food insecurity.<sup>31</sup> California and Maine understood the importance of free lunch and proactively passed bills in 2021 ensuring students had free school meals permanently.<sup>32</sup> Now nine other states are working to do the same.<sup>33</sup> Massachusetts, Nevada, and Vermont are providing free meals for every student for the current school year and will exercise their discretion in extending the program in the future.<sup>34</sup> Colorado voters approved a voluntary free school lunch measure that takes effect this year, leaving the choice with each school district whether to accept or decline state funds for school lunch.<sup>35</sup>

Lawmakers in twenty states have considered expansions to school lunch programs, but many have been met with significant costs.<sup>36</sup> While some states have made progressive headway towards free lunch, some legislatures' fires have fizzled out because of uncertainty about how to pay for school lunches.<sup>37</sup> The consequence in states like Arkansas that have not proactively legislated to combat food insecurity is that families must start paying for school breakfast and lunch again, many for multiple students.<sup>38</sup> It is inevitable that this burden will go unmet for many children, rendering them food insecure once again. Legislators have implied that the reversion to pre-COVID funding mechanisms will mean not all students will have access to meals, and there will be unequal access in school cafeterias to nutrition.<sup>39</sup> This reversion means students will go hungry,

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<sup>31</sup> See Winfrey & Daley, *supra* note 26.

<sup>32</sup> See *id.*

<sup>33</sup> See *id.* (Washington, Minnesota, Wisconsin, Ohio, Pennsylvania, New York, Massachusetts, North Carolina, and Colorado are all currently seeking to or have successfully passed legislation to subsidize the National School Lunch Program and provide free school lunch to all students).

<sup>34</sup> Daniel C. Vock, *Kids Eat Free! States Push to Make School Meals Available to All*, ROUTE FIFTY (Mar. 15, 2023), <https://www.route-fifty.com/health-human-services/2023/03/kids-eat-free-states-push-make-school-meals-available-all/384030/>.

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> See *id.* (Oregon and Washington, despite attempting to begin drafting free school lunch legislation, have stopped their efforts).

<sup>38</sup> See *id.* (As California and Maine are the only states that have proactively subsidized school lunch funding, and Arkansas is a state that has not proactively legislated to subsidize free school lunch funding, the only option for Arkansas was to return to pre-COVID-19 eligibility requirements).

<sup>39</sup> See Vock, *supra* note 33.

experience developmental delays, face social stigma, and will overall cause financial burdens on families.

While we know that the NSLP does not cover costs for all children, it does serve a necessary purpose of providing free and reduced lunch to children from low-income families. Next, the way school lunches are funded in America is laid out.

*C. The National School Lunch Act (“NSLA”) and Program*

i. Administration

The NSLP was enacted in 1946 by President Harry Truman and federally assists over 100,000 public and non-profit private schools in the United States.<sup>40</sup> Its goal is to provide nutritionally balanced, low-cost, or free lunches to many children in public schools.<sup>41</sup> The NSLP assists in serving millions of students free and reduced lunches each day when students meet certain household income criteria.<sup>42</sup>

At the federal level, the Food and Nutrition Service administers the program, while state education agencies effectuate the NSLP in each specific state.<sup>43</sup> The program works to reimburse participating school districts by providing cash subsidies and USDA approved foods for each reimbursable meal they serve a student.<sup>44</sup> In exchange for the reimbursement, schools utilizing the NSLP must serve lunches that (1) meet federal meal pattern requirements, and (2) provide them at free or reduced cost to eligible students.<sup>45</sup> These school food authorities may also be reimbursed for snacks provided to children in after school programs.<sup>46</sup> There are various eligibility

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<sup>40</sup> See *Child Nutrition Unit*, DIV. OF ELEMENTARY & SECONDARY EDUC., <https://dese.ade.arkansas.gov/Offices/child-nutrition-unit> (last visited Dec. 19, 2023).

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> *The National School Lunch Program*, U.S. DEP’T OF AGRIC., <https://fns-prod.azureedge.us/sites/default/files/resource-files/NSLPFactSheet.pdf> (last updated Nov. 2017).

<sup>45</sup> See *id.*

<sup>46</sup> See *id.*

and verification requirements that must be met before a student can receive free or reduced price lunch under the NSLP.

## ii. Eligibility and Verification Requirements

During execution of The Acts, eligibility and verification measures were unnecessary to receive free school lunch. However, the eligibility of students for free and reduced meals has returned to pre-pandemic requirements, which poses a significant risk of food insecurity for public school students.<sup>47</sup> Fort Smith Public Schools, among numerous others in Arkansas, requires each household to fill out an application and verification of data to determine their eligibility, which are subject to verification or re-verification at any time during the school year.<sup>48</sup> This application requirement presents problems for children and families. The fact that families are required to apply, wait for an eligibility determination, and are subject to further inquiry regarding verification presents a potential for children to remain hungry if any one step is not taken. The problem lies with parents being unable, unwilling, or uncomfortable to fill out the required eligibility paperwork. It is also possible that parents simply are unaware of eligibility or verification process and do not take action out of ignorance of the NSLP's eligibility and verification rules.

In Arkansas, the only assistance program that qualifies a student to be categorically eligible for free meals is the Supplemental Nutrition Assistance Program (“SNAP”).<sup>49</sup> Despite being a part of any other federal assistance program, students and families are not categorically eligible for free lunch unless they also receive SNAP benefits.<sup>50</sup> If a student is not categorically eligible for free or reduced lunch, their parents' income must fall below a certain pre-tax annual household income rate in ratio to the number of persons living in the

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<sup>47</sup> See Winfrey & Daley, *supra* note 26.

<sup>48</sup> *Free and Reduced-Price Meals Application Now Open*, FORT SMITH PUB. SCHS., <https://www.fortsmithschools.org/site/default.aspx?PageType=3&DomainID=4&ModuleInstanceID=39&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=157576&PageID=1> (last visited Dec. 19, 2023).

<sup>49</sup> *Eligibility Manual for School Meals*, DIV. OF ELEMENTARY & SECONDARY EDUC. CHILD NUTRITION UNIT, <https://dese.ade.arkansas.gov/Offices/child-nutrition-unit/guidance/eligibility-manual-for-school-meals> (last visited Dec. 19, 2023).

<sup>50</sup> See *id.*

household.<sup>51</sup> For a household with two people, the maximum income level is \$36,482.00 while a household with eight people cannot earn more than \$93,536.00.<sup>52</sup> These amounts are subject to verification at any point during the year, and benefits may be cut if income levels rise above these lines.<sup>53</sup>

Many Arkansas schools, such as Springdale High School, have had no choice but to require students and families to pay for school lunch if they do not meet free and reduced lunch requirements allocated by NSLP.<sup>54</sup> School districts are not even financially able to provide free or reduced lunch until a household's application has been processed with an eligibility determination and verification.<sup>55</sup> Regarding school lunch, most schools in Arkansas do not receive any federal or state funds outside from the NLSP and state that they cannot feasibly be financially responsible for meals that are unpaid, meaning that the student must be eligible for free or reduced-price meals or their parents must provide payment.<sup>56</sup>

Overall, school districts are at the mercy of Congress and the NSLP concerning eligibility and verification requirements. They cannot foot the bill for ineligible or unverified students, even though those students may be food insecure. Eliminating or reducing the effect of this onerous application and verification process and crossing out arbitrary household eligibility requirements would significantly decrease student food insecurity.

### iii. Congress and Arkansas General Assembly's Attitude Towards School Lunch Funding

Congress and state legislatures' attitudes concerning public school lunch funding have been perplexing, and while they all claim

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<sup>51</sup> See *National School Breakfast and Lunch Program for Arkansas*, BENEFITS.GOV, <https://www.benefits.gov/benefit/1952> (last visited Dec. 19, 2023).

<sup>52</sup> See *id.*

<sup>53</sup> *NSLP Resource Manual*, ARKANSAS.GOV, <https://dhs.arkansas.gov/dccece/snp/PDF/NSLP%20Training%20Materials/NSLP%20Resource%20Manual%20Chapter%205%20Determining%20Eligibility.pdf> [<https://web.archive.org/web/20201017115729/https://dhs.arkansas.gov/dccece/snp/PDF/NSLP%20Training%20Materials/NSLP%20Resource%20Manual%20Chapter%205%20Determining%20Eligibility.pdf>] (last visited Dec. 19, 2023).

<sup>54</sup> *Springdale Schools Child Nutrition*, SPRINGDALE PUB. SCHS., <https://www.sdale.org/page/food> (last visited Dec. 19, 2023).

<sup>55</sup> See *id.*

<sup>56</sup> See *id.*

that children going hungry is unacceptable, their actions in response to food insecurity leave citizens wondering if that belief is true.<sup>57</sup> Historically, school lunch funding has not been treated favorably by Congress or the Arkansas General Assembly. Former Arkansas Attorney General Leslie Rutledge, in her official capacity, joined twenty-two other attorneys general from across the country in suing the Biden Administration for allegedly withholding school lunch program funding from schools that failed to comply with federal guidance regarding gender identity and sexual orientation.<sup>58</sup> The federal approach towards feeding students has been to remove school lunch funding immediately after the pandemic and to hold school lunch funding over the heads of states to force compliance on hot button issues. Congress's threat to cut school lunch funding places student food insecurity as a bargaining chip to increase federal compliance. A Congress which believes children should be fed would not hang hunger in the balance to force compliance.

Some Arkansas legislators have similarly attempted to pit compliance against student food insecurity.<sup>59</sup> For example, an Arkansas legislator attempted to cut school lunch funding for schools that struggle with reading.<sup>60</sup> The proposed bill intended to reduce a district's national school lunch funding if they did not meet a certain standard in reading test scores over a period of time.<sup>61</sup> The lack of any clear correlation between student reading proficiency being incentivized by cutting lunch funding exemplifies some members of

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<sup>57</sup> See Bryce Covert, *Shame, Stigma and Hunger Return as Congress Eliminates Free Meals for All in Public Schools*, EARLY LEARNING NATION (Oct. 20, 2022) <https://earlylearningnation.com/2022/10/shame-stigma-and-hunger-return-as-congress-eliminates-free-meals-for-all-in-public-schools/>; *Arkansas House: Thousands of Arkansans are "food insecure"*, MAGNOLIAREPORTER.COM (May 27, 2012),

[http://www.magnoliareporter.com/news\\_and\\_business/opinion/article\\_b6f3d572-a6ec-11e1-9d4f-0019bb2963f4.html](http://www.magnoliareporter.com/news_and_business/opinion/article_b6f3d572-a6ec-11e1-9d4f-0019bb2963f4.html).

<sup>58</sup> See Jack A. Webb, *Rutledge sues Biden Administration for withholding school lunches based on gender guidance*, KATV (July 27, 2022, 9:31 AM CDT), <https://katv.com/news/local/rutledge-sues-biden-administration-for-withholding-school-lunches-based-on-gender-guidance-arkansas-attorney-general-ag-leslie-title-ix-snap-sexual-orientation-alabama-alaska-arizona-georgia-indiana-kansas-kentucky-louisiana-mississippi-missouri-montana>.

<sup>59</sup> See Troy Washington, *Arkansas senator proposes bill to cut school lunch funding to improve reading*, WREG.COM, <https://wreg.com/news/arkansas-senator-proposes-bill-to-cut-school-lunches-to-improve-reading/> (last updated Feb. 26, 2019, 5:08 PM CST).

<sup>60</sup> See *id.*

<sup>61</sup> See *id.*

the Arkansas General Assembly's lack of concern for students in schools and their wellbeing. Surely, there are other incentives that do not jeopardize the nourishment of students who are already set back in their academic proficiency. After Congress's mandated return to pre-COVID funding mechanisms, Arkansas child welfare activists and non-profit entities have reached out to state legislators for assistance in response to federal COVID lunch waivers ending, but the legislators' offices gave no response.<sup>62</sup> Viewing this proposed legislation that would cut school lunch funding for school districts with poor reading levels alongside proven statistics that children's ability to learn and focus when they are hungry is incongruent. School districts with hungry students will likely produce much worse reading scores, as the food insecurity problem that decreases learning ability will be more prevalent. A concerned legislature would provide more food funding for students who struggle to learn, not less.

Senate Bill 477, now passed as Act 656 and codified as Ark. Code Ann. § 6-18-720, made its way up through the Arkansas General Assembly and is an affirmative step in the right direction for student lunch funding.<sup>63</sup> The bill's purpose is to keep more students fed, and, after making its first step on the way to the governor's desk, was eventually passed.<sup>64</sup> This bi-partisan bill provides *free* meals to students who are eligible to receive *reduced-price* meals under the NSLP's eligibility framework.<sup>65</sup> While this does not solve the application, eligibility, and household income barrier requirement, the effect is that more Arkansas students have free lunch. Essentially, this bill plans to use state funds to subsidize students who receive reduced-price meals under the NSLP. While it is a step in the right direction, subsidizing the NSLP to provide free lunch to *all* students, not just those eligible under the NSLP, would much more adequately serve Arkansas's children.

Members of Arkansas's legislature have stated that "a child who is hungry is a child who cannot learn" and that "we don't want

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<sup>62</sup> See Godwin, *supra* note 7.

<sup>63</sup> Austin Bailey, *Arkansas students who qualify for reduced school lunches will get free meals under bipartisan bill*, ARK. TIMES (Mar. 29, 2023, 4:49 PM), <https://arktimes.com/arkansas-blog/2023/03/29/arkansas-students-who-qualify-for-reduced-school-lunches-will-get-free-meals-under-bipartisan-bill>.

<sup>64</sup> See *id.*

<sup>65</sup> See *id.*

to see kids in schools go hungry.”<sup>66</sup> However, the caveat to Senate Bill 477 is that the Arkansas General Assembly anticipates that federal funds will fully compensate school districts for this funding change.<sup>67</sup> This means the Arkansas General Assembly is unlikely to be required to reimburse school districts that provide free lunch to the reduced-price eligible students, although the wording of the bill does place the legislature on the hook for costs uncovered by the NSLP.<sup>68</sup> While the bill likely eliminates food insecurity for nearly 49,000 students, it does not go far enough to eliminate food insecurity for all students.<sup>69</sup> The Arkansas General Assembly is attempting to provide assistance for school districts which have incurred debts by providing lunch to students who could not pay the reduced-price amount, but schools will likely still incur high debts in attempting to combat food insecurity for students who are totally ineligible under the NSLP.<sup>70</sup>

Absent help from the Arkansas General Assembly, if schools in Arkansas are to feed their students, they are on the hook for the cost whenever children cannot afford it.<sup>71</sup> Inevitably, these schools’ student meal debts have begun to climb after Congress’s halt of federal school lunch funding covering all lunches, and some schools have student meal debts totaling up to \$200,000.<sup>72</sup> The problem with this debt that Senate Bill 477 and Act 656 does not alleviate is that not all of these debts are for students who qualified for reduced-lunch but could not pay. The meal debt includes students who do not qualify at all for the NSLP, for which the Arkansas General Assembly is not on the hook to cover such costs. This leaves not only students, but Arkansas school systems, to fend for themselves in climbing out of crippling debt for attempting to feed their students.

It is likely that school lunch debt will only rise for school districts, as they are witnessing food costs increase at an alarming

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<sup>66</sup> *Id.*

<sup>67</sup> *See id.*

<sup>68</sup> *See* Bailey, *supra* note 63.

<sup>69</sup> *See id.*

<sup>70</sup> *See id.*

<sup>71</sup> *See* Ian Russell, *Schools in Arkansas face issues due to high student meal debt*, THV 11 (Jan. 23, 2023, 6:16 PM CST), <https://www.thv11.com/article/life/food/arkansas-school-districts-overdue-meal-balance/91-e1fd8d6b-9481-493b-8f53-b71ce4f1c523>.

<sup>72</sup> *See id.*

rate with inflation.<sup>73</sup> Schools are asking for help, citing that because students attend school for free, ride the bus for free, and get their books for free, it only makes sense that the Arkansas General Assembly makes sure they are fed without cost.<sup>74</sup> It is imperative that the Arkansas General Assembly wipe out school districts' student lunch debt totals and begin funding all school lunches to avoid these problems in the future.

#### iv. Support for Free School Lunch for All Children

Civilian support for universal free school lunch is widespread.<sup>75</sup> Congress and state legislatures, which bear the responsibility to reflect the values of the people, are commonly missing the mark on school lunch funding. While Republicans opposed federal spending of \$11 billion on free school lunch, the disdain for such spending is not widespread.<sup>76</sup> A majority of Americans support universal school meals with federal or state legislatures covering the expense.<sup>77</sup>

According to the anti-hunger group, Food Research & Action Center, 63% of voters support legislation that would make free school meals permanently available to all students.<sup>78</sup> A 2021 poll by Data for Progress found that 74% of Americans support making universal free school meals permanent nationwide.<sup>79</sup> Further, a June 2022 poll found that 76% of adults living with children enrolled in public school and 67% of adults not living with children enrolled in public school support permanent free school meals for all children.<sup>80</sup>

Those who are in favor of universal free lunch acknowledge its requirement of hefty funding by legislatures yet continue to say it should be a priority.<sup>81</sup> They implore legislatures that the feeding of their children should not be political, and that if they continue to

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<sup>73</sup> See *id.*

<sup>74</sup> See *id.*

<sup>75</sup> Elizabeth Chuck, *School lunch is too costly for a growing number of families. Will a White House pledge help?*, NBC NEWS (Oct. 2, 2022, 6:00 AM CDT), <https://www.nbcnews.com/news/us-news/school-lunch-costly-growing-number-families-will-white-house-pledge-he-rcna49596>.

<sup>76</sup> See *id.*

<sup>77</sup> See *id.*

<sup>78</sup> See *id.*

<sup>79</sup> See Winfrey & Daley, *supra* note 26.

<sup>80</sup> See *id.*

<sup>81</sup> See *id.*



refrain from acting, school districts' meal debts will continue to climb, and children will continue to be food insecure.<sup>82</sup> Amidst widespread support by voters, Congress and state legislatures have failed to implement sweeping legislation that would eliminate food insecurity.<sup>83</sup>

v. Comparisons to Other Provisions by the Arkansas  
Legislature

Opponents of school lunch funding maintain that it amounts to an overreach of state power or that it would accrue substantial costs to the Arkansas General Assembly. However, the state and federal government provide funding for every aspect of the public school system except school lunch.<sup>84</sup> Students are required by law to attend school, yet the law does not necessarily afford them the opportunity to be nourished while they are there. In some similar situations where people are unable to pay, yet the government requires their attendance, the state covers the cost.<sup>85</sup> This is true in Arkansas prisons as quorum courts in each county are to prescribe the method and procedure for feeding and keeping prisoners in county jail and must provide payment for food and services concerning county prisoners.<sup>86</sup> These budgets are approved by the Arkansas General Assembly.<sup>87</sup>

Further, state prisons are no different, as the Arkansas General Assembly provides funding for state prisoners.<sup>88</sup> Arguably, in both situations children and inmates have the same ability to pay for their meals, yet the inmates largely controlled the circumstances leading to their mandate. Children and families, the ones who cannot control their circumstances of being mandated to attend school, are required to pay for their own meals. In fact, some jails in Arkansas

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<sup>82</sup> *See id.*

<sup>83</sup> *See Lee, supra* note 4.

<sup>84</sup> *See Russell, supra* note 71.

<sup>85</sup> Will Langhorne, *Sanders unveils wide-ranging criminal justice package addressing parole reform, prison expansions*, ARK. DEMOCRAT GAZETTE (Mar. 28, 2023, 7:17 AM), <https://www.arkansasonline.com/news/2023/mar/28/sanders-unveils-wide-ranging-criminal-justice/> (evidencing that Arkansas, under new Governor Sarah Huckabee Sanders has implemented a \$470 million prison reform bill with \$31 million in yearly operating costs to provide accommodations for state mandate prisoners).

<sup>86</sup> *See* ARK. CODE ANN. § 12-41-504.

<sup>87</sup> *See generally id.*

<sup>88</sup> *See* ARK. CODE ANN. § 12-29-505.

are allocated funding to provide three hot meals a day to inmates, while most children in schools are required to pay for their one lunch, whether it is hot or cold.<sup>89</sup> The fact that Arkansas affords more protection to prisoners concerning their nourishment than children is chilling, and funds should be dispersed to at least place children on a level playing field with inmates at our state's prisons.

Recently, Arkansas approved a \$6 billion spending budget that allocated \$330 million for new prison space and \$300 million for a new crime lab building yet continues to make students and families pay for lunch at government mandated education facilities.<sup>90</sup> These expenditure approvals evidence a serious oversight regarding school lunch funding and a disproportionality in priorities.

Arkansas also recently passed the LEARNS Act, a 145-page omnibus bill that completely revamped the Arkansas education system, yet the provisions of the bill concerning school lunch stuck with the status quo.<sup>91</sup> The new law refers to the NSLP and its free and reduced eligibility and verification requirements, leaving the current school funding mechanism undisturbed under Arkansas law.<sup>92</sup> The LEARNS act was signed into law to include school vouchers, increase teacher pay, create higher literacy standards for elementary students, and repeal the Teacher Fair Dismissal Act.<sup>93</sup> It is unclear whether Arkansas will utilize state tax surplus money to fund the LEARNS act, but the bill will cost \$297.5 million in the first year, \$343.3 million in the second year, and \$175 million in the third year.<sup>94</sup> Assuming the LEARNS act is not repealed, as is possible under Article 5, Section 1 of the Arkansas Constitution if citizens attempt to repeal the law using a legal referendum, the bill will ensure

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<sup>89</sup> See Chris Zoukis, *Arkansas Jail Finally Begins Serving Hot Meals*, ZOUKIS CONSULTING GRP. (August 27, 2016), <https://federalcriminaldefenseattorney.com/arkansas-jail-finally-begins-serving-hot-meals/>.

<sup>90</sup> See *Arkansas Legislature approves \$6.2B budget plan, sentencing overhaul*, FOX NEWS (Apr. 7, 2023, 8:42 PM EDT), <https://www.foxnews.com/politics/arkansas-legislature-approves-6-2b-budget-plan-sentencing-overhaul>.

<sup>91</sup> See *What you need to know about the Arkansas LEARNS Act*, ARK. DEMOCRAT GAZETTE (Mar. 10, 2023, 2:18 PM), [www.arkansasonline.com/news/2023/mar/10/what-you-need-to-know-about-arkansas-learns/](http://www.arkansasonline.com/news/2023/mar/10/what-you-need-to-know-about-arkansas-learns/); S.B. 294, 94th Gen. Assemb., Reg. Sess. (Ark. 2023).

<sup>92</sup> S.B. 294, 94th Gen. Assemb., Reg. Sess. (Ark. 2023).

<sup>93</sup> *What you need to know about the Arkansas LEARNS Act*, *supra* note 91.

<sup>94</sup> See *id.*

Arkansas's legislature spending almost \$1 billion over the next three years.<sup>95</sup>

Arkansas has unique circumstances in which it could fund a comprehensive school lunch subsidy act providing free lunch to all students. In August 2022, Arkansas announced that they had over \$1 billion dollars of surplus state tax money.<sup>96</sup> While it was debated about what it should be spent on, such as teachers' salaries, roads, children, and fair housing, it is unclear where all of the money has gone or will go.<sup>97</sup>

It is clear that the Arkansas General Assembly is not afraid to spend. With the passage of a \$6 billion spending budget, approving new prisons and crime lab facilities, overhauling the Arkansas education system, and contemplating fair housing, the lack of sweeping school lunch funding is a gross oversight. While these expenditures are important in their own regard, child hunger, according to the Arkansas General Assembly, is a problem that should not exist. Sweeping school lunch subsidy to the NSLP is the solution to this problem. The Arkansas General Assembly must act to provide comprehensive school lunch funding to subsidize the NSLP not just for students eligible for free or reduced-price lunches, but for all students regardless of eligibility. Arkansas may look to other states for reference who are doing just that.

### **III. How Other State Legislatures are Subsidizing to Provide Free Lunch to All Students**

Arkansas can learn from the approaches that other states have taken to subsidize the NSLP and provide free lunch to all students, regardless of household income categorization. These approaches will be useful in determining what Arkansas may do to implement, fund, and run its program. California and Maine are two states that have affirmatively legislated to ensure free lunch to all students.<sup>98</sup> California allocated \$650 million from its state budget to

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<sup>95</sup> *See id.*

<sup>96</sup> *See* Ian Russell, *Lawmakers in Arkansas discuss what should be done with surplus money*, THV 11, <https://www.thv11.com/article/money/arkansas-lawmakers-discuss-surplus-money/91-d54eaf6e-1d5f-43b5-a771-a6d702fc4e7b> (last updated Aug. 11, 2022, 7:56 PM CDT).

<sup>97</sup> *See id.*

<sup>98</sup> Winfrey & Daley, *supra* note 26.

fund the program for the 2022-2023 school year, while Maine's program was estimated to cost \$34 million a year.<sup>99</sup> While Colorado's implementation of free school lunch that recently passed has not been implemented yet, Arkansas may look to Colorado for its approach in gaining political support and implementing the funding scheme to achieve a subsidy to the NSLP.<sup>100</sup>

#### A. Maine's Funding Approach

Maine is a nationwide leader in the school lunch funding realm as it recently passed a bill providing school lunch funding for all of its students called the School Meals for All Act ("SMAA").<sup>101</sup> The benefits of free school lunch have been evident in Maine.<sup>102</sup> When Maine implemented free meals for all, one district served around 45% more meals than it did pre-pandemic and schools across Maine have stated they have seen many more kids receiving school lunch.<sup>103</sup> This increase and the elimination of a barrier to receiving school lunch has effectively eroded the perception that free meals are only for low-income students.<sup>104</sup>

The groundwork and path to Maine's SMAA began in 2014 when the Full Plates Full Potential legislative task force sought to combat Maine's high rate of student food insecurity.<sup>105</sup> Full Plates Full Potential saw a great need for a nonprofit and non-governmental organization dedicated to the purpose of addressing food insecurity.<sup>106</sup> The nonprofit's tasks included leading work,

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<sup>99</sup> See *id.*; Soumya Karlamangla, *What to Know About California's Free School Lunch Program*, N.Y. TIMES, <https://www.nytimes.com/2021/10/01/us/california-free-lunch.html> (last updated Nov. 4, 2021).

<sup>100</sup> Winfrey & Daley, *supra* note 26.

<sup>101</sup> Chloe Teboe, *New law will require Maine public schools to provide free meals to all students*, NEWS CTR. ME. (July 13, 2021, 8:33 AM EDT), <https://www.newscentermaine.com/article/news/local/as-seen-on-tv/new-law-requires-free-school-meals-for-all-maine-public-students-regardless-of-family-income-starting-2022-2023/97-4e822474-cd25-4641-958e-c0c8599971c3>.

<sup>102</sup> See *id.*

<sup>103</sup> Robbie Feinberg, *Maine makes free school lunches permanent after federal funding ends*, NPR (Aug. 31, 2022, 5:06 AM ET), <https://www.npr.org/2022/08/31/1120223479/maine-makes-free-school-lunches-permanent-after-federal-funding-ends>.

<sup>104</sup> See *id.*

<sup>105</sup> See Justin Strasburger & Anna Korsen, *Maine's Path to Healthy School Meals for All*, FOOD RSCH. & ACTION CTR (Jan. 9, 2023), <https://frac.org/blog/maines-path-to-healthy-school-meals-for-all>.

<sup>106</sup> See *id.*

assembling coalition partners, and investigating best practices and sensible solutions to existing nutrition programs.<sup>107</sup> The first step in implementing sweeping school lunch funding mechanisms was to eliminate the reduced-price copay category for school breakfast and lunch created by the NSLP.<sup>108</sup> The passage of the SMAA took support from numerous nonprofits, legislators, lobbyists, and officials who stated that “feeding kids is not a partisan issue.”<sup>109</sup> The SMAA passed with overwhelming bipartisan approval and the legislature allocated \$10 million in seed money to begin the operation.<sup>110</sup>

Starting this school year, Maine public schools were required to provide school meals to all students for free, regardless of family income and without eligibility and verification determinations.<sup>111</sup> In fact, an ultimate goal of the legislation is that no one needs to fill out a school meal application at all.<sup>112</sup> This was implemented with the realization that families under the poverty threshold are not the only families who experience hardship, especially in wake of the pandemic.<sup>113</sup> Maine has taken responsibility for its citizens and placed the onus on the State legislature to cover the difference between the federal reimbursement for school meals after the free and reduced-price lunches have been covered by the NSLP.<sup>114</sup>

Even with a \$34 million per year price tag, advocates for Maine’s children are in favor of the new groundbreaking legislation, because hungry children cannot learn, and the social stigma of socioeconomic classes should never be tied to an essential need of a student.<sup>115</sup> Maine has already claimed to hear anecdotal evidence that the SMAA and school lunch funding is having an enormous impact in schools as it is eviscerating food insecurity.<sup>116</sup> Maine lobbyists, including the School Nutrition Association, are advocating for

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<sup>107</sup> *See id.*

<sup>108</sup> *See id.*

<sup>109</sup> *See id.* (Full Plates Full Potential worked with the Maine Department of Education, Maine School Nutrition Association, Good Shepherd Food Bank, Maine Farm to School Network, the Summer Food Service Program, Breakfast After the Bell and many others).

<sup>110</sup> Strasburger & Korsen, *supra* note 105.

<sup>111</sup> *See id.*

<sup>112</sup> *See* Teboe, *supra* note 101.

<sup>113</sup> *See id.*

<sup>114</sup> *See id.*

<sup>115</sup> *See id.*

<sup>116</sup> *See* Strasburger & Korsen, *supra* note 105.

Congress to provide free school meals to all students on a permanent basis nationwide as a service to care for families.<sup>117</sup> While it seems to be a long road ahead, Maine has made great strides in moving to eliminate food insecurity for their students. Arkansas should implement similar measures that place high importance on student nutrition and an elimination of food insecurity.

### *B. California's Funding Approach*

California was the first state to implement a statewide Universal Meals Program (“UMP”) for school children as it built on the foundations of the NSLP and School Breakfast Program (“SBP”) to subsidize food costs so that they are not passed on to students and families.<sup>118</sup> The UMP requires schools to provide at least two nutritiously adequate school meals per day, with state taxpayers footing the bill.<sup>119</sup>

The California State legislature is filling in the gaps for which the NSLP does not provide for. They saw the importance of providing funding for all students to eat lunch at school, not just the ones who fall below an arbitrary poverty line.<sup>120</sup> California is not requiring any eligibility application or verification and is simply providing food to each of the six million children it serves, eviscerating the problem that one in six children in the United States faces hunger and food insecurity.<sup>121</sup>

School district officials stated that the eligibility rules and verification procedures in place before the UMP left cost of living unaccounted for and blocked too many families from receiving the help they needed.<sup>122</sup> While students will not be required to participate, all students are automatically enrolled in the program and

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<sup>117</sup> *See id.*

<sup>118</sup> *See California Universal Meals*, CAL. DEP'T OF EDUC., <https://www.cde.ca.gov/ls/nu/sn/cauniversalmeals.asp> (last reviewed Aug. 16, 2023).

<sup>119</sup> *See* Karen Garcia & Jon Healey, *Free for all California public school students: At least two meals a day*, L.A. TIMES (Aug. 15, 2022, 2:23 PM PT), <https://www.latimes.com/california/story/2022-08-15/free-for-all-california-public-school-students-at-least-two-meals-a-day>.

<sup>120</sup> *See id.*

<sup>121</sup> *See* Ali Tadayon, *Free school meals for all here to stay in California*, EDSOURCE (July 27, 2021), <https://edsources.org/2021/free-school-meals-here-to-stay-in-california/658564>.

<sup>122</sup> *See* Garcia & Healey, *supra* note 119.

affirmatively receive at least two free meals at school, with no required payment from their parents.<sup>123</sup> By offering free meals to all with no strings attached, eligibility and verification roadblocks have been eliminated.<sup>124</sup>

Even with the significant price tag of \$650 million per year, the State legislature committed to supplement federal meal reimbursements to all K-12 schools in California.<sup>125</sup> California's utilization of state tax dollars to ensure child nutrition evidences the California legislature's placing high importance on caring for its most vulnerable population. Arkansas can learn and implement their own provisions modeled after California's approach.

### *C. Colorado's Funding Approach*

In Colorado, Proposition FF legislation which included the Healthy School Meals for All act (“**HSMA**”) for permanent school lunch for all students recently passed.<sup>126</sup> It took many people, such as coalitions of parents, teachers, and anti-hunger advocates working with legislators, to get the HSMA proposal on the ballot.<sup>127</sup> Colorado's legislative measure to combat food insecurity essentially raises \$100 million a year by increasing taxable income for its citizens, but only for the three or four percent who make at least \$300,000.00 a year.<sup>128</sup> The bill works to reimburse school food authorities for free meals provided to students who are not eligible for free or reduced priced meals under the NSLP or other federal programs.<sup>129</sup>

A school food authority who participates in the HSMA must provide free meals to all students the school serves, provide annual notice to the state department for participation, and maximize the amount of federal reimbursement by participating in the federal community eligibility provision to identify students who are eligible

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<sup>123</sup> *See id.*

<sup>124</sup> *See* Karlamangla, *supra* note 99.

<sup>125</sup> *See id.*

<sup>126</sup> *See* Sonia Gutierrez, *Colorado voter approve free school lunches for all students*, ROCKY MOUNTAIN PBS (Nov. 9, 2022), <https://www.rmpbs.org/blogs/news/free-school-lunch-colorado-november-election/>.

<sup>127</sup> *See* Winfrey & Daley, *supra* note 26.

<sup>128</sup> *See id.*

<sup>129</sup> S.B. 22-087, 74th Gen. Assemb., 1st Reg. Sess. (Colo. 2022).

for the federal school meal programs.<sup>130</sup> This means that while eligibility and verification measures for the NSLP are not required to receive free lunch, the Colorado state legislature places the onus on the school district to identify and maximize those students who can receive federal reimbursement through the NSLP to decrease costs of the Colorado state legislature.

Washington, Minnesota, Wisconsin, Ohio, Pennsylvania, New York, Massachusetts, and North Carolina have all introduced bills similar to the one in Colorado, but they have not yet reached the ballot.<sup>131</sup> While this is a minority of states, the importance that has been placed on free lunch for all students is clearly evidenced by HSMA legislation. It sends the message that the legislature cares about school children's wellbeing and nourishment, especially since they cannot control the financial situations of their parents. The HSMA funding mechanism is simple. It raises tax rates for a small minority of citizens, requires school districts to fully utilize the NSLP's eligibility status, and reimburses school districts for meals they provide to students who are ineligible after exhausting the NSLP's eligibility provisions. Colorado has found it to be a feasible approach, and other states are headed in that direction as well. Arkansas should take this approach and utilize it to provide free lunch to all students.

#### **IV. Proposed Funding Mechanism for the Arkansas General Assembly**

As the voice of the citizens, the Arkansas General Assembly must legislate to provide free school lunch to all Arkansas students. It is imperative that Arkansas utilize bipartisan tactics to use its tax revenue surplus and provide nourishment for the most vulnerable population of its people: children. The Arkansas General Assembly has recently evidenced its willingness to make weighty fiscal decisions by making tax cuts, approving hefty budgets, and passing financially burdensome bills.<sup>132</sup> This evidence shows that providing free school lunch to all children is within the realm of possibility for the Arkansas General Assembly. Further, implementing a subsidy to the NSLP can and has been done by multiple states.<sup>133</sup> States like

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<sup>130</sup> *See id.*

<sup>131</sup> *See* Winfrey & Daley, *supra* note 26.

<sup>132</sup> *See* Russell, *infra* note 96.

<sup>133</sup> *See* Winfrey & Daley, *supra* note 26.



Maine, California, and Colorado have exemplified the potential for states stepping in and taking responsibility for their citizens, most importantly their children.<sup>134</sup>

Arkansas must implement legislation to provide free lunch to all students regardless of household income, and importantly must eliminate or reduce the eligibility and verification process. Arkansas should look to Colorado, Maine, and California to implement an elimination or reduction of the eligibility requirements for students to receive school lunch. In neither Maine, California, nor Colorado must a student fill out an eligibility form to receive free school lunch, however Arkansas's General Assembly would likely favor Colorado's HSMA when drafting free lunch legislation. Colorado's HSMA does not require students to be eligible under the NSLP to receive free lunch but requires school districts to utilize the NSLP's eligibility requirements to their fullest extent.<sup>135</sup> Under this type of legislation, the Arkansas General Assembly would subsidize and reimburse any student's lunch that falls outside the NSLP's eligibility requirements. However, the school must work to advertise and get as many people eligible and verified through the NSLP as possible to reduce the state legislature's potential reimbursement cost. This benefits students who receive free lunch, but also benefits the legislature's reduction in costs.

An obvious issue with this proposal is the prospective hit the Arkansas budget would take. If the State is going to provide free lunch to all students, it will inevitably cost more money. However, Arkansas's unique circumstances in which it could fund a comprehensive school lunch act is what must be used to achieve this goal. Arkansas's \$1 billion dollar surplus of state tax money could be the perfect funding mechanism, at least to get the subsidy off of its feet.<sup>136</sup> Therefore, one option to begin this free lunch subsidy is to utilize existing tax surplus dollars. Alternatively, like Colorado, Arkansas could choose to raise taxes to fund this legislation.<sup>137</sup> While raising taxes is not commonly supported by taxpayers, evidence from national polls shows that the majority of voters and taxpayers are in favor of sweeping school lunch legislation.<sup>138</sup> Therefore, an increase

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<sup>134</sup> *See id.*

<sup>135</sup> *See* Gutierrez, *supra* note 126.

<sup>136</sup> *See* Russell, *supra* note 96.

<sup>137</sup> *See* Winfrey & Daley, *supra* note 26.

<sup>138</sup> *See* Chuck, *supra* note 75.

in taxes, even while not favorable to taxpayers, would at least be for a cause they have deemed favorable in the past.

Further, the wide range of funding schemes, from \$34 million a year in Maine to \$650 million a year in California, shows that Arkansas could implement a plan that works for its situation. Arkansas's population includes 3 million people, while Maine's population includes 1.3 million people, and California's population includes 39 million people.<sup>139</sup> Therefore, it is likely that Arkansas' costs would fall in between Maine and California and be closer to the \$34 million price tag than the \$650 million price tag. Even with tripling Maine's yearly costs, as Arkansas has three times the people Maine has, Arkansas' costs are around \$100 million, which could be reduced with school districts fully utilizing the NSLP. As long as children are fed indiscriminately, which aligns with citizens' and voters' viewpoints, there will likely be no great qualms from the general population. Further, Arkansas's passage of the LEARNS act allocates over \$200 million per year to education funding yet does not subsidize school lunch. A willingness to pass school lunch funding for another \$100 million is a logical following to the LEARNS act's passage, as it did not contemplate new school lunch measures.<sup>140</sup>

The fact that Arkansas has effectively disregarded students and school lunch in previous legislation, incurred over \$1 billion in tax revenue surplus, and has approved almost \$1 billion in education funding to improve teacher salaries, yet still requires students to pay for their own lunches, evidences a severe inequity and oversight. Even with a \$100 million price tag, likely a high estimate, Arkansas would be well short of utilizing the \$1 billion tax revenue it incurred in a single fiscal year.

Overall, even with a large price tag, the benefits of implementing sweeping school lunch legislation far outweigh the

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<sup>139</sup> See *QuickFacts: Arkansas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/AR> (last visited Dec. 19, 2023) (estimating Arkansas' current population at 3,067,732); *QuickFacts: Maine*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/maine> (last visited Dec. 19, 2023) (estimating Maine's current population at 1,395,722); *QuickFacts: California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/CA> (estimating California's current population at 38,965,193) (last visited Dec. 19, 2023).

<sup>140</sup> See S.B. 294, 94th Gen. Assemb., Reg. Sess. (Ark. 2023) (implementing no changes in Arkansas student lunch funding under the LEARNS act).

costs. To eliminate food insecurity by providing free lunch to all Arkansas students would greatly benefit Arkansas, its taxpayers, and its education system.

## **V. Conclusion**

Students are generally given everything they need at school, yet their most valuable asset, their brain, requires fuel to succeed. The one thing the Arkansas General Assembly continuously fails to provide students with is fuel for their most valuable asset. When this fuel is provided to students indiscriminately, like it is provided to inmates in state prisons, the food insecurity problem will be eviscerated, and school lunch will be one less thing for families and children to worry about. While the cost and allocation might prove to be cumbersome, burdensome, or time-consuming, it is clear that providing school lunch to all students at no cost will have a substantial impact and benefit the state of Arkansas. Further, it is feasible when looking to the successes of other states' legislation.

As stated in the introduction, the Arkansas General Assembly must utilize its current tax surplus, or alternatively increase taxes to fund a state-wide subsidy to the NSLP. In turn, the subsidy will decrease the negative effects of ineligibility under the NSLP, eliminate food insecurity for Arkansas students, and eliminate large school lunch debts many Arkansas schools have incurred. The focus of this legislation must be to feed students and take partisan and financial decisions out of the hunger equation. This is a call for the Arkansas General Assembly to act to care for its most vulnerable citizens: hungry school children.