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The Public Utility Regulation of Dollar General

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THE PUBLIC UTILITY REGULATION OF DOLLAR GENERAL

Olivia R. Sokos*

ABSTRACT

As food insecurity persists across the country, few solutions have been proposed to address the lack of access to healthy food in rural regions. This Note explores whether public utilities regulation is a theoretical avenue for addressing rural food deserts. The contribution of this Note is to encourage the recognition of healthy food as a critical public good through a modern public utility lens and build solutions to inadequate food access in rural regions by considering the qualities unique to rural populations. One solution proposed herein is to apply a modern public utility framework to dollar stores, ensuring reliable and affordable access to quality goods. The Note begins by defining rural food deserts through three key characteristics: (1) low-income households; (2) inadequate access to transportation; and (3) limited healthy food retailers. It then illustrates rural food deserts in a West Virginia case study, which further discusses the consequences of unaddressed food insecurity. Next, it examines existing legislation and initiatives addressing rural and urban food deserts. It then goes on to expose urbanormative thinking trends that contribute to the lack of conversations surrounding food deserts in rural communities and their persistence. Finally, it introduces a public utility framework as a new solution to treating rural food deserts, specifically proposing a modern public utility application to dollar stores in West Virginia. It further explores potential challenges to this framework.

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I. INTRODUCTION

The prevalence of food insecurity in rural communities across the country presents a major obstacle to rural health, economic development, and

stability.¹ Rural communities, particularly vulnerable populations, experience the American food system differently than communities located in high-population-density urban and suburban areas.² Food insecure communities that fall within a measured population tract and are characterized by low-income households, inadequate access to transportation, and limited healthy food retailers are defined as “food deserts.”³ In West Virginia alone, 33% of the population lives within identifiable food deserts.⁴ While some efforts have been made to alleviate food insecurity in rural communities, the issue remains largely unaddressed.⁵ Rural Americans have been left unarmed and unsupported to cope with the everyday challenges of food insecurity unique to their communities. Utilizing a modern public utility framework to recognize healthy food as a critical public good could shift the tides of rural health and development and properly address the enduring burdens of rural food deserts.

This Note is constructed to provide a detailed overview of the unique challenges facing rural, food-insecure places, then further narrows its analysis to examine West Virginia rural food deserts, discuss existing frameworks available to alleviate food deserts, and finally, propose a better-equipped, modern public utility framework to address rural food insecurity that has been perpetuated by urbanormative trends and corporate profit.

II. DEFINING RURAL FOOD DESERTS

The consolidation of the retail food industry following industrialization and globalization have permanently altered the landscape of the American food system, disproportionately harming rural and inner-city communities.⁶ Grocers in consolidated markets—mainly large corporations—retain market control, deciding everything from prices to working conditions.⁷ Former President Biden recognized these existing disparities in the 2024 State of the Union address, noting that “[g]rocers in consolidated markets charge you more because you have nowhere else to shop.”⁸ Defined by low-income populations, inadequate access to transportation, and limited healthy food retailers, these vulnerable communities must choose convenience and affordability over long term

¹ See generally Chery Smith & Lois W. Morton, *Rural Food Deserts: Low-Income Perspectives on Food Access in Minnesota and Iowa*, 41 J. NUTRITION EDUC. & BEHAV. 176 (2009).

² *Id.* at 176.

³ ECON. RSCH. SERV., U.S. DEP’T OF AGRIC., ERR-309, HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2021 (2022).

⁴ H.B. 2050, 83d Leg., Reg. Sess. (W. Va. 2021).

⁵ See *infra* Part IV.B, C.

⁶ Smith, *supra* note 1, at 176.

⁷ Mia DiFelice, The Real Root of High Food Prices: Corporate Greed and Consolidation, Food & Water Watch (Mar. 26, 2024), <https://www.foodandwaterwatch.org/2024/03/26/high-food-prices-consolidation/>.

⁸ *Id.*

community health and stability.⁹ Rural people, although faced with food security threats similar to those of inner-city communities, are distinctly challenged by geography, transportation accessibility, and healthy food retailer availability.¹⁰ Because rural communities must confront exceptional challenges when accessing food, few solutions have been formulated to adequately address rural food deserts. Negative social stigma towards rural Americans also contributes to the lack of solutions for rural food insecurity.¹¹

The following section outlines the complexity of food insecurity in rural places by: (1) illustrating comparisons between urban and rural food deserts; (2) detailing the characteristics of food insecure, rural places; (3) analyzing market pressures; (4) demonstrating infrastructure and transportation challenges in rural places; and (5) identifying major accessibility challenges for rural community members.

A. *The Rise of Urban Food Deserts*

We most commonly hear of the term “food deserts” being discussed in the context of low-income, urban neighborhoods where access to affordable, healthy food is limited by numerous factors. One of these factors is the strategic choice of supermarkets to maximize profits by centering their attention and efforts on suburban consumers.¹² This trend followed the mass exodus of families from urban centers to suburban communities caused by subsidized mortgages and the construction of highways and schools.¹³ Coined as “white flight,” the movement of people to suburban communities was mostly exclusive to white families as a result of racial covenants and discriminatory loan practices.¹⁴

Consequently, an access gap was formed due to these practices. The mostly Black community that remained in urban areas was left with little to no access to reasonably priced and healthy grocery choices.¹⁵ In totality, these events created modern urban food deserts, deepening socioeconomic and racial divides.¹⁶

⁹ *Id.*

¹⁰ Ella Anette Bitto, Lois Wright Morton, Mary Jan Oakland & Mary Sand, *Grocery Store Access Patterns in Rural Food Deserts*, 6 J. STUDY FOOD & SOC’Y 35, 36 (2003).

¹¹ GREGORY M. FULKERSON & ALEXANDER R. THOMAS, *STUDIES IN UNIFORMITY: RURAL COMMUNITY IN URBAN SOCIETY* 8 (Gregory M. Fulkerson & Alexander R. Thomas eds., 1st ed. 2014) [hereinafter FULKERSON, UNIFORMITY].

¹² Christopher R. Leslie, *Food Deserts, Racism, and Antitrust Law*, 110 CALIF. L. REV. 1717, 1720, 1728–29 (2022).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

B. Food Insecurity in Rural Communities

Although an accurate depiction of urban food deserts, the characterization provided above largely neglects the significant portion of food insecurity suffered across the United States. Rural communities represent some of the most intensely affected populations of Americans suffering from food insecurity.¹⁷ Limited by geography, uneven food distribution, transportation, income, market forces, infrastructure, and more, rural places struggle to access the food necessary to sustain healthy communities.¹⁸ Although rural places account for the production of almost the entire food network in the United States, they habitually have the least access to it.¹⁹ In 2023, the United States Department of Agriculture (“USDA”) reported that 16.1% of rural households were food insecure, as compared to 14.1% in urban communities.²⁰

Food insecure communities fall within measured population tracts with three defining characteristics: (1) low-income households; (2) inadequate access to transportation; and (3) limited food retailers that offer affordable, fresh produce and healthy groceries.²¹ The USDA defines food insecurity as any household which lacks *consistent access* to enough food for an active, healthy life for all household members.²² Better known as the defining characteristic of a “food desert,” *access* is the number one predictor of health and stability around the world—not only access to food, but also education, transportation, information, healthcare, local social services and support, subsidies, markets, labor and employment, etc.²³ In rural communities, access proves a daily struggle to overcome.

Despite the fact that more than 46 million people live in rural areas, 80% of rural America is still regarded as having inadequate access to healthcare.²⁴ Significant obstacles to healthcare for rural Americans include high uninsurance

¹⁷ Smith, *supra* note 1, at 176.

¹⁸ *Id.*

¹⁹ 2 Carolyn Olson et. al., *Chapter 10: Agriculture and Rural Communities*, in *IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES: FOURTH NATIONAL CLIMATE ASSESSMENT* 89–91 (Georgine Yorgey et al. eds., 2018).

²⁰ *Food Insecurity in 2023: Notable Research Findings from the USDA’s Annual Food Security Report*, FEEDING AM. (Sept. 4, 2024), https://feedingamericaaction.org/wp-content/uploads/Resource_USDAsAnnualFoodSecurityReport_NotableFindings.pdf [hereinafter *Food Insecurity in 2023*].

²¹ HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2021, *supra* note 3.

²² *Id.* (emphasis added).

²³ About CDC, *Social Determinants of Health (SDOH)*, <https://www.cdc.gov/about/priorities/why-is-addressing-sdoh-important.html> (last visited Mar. 7, 2025).

²⁴ *Rural Health: Addressing Barriers to Care*, NIHCM FOUND. (Oct. 25, 2023), <https://nihcm.org/publications/rural-health-addressing-barriers-to-care>.

rates, the need to travel farther for care, and a lack of medical professionals.²⁵ When compared to people in cities, these barriers lead to lower life expectancies and worse overall health outcomes for rural populations.²⁶

Access to education also proves to be a major obstacle for rural Americans.²⁷ The United States Department of Education reported that just 29% of rural individuals between the ages of 18 and 24 are enrolled in higher education, compared to 48% and 42% of urban and suburban inhabitants in the same age range.²⁸ ”This disparity has been attributed to several factors, including geographic isolation, limited access to college-preparatory resources, and financial constraints.”²⁹

Additionally, the U.S. Department of Transportation provides that rural Americans have exceptionally limited transportation access, with only 36% of residents able to choose between airline, rail, and bus transportation services.³⁰

These issues, among many others, display the major barriers to access faced by rural Americans. As a result, rural communities across the nation find themselves grappling to address the daunting summit we know as accessibility to build stable and fruitful futures.

C. *Food Deserts vs. Food Swamps*

Although the terms “food insecurity” and “food deserts” might suggest that communities have zero access to food, this is routinely false.³¹ Many places that qualify as food deserts are oversaturated with highly processed food sources—such as fast-food and corner stores—but lack adequate access to healthy, affordable food options.³² This oversaturation can be alternatively identified as a “food swamp” because of the abundance of food retailers that provide nutrient poor food options. Even where grocery stores with healthy foods

²⁵ *Id.*

²⁶ *Id.*

²⁷ Erik Cliburn & Courtney Mullins, *Transforming Rural Access to Higher Education*, INSIGHT INTO DIVERSITY (Sept. 17, 2024), <https://www.insightintodiversity.com/transforming-rural-access-to-higher-education/>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *The Critical Role of Rural Communities in the U.S. Transportation System*, U.S. DEP’T TRANSP., <https://www.transportation.gov/rural/grant-toolkit/critical-role-rural-communities> (last visited Feb. 2, 2025) [hereinafter *Transportation in Rural Communities*].

³¹ *What Are Food Deserts and How Do We Solve Them?*, EDEN GREEN TECH. (Mar. 20, 2023), <https://www.edengreen.com/blog-collection/food-deserts> (emphasis added).

³² *Id.*

are available, access is continually limited by affordability,³³ making cheaper, less nutrient-rich foods a more viable option for consumers.³⁴

A critical distinction should be made between access to food generally and access to healthy, nutrient-rich foods. In many places, especially low-income and high unemployment areas, it is exponentially more convenient and affordable for people to visit a fast-food restaurant for a meal rather than drive a farther distance and pay higher prices for fresh produce.³⁵ When looking for solutions to rural food deserts, distance from the stores that provide healthy food options presents a major challenge. Consolidated grocery markets perpetuate this issue.³⁶ Because consolidated grocers exercise such vast control over the market, they can operate storefronts anywhere they wish, with any price scheme they choose. “[B]ig grocery stores can adopt cost-cutting measures that make it impossible for smaller stores to compete. Small businesses shutter. Then, because the big stores are the only option in town, they can raise prices again — and that’s exactly what they do.”³⁷

D. Food Provision vs. Corporate Profit

Food deserts almost exclusively exist near or within low-income communities.³⁸ This key characteristic of food deserts is mainly attributable to business decisions by large grocery monopolies.³⁹ Despite significantly limiting the rural grocery availability through market control, consolidated grocers prioritize profitable locations over locations that guarantee equitable access to healthy foods across communities.⁴⁰ Low-income communities are not attractive business locations when deciding where the highest profit margins exist, unless of course, you are a dollar store.⁴¹ For the purpose of this Note, dollar stores are referred to as grocery markets loosely because they are *not* a healthy food or

³³ See Press Release, Accountable.US, Senate Hearing Highlights: Grocery Giants Grilled Over Price Gouging (May 22, 2024), <https://accountable.us/senate-hearing-highlights-grocery-giants-grilled-over-price-gouging/>.

³⁴ *What Are Food Deserts and How Do We Solve Them?*, *supra* note 31.

³⁵ Angela Hilmers, David C. Hilmers & Jayna Dave, *Neighborhood Disparities in Access to Healthy Foods and Their Effects on Environmental Justice*, AM. J. PUB. HEALTH (July 19, 2012), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2012.300865>.

³⁶ DiFelice, *supra* note 7.

³⁷ *Id.*

³⁸ Hilmers, *supra* note 35.

³⁹ Keith Loria, *How Do Grocery Stores Find the Right Location for Expansion?*, GROCERY DIVE (Feb. 17, 2017), <https://www.grocerydive.com/news/grocery—how-do-grocery-stores-find-the-right-location-forexpansion/535437/>.

⁴⁰ *Id.*

⁴¹ Michael Sainato, *How Dollar Stores Prey on the Poor*, PROGRESSIVE MAG. (Oct. 1, 2019), <https://progressive.org/magazine/dollar-stores-prey-on-the-poor-sainato-191001/> (emphasis added).

fresh produce provider. The Dollar General phenomenon will be addressed later in this Note when looking at food availability in rural communities. Generally, though, grocery stores are driven by business decisions and are scantily located in low-income communities, which significantly overlaps with rural community demographics, according to the USDA.⁴²

E. Rural Transportation and Food Deserts

Another key identifier of food deserts is inadequate access to transportation. Reliable public transit often does not exist or is difficult to come by in rural communities, despite them often being key linkages in America's transportation system.⁴³ In addition to inadequate access to transportation, poor transportation infrastructure plagues rural regions.⁴⁴ Even though 68% of America's road miles—more than six million miles—are in rural regions, rural America has numerous safety and mobility issues, including high rates of motor vehicle fatalities and inadequately maintained transportation infrastructure.⁴⁵ Without properly maintained roadways and some reliable mode of transportation, it can be very difficult for someone to reach a food market, let alone access healthy food sources.⁴⁶

While urban food deserts also often require residents to travel greater distances for healthy food options, access to public transportation can mitigate this challenge to a greater extent than it does for rural areas. Generally, driving long distances is not feasible or convenient for many people to reach healthier food options, encouraging consumption of less healthy, cheaper alternatives.⁴⁷ The United States Department of Transportation noted that access to transportation as well as:

Reliable transportation infrastructure enhances quality of life, particularly in rural areas, by improving connectivity, mobility, and access to services like education and healthcare. According to the Centers for Disease Control and Prevention (CDC), approximately one third of adults in rural communities live with

⁴² *Food Insecurity in 2023*, *supra* note 20.

⁴³ *Transportation in Rural Communities*, *supra* note 30.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Hyun Joung Jin, Soowoen Moon & Sung Min Cho, *Effects of Access to Food Retailers and Convenience of Public Transportation on Residents' Fresh Food Intake and Body Mass Index*, 26 J. OF TRANSP. & HEALTH.

⁴⁷ Jon M. Bailey, *Rural Grocery Stores: Importance and Challenges*, CTR. FOR RURAL AFFS., Oct. 2010, at 1–2, <https://www.cfra.org/sites/default/files/publications/rural-grocery-stores-importance-and-challenges.pdf>.

a disability, impacting their ability to travel freely to the places they want and need to go.⁴⁸

These are some of many factors that contribute to the persistence of rural food deserts. Some demographics are more significantly impacted in their efforts to access healthy food retailers, including, but not limited to, older adults on fixed incomes; food stamp recipients; or those dependent upon government benefits, such as disability, unemployment, etc.

F. Rural Supply Chain Issues

The lack of variety of produce and fresh food available at grocery stores in rural locations is notable. Produce options are limited in comparison to nonperishable items and have a shorter shelf life than some less healthy competitors, making cheaper, less nutrient dense options more palatable for consumers.⁴⁹

Transporting fresh produce to more rurally located grocery stores often proves challenging. Many rural communities have poorly maintained infrastructure, often making it difficult for distribution trucks to reach them.⁵⁰ A study on this issue by the University of Wisconsin-Madison's Center for Integrated Agricultural Systems explored transportation-linked problems that affect food accessibility.⁵¹ The study found that several of the rural regions they observed had access to 0.1 pound per person, per year, per type of fresh perishable food from conventional distribution, while urban counties had 19–37 pounds available.⁵² This statistic overwhelmingly displays the disparity in food access between urban and rural communities.⁵³ Even if infrastructure is sound, it is a more attractive business option for producers to pay distributors to distribute to more centrally located suburban markets, where their most reliable consumers with the greatest purchasing power reside.⁵⁴ Here, producers can guarantee higher profit margins because of more consistent and larger volumes of consumers.⁵⁵

⁴⁸ *Transportation in Rural Communities*, *supra* note 30.

⁴⁹ *Id.*

⁵⁰ *Transportation in Rural Communities*, *supra* note 30.

⁵¹ *Transportation Issues Affecting Fresh Food Distribution: A Comparison Study of Rural vs. Urban America*, Ctr. for Integrated Agric. Sys. U. Wis.-Madison, <https://cias.wisc.edu/transportation-issues-affecting-fresh-food-distribution/> (last visited Oct. 24, 2024).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Bailey, *supra* note 47, at 1–2.

⁵⁵ *Id.*

G. *Maintaining Rural Grocery Stores*

It is clear that profit drives many business decisions for grocery operators, which begs the following question: What makes a community worthy of access to quality, healthy, and affordable foods? It is difficult for a grocery store in competition to opt to bear the upfront and maintenance costs of a store location that would yield little profit.⁵⁶ In most cases, when grocery stores are considering new locations for storefronts, they factor in “[p]opulation, neighborhood demographics, visibility, the amount of traffic that goes by[,] and local competition”—all business-oriented considerations that ultimately limit the number of food retailers available in rural communities, leaving a select few who meet the minimum criteria necessary for maintaining or opening a new grocery store.⁵⁷

The totality of these characteristics leaves many communities lacking adequate access to healthy foods. Although these problems are not unique to rural communities, food insecurity has a higher prevalence among rural households, with more severe consequences across communities and fewer solution strategies.

III. A WEST VIRGINIA CASE STUDY

Food insecurity presents a massive barrier to community health, development, and stability. Without proper access to nutrient rich food, people in rural communities will continue to face poorer quality of life via adverse health effects, less productivity and development of communities, especially child development, and poor economic stability. While food deserts in rural places look relatively similar across the country, West Virginia is a prime illustration of what rural food deserts can look like and the accompanying consequences. This Section will present a closer look at rural food deserts in West Virginia and their effects.

A. *Food Deserts in West Virginia*

With the majority of Americans living in suburban communities, most people are able to access a healthy food retailer in a matter of minutes.⁵⁸ A quick trip to the store or a weekly grocery haul pose little disruption to daily life. While this is the convenient reality for suburban America, the same cannot be said for those who reside in rural regions. Suffering from the highest rates of food

⁵⁶ *Id.*

⁵⁷ Loria, *supra* note 39.

⁵⁸ Jeffrey H. Anderson, *Classification of Urban, Suburban, and Rural Areas in the National Crime Victimization Survey*, U.S. DEP'T JUSTICE, Dec. 2020, at 6, <https://bjs.ojp.gov/content/pub/pdf/cusrancvs.pdf>.

insecurity in the nation, nearly 15% of West Virginians face barriers to healthy food access.⁵⁹

Residents of Cameron, West Virginia, just shy of 70 miles from the major metropolitan city of Pittsburgh, Pennsylvania, must travel nearly 90 minutes roundtrip to reach the closest grocery store that offers fresh food options. This does not account for time spent in the store. Given its proximity to one of the most centrally located cities on the east coast, one might expect that reaching fresh produce would not be an overburdensome obstacle; however, that assumption would be ill informed. Moreover, Cameron is situated closely to higher populated towns; the same is not true for many rural communities across West Virginia, like those of the southern coalfields.⁶⁰ In many instances, a community may be between two and three hours from the next densely populated town, leaving them with difficult choices to make about what they feed themselves and their families.⁶¹

1. Low or Fixed Income, High Unemployment

Food deserts in the state of West Virginia replicate what has already been described as a rural food desert in this Note. Throughout the state, there are population tracts of people that are characterized by low income, poor access to transportation, and limited healthy food retailers. With 17.9%⁶² of West Virginians living in poverty and nearly 20%⁶³ eligible for SNAP benefits, citizens living off a low income represent a significant portion of the state. In addition to the low-income population are individuals that live off a fixed income. People aged 65 and older make up 20.9% of West Virginia's population.⁶⁴ Although older adults face many obstacles accessing healthy food—such as transportation, physical health, etc.—fixed incomes often prove insufficient to financially access more nutrient rich and healthy food options.⁶⁵

⁵⁹ *Food Deserts and Food Insecurity in West Virginia*, W. VA. U. BRIDGE INITIATIVE SCI. & TECH. POL'Y, LEADERSHIP, & COMM'NS (Jan. 8, 2024), <https://scitechpolicy.wvu.edu/science-and-technology-notes-articles/2024/01/08/food-deserts-and-food-insecurity-in-west-virginia>.

⁶⁰ Taylor Kuykendall, *USDA: Parts of W. Va. Qualify as 'Food Deserts'*, REGISTER-HERALD (July 29, 2014), https://www.register-herald.com/news/local_news/usda-parts-of-w-va-qualify-as-food-deserts/article_dc9373e9-38a5-57bf-aa06-20cdc3f105ac.html.

⁶¹ *Id.*

⁶² Sean O'Leary, *A Deeper Look at West Virginia's 2022 Poverty Data*, W. VA. CTR. ON BUDGET & POL'Y (Sept. 20, 2023), <https://wvpolicy.org/child-poverty-increased-in-west-virginia/>.

⁶³ Chris Gilligan, *States With the Highest Rates of SNAP Recipients*, U.S. NEWS & WORLD REP. (Mar. 16, 2023, 12:33 PM), <https://www.usnews.com/news/best-states/articles/food-stamp-benefits-by-state>.

⁶⁴ Lillian Kilduff, *Which U.S. States Have the Oldest Populations?*, POPULATION REFERENCE BUREAU (Dec. 22, 2021), <https://www.prb.org/resources/which-us-states-are-the-oldest/>.

⁶⁵ Emma L. Tucher, Tamara Keeney, Alicia J. Cohen & Kali S. Thomas, *Conceptualizing Food Insecurity Among Older Adults: Development of a Summary Indicator in the National Health and Aging Trends Study*, 76 *J. GERONTOLOGY: SOC. SCIS.* 2063, 2063 (2020).

2. Inadequate Access to Transportation

Lack of access to transportation also creates a massive barrier to accessing healthy food retailers in the state. The West Virginia Division of Highways State of the System reported gaps in the current existing transit services in north central West Virginia and some discontinuous areas in the southern half of the state.⁶⁶ These gaps leave 18 of the 55 counties with *zero* access to public transit services.⁶⁷ Without access to a personal vehicle, these individuals have no way of reaching any food retailers, let alone healthy food retailers. Consequently, much of the population is reliant upon family and community support or external resources for food provision.⁶⁸ Although the remaining 37 counties have some degree of access to public transit services, many counties have very limited and unreliable services that would be considered inadequate.⁶⁹ In their long-range plan considerations, the Division of Highways noted the limitations of public transit in the state; “[p]roviding transportation options to residents who have mobility limitations, particularly limitations that hamper their access to healthcare, education, and employment opportunities is a significant challenge. Funding constraints, distances between destinations, and declining population challenge service in rural areas.”⁷⁰

3. Limited Access to Healthy Food Retailers

Inadequate access to transportation makes the already limited number of healthy food retailers in West Virginia further inaccessible. For many, Walmart and Kroger serve as the main sources of fresh produce and meat. With only 44 Walmart retail locations⁷¹ and 38 Kroger retail locations,⁷² generally situated in more densely populated areas, the rural shopping options in the state are lack luster. There are, however, 62 Dollar Tree locations,⁷³ 122 Family Dollar

⁶⁶ *State of the System: Public Transportation in West Virginia*, W. VA. DIV. HIGHWAYS-PLAN. DIV., at 2, https://transportation.wv.gov/highways/Planning/LRTP/Documents/Transit_FactSheet_Final.pdf (last visited Oct. 24, 2024) [hereinafter *State of the System*].

⁶⁷ *Id.* (emphasis added).

⁶⁸ *It's Not Just Hunger: Transportation's Role In Food Insecurity*, U.S. HUNGER (Aug. 29, 2022), <https://ushunger.org/blog/transportation-food-insecurity/>.

⁶⁹ *State of the System*, *supra* note 66.

⁷⁰ *Id.* at 4.

⁷¹ *Walmart in West Virginia*, WALMART, <https://corporate.walmart.com/about/location-facts/united-states/west-virginia> (last visited Oct. 24, 2024).

⁷² *Grocery Stores in West Virginia*, KROGER, <https://www.kroger.com/stores/grocery/wv#:~:text=Kroger%20has%2038%20grocery%20stores,supplies%2C%20health%20products%20and%20more> (last visited Oct. 24, 2024).

⁷³ *Dollar Tree Store Locations in West Virginia*, DOLLAR TREE, <https://www.dollartree.com/locations/wv/> (last visited Oct. 24, 2024).

locations,⁷⁴ and 285 Dollar General locations,⁷⁵ totaling to a whopping 469 dollar stores in rural communities. The caveat is that these stores offer extremely minimal, if any, fresh and nutrient rich foods. Dollar General stores have launched a fresh food initiative⁷⁶ across the country, but their business model significantly limits their prospects of filling the existing healthy food access gaps in this state and many others.

With nearly one-third of the population living within qualified food deserts, many West Virginians are faced daily with the difficulties of food insecurity.⁷⁷ The natural beauty and rich culture of the state is often juxtaposed with the current conditions of rural West Virginia. Where small and vibrant communities driven by blue collar industries once stood are now sparsely populated regions with a single gas station, a few churches, and a dollar store (or maybe two).

B. Consequences of Rural Food Deserts

The implication of rural food desert continuity is that rural communities will, over time, grow to be less healthy, productive, and stable. Further, they will be unable to support their current populations, let alone any growth.⁷⁸ Less access to healthy foods will lead to less healthy consumption and in turn, less healthy individuals. Compounding negative effects create major risks of multi-generational habits and hardships. With no end to the vicious cycle in sight, rural communities will be faced with daunting futures.⁷⁹

As research on rural health expands, the deep connection between health and food is unquestionable. In rural communities across the country high rates of type 2 diabetes, high blood pressure, heart disease, and obesity are commonplace.⁸⁰ According to Feeding America, “[f]amily members in food-insecure households are also more likely to struggle with psychological and

⁷⁴ *Family Dollar Locations in West Virginia*, FAMILY DOLLAR, <https://www.familydollar.com/locations/wv/> (last visited Oct. 24, 2024).

⁷⁵ *Number of Dollar General Stores in the United States as of 2022, by State*, STATISTICA, <https://www.statista.com/statistics/1121086/number-of-dollar-general-stores-in-the-united-states-by-state/> (last visited Oct. 24, 2024).

⁷⁶ Sam Silverstein, *Dollar General Now Sells Fresh Produce at More Than 5k Stores*, GROCERY DIVE, (Jan. 31, 2024), <https://www.grocerydive.com/news/dollar-general-produce-food-grocery/706120/>.

⁷⁷ H.B. 2050, 83d Leg., Reg. Sess. (W. Va. 2021); S.B. 18, 82d Leg., Reg. Sess. (W. Va. 2020); *Food Deserts and Food Insecurity in West Virginia*, *supra* note 59.

⁷⁸ *Food Accessibility, Insecurity and Health Outcomes*, NATIONAL INSTITUTE ON MINORITY HEALTH AND HEALTH DISPARITIES, <https://www.nimhd.nih.gov/resources/understanding-health-disparities/food-accessibility-insecurity-and-health-outcomes.html> (last visited Feb. 13, 2025).

⁷⁹ *Id.*

⁸⁰ *Importance of Nutrition on Health in America*, FEEDING AM., <https://www.feedingamerica.org/hunger-in-america/impact-of-hunger/hunger-and-nutrition> (last visited Oct. 24, 2024).

behavioral health issues. And kids struggling to get enough to eat are more likely to have problems in school and other social situations.”⁸¹ In addition to the direct negative impacts of food insecurity on health, many food insecure people live in communities that also suffer from healthcare access gaps.⁸² According to recent research from Pew, nearly a quarter of rural Americans identified quality healthcare access as a major challenge compared to those living in cities or suburban environments.⁸³ Not only are people struggling with poor health as a result of inaccessible healthy food, but they are also poorly situated to receive proper care for their health concerns.⁸⁴

Economic productivity is also hindered as a result of food insecurity:

The economic cost of hunger and malnutrition as reflected in lost productivity, illness and death, is extremely high. Undernourishment significantly lowers physical ability, cognitive development and learning achievement, resulting in lower productivity. It not only blights the lives of individuals and families but also reduces the return on investment in social and economic progress.⁸⁵

Food insecurity leaves many communities in poor health with stunted economic development, making them unstable environments for the current populations and economies they support and any potential economic growth.⁸⁶ Community instability makes the future uncertain for generations to come. Critical changes must be made to shift the tide of community well-being in order to support proper development of youth, economic productivity, and overall community growth.

C. *Consequences of Rural Food Deserts in West Virginia*

West Virginians face unavoidable risks if rural food deserts continue to go unaddressed, including detrimental effects on economic stability and long-term health and well-being. With nearly 20% of the state’s total population living

⁸¹ *Id.*

⁸² *Health Plan Insights: How Recuro is Combating “Food Deserts: In Rural America*, RECURO HEALTH, <https://recurohealth.com/health-plan-insights-how-recuro-is-combating-food-deserts-in-rural-america/> (last visited Feb. 15, 2025).

⁸³ Onyi Lam, Brian Broderick & Skye Toor, *How Far Americans Live From the Closest Hospital Differs by Community Type*, PEW RSCH CTR. (Dec. 12, 2018), <https://www.pewresearch.org/short-reads/2018/12/12/how-far-americans-live-from-the-closest-hospital-differs-by-community-type/>.

⁸⁴ *Id.*

⁸⁵ *Dynamics of Change: The Dividends of Food Security*, FOOD & AGRIC. ORG. UNITED NATIONS, <https://www.fao.org/3/X8200E/x8200e05.htm> (last visited Oct. 24, 2024).

⁸⁶ *Id.*

in poverty, many are faced with critical daily food choices.⁸⁷ Beyond the 20% living in poverty, 40% are food insecure,⁸⁸ and over 33% live within a food desert.⁸⁹ Given the statistics stacked against West Virginians, convenience and affordability dictate food choices rather than health and well-being.⁹⁰ Taking these factors into account, it is often beyond the purchasing power of vulnerable populations to select nutrient rich foods.⁹¹ Even if communities are economically stable enough to purchase healthier food, their ability to access healthy foods may be impacted by the distance they must travel to reach it, likely still characterizing them as a vulnerable population in terms of food access.

Several vulnerable populations make up the communities of West Virginia. With an aging population, older adults are vulnerable to the effects of food insecurity, surviving mainly on fixed incomes and community support. The fluctuation of food prices along with the higher cost of healthy and nutrient rich foods make healthy options unobtainable for many in this age cohort.⁹² Not only does this deny older adults the nutrients they need to remain healthy, but it also deepens their vulnerability by placing them at a greater risk of adverse health effects resulting from a diet lacking proper nutrients.

Additionally, older adults are restricted by transportation access.⁹³ Driving less frequently or not at all and relying exclusively on public transportation or family and caregivers, older adults lack mobility and autonomy in their food choices.⁹⁴ The inaccessibility of public transportation in the state of West Virginia intensifies the issue of food accessibility, creating an even larger hurdle not only for older adults unable to drive, but also those with disabilities and those without access to a personal vehicle.⁹⁵

At the opposite end of the spectrum are youth. Many young people in the state face inadequate access to proper nutrient rich food, making them

⁸⁷ *QuickFacts West Virginia*, U.S. CENSUS BUREAU (July 1, 2022), <https://www.census.gov/quickfacts/fact/table/WV/PST045222>.

⁸⁸ *West Virginia Food Desert Summit 2019: Collective Action to Address Food Deserts in West Virginia*, W. VA. U. EXTENSION SERV., Dec. 10, 2019, at 16, <https://researchrepository.wvu.edu/cgi/viewcontent.cgi?article=1003&context=food-dessert-summit-2019>.

⁸⁹ H.B. 2050, 83d Leg., Reg. Sess. (W. Va. 2021); S.B. 18, 82d Leg., Reg. Sess. (W. Va. 2020).

⁹⁰ *Access to Food That Support Healthy Dietary Patterns*, OFF. DISEASE PREVENTION & HEALTH PROMOTION, <https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/access-foods-support-healthy-dietary-patterns> (last visited Oct. 24, 2024).

⁹¹ *Id.*

⁹² *Older Adults and People with Disabilities*, RURAL HEALTH INFO. HUB, <https://www.ruralhealthinfo.org/toolkits/transportation/4/population-considerations/older-adults-people-with-disabilities> (last visited Oct. 24, 2024).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

susceptible not only to poor health outcomes, but also generational health detriments.⁹⁶ Food insecurity and lack of healthy choices can have an intense ripple effect throughout communities; this effect is further amplified through adverse impacts on youth. Malnourishment and food insecurity make it more difficult to grow physically and developmentally, learn in school, sleep, and be generally healthy.⁹⁷

Vulnerability and food insecurity among West Virginians is highly correlative to several negative long term health effects; the two most prominent being heart disease and obesity rates.⁹⁸ With adult obesity rates measuring to 41.6%⁹⁹ and childhood obesity rates at 24.8%,¹⁰⁰ West Virginia citizens run high risk for illness and disease as a result of improper diets. In addition to obesity and heart disease, many food insecure communities are susceptible to other diet related diseases, such as high blood pressure, high cholesterol, diabetes, stroke, gallbladder disease, osteoarthritis, sleep apnea and breathing problems, cancer, and mental illness.¹⁰¹ Poor access to food necessary for maintaining a healthy diet is the primary cause of diet related illnesses, with 33% percent of West Virginians living in food deserts and a notable connection between food and health, rural communities will continue to suffer if healthy food options are not made readily accessible and affordable.

Nationwide, West Virginia has some of the highest rates of cardiovascular disease¹⁰²—statewide, it is the leading cause of death.¹⁰³ What is most notable, however, is the community’s response in addressing heart disease. Preventing and treating heart failure is at the center of West Virginia University (“WVU”) Medicine’s research and care initiatives. However, the healthy food needed for successful treatment and prevention plans is largely unavailable to many patients. Like food deserts, many Americans in rural communities live within “access deserts,” where specific populations of people experience

⁹⁶ Overweight or Obesity – Youth in West Virginia, AM.’S HEALTH RANKINGS UNITED HEALTH FOUND., https://www.americashealthrankings.org/explore/measures/youth_overweight_overall/WV (last visited Feb. 16, 2025).

⁹⁷ *Id.*

⁹⁸ *Fast Facts: Statistics About the Population of West Virginia*, W. VA. DEP’T HEALTH, https://dhhr.wv.gov/hpcd/data_reports/pages/fast-facts.aspx (last visited Oct. 24, 2024).

⁹⁹ *Adult, STATE CHILDHOOD OBESITY*, <https://stateofchildhoodobesity.org/demographic-data/adult/> (last visited Oct. 24, 2024).

¹⁰⁰ *West Virginia, STATE OF CHILDHOOD OBESITY*, <https://stateofchildhoodobesity.org/state-data/?state=wb> (last visited Oct. 24, 2024).

¹⁰¹ *How Overweight and Obesity Impacts Your Health*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/healthy-weight-growth/food-activity/overweight-obesity-impacts-health.html> (last visited Oct. 24, 2024).

¹⁰² *Fast Facts: Statistics About the Population of West Virginia*, *supra* note 98.

¹⁰³ *WVU Awarded Million Hearts Funding to Improve Rural Health Outcomes*, W. VA. U. SCH. MEDICINE (Sept. 19, 2023), <https://medicine.hsc.wvu.edu/news/story?headline=wb-awarded-million-hearts-funding-to-improve-rural-health-outcomes>.

inequities in access to healthcare.¹⁰⁴ “In West Virginia, 84.66% of the population [is] living in counties designated as primary care deserts, with no providers within a five-mile radius.”¹⁰⁵

While similar in nature to food deserts, the approach to addressing primary care deserts is drastically different. Heart disease treatment in the state is a prime illustration. WVU Medicine has taken an aggressive approach to combat the number one cause of death among West Virginians, viewing heart healthcare as an *essential right* (or even a public good), no matter where people live.¹⁰⁶

In an interview discussing WVU Medicine’s collaboration on the Million Hearts initiative to help prevent one million cardiovascular disease incidents within five years, Director of WVU Medicine’s Advanced Heart Failure Program and heart failure specialist, Dr. George Sokos, noted “[w]e believe that patients deserve the highest level of care no matter where they live or how far away they are from a major medical center.”¹⁰⁷ WVU Medicine has worked diligently to address access gaps by creating Community Care sites across the state that allow patients in rural communities to more easily access high quality healthcare close to home.¹⁰⁸ WVU Medicine has largely shifted their policy lens to view healthcare access as a public necessity for the people of West Virginia, rather than solely a profitable industry.

However, these approaches to access gaps in healthcare and the industry’s recognition of the right to high quality care for all is not prioritized in the same manner in the food access context. Without the prioritization of closing access gaps by all food retailers, it will be impossible for physicians, pharmacists, and other healthcare specialists to effectively carry out their treatment plans and achieve desired outcomes.

Issues of accessibility should not be mistaken with laziness or lack of effort to provide stable and healthy communities. Urbanormative thinking trends and societal portrayals of rural regions contribute to the negative lens through which rural people are viewed, making it critical to recognize that rural communities have not sat complacently in their struggles for health and longevity. Programs across the state are working tirelessly to close access gaps for those living within rural food deserts, while others at a local level continue to come up with innovative approaches to accessing healthy food.¹⁰⁹

¹⁰⁴ Jesse Corn, *How To Close The Healthcare Desert Gap And Improve Access In The US*, FORBES (Jan. 2, 2025), <https://www.forbes.com/councils/forbesbusinesscouncil/2025/01/02/how-to-close-the-healthcare-desert-gap-and-improve-access-in-the-us/>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* (emphasis added).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Emily Rice, *Going the Extra Mile: Innovative Program Looks to Address Hunger in Mercer County, West Virginia*, W. VA. NEWS (June 15, 2023), <https://www.wvnews.com/news/wvnews/going-the-extra-mile-innovative-program-looks-to->

IV. ADDRESSING RURAL FOOD DESERTS

Considering the three defining characteristics of food deserts—low income, inadequate access to transportation, and limited food retailers—how can the problem of providing access to healthy, affordable foods in food deserts be best addressed? Some government solutions that have been proposed or implemented include tax incentives for grocery stores built in low-income and low access communities, increased funding for public transportation to increase accessibility, and government-sponsored gardens and urban farming initiatives to spur local food production.¹¹⁰ The private sector is also working towards creative solutions in addressing food deserts and food insecurity. Some of these initiatives include mobile grocery stores and food trucks, community-supported agricultural programs, and vertical farming and hydroponic technology.¹¹¹ Grassroots organizations are making similar strides through community advocacy and local food co-ops and markets.¹¹² The problem with many of these solutions, however, is they have been created for and implemented in mostly urban communities, leaving the issues presented by rural food deserts largely unaddressed, with little to no conversational space for rural-centered solutions. Even these urban centered solutions have not been enough to fully mitigate the effects of urban food deserts, let alone rural ones.

A. *Urbanormative Trends*

Although urban communities may present fewer obstacles to implementation of some of these initiatives, it is more than just their ease of implementation that makes them an attractive problem to solve. It is the pervasive mindset that issues facing urban communities are more important to solve than those facing rural communities. This trend of thinking is referred to as “urbanormative” and has continually provided less and less space for rural issues to be discussed and addressed, even when the issues affect larger numbers of people and are more time sensitive.¹¹³

Accordingly, much of the conversation concerning food deserts has been centered around urban communities. Urbanormative trends have created a culture and mindset that “assumes that the interests of cities are of paramount importance” and that “urban cultural norms and values are not only dominant but superior as well.”¹¹⁴ “Cities are associated with a range of positive values: prosperity and progress, education and refinement, cosmopolitanism and

[address-hunger-in-mercier-county-west-virginia/article_09e3d5aa-0ba6-11ee-9929-cfae399a5302.html](https://www.wvlawreview.com/address-hunger-in-mercier-county-west-virginia/article_09e3d5aa-0ba6-11ee-9929-cfae399a5302.html).

¹¹⁰ *What Are Food Deserts and How Do We Solve Them*, *supra* note 31.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ FULKERSON, UNIFORMITY, *supra* note 11, at 5.

¹¹⁴ *Id.* at 5–6.

diversity. In contrast, those living in the country are associated with poverty and backwardness, ignorance and crudeness, boredom and homogeneity.”¹¹⁵ A great deal of urbanormative thinking stems from negative portrayals of rural life throughout history.¹¹⁶ Television and other forms of media have generated numerous representations favoring negative themes of rural living which contribute to the present views of rural communities.¹¹⁷ Not only do these representations affect how rural communities are viewed and understood by other groups, but they also influence problem solving strategies in approaching societal issues, leaving “scant social scientific attention” for issues plaguing rural communities and, in our case, solutions to rural food deserts.¹¹⁸ Legal avenues for addressing food deserts in general are scarce, but because of urbanormative thinking trends, most solutions are geared toward serving urban communities rather than rural ones.

Urbanormative trends also contribute to a misallocation of federal assistance and poor investments into rural communities.¹¹⁹ The misconception that rural communities are still heavily reliant on agriculture prevents rural communities from receiving proper federal assistance as they search for avenues to evolve and improve.¹²⁰ This effects how lawmakers approach issues in rural America—particularly how they decide to spend federal dollars. Misinformed perceptions, therefore, not only hinder better and more sound investments in rural regions but prevent them.¹²¹ Adjusting the lens that lawmakers view rural communities through is essential to recognizing their full potential and making better investments for the health and future of rural regions.

B. Existing Legislation Addressing Food Deserts

Much of what legal solutions exist for urban and rural food deserts alike is very recent and not fully developed. While several states have felt pressure from voters to recognize an inherent right to food, the federal government has not yet recognized this human right and has moved slowly in addressing these time sensitive issues.¹²² Senate Bill 203, introduced in 2021, “allows tax credits

¹¹⁵ *Id.*

¹¹⁶ GREGORY M. FULKERSON & ALEXANDER R. THOMAS, REIMAGINING RURAL: URBANORMATIVE PORTRAYALS OF RURAL LIFE 9 (Gregory M. Fulkerson & Alexander R. Thomas eds., 1st ed. 2016).

¹¹⁷ *Id.*

¹¹⁸ FULKERSON, UNIFORMITY, *supra* note 11.

¹¹⁹ Claire Carlson, *Keep It Rural: What the NYT Got Wrong*, DAILY YONDER (Jan. 31, 2023), <https://dailyyonder.com/newsletter/keep-it-rural-what-the-nyt-got-wrong/>.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Tess Brennan, *Maine Becomes the First US State to Recognize the Right to Food in a Constitutional Amendment*, UNIVERSAL RTS. GRP. (Jan. 19, 2022), <https://www.universal->

and grants for activities that provide access to healthy food in food deserts.”¹²³ This bill is still in the introductory phase and lives currently in the Senate Finance Committee. The Food Deserts Act, or H.R. 1230, was introduced to the House in 2023 for the purpose of establishing “a grant program within the Department of Agriculture to reduce food deserts.”¹²⁴ The program outlines grant opportunities for states “that support the establishment and operation of grocery stores in underserved communities.”¹²⁵ This bill is also still in its introductory phases and is sitting currently in the House Agriculture Committee. Both proposed bills work concurrently with the Healthy Food Financing Initiative (“HFFI”), established in 2014—the goal of which is similarly to bring grocery stores to underserved communities. This is a competitive grant-based system maintained by a private-public partnership between the USDA and the Reinvestment Fund.¹²⁶

While federal initiatives exist in the search for rural food desert solutions, the most successful initiatives have come from bottom-up approaches. Case studies from Kansas State’s Rural Grocery Initiative display the “no one size fits all” solutions for saving or establishing rural grocery stores.¹²⁷ From community shareholder investment to school-run grocery markets, small communities across the country are coming up with innovative solutions to save their local grocery stores.¹²⁸ However, poor investments and inadequate support from federal and state funded programs have prevented the wide scale success of these bottom-up approaches.

C. Other Initiatives for Addressing Rural Food Deserts

Local initiatives for addressing rural food deserts typically come from nonprofit and grass root organizations, which consist mainly of grant-funded food pantry programs.¹²⁹ Although these programs have proven beneficial in assisting efforts to reduce food insecurity in rural communities, they function as band-aid solutions. Providing little relief for poor access to healthy foods, these solutions fail to address the root causes of rural food deserts. Some small

rights.org/maine-becomes-the-first-us-state-to-recognise-the-right-to-food-in-a-constitutional-amendment/.

¹²³ S. 203, 117th Cong. (2021).

¹²⁴ H.R. 1230, 118th Cong. (2023).

¹²⁵ *Id.*

¹²⁶ *About the Healthy Food Financing Initiative*, AM. HEALTHY FOOD FIN. INITIATIVE, <https://www.investinginfood.com/about-hffi/> (last visited Oct. 24, 2024).

¹²⁷ *See generally, Rural Grocery Initiative*, KAN. STATE U., <https://www.ruralgrocery.org/learn/publications/case-studies/> (last visited Oct. 24, 2024).

¹²⁸ *Id.*

¹²⁹ *Rural Hunger and Access to Healthy Food*, RURAL HEALTH INFO. HUB (Oct. 29, 2024), <https://www.ruralhealthinfo.org/topics/food-and-hunger>.

communities have turned to more innovative initiatives, opening local cooperative stores led by community members.¹³⁰

As rural communities have shrunk over the years, it has become increasingly difficult for local grocery stores to stay afloat, leaving 76 counties nationwide without a single grocery store.¹³¹ “Declining populations mean that a number of rural communities are without an adequate customer base for a local store. . . . In 2000, the average population needed to maintain a grocery store was 2,843. By 2005[,] the necessary population had risen to 3,252.”¹³² Alongside shrinking populations, grocery store consolidation has also presented a major issue:

A recent USDA report shows the percentage of grocery sales from the nation’s top 20 retailers more than doubled from 1990 to 2020, while the consolidation was more pronounced in rural areas. “These independent, small town stores don’t have as much buying power as some of the larger chains that you’ll find in urban areas.”¹³³

Lack of employment has also played a role in the disappearance of rural grocery stores.¹³⁴ Many residents travel to larger communities for work and will shop based on location convenience in accordance with their work.¹³⁵ “Aging ownership and a lack of transfer opportunities” are also contributing factors, leaving many local stores with no option but to close when the owners retire or decide to leave their businesses.¹³⁶ Although innovative and effective, many of the existing bottom up efforts cannot adequately address the burdens of rural food deserts. Using a public utility framework would provide an innovative approach that requires the participation of state and federal regulators to ensure that healthy food is accessible to all, the same as water or energy.

If we do not employ some kind of regulation over food access, there are alternative options that could help kickstart the bottom-up approach to these problems. Communities could implement community garden centers and form local cooperatives to create more healthy and nutrient rich food options from a grassroots perspective; however, it would take a significant amount of boots on the ground to start up and maintain those centers. Communities would need to

¹³⁰ Aaron Bonderson, *Rural Grocery Stores Are Dying. Here’s How Some Small Towns Are Trying to Save Them*, NAT’L PUB. RADIO (Apr. 19, 2023, 5:00 AM), <https://www.npr.org/sections/healthshots/2023/04/19/1170757257/rural-grocery-stores-are-dying-heres-how-some-small-towns-are-trying-to-save-the>.

¹³¹ *Id.*

¹³² Bailey, *supra* note 47, at 1.

¹³³ Bonderson, *supra* note 130 (quoting the program leader for the Rural Grocery Initiative at Kansas State University).

¹³⁴ Bailey, *supra* note 47, at 2.

¹³⁵ *Id.*

¹³⁶ *Id.*

consult local zoning ordinances to ensure their use of land is compliant; they must also ensure they have good title to the land. This solution would not completely eradicate food insecurity, but it would give many communities some autonomy over their food choice, rather than simply settling for what the dollar store has to offer. However, this alternative will never be adequate to maintain the degree of change needed to alter the long-term health and productivity and shift public policy the way a public utility regulation by the federal government would.

D. *West Virginia Efforts to Eliminate Food Insecurity*

Many efforts have been made to close access gaps and provide healthy food options to people across West Virginia. From food banks to dollar stores, rural communities have not been complacent in their struggle for food security, but many of the efforts fail to meet the burdens presented by food deserts.

1. Food Banks

Organizations like the Mountaineer Food Bank are coming up with innovative solutions to overwhelming food insecurity problems.¹³⁷ Not only are they working to fight obesity rates and illnesses associated with nutrient poor foods by providing healthy foods, but they are also knocking down transportation barriers by delivering groceries to people in their homes.¹³⁸

While these initiatives provide temporary relief for food insecure communities, their long-term value is limited. Creating the infrastructure necessary to deliver food to all food insecure people living in rural places would be nearly impossible, with major concerns of sustainability. More impactful and sustainable solutions are necessary to eliminate food deserts and create transformative results for food scarce communities.

2. Dollar General: A Solution or a Problem?

Across the country, rural communities are filling the grocery store void with Dollar General stores. Dollar stores play a complex role in rural places because they do not operate like a typical grocery store. Offering mainly household essentials, canned goods and sometimes frozen foods—dollar stores assist in meeting some basic needs but generally do not offer fresh produce.¹³⁹ This is concurrently beneficial and problematic. Although Dollar General offers

¹³⁷ *Our Programs*, MOUNTAINEER FOODBANK, <https://www.mountaineerfoodbank.org/our-programs> (last visited Feb. 21, 2025).

¹³⁸ *Id.*

¹³⁹ Mary Hanbury, *Dollar General Has Close to 20,000 Stores Across the US. Here's How it Keeps Its Prices So Low*, BUS. INSIDER (Apr. 2, 2023, 8:30 AM) <https://www.businessinsider.com/dollar-general-low-price-strategy-2018-8>.

a convenient space to shop for rural communities, they perpetuate rural food deserts by failing to provide healthy food options. Dollar General's business model lends itself to operating in rural communities because rent and labor costs are cheaper, and they can sell items in lower quantities rather than in bulk as a traditional grocery store might.¹⁴⁰ This allows stores to keep transaction costs and operating costs low, encouraging a greater number of store locations.¹⁴¹

In many rural areas, Dollar General serves as the sole grocery provider within a reasonable radius. A distributor from the University of Wisconsin-Madison's Center for Integrated Agricultural Systems' study noted the benefit of Dollar General stores when discussing profit issues concerning deliveries to rural grocery stores. "[T]here's people that are driving an hour just to go to the grocery store one way you know, because there's nothing else available. And these Dollar Generals are really giving them that opportunity to put some, at least the basic fundamental items into their houses."¹⁴² However, rural communities struggle with weighing the benefits versus the costs that accompany a Dollar General.¹⁴³ While Dollar General offers many items that are convenient and necessary to sustain their lives at reasonable costs, community members have to decide if shopping at these locations supports the best interests of their community or if interests are better served shopping at a small local store or traveling greater distances to reach a grocery store. In some communities, people do not have a choice between Dollar General and a small grocery market and must shop at Dollar General for the sake of not having to travel. In other places, Dollar General competes with other local grocers.¹⁴⁴ Choosing between the two stores could mean life or death for the local grocery, with many being unable to compete with the prices of items available at the Dollar General.¹⁴⁵

Additionally, Dollar Stores have low upfront costs and can afford to be located in rural areas with fewer consumers because they are less expensive to maintain than a typical grocery store.¹⁴⁶ However, with this ability to serve rural, low population, low-income communities come the tradeoff of offering no fresh produce or meats and generally less healthy food items.

Although Dollar Generals theoretically fill an access gap for food and essential household items in rural communities and have doubled their footprint in these communities over the last decade, the issue of food deserts in rural

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Transportation Issues Affecting Fresh Food Distribution*, *supra* note 51.

¹⁴³ Frank Morris, *How Dollar General is Transforming Rural America*, NAT'L PUB. RADIO (Dec. 11, 2017, 5:16 AM), <https://www.npr.org/2017/12/11/569815331/loving-and-hating-dollar-general-in-rural-america>.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Kennedy Smith, Stacy Mitchell & Susan Holmberg, *The Dollar Store Invasion*, INST. LOC. SELF-RELIANCE (Feb. 28, 2023), <https://ilsr.org/articles/report-dollar-store-invasion/>.

America persists.¹⁴⁷ How can this be? The answer is the type of goods being provided by Dollar General. One could argue that they serve as a catalyst for less healthy rural communities because of their overwhelming presence in rural areas—often putting other grocers out of business because of their bottom tier pricing. This means that Dollar General can continue to operate in rural communities with no regulations or standards for the goods they are providing—simply because they are the only provider.¹⁴⁸ This presents a unique obstacle to rural communities; Dollar General stores have assumed the status of a natural monopoly, meeting no competition and no regulations, maintaining complete unregulated and unmonitored control of product availability, quality, and pricing. Meaning that in many rural communities, they are the sole provider of food and household essentials, but they are unregulated and unmonitored as far as what products they offer, the quality of those products, and their pricing.

What would happen if we decided to regulate this natural monopoly under a public utility framework?

E. The Persistence of Rural Food Deserts

No sufficient solutions have been conceived to close food access gaps in rural places. Either geared toward urban living or lacking adequate considerations of rural realities, existing approaches to eradicate food deserts have largely failed at treating rural food insecurity across the country. Improper allocation of federal money fails to meet the needs of rural populations that are continuing to suffer from poor health, stifled development, and instability. While the Dollar General model attempts to provide affordable and accessible goods to consumers, their growing footprint coupled with persisting food insecurity statistics casts doubt upon their effectiveness as a food retailer in rural regions.¹⁴⁹ What, then, can adequately address the concerns of rural food deserts?

This brings us to an earlier point which posed the following question: *What makes a community worthy of access to quality, healthy, and affordable foods?* Does rurality cancel out the right to a healthy and nutrient rich lifestyle? If Dollar General continues to dominate public spaces and is the sole grocery provider in rural communities, shouldn't they be held to some kind of standard of fair pricing and mandatory healthy grocery options, such as fresh produce and meats? When is it appropriate to regulate a private company that is not only offering an essential public good, but is the only provider of this essential good in all of the rural communities across the country?

The main purpose of this Note is to explore whether public utilities regulation is a theoretical avenue for addressing rural food deserts. If Dollar

¹⁴⁷ Sharon Udasin, *Dollar Stores Rising in Popularity as Food Retailers in Rural America*, THE HILL (Jan. 19, 2023, 4:00 PM), <https://thehill.com/policy/equilibrium-sustainability/3819905-dollar-stores-rising-in-popularity-as-food-retailers-in-rural-america/>.

¹⁴⁸ Smith, *supra* note 146.

¹⁴⁹ *Id.*

Generals aren't making the cut for solving food deserts in rural America, what will? My suggestion is that we explore the model of modern public regulation for dollar stores, guaranteeing rural communities access to healthy and affordable food. A public utilities framework would attribute permanent value to equitable, healthy food access, which would be guaranteed and maintained by government regulation. Healthy food would be fully recognized as the essential public good that it is, and be accessible to all communities, urban or rural, rich or poor.

F. Building New Solutions to Rural Food Deserts: Recognizing Food as a Critical Public Good

Rural food deserts present several challenging questions. If society viewed food as a critical public good, would policy makers take greater issue with the 47 million people living in food insecure homes in the United States, or the 92 billion pounds of food waste produced each year?¹⁵⁰ Would this recognition as a critical public good and the utilization of a public utility framework reduce the number of food insecure homes and eliminate the accessibility problem presented by food deserts? The amount of food waste highlighted in this section does not illuminate the reason for food insecurity across the nation, rather it displays the massive access gap that exist in rural regions. More than enough food is produced each year to supply healthy, nutrient rich food to all Americans, but the majority of people in rural communities struggle daily to access it. If the country changed its approach in food production and distribution to recognize food as a critical public good for all people, rather than a lucrative suburban market, would it change the health and productivity of the nation? Or should grocery markets remain largely unregulated and allow for a significant portion of the country to continue on a path of inaccessibility to basic goods, devastating their opportunity for high quality of life, health, and the long-term economic benefits and productivity?

Take energy for example. As energy markets became federally regulated under the public utility structure, it changed the functionality of communities that once did not have proper access to electricity.¹⁵¹ Access to energy permanently altered the productivity and future of the nation by providing it not only for the elite and wealthy, but for working class citizens.¹⁵² The lens through which we viewed goods was transformed, making accessibility essential rather than just preferred or encouraged. "Pure public goods are neither rivalrous nor

¹⁵⁰ *Food Waste and Food Rescue*, FEEDING AM., <https://www.feedingamerica.org/our-work/reduce-food-waste> (last visited Oct. 24, 2024).

¹⁵¹ Jerrold Oppenheim, *The United States Regulatory Compact and Energy Poverty*, 18 ENERGY RSCH. & SOC. SCI. 96, 96 (2018).

¹⁵² *Id.*

excludable—regardless of price, public goods cannot be denied because of their importance to individuals’ very existence in society and basic human rights.”¹⁵³

As the nation began to view electricity as an essential public good, its policy frameworks shifted. The Rural Electrification Act of 1936 was enacted to ensure the provision of affordable electricity to rural areas.¹⁵⁴

At the time, private electricity generators, albeit often unreliable in supply, were opposed to government projects such as TVA that would effectively stunt their businesses. So, what would justify the great dam building exercise? Among other things, one could argue that it was an example of government accepting the idea that energy in one form was a marketable public good—in a modernizing society, electricity served a necessary function without which a large-scale modern citizenry could not easily exist.¹⁵⁵

If government acceptance of energy as a public good led to massive innovation and advancement of society, would this same acceptance of food as a public good transform the health and productivity of the nation? Would it not be logical to follow the example of a considerable success of the public utility framework to not only address rural food deserts, but to eradicate food insecurity across the nation and provide a path for major advancements for society?

The modern public utility model presents a unique approach to addressing food insecurity across the nation, especially for the most vulnerable among us. By considering energy lessons from the past and amending them to address modern obstacles of food insecurity and grocery consolidation, it provides a reasonable notion that treating healthy food as a critical public good could significantly improve rural health outcomes and quality of life.

V. THE MODERN PUBLIC UTILITY MODEL

A. *What is the Modern Public Utility Model?*

The modern public utility model provides us with a framework for addressing food deserts in rural America, but what is the modern public utility model? The modern public utility model revises the public utility concept “for a modern-day approach to diagnosing and then regulating problematic concentrations of private control over essential goods and services.”¹⁵⁶ The use of public utilities regulation to address rural food deserts explores the historically

¹⁵³ *Is Energy a Public Good?*, RENEWABLE ENERGY WORLD, (July 2, 2007), <https://www.renewableenergyworld.com/storage/is-energy-a-public-good-49201/#gref>.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ K. Sabeel Rahman, *The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept*, 39 CARDOZO L. REV. 1621, 1624–25 (2018).

persistent challenge of “ensuring the accountability of private actors to the public good, and ensuring that the constituencies affected by private power—whether workers, consumers, or citizens more broadly were—ultimately treated fairly.”¹⁵⁷ The overarching purpose of this type of regulation is to ensure that people have equitable and adequate access to an essential public good that is controlled by a private party.

Public utility regulation is built on English common law traditions where “common carrier” industries were held to “serve all comers, to demand reasonable prices, and to offer acceptable compensation [T]his tradition was gradually absorbed into the emerging law of highways, rivers, ports, and innkeepers, to name a few.”¹⁵⁸ Economists have widely recognized, though, that public utilities regulation should be reserved for only “those most critical goods and services.”¹⁵⁹ A most critical good or service yields significant positive externalities that are required by democracy.¹⁶⁰ This includes electricity, water, telecommunications, and transportation systems.¹⁶¹ “Because such services are often expensive to maintain but essential for the public good, many societies buffer them from unfettered market forces and public utility regulation provides a set of policy tools for doing so.”¹⁶²

In 1877, the landmark case *Munn v. Illinois*¹⁶³ allowed states to regulate the use of private property “when such regulation becomes necessary for the public good.”¹⁶⁴ Recognizing the essential nature of public goods, the Court determined that government intervention can be justified when the following elements are present: (1) the business is in the public interest, meaning there are consequences for the public, or it affects the public at large; (2) the business is prone to market failure, such as the exercise of monopoly power; and (3) the business serves as a gateway of commerce. In *Munn v. Illinois*, grain was essential to the way of life at the time, there was monopoly control, and Chicago served as the gateway for grain access.¹⁶⁵ Considering these facts, the Court deemed government intervention appropriate over the privately owned good because of its essential public nature.¹⁶⁶

¹⁵⁷ *Id.* at 1628.

¹⁵⁸ *Id.* at 1635.

¹⁵⁹ *Id.* at 1636.

¹⁶⁰ Victor Pickard, *Democratizing the Platforms: Promises and Perils of Public Utility Regulation*, MEDIA DEV., Mar. 2022, at 6–7.

¹⁶¹ *Id.*

¹⁶² *Id.* at 7.

¹⁶³ *Munn v. Illinois*, 94 U.S. 113, 125 (1876).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 130.

¹⁶⁶ *Id.* at 135.

Public utilities were not solely understood in terms of economies of scale and laws of nature, however, but also in moral and social terms.¹⁶⁷

Industries triggered public utility regulation when there was a combination of economies of scale limiting ordinary accountability through market competition and a moral or social importance that made the industries too vital to be left to the whims of the market or the control of a handful of private actors. This combination of economic dominance and social necessity is what created the threat of not just exploitative prices but also discrimination and unequal access. The public utility model offered a way to check this particular form of private power. Public utility regulation thus did not apply to all forms of private power—but it did address the most vexing, powerful, and dangerous private actors.¹⁶⁸

Walton Hamilton, a prominent economist and professor at Yale, divided the economy into three sections: (1) those industries that produce non-essential goods and should be left to market forces; (2) those industries characterized by “distinctive groups of customers” where undue private power could be checked by collective bargaining; and (3) those industries “that were ‘linked with all the activities of the economic order’ which ‘demand large social oversight,’ whether by outright public ownership or by the stringent regulation of an administrative commission.”¹⁶⁹ Some of the industries encompassed by section (3) include railroads and electrical power—those industries which were operated by monopoly powers with no oversight or regulation.¹⁷⁰ The purpose of public utilities regulation was to ensure that necessary public goods were non-discriminatorily accessible for the public at reasonable, affordable rates.

B. Successes of the Public Utility Model

The public utility model has succeeded most notably in the regulation of electricity. Sometimes more clearly identified as a natural monopoly, electricity production, similar to water, required a monopoly structure for economic efficiency “in order to incentivize expensive investments in shared infrastructure.”¹⁷¹ Constructing the grid was a substantial undertaking that many companies couldn’t afford without some kind of guaranteed return on investment. Industrialization was paramount to the nation, making the public

¹⁶⁷ Rahman, *supra* note 156, at 1637.

¹⁶⁸ *Id.* at 1637–38.

¹⁶⁹ *Id.* at 1636–37.

¹⁷⁰ *Id.* at 1637.

¹⁷¹ *Id.* at 1635.

utility framework a no brainer for the federal government.¹⁷² The regulatory compact was born as a result of this compromise, granting companies a monopoly over power production to guarantee a return on their substantial investment in the grid in exchange for regulation by public utility commissions who would set the prices as “just and reasonable” for ratepayers.¹⁷³ This regulatory scheme guaranteed accessibility as well as affordability for ratepayers.¹⁷⁴ The design of this regulatory model allowed for the full development of the grid across the United States, providing fair prices for reliable power, whether you lived in New York, New York or Cameron, West Virginia.

C. Challenges of the Public Utility Model

Although this model has allowed for the extensive development of the electrical grid in the United States, it has not come without struggle. Between the federal government, state governments, and private industry players, the struggle for power in controlling regulation of electricity has remained contentious throughout time. Although private companies gained a monopoly over an industry, they gave up their autonomy to decide what reasonable pricing and adequate service look like.¹⁷⁵ Up until the 1970s when the trend towards deregulation began, the federal government not only controlled market prices for electricity but also created the entire pricing scheme, aiming to replicate what pricing in a real competitive market might yield.¹⁷⁶ They were granted major discretion over the reasonableness of this process with few checks.¹⁷⁷ This problem became less relevant with the deregulation of the market, encouraging greater competition to set market prices rather than relying on predictions of fair prices from a nonexistent competitive market.¹⁷⁸

Even with deregulation, electrical power in the United States remains largely under the control of the federal government for the purpose of ensuring that the essential public good (electricity) is available to everyone in the country at just and reasonable rates.¹⁷⁹ Although power struggles have maintained over time in the regulation of electricity, the public utility regulation model has largely served its purpose, proving its worth through the consistent developments and advancements in the power grid and the ability to provide affordable access to power for everyone, including rural communities.¹⁸⁰

¹⁷² LINCOLN L. DAVIES ET AL., ENERGY LAW AND POLICY 278–80 (3d ed. 2021).

¹⁷³ *Id.* at 284.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 324.

¹⁷⁶ *Id.* at 376.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 377.

¹⁷⁹ Rahman, *supra* note 156, at 1635.

¹⁸⁰ *Id.*

D. What Conditions Must be Met to be Considered a Modern Public Utility?

Although the public utility model has had large scale success in the expansion of the power grid, the public utility scheme remains unpopular in a modern setting. Disputes over what qualifies for public utility regulation has kept the framework's use to a minimum. For example, there have been debates over whether major social media platforms such as Meta, TikTok, and X "provide a service so essential to 'modern commerce, communications, and civic connections' that they demand specific regulation."¹⁸¹ Efforts to determine modern public utility qualifications have created a range of suggestions for bringing the public utility framework into a modern light. Economic and legal scholar, K. Sabeel Rahman, has laid out a modern framework for identifying appropriate goods and services, or "infrastructural goods," for public utility regulations.¹⁸²

For a good or service to be deemed infrastructural, there must be a concentration of private power over the good or service which "poses a unique threat to public welfare".¹⁸³ These infrastructural goods are characterized by the following three features: "[1] the economics of *production*; [2] the *downstream uses* of the good or service; and [3] the degree to which the good or service is a *necessity* that makes its users particularly *vulnerable* to exploitation."¹⁸⁴ In addition to inquiring about the traditional monopolistic nature of a good, this framework also "encompasses questions about the essential nature of the good or service itself, as well as the capacity of the providers to exert undue influence through their control of the good."¹⁸⁵

1. Production

Traditional public goods such as roads and bridges, and natural monopolies like water, electricity, communications, infrastructure, and the like are (most of the time) non-rival, non-excludable, with high sunk costs, high barriers to entry, and increasing returns to scale. These economics of production suggest that ordinary market competition will under-provide the goods. Today, we can see similar production dynamics in other

¹⁸¹ Derek Robertson, *The Case for Treating Tech Companies Like Railroads*, POLITICO (Apr. 3, 2024, 4:00 PM), <https://www.politico.com/newsletters/digital-future-daily/2024/04/03/big-tech-railroads-sitaraman-00150408>.

¹⁸² *Id.* at 1641.

¹⁸³ *Id.* at 1641.

¹⁸⁴ *Id.* (emphasis added).

¹⁸⁵ *Id.* at 1644.

goods and services as well, from telecom to banking to online platforms, where the network effects of a consolidated system yield similar increasing returns to scale, high sunk costs for competitors, and thus a likelihood towards either concentration among a few private providers on the one hand, or under-provision of the good in a more fragmented industry on the other.¹⁸⁶

2. Use

[T]he value of infrastructure also derives from the downstream activity that the good enables. Infrastructural goods act as a resource input to a range of activities, goods, and services that actors relying on the good can go on to develop. Infrastructure is thus better understood as a “shared means to many ends,” comprising “resources [that] enable, frame, and support a wide range of activities in our lives.” Resources that are such critical enablers of a wide range of social uses and projects must be managed as a commons: open to use by all on principles of equal access and nondiscrimination, simple to identify and access without excessive or confusing barriers, designed to maximize these downstream uses and the spillovers and innovations that might result.¹⁸⁷

3. Necessity and Vulnerability

[T]he[re are] negative repercussions [that exists] when access to these goods and services [are] restricted particularly where such loss of access introduces severe inequalities. We can call this the basic necessities condition of infrastructure. On this view, if we fail to provide such social public goods or social infrastructure in a way that is accessible to all, we magnify the kinds of disparities and inequalities of opportunity and well-being rife in today’s economy. . . “bottlenecks”-structures that restrict access to resources that are critical to enabling the broad notion of opportunity as freedom described above. Bottlenecks can take a variety of forms, most quintessentially in the form of qualifications or developmental bottlenecks that restrict access to educational or career opportunities to only those with a particular degree or prior experience-prerequisites that not everyone can access and which therefore function to choke off longer-term opportunities. But bottlenecks can also arise where access to a critical good or service is restricted, and where that

¹⁸⁶ *Id.* at 1642.

¹⁸⁷ *Id.* at 1642.

good or service has an outsized impact on the future life chances and well-being of the individual. The necessities view of infrastructure points us towards those goods and services that are vital and urgent necessities for individual and communal flourishing—think access to healthcare or education as prime examples. These are goods and services whose social value is so critical—and whose absence introduces such profound inequalities in life opportunities and well-being—that we have a moral obligation to provide them on equal terms to all members of society. Precisely because of the importance of the good or service, the prospect of private control over the terms of access to that good or service raises the specter of a particularly troubling form of exploitation, exclusion, or vulnerability on the part of the users, the general public.¹⁸⁸

Employing Rahman’s infrastructural goods framework, it can be determined what goods and services qualify for public utilities regulation in a modern setting.¹⁸⁹ It allows for an updated and reliable framework in exploring access barriers to healthy food options across rural America and suggests modern solutions to persistent, long-term threats to rural community health. Viewing food insecurity and rural food deserts through the lens of public utilities regulation will create a space for conversations surrounding long-term solutions rather than band-aid fixes and will encourage resolutions that prioritize public welfare.

Looking at healthy food as a critical public good will jumpstart the reformation of society’s view of its role in ensuring equitable access to not only healthy food, but also access to long-term health and well-being. Under Rahman’s modern public utility requirements, healthy food qualifies as a “critical” public good, or an “infrastructural good”. As a result, its access should be guaranteed to the entirety of the public—including rural communities—at a reasonable price. In the case of Dollar General, evaluating the power of private actors and their control over food accessibility is critical in addressing rural food deserts. If public utilities regulation is not the answer, then what protections can rural communities be afforded to promote access to healthy food? A combination of regulations for grocery stores, tax incentives or tax penalties for grocery stores, and grants for opening local cooperatives or new grocery stores to fill access gaps could provide an alternative solution; however public welfare is not prioritized as it would be under a public utility regulation scheme.

Utilizing Rahman’s modern public utility framework, a *production* analysis must show that healthy food access is “non-rival, non-excludable, with high sunk costs, high barriers to entry, and increasing returns to scale.”¹⁹⁰ It must

¹⁸⁸ *Id.* at 1643.

¹⁸⁹ *Id.* at 1641.

¹⁹⁰ *Id.* at 1642.

also determine whether the goods will be under-provided or if the goods will have a “concentration among a few private providers” under ordinary market conditions.¹⁹¹

Following the COVID-19 pandemic, consolidated grocers have manipulated the market to create conditions that prevent small grocers from competing.¹⁹² These market manipulations supported the rise of profits for consolidated grocers, which have remained elevated to present.¹⁹³

Food and beverage retailer revenues increased to more than 6% over total costs in 2021, higher than their most recent peak in 2015 of 5.6%. In the first three-quarters of 2023, retailer profits rose even more, with revenue reaching 7% over total costs, casting doubt on the assertions of some companies that rising prices at the grocery store are the result of retailers’ own rising costs.¹⁹⁴

As a result of this business conduct by consolidated grocers, major barriers to entry and high sunk costs plague the grocery market.¹⁹⁵

We see from the mere existence of food deserts, both rural and urban, that healthy food is under-provided to certain communities. According to the U.S Census Bureau, there are approximately one third the amount of grocery stores available than there were 25 years ago, with four main companies controlling 65% of the market.¹⁹⁶ “Grocery chains and superstores are also the main beneficiaries of government aid for Americans struggling to feed their families. In 2020, 82% of all food stamps were spent in supermarkets and superstores like Kroger, Walmart, Costco and Sam’s Club, which means the taxpayer contributed \$64 billion to their revenue.”¹⁹⁷

Provided that healthy food access is almost exclusively controlled by these consolidated markets, its production is subject to market manipulation. Here, small grocers that want to supply healthy foods are largely excluded from participating because they can’t afford it. Cost is the barrier to entry, and in turn, the few with the deepest pockets control where the good is provided.

¹⁹¹ *Id.*

¹⁹² *FTC Releases Report on Grocery Supply Chain Disruptions*, FED. TRADE COMM’N (March 21, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-releases-report-grocery-supply-chain-disruptions>.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Nina, Aliya Uteuova, & Alvin Chang, *Revealed: The True Extent of America’s Food Monopolies, and Who Pays the Price*, THE GUARDIAN (July 14, 2021), <https://www.theguardian.com/environment/ng-interactive/2021/jul/14/food-monopoly-meals-profits-data-investigation>.

¹⁹⁷ *Id.*

A *use* analysis must demonstrate that healthy food is considered a resource of such critical nature that it enables a “wide range of social uses and projects” and in turn, “must be managed as a commons.”¹⁹⁸ Access to healthy food is a gateway to community enrichment. Because of the health benefits associated with nutrient rich diets, access to healthy foods through grocery markets is essential for social good. Use of the market providing the healthy foods, as well as the consumption of the healthy foods themselves will create long term social benefits for communities. The downstream effects include improved diets, reduction in child and adult obesity rates, and decreased risk of heart disease and other adverse health conditions resulting from unhealthy diets and lifestyles. Healthier communities of people also tend to be more productive.¹⁹⁹ Additionally, increased availability of food in rural communities will facilitate healthier, more stable populations of people. “Strategies to increase access to healthy foods have the potential to provide significant economic stimulus and community development.”²⁰⁰

When considering *accessibility and vulnerability* under Rahman’s framework, an analysis is required to determine “if we fail to provide such social public goods or social infrastructure in a way that is accessible to all, we magnify the kinds of disparities and inequalities of opportunity and well-being rife in today’s economy.”²⁰¹ Applying the accessibility and vulnerability section of Rahman’s model is almost dismissive because of its obviousness. If people in rural communities are continually faced with access barriers to healthy food, their quality of life and overall health and well-being will suffer great detriment. Rural communities across the country have experienced more intense levels of mental and physical health disparity over time as gaps in food access widen.²⁰² As discussed *supra* many people in rural communities already live in conditions of limited autonomy, including limited purchasing power. Bound by geography, uneven food distribution, transportation, income, market forces, and infrastructure—all discussed at length throughout this Note—rural places and people stand to encounter unparalleled harms without proper healthy food access for their communities. Most importantly, if they are denied access to affordable and healthy food, their autonomy over their health is stripped away. Employing a public utility model for grocery stores would assign social value to more equitable access for all communities of people. It would create higher standards for product quality without unjust and unreasonable pricing schemes. Healthy

¹⁹⁸ Rahman, *supra* note 156, at 1642.

¹⁹⁹ Erin Hagan & Victor Rubin, *Economic and Community Development Benefits of Healthy Food Retail*, HEALTHY EATING RSCH. (June 2013), https://healthyeatingresearch.org/wp-content/uploads/2013/12/HER_IB_EconomicBenefitsHealthyEating_FINAL.pdf.

²⁰⁰ *Id.*

²⁰¹ Rahman, *supra* note 156, at 1643.

²⁰² Asley Paro, *The Impact of Food Insecurity on Rural Communities*, NYS ASS’N RURAL HEALTH (Nov. 4, 2020), <https://nysarh.org/blog/2020/11/04/the-impact-of-food-insecurity-on-rural-communities/>.

and nutrient rich foods would reach a status of value in society not yet recognized as an inherent right in the United States.

VI. A WEST VIRGINIA CASE STUDY: REGULATING DOLLAR STORES
UNDER A PUBLIC UTILITY MODEL

What would happen if dollar stores in West Virginia were regulated under a modern public utilities model? With 33%²⁰³ of the state's population currently living within food deserts and nearly 500²⁰⁴ dollar stores operating in the state, what would happen if the dollar stores were forced to provide fresh produce and other healthy food options at just and reasonable prices? That 33% would likely go significantly down, as would rates of obesity, heart disease, and diabetes. This section will address some of the potential effects if dollar stores in the state of West Virginia were regulated under a modern public utility model.

A. *How Public Utility Regulation Could Close Access Gaps*

With nearly 500 dollar stores (Dollar General, Family Dollar and Dollar Tree) throughout the state, West Virginia has the second greatest number of dollar stores based on ratio of state population to individual stores.²⁰⁵ Although much of the state suffers from food insecurity, the number of dollar stores present continues to grow, and adverse health effects as a result of food deserts persist. How can this be if dollar stores have flooded the state and filled the access gap? The aforementioned 40%²⁰⁶ of West Virginia people considered food insecure and 33%²⁰⁷ living within food deserts pushes back against the idea that dollar stores are doing their part in fighting hunger and poor health in West Virginia communities. In fact, one might argue that dollar stores facilitate food deserts because of the low quality and nutrient poor food they sell. By bottoming out their competition, dollar stores have effectively forced the closure of existing markets and grocery stores.²⁰⁸ Once other stores have closed, dollar stores can price gouge consumers because they eliminated market competition.²⁰⁹ Most consumers are left with the choice of surrendering to dollar store options and prices or driving three hours round trip to reach the next closest market.

Regardless of dollar store pricing schemes, it is safe to point out that dollar generals may be deepening rather than curing an access gap in rural food deserts because they lack nutrient dense food options and are held to no quality

²⁰³ H.B. 2050, 83d Leg., Reg. Sess. (W. Va. 2021).

²⁰⁴ Seth McVey, *West Virginia Has A Lot of Dollar Stores*, WTRF (Dec. 4, 2023, 8:26 AM), <https://www.wtrf.com/news/west-virginia-news-2/west-virginia-has-a-lot-of-dollar-stores/>.

²⁰⁵ *Id.*

²⁰⁶ U.S. CENSUS BUREAU, *supra* note 87.

²⁰⁷ H.B. 2050, 83d Leg., Reg. Sess. (W. Va. 2021).

²⁰⁸ DiFelice, *supra* note 7.

²⁰⁹ *Id.*

standards. The number of dollar stores is unjustifiable. One must consider whether these stores are predatory to vulnerable people, especially those desperate to feed themselves and their families.²¹⁰

Qualifying healthy food as an infrastructural good provides an opportunity to close the access gap and make a difference in the long-term health and well-being of the rural communities across the state. The model could largely follow the regulatory structure of the electricity sector by employing a federal regulatory framework which would set standards that must be adhered to by dollar stores—regulating food options, quality, and cost. Federal regulation would likely encourage and even incentivize competition to emerge with guaranteed returns on upfront investments. Just as investments by utility companies in the provision of electricity to the grid were protected by federal regulation, grocery stores would also be protected and insulated from major losses.

To achieve this, the federal government would need to create an agency body that is responsible for monitoring and regulating stores to ensure access to critical public goods as well as the quality and affordability of those goods. For example, the government created the Federal Energy Regulatory Commission (“FERC”) and utilized public utility commissions as means for regulating the energy industry.²¹¹ A similar structure could be used for monitoring dollar stores and other grocery stores.

Dollar General would not only be forced to abide by regulations set by the federal government for their products, but they would also be held to the standard of just and reasonable pricing. The federal government could choose to employ the deregulated framework laid out in electricity production in the 1970’s, which allowed for smaller companies to enter the market, rather than sole control by monopolistic powers.²¹² This would allow smaller grocers to come back into rural places with guaranteed fair pricing and a chance at competition, in contrast to the current state of Dollar Generals which drive out small business by bottoming out their competitors.

B. Potential Benefits of a Public Utility Framework

Closing the healthy food access gap in rural communities would not only benefit local populations through improved health, economic productivity and stability, but would increase the overall value of rural communities. Healthier communities would spur more economically productive with healthier citizens, achieving greater education success rates with better fed and healthier children, who will also be more likely to grow up and make positive contributions to economic productivity. Healthy and educated populations are more attractive for potential businesses entering the state, and encourage other economic

²¹⁰ McVey, *supra* note 204.

²¹¹ DAVIES, *supra* note 172, at 280.

²¹² *Id.* at 371.

opportunities. Additionally, insurance and healthcare providers would shift their practices in favor of preventative care, undertaking fewer costs to pay for long term illnesses and health problems.

C. Potential Challenges and Considerations

The employment of public utilities regulation to address rural food deserts will likely be met with challenges. Some potential challenges include: questions of whether this type of regulation would disincentivize grocery stores from relocating to rural places; whether this would drive existing local grocers out of business; whether rural communities will benefit from this model because their food choices have become generationally engrained; whether this federal regulation would constitute a takings; and whether government intervention is appropriate in the regulation of this industry.

A potential counterargument to the public utility framework is that enlisting a highly regulated framework for food markets in rural food deserts would disincentivize rather than incentivize grocery stores to operate in these areas. Even with a monopoly-like structure over food production, grocers would still be operating at a loss when forced to maintain stores in a low income, low population areas. Although this argument holds some merit, the underlying purpose of the model is to ensure access to a critical public good by providing a benefit to those companies that bear the weight of the upfront costs; meaning that in exchange for operating within less financially productive markets, companies would have a greater control over the market. Market control is the ultimate goal for many companies looking to profit long term. The federal government would essentially be handing out market control with some restricting conditions, such as quality standards, just and reasonable pricing, etc. The investment and control allocated by the government would ultimately guarantee long-term financial profit and prominence in the respective market, as well as serve the public interest by providing a critical public necessity—healthy food. This would also promote economic development and long-term productivity, which over time would increase the value of the market that grocers are mandated to function within, presenting larger benefits and profit margins over time. Healthy food grocers operating in these communities would also likely contribute to an uptick in the local economy by creating healthier communities. Removing the barriers to access healthy foods would allow for healthier people; healthier people are more productive members of society; and more productive members of society contribute to greater financial stability for communities. Although this change may occur slowly, what would begin as a traditionally “bad investment” would spur economic productivity and potentially community growth over time, making more lucrative grocery stores long term.

Another potential counterargument to the public utility framework is that this type of regulation would run small, local grocery markets into the ground. This is a reasonable but unnecessary concern, as regulators would control who participates in the market. Like energy regulation structure, federal regulators

would allow for the freedom of food choice by consumers encouraging market competition. Small, specialized grocery markets, local produce markets, etc., would continue to survive or even thrive off market regulation, as long as the proper goals of diversification of the market and food choice are prioritized under public policy. Larger grocery markets would still be guaranteed their long-term stability and profit in the market, but regulation would create space for smaller market grocers and natural competition. The government's overarching regulatory scheme would protect both the interests of the companies operating within the markets, as well as access to healthy food, quality of foods, and just and reasonable pricing.

Another question for debate is whether creating healthy food grocery options would improve health and well-being in rural communities. Much of the scholarship debating the value of investments in rural and impoverished communities argues that even if these communities were offered choices, they would perpetuate their current situations.²¹³ In this case, some might argue that bad food choices are generationally engrained in poor, rural communities, and that if healthy food was an option, community members would choose the less nutrient dense, less healthy food options available. This counterpoint holds little merit and follows closely along with urbanormative trends that classify rural Americans as backwards and inferior to urban communities. Rural communities, particularly rural Appalachian communities, have proven to be incredibly resilient despite severe exploitation of natural resources and labor. Providing people with greater opportunities and greater access will help improve community health, making for more productive members of society, and eventually economic improvement and growth.

Another potential counterargument to the public utility framework is that this regulation by the government would be considered a takings. Companies have a constitutional right to just compensation, so forcing them to locate in areas where the profit yield isn't comparable to higher income and higher population is a problematic framework. The regulation of the electricity sector also largely faced this criticism but was defeated under *FPC vs. Hope Natural Gas*.²¹⁴ This case made the determination that:

The fixing of prices, like other applications of the police power, may reduce the value of the property which is being regulated. But the fact that the value is reduced does not mean that the regulation is invalid. It does, however, indicate that "fair value" is the end product of the process of ratemaking, not the starting point[.]²¹⁵

²¹³ Anne N. Junod, Clare Salerno, & Corianne Payton Scally, *Debunking Three Myths About Rural America*, URBAN INST. (Oct. 30, 2020), <https://www.urban.org/urban-wire/debunking-three-myths-about-rural-america>.

²¹⁴ Fed. Power Comm'n v. Hope Nat. Gas, 320 U.S. 591 (1944).

²¹⁵ *Id.* at 601.

Although a public utility framework may present challenges, a change of this nature is necessary to address rural food deserts and food insecurity generally across the country. Rural communities struggling to meet basic needs are the one's the nation relies on for the food and energy production that fuels the nation. If they fall, we all fall. Without some kind of underlying recognition of food as a critical public goods, the quality of life in rural communities will continue to decline. Entertaining a public utilities framework, although contentious and problematic, may create space for the necessary conversations to address food insecurity in the United States.

VII. CONCLUSION

The underlying purpose of a public utility framework is to recognize food as a critical public good. This recognition along with the consideration of unique rural characteristics could assist both local and federal efforts to close food access gaps and give rural communities a fighting chance at higher qualities of life, improved health and economic development, and overall stability. Without these communities, the daily operations of the country would come to a screeching halt. As a society, not only are these communities critical to our survival as a nation, but we have a moral obligation to ensure access to critical goods for the health and survival of all people, rich or poor, urban or rural.