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Food Deserts: Is the Let's Move Campaign an Oasis for the Urban Minority Community

FOOD DESERTS: IS THE *LET'S MOVE* CAMPAIGN AN OASIS FOR THE URBAN MINORITY COMMUNITY?

By Thomas P. Ziehnert

I work, sometimes three and four jobs, and I still get SNAP assistance. I finally got one job that has reduced my need for assistance from \$450.00 a month to \$60.00 a month. But the fact is, that when it comes to access[ing] quality, healthy food in my community on my income, it is still almost impossible. The barriers are staggering — whether it's transportation, working hours . . . or the cost associated with investing in this food for a family that lives beneath the poverty level. . . . I don't want to continue having to ride to East or West Hartford just to get an apple that actually tastes like an apple. . . .

. . . [T]he north end of Hartford, particularly Clay Arsenal, is a "no mans land" when it comes to quality and affordable healthy food options and accessibility. [Stores are] unoccupied due to fear and uncertainty, because it appears to potential shop owners that they will lose money investing in this [neighborhood]. . . . But if you build it they will come. And when they come, we can start to rebuild our community on those very basic fundamentals that my grandmother taught me and my siblings long ago.

. . . For the past two years I have asked community leaders, churches, and friends to seriously look into addressing this issue with me, but for some reason the ones who are affected the most by this don't feel empowered to make change. . . . High blood pressure, diabetes, asthma, low birth weights, obesity and so many other things plague my people, and until someone can change the facts and convince me that it doesn't make a difference for my community to have that access, I plead for it to come. . . . These are my friends, my family, my co-workers, my children, my community, my people. And I want ACCESS. . . .

— Hartford resident and community leader, Evelyn Richardson¹

Introduction

First Lady Michelle Obama's *Let's Move* campaign has recently come under fire for a number of reasons, including claims of unwarranted government intrusion into the personal lives of citizens and skepticism about the campaign's efforts to embrace food and beverage industry cooperation.² While these concerns may prove defensible depending upon one's politics, one criticism runs across party lines. In 2011, with the economy barely recovering from "The Great Recession" and a national deficit approaching \$14 trillion, is the *Let's Move* campaign frivolous government spending?

The Obama Administration's efforts to curb America's obesity crisis are not frivolous, and are justified in ways one might not realize. Champions of obesity prevention often cite disheartening statistics to show that America's obesity "epidemic" is at an all-time high and that increasing health care costs alone are worth increased research and intervention. However, what is often on the fringe of the obesity debate is that minority individuals are disproportionately affected by America's collective weight gain. One of the many reasons for this disparity is the existence of "food deserts," locales marked by a scarcity of healthy food, which may prohibit individuals in urban areas (largely comprised of minority individuals) from obtaining affordable food that is fresh and healthy.

The Healthy Food Financing Initiative, an effort under the broader *Let's Move* campaign, provides federal funds to, among other things, combat food deserts. The Obama Administration's efforts should be lauded, not only for attacking the obesity epidemic and its impact on the nation's health and health care costs, but for diminishing societal inequities both from a health perspective and also from a larger socioeconomic perspective. This paper intends to defend federal efforts

to reduce food deserts. It also offers constructive criticism and suggestions as to how to improve the program to meet the needs of urban minority communities and aims to shed light on an issue that has been widely-discussed in public health circles, but has yet to fully enter the legal academic discourse.

I. What are Food Deserts and Why are They Relevant?

Food deserts are neighborhoods with relatively poor access to healthy and affordable food.³ They have been found to contribute to disparities in diet and diet-related health outcomes.⁴ The term “food desert” can mean a literal dearth of retail food in a defined area.⁵ Studies of food deserts frequently measure disproportionate accessibility to healthy and affordable food between advantaged and disadvantaged socioeconomic groups.⁶

In the United States, 11.5 million low-income individuals (4.1 percent of the total U.S. population) live in low-income areas more than one mile from a supermarket.⁷ Over ten million of these individuals (approximately 87.8 percent of the total) live in low-income urban areas.⁸ The U.S. Department of Agriculture estimates that thirty percent of low-income individuals in low-income urban areas have limited access to supermarkets.⁹

Supermarket owners have fled urban and underserved areas for a number of reasons, including “urban obstacles” such as discouraging revenue projections, more rigorous zoning processes, higher operating costs, and externalities such as stereotypes about inferior employee human capital.¹⁰ Retailers also have had difficulty finding locations for new stores, which are typically as large as 50,000 square feet and require the purchase of multiple lots.¹¹ Additionally, unlike wealthy suburbs, cities are less likely to offer inducements to retailers to encourage them to build.¹² Lack of transportation compounds the issue for those who live in cities. While many suburbanites have automobiles to transport them to supermarkets, many urban residents do not have access to cars or to any means of transportation that will take them to suburban supermarkets.¹³

This departure of supermarkets from urban areas is unfortunate because supermarkets are unquestionably some of the best places to find fresh,

healthy foods such as fruits and vegetables, whole grains, lean meats, and low-fat dairy products.¹⁴ Without supermarkets, individuals must rely more heavily on convenience stores and fast-food establishments.¹⁵ Convenience stores largely do not have the resources to stock fresh, wholesome foods¹⁶ and in the alternative, often carry prepackaged snack foods and sugar sweetened beverages.¹⁷ Fast-food chains are equally, if not more, notorious for selling menu items that are high in caloric, sodium, and fat content.¹⁸

Under-consumption of produce and healthy dairy products are two major dietary deficiencies in the U.S., particularly amongst low-income individuals.¹⁹ Typically, SNAP²⁰ program recipients who do not shop at supermarkets purchase less of these already under-consumed foods than recipients who do.²¹ Food deserts clearly exacerbate the problem.

Maintaining a healthy diet is of particular relevance today. Obesity is the fastest-growing cause of disease and death in America.²² Its prevalence in the United States exceeds thirty percent in most sex and age groups.²³ Moreover, self-reported data collected by the Centers for Disease Control and Prevention (CDC)²⁴ demonstrate that the overall prevalence of obesity among U.S. adults has increased 1.1 percentage points from 2007.²⁵ In 2009, no state met the Healthy People 2010²⁶ obesity target of fifteen percent.²⁷

Obesity is a national health threat and a major public health challenge. Obese adults are at increased risk for many serious health conditions, including coronary heart disease, hypertension, stroke, type 2 diabetes, high cholesterol, certain types of cancer, and premature death, among others.²⁸ It is estimated that one out of every eight deaths in America is caused by an illness directly related to obesity.²⁹ Obesity kills more Americans every year than AIDS, all cancers, and all household, industrial, and automobile accidents combined.³⁰

A study conducted in 2001 found a significantly higher percentage of overweight students living in areas classified as food deserts.³¹ The study determined that food deserts are positively associated with increased rates of overweight youth. Considering that childhood obesity is one of the strongest predictors of obesity in adulthood³² and that food deserts are one of the suspected determinants of the obesity epidemic,³³ public policy stakeholders have good reason to rally behind the elimination of food deserts.

II. Federal Initiatives

A. *Let's Move and the Task Force on Childhood Obesity*

The eradication of food deserts has been heavily covered in the media due in large part to the *Let's Move* campaign championed by First Lady Michelle Obama.³⁴ *Let's Move* is an initiative that intends to “solve the problem of obesity within a generation.”³⁵ The campaign was started formally in February 2010 and informally when the First Lady broke ground on the White House Kitchen Garden.³⁶ The five core tenants of the initiative are “1. Creating a healthy start for children, 2. Empowering parents and caregivers, 3. Providing healthy food in schools, 4. Improving access to healthy, affordable foods, and 5. Increasing physical activity.”³⁷ The eradication of food deserts is a core component of the fourth goal of the *Let's Move* initiative to “improve access to healthy, affordable foods.”³⁸

In conjunction with the *Let's Move* campaign, President Obama created the *Task Force on Childhood Obesity* to foster inter-agency cooperation.³⁹ The *Task Force* seeks to reduce the childhood obesity rate to five percent by 2030.⁴⁰ Five percent is the rate of childhood obesity before it first began to rise in the late 1970s.⁴¹ In accordance with this effort, one of the ultimate goals of the *Task Force* is to eliminate food deserts within seven years.⁴²

In its May 2010 Report to the President, the *Task Force* identified several recommendations to improve healthy food accessibility.⁴³ Specifically, the *Task Force* recommended: engaging with local governments to attract supermarkets and to improve transportation,⁴⁴ working with food distributors to improve their distribution chains and systems,⁴⁵ working with communities to encourage farmers' markets and subscriptions to community supported agriculture,⁴⁶ and facilitating the establishment of local food policy councils.⁴⁷ The *Task Force* also recommended that the federal government encourage schools, hospitals, parks, and the food production and restaurant industries to implement menus that are consistent with the current United States Department of Agriculture's (USDA) Dietary Guidelines,⁴⁸ provide economic incentives to increase production of healthy foods,⁴⁹ heighten evaluation of the federal government's nutrition assistance programs,⁵⁰

encourage the use of such programs,⁵¹ and analyze the effectiveness of “junk food” taxes.⁵² One of the most crucial recommendations of the *Task Force* was the proposal to create the Healthy Food Financing Initiative, analyzed below.⁵³

In February 2011, the *Task Force* submitted its first year progress report to President Obama.⁵⁴ Steady but slow progress was made in the effort to improve access to healthy, affordable food. Specifically, the Report detailed the fiscal year 2011 Notice of Funding Availability, through which forty-five community development institutions sought funding.⁵⁵ The \$25 million needed to fund the project's interventions is currently pending in Congress.⁵⁶ The Report also announced a pending \$250 million New Markets Tax Credit authority to raise private sector financing⁵⁷ and \$20 million in funding from the Department of Health and Human Services' (HHS) Community Economic Development Plan.⁵⁸ The Report did not detail how project funds were being allocated.

B. *Healthy Food Financing Initiative*

One of the highlights of the *Task Force's* action plan is the creation of the Healthy Food Financing Initiative (HFFI). The HFFI seeks to “provide grants, loans, loan guarantees, and other assistance to expand retail outlets for farm products in food deserts.”⁵⁹ The HFFI is modeled after the Pennsylvania Fresh Food Financing Initiative.⁶⁰

According to the President's budget for fiscal year 2012, \$35 million of the USDA's budget will be allocated “to bring grocery stores and other healthy food retailers to underserved communities.”⁶¹ The aforementioned \$20 million from HHS will be allocated to “businesses, local and tribal governments, non-profit organizations, cooperatives, state departments of agriculture, colleges and universities, treasury-certified community development financial institutions, and community development entities.”⁶²

On Thursday, May 11, 2011 HHS released a Notice of Funds Available (NOFA) for a portion of the Healthy Food Financing Initiative.⁶³ A total of \$10 million has been made available for “projects located in food deserts and designed to improve access to healthy, affordable foods by developing grocery stores, small retailers, corner stores, and farmers markets that will make available nutritious food in these areas.”⁶⁴

III. A Disparate Impact on Minorities and an Opportunity to Empower

The food desert issue is a controversial one largely because there are serious implications for race and class. A 2006 study conducted in Chicago suggests that African Americans face the greatest hindrances to finding healthy, affordable food.⁶⁵ According to the study, Chicago's food deserts are largely comprised of African American communities.⁶⁶ Black Chicagoans, on average, travel the farthest distance to supermarkets, which are typically twice as far as the nearest fast food restaurants.⁶⁷ The study also found that the communities with more "out-of-balance food choices" had twenty-four percent higher rates of obesity and twenty-seven percent higher rates of hypertension.⁶⁸ The findings from the Chicago study are not atypical. There is substantial literature evidencing racial disparity in regards to a multitude of public health concerns.⁶⁹

A. *A Basis in Critical Race Theory and ClassCrit*

Critical Race Theory is an intellectual movement within academic legal scholarship that studies the axes of race, racism and power.⁷⁰ Critical Race Theorists recognize the importance of civil rights scholarship and its emphasis on intentional discrimination, but place a deeper emphasis on racial inequality as viewed through the lens of the "larger, systemic, structural, and cultural" racial oppression that is endemic to American life.⁷¹ Critical race theory proposes that "current inequalities and social and institutional practices" must be examined within a "contextual" and "historical" framework.⁷² In an article entitled *A Holiday for Dr. King: The Significance of Symbols in the Black Freedom Struggle*, Critical Race Theorist Derrick Bell wrote:

Today we are witness to an increasingly grim national scene of an exploited, colonized people without jobs, decent homes, and viable educations. Their options are few, their reasons for hope virtually non-existent. Yet all blacks are covered by more laws protecting them against racially discriminatory treatment than any of their black ancestors

. . . The masses of poor blacks today have legal rights that are worthless and unmet economic means that threaten life itself. They lack the schooling, skills, or financial resources needed to survive, much less succeed, in a society where manhood is measured by job and worth by income. They, like Harriet Tubman, remain "strangers in a strange land."⁷³

Bell tells the story of a highly disenfranchised African American people, a race plagued by dire job prospects, substandard housing, and inferior educational opportunities.⁷⁴ While Bell's illustration clearly does not describe a universal Black experience, it certainly does describe a subset of America's minority population. According to the latest U.S. Census, 24.7 percent of Blacks and 23.2 percent of Hispanics live below the poverty line, as opposed to just 11.2 percent of whites.⁷⁵ Moreover, low-income minorities have historically resided together in what are popularly known as urban "ghettos."⁷⁶

Sociologists have theorized a "residential color line," where within the line's confines, minority populations have greater difficulty overcoming "crime, violence, housing abandonment, unstable families . . . environmental degradation," and "failing schools," and suffer from "poorer health and higher mortality."⁷⁷ These communities seem to embody a self-fulfilling prophecy of sorts; a net of inadequacies that pins low-income minority individuals to the "bottom." Recognizing that these disenfranchised populations do indeed exist, Bell intends to determine the source of this restraint.

Bell asserts that the culprit is racism — not the overt racism that most easily comes to mind, but racism in a far subtler form; a type of racism widely cited as "institutional."⁷⁸ Bell recognizes that although civil rights laws have protected Blacks against disparate treatment, there is a fair amount of discrimination that is discrete, and therefore undetectable by antidiscrimination laws.⁷⁹ This discrimination reinforces disparities in multiple contexts, including in our food distribution systems.

Bell questions why resources are not provided to improve the caliber of urban school systems. He questions why no capital is provided to spur job growth for minority populations and why

such contingents are given inadequate resources to combat crime. Following Bell's line of reasoning, it would be pertinent to question why grocery stores tend not to locate in predominantly minority urban neighborhoods, and to question why when they do, their products are more expensive and of lesser quality.

Professor Cheryl Harris picks up the discourse where Bell leaves off. In her article *Whiteness as Property*, Harris notes that property rights are "not natural, but . . . creations of law."⁸⁰ She advocates that property "encompasses jobs, entitlements, occupational licenses, contracts, subsidies, and . . . intangibles that are a product of labor, time, and creativity."⁸¹ She recognizes that individuals do play a role in acquiring property — whether that property is a paycheck, a college degree, or a bag of groceries — but that role is limited. Harris speculates that an individual's ability to acquire is inherently aided or hindered by the constructs of society, and she notes how race and institutional racism play a role in defining such constructs. Harris posits, "When the law recognizes, either implicitly or explicitly, the settled expectations of whites built on the privileges and benefits produced by white supremacy, it acknowledges and reinforces a property interest in whites that reproduces Black subordination."⁸²

Harris's article challenges the law to be proactive. She encourages the law to consider how it informs societal constructs, particularly as such constructs pertain to race. Harris would want the law to correct the inequities that hinder the acquisition of property. Harris would applaud a society governed by laws that facilitate equal access to a healthier lifestyle.

ClassCrit is a separate intellectual movement that "reconsiders longstanding assumptions and approaches in legal scholarship and practice around economic issues" and "develop[s] an alternative to the predominant discussions of 'law and economics' . . . [and] its denial of 'class.'"⁸³ ClassCrit, like Critical Race Theory, recognizes the evident conflation of race and class and considers race to play a significant role in the conception of law and economic inequality.⁸⁴

ClassCrit author Maria Grahn-Farley posits that the relationship between race and class is "multidimensional," and that "[r]ace and class in relationship to white wealth goes beyond the dichotomy of black/white and poor/rich."⁸⁵ She argues that, since race and class are connected in their relation to white wealth, "race and class are intricate

parts of what constitutes the persistence of social hierarchy and must therefore be addressed separately and in combination if equality is to be achieved."⁸⁶ Grahn-Farley advocates the recognition of race and class as distinct, but interdependent. Moreover, she poses a challenge. She asserts that "it is everyone's interest, jointly together against the interest of a very narrow group on the top of the hierarchy, to work for social change and reallocation of resources."⁸⁷

ClassCrit's rejection of the black/white rich/poor dichotomy falls in line with both the natural conclusion that only *some* Black individuals are impoverished or impacted by urban food deserts and the proposition that poor whites should not be excluded when policymakers discuss food deserts. However, ClassCrit theory suggests that race is a crucial consideration. Race and class are often comingled as a result of historical limitations and discriminatory practices. Severe economic inequalities continue to plague minorities, reflecting a "systematic socioeconomic hierarchy" that has persisted long past the civil rights gains of the mid twentieth century.⁸⁸ As ClassCrit Anthony Paul Farley describes the plight,

The rules regarding equality and freedom would not be required were the dispossessed not marked for dispossession. Were there not an omnipresent and perpetual desire for and habit of repeating the original dispossession of the dispossessed, then the dispossessed would have no motive to imagine rules for equality and freedom.⁸⁹

Legislators and politicians have a number of reasons to support interventions designed to eradicate food deserts.⁹⁰ The civil rights of minority individuals should be at the forefront of such considerations.

B. An Argument for Intervention

Critics of food desert policies and the broader *Let's Move* campaign argue not only that such programs are needlessly paternalistic, but that historically, government efforts to address inequalities have largely been ineffective. Such criticism is rooted in neoliberal "free market" ideology and is perhaps most clearly associated with the law and economics movement.⁹¹

This ideology considers economic efficiency and “free markets,” as the key to public well-being.⁹² Free market advocates argue that unregulated market competition incentivizes the maximization of overall resources and individual responsibility and makes society better off in the long term, regardless of its short-term effects.⁹³ Essentially, free market advocates believe that the move away from government economic involvement “toward reliance on competition in the marketplace” is “a more efficient way to protect the public.”⁹⁴ “Neoliberalism distinguishes this efficiency goal from the goal of social equity, which represents the redistribution of resources according to particular fairness or equality values. In the conventional view, efficiency is about expanding the societal pie; redistribution about dividing it.”⁹⁵ According to free market advocates, the argument against “dividing the pie” is as follows: “redistributive policies replace individual market freedom that promotes the public gain with paternalist government protection that generally benefits particular groups . . . non-citizens or subordinate citizens: those who are deemed inadequate to assume the responsibilities of freedom because of their incapacity or incivility.”⁹⁶

Seventh Circuit Justice and University of Chicago professor Eric Posner presents further critiques in regard to the efficiency of government intervention. Free market economists have dubbed government inefficiency — when a government allocates goods and services that would generally be allocated without that intervention — “government failure.”⁹⁷ Posner argues that “government generally lacks the discipline of competition and the incentive of profit maximization and is buffeted by politics.”⁹⁸ He cites the social security disability program and the now-defunct Aid for Families with Dependent Children, as examples, noting that both have created significant disincentives to work.⁹⁹

Unfortunately, critics of government intervention on the food desert issue have lost sight of the fact that markets are politicized.¹⁰⁰ Neoliberal free market supporters, in embracing self-interest over community solidarity, embrace “a racialized, genderized, and class-biased vision of social equity and community solidarity that favors the interests of the most privileged members of society.”¹⁰¹ Neoliberalism thereby promotes social hierarchy in the “guise of efficiency.”¹⁰² In a democratic society, public well-being depends not only on political and civil rights, but on

economic security as well, including the right to “live the life of a civilized being according to the standards prevailing in . . . society.”¹⁰³ Such rights should extend to all groups, including marginalized populations.

ClassCrit author Martha McCluskey argues that “[s]ocial citizenship ideals cannot remain outside the market as complementary goals because those ideals are inextricable from the structures of government rights and responsibilities inevitably internal to markets.”¹⁰⁴ She concludes, “We should focus on the underlying question of which individuals and what kinds of communities our markets should be structured to protect and to benefit.”¹⁰⁵

Our markets should be structured to protect and benefit the residents of food deserts. Food deserts suggest lack of access to basic human needs. Poor, disproportionately minority urban residents have been relegated to the edges of our society. The lifestyles they live do not meet the prevailing standards our societal expectations have set. The free market has failed to provide the urban poor with adequate food access. Inadequate food access can be added to a list of goods and services, including education and housing among other things, which have been allocated within an unjust hierarchical framework.

Free market economists use the term “paternalism” as if it were an obscenity. But advocates of government intervention seem to disagree. They, unlike neoliberals, seem willing to withstand a small dose of paternalism for the sake of correcting societal imbalances. Here, we have a clear case of a group that has been given inadequate access to nutritious food, which is necessary for health. There is a clear case for government intervention to correct the imbalance because a vulnerable population is involved and self-help has proven futile. The case only becomes stronger when one considers the fact that these economic inequities stem from historical limitations and discriminatory practices. Furthermore, as discussed below, food deserts also have social, political, and economic implications as well, and can be used as a litmus test for the socioeconomic health of a community.

The following sections demonstrate: 1) how food deserts have impacted the health of poor and disparately minority urbanites and 2) how the interventions instituted by the federal government may have a farther-reaching effect on food deserts than anticipated, impacting not only health outcomes, but

socioeconomic outcomes as well. They serve to flesh out the reader's conception of the food desert climate.

C. Health Implications

While there is a tendency in public health to consider race and socioeconomic status as proxies, many sociologists and public health researchers have emphasized that race and socioeconomic status are related, but distinct, and that they collectively contribute to health risks.¹⁰⁶ In fact, there are several notions as to the distinction between racial and socioeconomic disparity.¹⁰⁷ One controversial approach considers race to be a biologically meaningful category that reflects inherent susceptibilities to certain diseases and health conditions.¹⁰⁸ However, a more conventional approach views race in light of historical, political, and ideological obstacles that cloud the analysis of race and class as co-determinants of public health disparities.¹⁰⁹ This paper operates on the assumption that race and class are not proxies for each other and that the ties to race and socioeconomic status are comingled and quite complex. If this assumption proves to be true, there are a number of legal and policy considerations that must be refined to reflect this distinction. Just a few of these considerations are presented throughout this paper.

In 1998, Al Sharpton declared that “[h]ealth will be the new civil rights battlefield.”¹¹⁰ Sharpton's prediction may prove accurate. African Americans, on average, live six to ten fewer years than whites and face higher rates of illness and mortality.¹¹¹ A recent analysis of mortality data found that over 880,000 deaths would have been prevented if the mortality rates of African Americans had been equivalent to that of whites between the years 1991 and 2000.¹¹² African Americans experience higher rates of infant mortality, diabetes, cardiac disease, and obesity, among other illnesses and conditions.¹¹³ Over fourteen percent of African Americans report being in fair or poor health as compared to only eight percent of whites.¹¹⁴

There is also research that demonstrates that minorities suffer from what is known as “deprivation amplification.”¹¹⁵ Deprivation amplification refers to a theory whereby risk factors for obesity endemic to minority populations (such as low income and limited knowledge about nutrition) are intensified by exposure to food deserts.¹¹⁶ Proponents of the deprivation amplification model stress that minority

populations be given “special consideration” due to this heightened vulnerability.¹¹⁷

It has been widely noted in public health literature, as well as in the larger social discourse, that the most effective interventions in diminishing racial and socioeconomic disparity “will be those that are targeted not at internal biological processes, but those [interventions] that seek to improve the quality of life in the places where Americans spend most of their time: their homes, schools, workplaces, neighborhoods, and places of worship.”¹¹⁸ Moreover, there is consensus amongst public health scholars and other stakeholders alike that such success will also hinge “on integrative and collaborative efforts across multiple sectors of society that seek to leverage resources to enhance health.”¹¹⁹ It is clear that efforts to close the health disparity gap are painstaking and resource-consuming.

The aforementioned examples of stark racial health disparities call for the diligent evaluation and implementation of interventions that aim to improve quality of life for minorities. Political stakeholders have an opportunity to awaken from collective complacency. While the fruits of the civil rights movement of the mid-twentieth century have indeed been healthy and satisfying, it is increasingly apparent that the goals of the civil rights movement have not yet been fully achieved. Health disparities in minority populations are akin to inadequate urban schools and law enforcement — issues at the heart of minority communities that compound racial stratification and are largely ignored by policymakers.

In a recent United Kingdom study, participants with the poorest “pre-intervention” diets “significantly increased their fruit and vegetable consumption and differentially switched away from limited-range . . . stores when a supermarket opened in their neighborhood.”¹²⁰ The eradication of food deserts is just one small step, albeit an important one, towards diminishing racial health disparities, by ensuring that all individuals, particularly those in minority groups, have access to fresh, healthy and affordable food. It stands to reason that if minorities in lower socioeconomic strata have healthful foods as an option (paired with adequate nutrition education) lifestyle changes would have an opportunity to flourish and consequently, high rates of infant mortality, diabetes, cardiac disease, and obesity (among other conditions) would dissipate.

D. Socioeconomic Implications

Food deserts are not only a health issue; they are a social issue as well. Eating nutritious food is good for one's health, but eating food (of any type) is universal and necessary for human survival, which means that food needs to be attained, whether via purchase or agriculture. In the modern sense, food is a commodity, just like electronics, paper products, and clothing. Its sale has an impact on both the retail market and on the labor market. Food sale and distribution is a vital component of local economies. Healthy local economies play a role in fostering robust communities.

One would be mistaken to think that, because of relatively cheaper land and lower wages, supermarkets should find economically depressed urban locales attractive.¹²¹ The reality is, supermarkets operate with thin margins and require enormous sales volume to make a profit.¹²² Therefore, "supermarkets primarily base their location decisions on the revenue projections and number of targeted customers they can reach within the trade area, rather than the capital cost of the facility."¹²³

Moreover, supermarket chains locating in urban areas must navigate a plethora of obstacles they may not have in more suburban locales, including: more stringent zoning and regulatory approval processes, difficulty securing land sites large enough for stores, environmental remediation and/or demolition of current structures, higher construction and operating costs, lower access to distribution chains, visibility issues, traffic flow and parking issues, and local politics, where officials and groups may have competing goals for development.¹²⁴ Many chains would be reluctant to enter an inner-city community even if the rent was free; not only would the anticipated sales volume not be enough to turn a profit, but the obstacles laid out would be cost and time prohibitive as well.¹²⁵

Additionally, externalities such as stereotypes about employees being of lower caliber and misperceptions about the spending power of customers often impede rational decision-making.¹²⁶ This leads corporate decision-makers to overlook potential untapped urban markets while ignoring the call to corporate citizenship. This is unfortunate because numerous chain stores have been able to operate successfully in urban areas by adapting to

neighborhood preferences (such as catering to ethnic cuisine preferences) and by forming partnerships with community groups.¹²⁷ For instance, supermarket chain Giant, owned by Royal Ahold, operates one of its most successful stores in the Anacostia neighborhood of Washington, D.C., a neighborhood that is predominantly African American.¹²⁸ Irrationalities in the face of these successes support the claim that "free" markets foster economic inefficiency and injustice.¹²⁹

Because race discrimination is often perpetuated by market forces, it is up to the government to intervene. Many citizens do not see market benefits and it is the government's responsibility to take steps to "combat human deprivation and misery in the midst of growth."¹³⁰ In the words of legal scholar Cass Sunstein, "it is important to develop standards for measuring social well-being that allow people, in their capacity as citizens and voters, to focus on the issue of distribution."¹³¹

Critics of the Obama Administration's push to eradicate food deserts (as part of the broader effort to reduce obesity) argue that government funds should not be used to interfere with the prerogative of large supermarket chains.¹³² The logic is that supermarkets should be afforded the flexibility needed to operate most efficiently. Clearly there are concerns about market restraints and their impact on the broader economy.¹³³ These concerns reflect the sentiments of "free market" proponents who argue that government should not take a paternal interest in issues that rely on individual choice and responsibility, that government assistance and welfare programs are generally ineffective, and that the federal government should avoid engaging in redistribution.¹³⁴

However, arguments against government intervention baldly ignore the potential for neighborhood rehabilitation and its positive impact on urban economies, impoverished and minority residents, and the economy as a whole. A choice to stand idle is to flatly ignore the implications for minority groups and to actively engage in subtle, institutional, systemic racism, which Critical Race Theorists argue can lead to racial subordination.¹³⁵ Legal scholar Rachel Moran posits that "[a]lthough individual discrimination might be corrected through consciousness-raising or incremental legislation, subordination is so deeply entrenched that it can be eliminated only through profound transformations of the body politic."¹³⁶

Food deserts are not only a health concern for minority populations. They also present an opportunity to make strides in “transforming the body politic.”¹³⁷ As laid out below, policymakers should consider the power food desert-related public health interventions could have on urban labor markets and economic development. Moreover, food desert-related interventions that make a concerted effort to engage community members will have social impacts that, along with economic development, serve to facilitate the repair of disadvantaged neighborhoods. Interventions of this nature would strengthen the very “stuff” communities are made of — people.

1. Employment and Training

Urban supermarkets have the potential to be very large employers. When supermarkets invest in a neighborhood, they potentially provide hundreds of jobs.¹³⁸ The number of employees, of course, varies depending upon the size of the store. Moreover, twenty-two percent of supermarket employees are unionized industry-wide.¹³⁹ Unions provide workers with grievance representation and an ability to collectively bargain, among many other benefits.¹⁴⁰

Supermarkets employ not only cashiers and customer service representatives, but bakers, butchers, stockpersons, managers, pharmacists, dieticians, and human resource professionals as well.¹⁴¹ Many of the jobs do not require high levels of formal education and are therefore not prohibitive to lower-income urban residents without degrees. In 2008, nonsupervisory cashiers in grocery stores averaged \$8.59 in hourly wages.¹⁴² Supervisory employees earned \$16.90 per hour on average.¹⁴³ Full-time workers generally receive benefits, such as paid vacations, sick leave, and health and life insurance, and oftentimes receive discounts on food.¹⁴⁴

Supermarkets also provide an ideal setting for urban residents to receive on-the-job training, which often produces skills that translate across a number of employers and industries. When an individual “builds” his or her resume with a training program from a recognized retail chain and accrues experience there, the individual is better able to market him or herself to future potential employers. The Wakefern Food Corporation provides an excellent example of a company that builds a “pipeline” to the low-income urban community through its *Partners In Training* program.¹⁴⁵ Through

non-profit partnerships, Wakefern trains recipients of public assistance in cashiering, customer service, and job readiness.¹⁴⁶ The corporation hires the programs’ graduates in its supermarkets.¹⁴⁷

2. Economic Development

In addition to providing excellent job opportunities, supermarkets have the potential to serve as neighborhood “anchor” stores.¹⁴⁸ When a larger store enters a neighborhood, there is an incentive for smaller retail stores to strategically place themselves nearby in order to intercept the store’s customers during their shopping trips. Developers often use the tactic of placing a large chain store in a development in order to attract other tenants.¹⁴⁹ The same practice holds true for supermarkets, if not more so, because most consumers shop at grocery stores numerous times per month.¹⁵⁰ Supermarkets also widely utilize circular advertisements, which draw customers to the weekly sales as well as to the shopping centers they are housed in.¹⁵¹

All things considered, supermarkets have the potential to invigorate the local economy of a poverty-stricken neighborhood. And while the entrance of large chain stores in a neighborhood may signal what some perceive to be the beginning of a “gentrification,” the displacement of low-income urban minorities is not a given.¹⁵² It is equally as likely that the entrance of urban supermarkets will lead to both short-term and sustainable long-term economic growth.

That being said, the importance of supermarket partnership with the community cannot be overstated. Supermarkets’ investment with local civic groups and community nonprofits is key to building coalition, credibility, and “buy-in,” all of which is vital to drawing and keeping a solid customer base. A supermarket’s entry into a new neighborhood without laying the proper groundwork has the potential to inspire skepticism and cynicism provided that the chain has not put forth a good faith effort to build such coalition.

3. Community Gardens are “Growing” Communities

Food desert-related interventions should not be limited to the rudimentary scheme of providing monetary incentives for large supermarkets to locate in depressed neighborhoods. A multifaceted and more

effective approach also engages community members. Under such an approach, community members, in conjunction with nonprofit and grassroots organizations, unite to: grow their own food, distribute it throughout the community, and set the agenda for local food policy. Integrative approaches that engage community members have the potential to impact a community not only economically, but holistically as well, by building relationships, promoting core community values such as teamwork and identity, and encouraging accountability for food sources. Integrative interventions empower minority communities.

As mentioned above, the federal government has facilitated a national conversation about the food desert issue and has provided funding for food security initiatives.¹⁵³ A large portion of this funding goes to nonprofit groups engaged with the community.¹⁵⁴ On the ground level, these nonprofit groups (and city councils, entrepreneurs, and community activists) have already begun to fight the battle against food deserts.¹⁵⁵ They have structured community food assessments and food policy councils within their neighborhoods and cities, have developed educational programs that teach their community members the importance of health and nutrition, and have facilitated the creation and expansion of local community gardens and farmers' markets.¹⁵⁶

One such organization, the Detroit Black Community Food Security Network (DBCFSN), has been working to raise food awareness since 2006.¹⁵⁷ The DBCFSN has used "grassroots citizen engagement" to, among other things, establish a four-acre organic farm, organize a food co-op, and create both a city-wide food policy and food policy council.¹⁵⁸

The DBCFSN's food policy, which was passed unanimously by the Detroit City Council in March 2008, recognizes the city's lack of access to quality, affordable food.¹⁵⁹ The policy sets forth the following proposals for better food access:

1. Increase the number of culturally appropriate food outlets within a reasonable distance in all Detroit neighborhoods.
2. Perform research on the type and location of food establishments and the extent to which these stores fulfill neighborhoods needs.

3. Create mechanisms with store operators and the Michigan Dept of Agriculture food safety inspection system to ensure that Detroit stores comply with food safety codes and maintain clean and sanitary food preparation and sales environments within stores.
4. Ensure that food stores carry a variety of fresh foods and food items for persons with special needs and chronic conditions.
5. Put in place monitoring mechanisms to ensure that food items are safe and fresh.
6. Review bus stops and put in place bus lines that give people direct access to grocery stores without the need of a transfer. Assess the need for "grocery routes" which reflect actual shopping needs (evenings and weekends).
7. Make locally grown and organic foods accessible throughout the city by supporting increased production within neighborhoods, neighborhood farmers markets, and small business assistance to neighborhood stores that agree to participate in a "good neighbor program" in which they agree to sell more locally grown fresh and healthy foods, do not sell alcohol and tobacco to minors, and negotiate other mutual benefits with neighborhood organizations that can appropriately represent neighborhood desires.
8. Oppose distribution of genetically modified foods (GMO)'s in the City of Detroit.¹⁶⁰

The policy also makes suggestions for fighting hunger and malnutrition and encourages the establishment of community emergency food response systems.¹⁶¹ The DBCFSN emphasizes the importance of healthful diets, urban agriculture, food literacy, and partnerships with academia and school systems.¹⁶²

Most strikingly, however, the DBCFSN has viewed the issue of urban food access as an issue of "food justice."¹⁶³ The food policy developed by the DBCFSN addresses the issue of economic injustice within minority communities as it pertains to food, recognizing that at the time of the policy's drafting, only two grocery stores in Detroit were "owned and or operated by African Americans."¹⁶⁴ The policy cites the need for an "economic/agricultural safety net to

support the [community's] most vulnerable" and a need for minorities to be "represented at all levels and in all aspects of the food system."¹⁶⁵ Specifically, the policy puts forth the following recommendations regarding economic justice:

1. Identify and eliminate barriers to African-American participation and ownership in all aspects of the food system.
2. Explore providing employment and redistribution of wealth through cooperative community ownership.
3. Convene dialogues and create partnerships with local universities and national organizations advocating for African-American communities to develop entrepreneurship and low-cost loan programs which encourage African American entrepreneurship.
4. Hold those accountable within the food system that profit from Detroiters to integrate Detroiters into their operations at all levels.
5. Develop frameworks for providing business incentives (such as tax incentives, small business loans, etc.) so that businesses that receive public subsidies return maximal benefits to the surrounding community in terms of healthy food access, local employment and other forms of community responsiveness. Such frameworks should be developed in collaboration with community organizations and residents. Incentives should support stores development and improvement in currently underserved neighborhoods.¹⁶⁶

In June 2010, Dr. Monica M. White, Assistant Professor at Wayne State University and member of the Board of Directors at the DBCFSN, spoke frankly about the importance of food security to the minority community in an article entitled *D-Town: African American Farmers, Food Security and Detroit*.¹⁶⁷ White spoke to the community members' interest in taking control of their food, positing that minority members in the community "cannot count on others to provide them with healthy foods because availability of such food is based on race and class privilege."¹⁶⁸ White further asserted that the community members:

[E]schew the idea that someone or something else has or must have control over their food supply and see themselves as having sufficient power to control it. D-Town farmers' [sic] reject the government's efforts to control food because of its ineptitude and its lack of care about the Black community Instead of petitioning the government or local merchants to control their food supply in more effective ways, the D-Town farmers reject governmental and market involvement and assume control of their own food supply. In the process of controlling the food supply, the farmers see themselves as developing self-reliance. Through farming, they argue, they can produce their own food, invest in their communities, and encourage community members to learn much-needed survival skills D-Town activists challenge the White privilege embedded in the food security movement and demand that they themselves lead the movement to provide food for the citizens of their community.¹⁶⁹

What makes the DBCFSN movement powerful is that it encourages members of the community to take matters into their own hands. The minority residents of Detroit refuse to wait for a supermarket to locate in their neighborhoods. Instead, they are growing their own food, setting up channels of distribution, and educating their neighbors on the importance of nutrition. In the process, they are creating jobs, enriching their community, and cultivating a healthier environment.

IV. Criticisms and Recommendations

The efforts of the *Let's Move* campaign should be lauded. The program has spotlighted critical issues that deserve national attention. Though food deserts are only one small determinant of obesity, the campaign has treated the issue of food access as a key component of the program.¹⁷⁰ The

Obama administration is wise to do so, for all of the aforementioned reasons.

However, much can be done to improve the *Let's Move* initiative so as to more effectively accomplish its goal of eradicating food deserts. First, as evidenced by the White House Task Force on Childhood Obesity One Year Progress Report, efforts to extinguish food deserts have not moved quickly enough.¹⁷¹ *Let's Move* began over a year ago, and the HHS Notice of Funds Available for the Healthy Food Financing Initiative, has been the only tangible progress made on the food desert front.¹⁷² Significant remaining portions of the budget have been proposed but not officially passed.¹⁷³

Second, economic development subsidies are likely not enough to counter the tough market conditions that make urban locales unappealing.¹⁷⁴ The subsidies proposed by the HFFI are designed to reduce the capital costs of starting or relocating a business in a particular area, but are not sufficient to sustain the operating costs of running a business during its crucial infancy stage.¹⁷⁵ The Hartford Food System, a non-profit organization “working to create an equitable and sustainable food system,” recommends the creation of a public trust fund, capitalized by the grocery industry, which would subsidize the ongoing operating costs of urban stores.¹⁷⁶ According to the proposal, “[s]upermarkets that are built or renovated in communities that already have high per-capita store capacity would pay into the fund. Supermarkets that are built or renovated in underserved communities would be eligible to draw money out of the fund.”¹⁷⁷ This recommendation recognizes that supermarket chains will refuse to enter underserved urban areas unless the financial incentives are enough to counter all of the “urban obstacles” set out earlier in this paper. Such a recommendation would also quell some of the criticism from free market neoliberals who fear government failure.

Third, and most crucially, not enough attention has been paid to the minority contingent that lies at the center of the food desert crisis. The author, in his research, did not uncover any plans to earmark federal funds for minority-owned or operated supermarkets or nonprofits. Such an earmark would, among other things, enable groups like the DBCFSN to properly engage minority groups and effect significant grassroots change.

In fact, the recommendations of the *Task Force on Childhood Obesity* barely recognized the racial implications of food deserts and did not offer recommendations as to how to engage Black and Hispanic communities.¹⁷⁸ Recognizing the impact of food deserts on minority groups could potentially translate to a number of concrete proposals such as inducements for minority owned food businesses, nutrition education programs that emphasize cultural tastes and preferences, and the encouragement of partnerships such as the Wakefern *Partners in Training* program. As the *Let's Move* campaign currently stands, the rehabilitation of disenfranchised minority communities is a welcome side effect, not an explicit goal. This is disconcerting when one considers that “access to affordable and nutritious food” is a core tenet of the program. Why deny and alienate a major group of individuals the program aims to serve?

The obvious answer is that the *Let's Move* campaign is a project whose main focus is childhood obesity, not food access. And unfortunately, it is the only federal measure that has remotely addressed the food desert issue. To date, Congress has not yet enacted legislation, nor have agencies promulgated regulations, addressing the food desert issue *directly*. This paper aims to demonstrate that this is an area where legislative efforts are worthwhile.

V. Conclusion

The story of the urban minority, as Professor Bell tells it, is distressing and heartening at the same time.¹⁷⁹ This disenfranchised group faces daunting social and economic impediments.¹⁸⁰ But those impediments are impermanent.

Everyone deserves the opportunity to pursue a healthy lifestyle, whether that means access to fresh, affordable and nutritious food or living in a community that is safe and prosperous.¹⁸¹ The *Let's Move* campaign has potential to provide both by infusing resources into the communities that hunger for an end to both health and socioeconomic disparities.

What gives the *Let's Move* campaign its unique potential is its ability to empower. If the *Let's Move* campaign is as strategic as it purports to be, its constituents will bear in mind the marginalized populations who are most affected by obesity and

food access issues. *Let's Move* should be implemented in an integrated fashion so as not only to induce urban supermarket relocation (and its concomitant labor and economic benefits) but also to embrace community-based strategies that engage urban minority residents. Providing underserved urban minorities with the tools necessary to build their own communities can only lead to empowerment and sustainable change.

(Endnotes)

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² See, e.g., Eddie Gehman Kohan, *During Radio Interview, Sarah Palin Attacks Michelle Obama & Let's Move!*, OBAMA FOODORAMA (Nov. 24, 2010, 12:30 PM), <http://obamafoodorama.blogspot.com/2010/11/during-radio-interview-sarah-palin.html>; Tom Laskawy, *Is There too much 'Let's Hope' in the 'Let's Move' Anti-obesity Campaign?*, GRIST (Feb. 23, 2010, 6:19 PM), <http://www.grist.org/article/is-there-too-much-lets-hope-in-the-lets-move-anti-obesity-campaign/>.

³ Julie Beaulac ET AL., *A Systematic Review of Food Deserts, 1966-2007*, 6 PREVENTING CHRONIC DISEASE: PUB. HEALTH RES., PRAC., AND POL'Y 1, 1 (2009), http://www.cdc.gov/pcd/issues/2009/jul/pdf/08_0163.pdf

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* "Food deserts" are just part of the problem of "food insecurity." Food insecurity is lack of access to adequate food as limited by lack of money and "other resources." *US Department of Agriculture Economic Research Service*, MEASURING FOOD SECURITY IN THE U.S.: HOUSEHOLD FOOD SECURITY IN THE U.S. iii (2009), <http://www.ers.usda.gov/Publications/ERR108/ERR108.pdf> [hereinafter *Measuring Food Security*].

⁷ *US Department of Agriculture*, ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES. 5 (2009), <http://www.ers.usda.gov/Publications/AP/AP036/AP036.pdf> [hereinafter *Access*]. 23.5 million people

live in low-income areas that are more than one mile from a supermarket, representing 8.4 percent of the total U.S. population. *Id.* However, not all of these 23.5 million are themselves, low income. *Id.*

⁸ *Id.* Much research has been done on the effects of rural food deserts. TROY C. BLANCHARD & TODD L. MATTHEWS, RETAIL CONCENTRATION, FOOD DESERTS, AND FOOD-DISADVANTAGED COMMUNITIES IN RURAL AMERICA, IN REMAKING THE NORTH AMERICAN FOOD SYSTEM: STRATEGIES FOR SUSTAINABILITY 201, 213 (C. Clare Hinrichs & Thomas A. Lyson eds., Univ. of Neb. Press 2007). My paper, however, will focus on urban food deserts and their impact on low-income urban households.

⁹ *Id.* at 26.

¹⁰ See e.g., Elizabeth Eisenhauer, *In Poor Health: Supermarket Redlining and Urban Nutrition*, 53 GEOJOURNAL 125, 128 (2001).

¹¹ *Id.*

¹² *Id.* The suburban towns of Berlin, Glastonbury, Newington, Rocky Hill, and Vernon collectively have four times as much supermarket space as the city of Hartford, even though their collective total population is approximately the same as the number of people living in Hartford. Hartford Food System, *Connecticut's Supermarkets: Can New Strategies Address the Geographic Gaps?*, POL'Y BRIEFING PAPER 2 (Sept. 2006) [hereinafter, *Connecticut's Supermarkets*].

¹³ E.g., *Access*, *supra* note 7, at 108-109.

¹⁴ See e.g., Eisenhauer, *supra* note 10, at 130. The US Department of Agriculture recommends a diet that "[e]mphasizes fruits, vegetables, whole grains, and fat-free or low-fat milk and milk products; [i]ncludes lean meats, poultry, fish, beans, eggs, and nuts; and [i]s low in saturated fats, trans fats, cholesterol, salt (sodium), and added sugars. *Dietary Guidelines*, USDA (Jan. 31, 2011), <http://www.mypyramid.gov/guidelines/index.html>.

¹⁵ See *Access*, *supra* note 7, at 61-80.

¹⁶ *Id.* at 62.

¹⁷ See e.g., Kai A. Schafft et al., *Food Deserts and Overweight Schoolchildren: Evidence from Pennsylvania*, 74 RURAL SOC. 153, 155-56 (2009). Moreover, foods from larger supermarket chains cost as much as ten to sixty percent less than the same products in a smaller convenience store. Eisenhauer, *supra* note 10, at 129-30. The author recognizes the inherent "catch-22" that food desert remedies present — specifically that when larger chain stores enter a neighborhood, increased competition for "mom and pop stores"

accompanies the cheaper, healthier produce and job-creation.

¹⁸ See e.g., *Access*, *supra* note 7, at 79.

¹⁹ See e.g., *Access*, *supra* note 7, at 68. The USDA cautions that merely increasing access to fresh produce, whole grains, and low-fat dairy may not impact America's obesity epidemic. *Id.* at 56. The agency demonstrates that stores that carry nutritious foods at low prices also carry "junk" foods and beverages as well. *Id.* Moreover, the agency demonstrates that truly effective interventions must also change the dietary behaviors of consumers. *Id.*

²⁰ The SNAP Program is what is formally known as the food stamp program, a federal-assistance program that provides food assistance to low income people and families. Supplemental Nutrition Assistance Program, USDA, <http://www.fns.usda.gov/snap/rules/Legislation/about.htm> (last modified Oct. 12, 2011) [hereinafter ABOUT SNAP].

²¹ *Id.*

²² E.g., *Testimony Before the Subcommittee on Education Reform, Committee on Education and the Workforce United States House of Representatives; "The Obesity Crisis in America"*; (statement of Richard H. Carmona, M.D., M.P.H., F.A.C.S., Surgeon General, U.S. Public Health Service Acting Assistant Secretary for Health, Department of Health and Human Services), *The Obesity Crisis in America*, U.S. DEPARTMENT OF HEALTH AND HUM. SERVICES (Jul. 16, 2003, 10:00 am), <http://www.surgeongeneral.gov/news/testimony/obesity07162003.htm> [hereinafter *Carmona testimony*].

²³ Katherine M. Flegal ET AL., *Prevalence and Trends in Obesity Among US Adults, 1999-2008*, 303 J. AM. MED. ASS'N. 239, 239 (2010). This particular study found that increases in the prevalence of obesity do not appear to be continuing at the same rate that they had between 1999 and 2008, particularly for women and possibly for men.

²⁴ The CDC is one of the major operating components of the Department of Health and Human Services and "serves as the national focus for developing and applying disease prevention and control, environmental health, and health promotion and health education activities designed to improve the health of the people of the United States." ABOUT CDC ORGANIZATION, <http://www.cdc.gov/maso/pdf/cdcmiss.pdf> (last visited Jun. 4, 2011).

²⁵ Centers for Disease Control and Prevention, *State-specific Prevalence of Obesity among Adults — United States, 2007*, 57 MORBIDITY & MORTALITY WKLY. REP. 765, 765 (2008).

²⁶ "Healthy People 2010" was a statement of national health objectives designed to identify health threats and to establish national goals to reduce them. HEALTHY PEOPLE 2010 HOMEPAGE, <http://www.healthypeople.gov/2010/data/midcourse> (last visited Jun. 4, 2011). The project combines resources from a number of federal agencies, membership organizations, and trade associations. *Id.*

²⁷ Centers for Disease Control and Prevention, *Vital Signs: State-Specific Obesity Prevalence Among Adults — United States, 2009*, 59 MORBIDITY & MORTALITY WKLY. REP. 1, 1 (2010).

²⁸ E.g., National Institutes of Health, Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults, THE EVIDENCE REP. (1998), http://www.nhlbi.nih.gov/guidelines/obesity/ob_gdlns.htm (last visited Nov. 11, 2010); *The Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity*, U.S. DEPARTMENT OF HEALTH AND HUM. SERVICES (2001), <http://www.surgeongeneral.gov/topics/obesity/calltoaction/CalltoAction.pdf>; S. D. H. Malnick & H. Knobler, *The Medical Complications of Obesity*, 99 Q. J. of Med. 565, 565 (2006).

²⁹ *Carmona Testimony*, *supra* note 22.

³⁰ *Obesity: Promoting Healthy Lifestyles*, AM. MED. ASS'N, <http://www.ama-assn.org/ama/pub/physician-resources/public-health/promoting-healthy-lifestyles/obesity.shtml> (last visited Jun. 4, 2011).

³¹ E.g., Schafft, *supra* note 17, at 166. Note that this study was conducted on rural food deserts.

³² E.g., Richard J. Deckelbaum & Christine L. Williams, *Childhood Obesity: The Health Issue*; 9 OBESITY RES. S239, S239 (2001).

³³ E.g., C. Gordon ET AL., *Eating Well in Harlem: How Available is Healthy Food?*, NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE (2007), <http://www.nyc.gov/html/doh/downloads/pdf/dpho/dpho-harlem-report2007.pdf>.

³⁴ LET'S MOVE, <http://www.letsmove.gov/> (last visited Jun. 4, 2011).

³⁵ ABOUT LET'S MOVE, <http://www.letsmove.gov/about> (last visited Jun. 4, 2011).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Access to Health Affordable Food*, LET'S MOVE (2010), http://www.letsmove.gov/sites/letsmove.gov/files/TFCO_Access_to_Healthy_Affordable_Food.pdf [hereinafter *Task Force*].

³⁹ *White House Task Force on Childhood Obesity Report to The President*, LET'S MOVE, http://www.letsmove.gov/sites/letsmove.gov/files/TaskForce_on_Childhood_Obesity_May2010_FullReport.pdf (last visited Jun. 4, 2011).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 55.

⁴³ *Task Force Report*, *supra* note 38.

⁴⁴ *Id.* at 54. The *Task Force* recommended "tax credits, grant and loan programs, and mall business or economic development programs" and zoning to encourage sidewalks, bike paths, and pedestrian malls. *Id.* Job training resources for potential supermarket employees was also recommended. *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* The *Task Force* recommended promoting the use of WIC and SNAP benefits in farmers' markets, funding outreach about and transportation to farmers' markets, using land policies to encourage the development of community gardens, and implementing laws that promote mobile fruit and vegetable vendors. *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 54, 60.

⁴⁹ *Task Force Report*, *supra* note 38, at 59.

⁵⁰ *Id.* at 59.

⁵¹ *Id.* at 62.

⁵² *Id.* at 59.

⁵³ *Id.* at 53.

⁵⁴ WHITE HOUSE TASK FORCE ON CHILDHOOD OBESITY ONE YEAR PROGRESS REP. (2011), http://www.letsmove.gov/pdf/Obesity_update_report.pdf [hereinafter *Progress Report*].

⁵⁵ *Id.* at 4. The community development institutions would receive the funding through the Community Development Financial Institution (CDFI) program. *Id.*

⁵⁶ *Id.*

⁵⁷ "The New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). Substantially all of the qualified equity investment must in turn be used by the CDE to provide investments in low-income communities."

New Markets Tax Credit Program, COMMUNITY DEV. FIN. INSTITUTIONS FUND, http://www.cdfifund.gov/what_we_do/programs_id.asp?programid=5 (last updated Nov. 21, 2011).

⁵⁸ *Progress Report*, *supra* note 54.

⁵⁹ *News Release: Obama Administration Details Healthy Food Financing Initiative*, US DEPARTMENT OF HEALTH & HUM. SERVICES, (Feb. 19, 2010), <http://www.hhs.gov/news/press/2010pres/02/20100219a.html> [hereinafter *HHS News Release*].

⁶⁰ Among the Pennsylvania Fresh Food Financing Initiative's many achievements, it has reportedly created about 5,000 jobs. Jon Hurdle, *US Launches Program to End Food Deserts*, REUTERS (Feb. 19, 2010), <http://www.reuters.com/article/2010/02/19/us-food-health-program-idUSTRE61I5E820100219; Pennsylvania Fresh Food Financing Initiative>, THE FOOD TRUST, <http://www.thefoodtrust.org/php/programs/fff.php> (last visited Jun. 4, 2011).

⁶¹ US DEPARTMENT OF AGRICULTURE BUDGET, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/agriculture.pdf> at 47.

⁶² *Healthy Food Financing Initiative*, U.S. DEPARTMENT OF HEALTH & HUM. SERVICES, http://www.acf.hhs.gov/programs/ocs/ocs_food.html (last visited Jun. 4, 2011).

⁶³ *Healthy Foods Financing Initiative Notice of Funds Available*, U.S. DEPARTMENT OF HEALTH & HUM. SERVICES, <http://www.acf.hhs.gov/grants/open/foa/view/HHS-2011-ACF-OCS-EE-0178/html?msource=healthyfood#c.d.section.III> (last visited Jun. 4, 2011).

⁶⁴ *Id.*

⁶⁵ *E.g.*, Mari Gallagher Research & Consulting Grp., *Examining the Impact of Food Deserts on Public Health in Chicago*, GOOD FOOD (2006), http://www.marigallagher.com/site_media/dynamic/project_files/Chicago_Food_Desert_Report.pdf.

⁶⁶ *Id.* at 7.

⁶⁷ *Id.* at 7-9.

⁶⁸ *Id.* at 30.

⁶⁹ *E.g.*, *Access*, *supra* note 7, at 39.

⁷⁰ *See* MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 5-6 (Westview Press 1993).

⁷¹ *Id.*

⁷² *Id.*

⁷³ DERRICK A. BELL, A HOLIDAY FOR DR. KING: THE SIGNIFICANCE OF SYMBOLS IN THE BLACK FREEDOM STRUGGLE,

IN THE DERRICK BELL READER 380-81 (Richard Delgado & Jean Stefancic eds., N. Y. U. Press 2005).

⁷⁴ *Id.*

⁷⁵ *Statistical Abstract of the U.S.: 2011*, U.S. CENSUS BUREAU (2011) <http://www.census.gov/compendia/statab/2011/tables/11s0710.pdf>

⁷⁶ *E.g.*, Rajiv Sethi & Rohini Somanathan, *Inequality and Segregation*, 112 J. POLITICAL ECON. 1296 (2004).

⁷⁷ THOMAS M. SHAPIRO, *THE HIDDEN COST OF BEING AFRICAN AMERICAN: HOW WEALTH PERPETUATES INEQUALITY* 141 (Oxford Univ. Press 2004).

⁷⁸ *E.g.*, Rachel F. Moran, *The Elusive Nature of Discrimination: By Valdes, Culp, and Harris*, 55 STAN. L. REV. 2365, 2367 (2003) (reviewing Ian Ayres, *PERSUASIVE PREJUDICE, UNCONVENTIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION* (2001) and CROSSWORDS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes et al. eds., 2002)). “In analyzing how privilege is perpetuated, race scholars see . . . the patterns and practices that entrench inequality. As a result, race theory has moved well beyond the marketplace to explore how everything from public bureaucracies to family life can make racial difference seem both natural and inevitable.” *Id.*

⁷⁹ BELL, *supra* note 73.

⁸⁰ Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1730 (1993).

⁸¹ *Id.* at 1728.

⁸² *Id.* at 1731.

⁸³ Athena D. Mutua, *Introducing ClassCrits: From Class Blindness to a Critical Legal Analysis of Economic Inequality*, 56 BUFF. L. REV. 859, 860 (2008).

⁸⁴ *See id.* at 863.

⁸⁵ Maria Grahn-Farley, *Race and Class: More than a Liberal Paradox*, 56 BUFF. L. REV. 935, 936 (2008).

⁸⁶ *Id.* at 938.

⁸⁷ *Id.*

⁸⁸ RONALD F. FERGUSON, *SHIFTING CHALLENGES: FIFTY YEARS OF ECONOMIC CHANGE TOWARD BLACK-WHITE EARNINGS INEQUALITY*, IN *AN AMERICAN DILEMMA REVISITED: RACE RELATIONS IN A CHANGING WORLD* 76 (Obie Clayton, Jr. ed., Russell Sage Found. Publ’n 1996). Sociologists have concluded that numerous variables account for wealth differences between races, including “geographic region, educational attainment, the number of workers in the household, marital status, gender, and age.” MELVIN L. OLIVER & THOMAS M. SHAPIRO, *WEALTH AND INEQUALITY IN AMERICA*,

IN BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 67-90 (N.Y. Routledge 1995).

⁸⁹ Anthony Paul Farley, *Going Back to Class? The Reemergence of Class in Critical Race Theory*, 11 MICH. J. RACE & L. 51, 60 (2005).

⁹⁰ For one, food deserts are extremely costly. Obesity is estimated to cost the United States health care system \$100 billion per year. Mari Gallagher Research & Consulting Grp., *Examining the Impact of Food Deserts on Public Health in Chicago*, GOOD FOOD, 9 (2006), http://www.marigallagher.com/site_media/dynamic/project_files/Chicago_Food_Desert_Report.pdf. Additionally, a recent report estimated that the medical care and lost productivity costs for racial disparities in health amount to a \$309 billion annual loss to the economy. David R. Williams & Michelle Sternthal, *Understanding Racial-Ethnic Disparities in Health: Sociological Contributions*, 51 J. HEALTH & SOC. BEHAV. S15, S23 (2010). Moreover, the federal government spends billions of dollars on food assistance funding through programs such as SNAP, thereby demonstrating a vested interest in the food purchasing behavior of low income groups. Before *Let’s Move* and other food access interventions, the government had provided low income groups funding and education, but had not been able to provide a venue through which said low income groups could redeem entitlement program benefits. ABOUT SNAP, *supra* note 20; *Task Force Report*, *supra* note 38.

⁹¹ RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* (Aspen Publishers, 8th ed. 2011).

⁹² *Id.*

⁹³ DANIEL YERGIN & JOSEPH STANISLAW, *THE COMMANDING HEIGHTS* 15-16 (1998).

⁹⁴ *Id.*

⁹⁵ Martha T. McCluskey, *Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State*, 78 IND. L.J. 783, 786-87 (2003).

⁹⁶ NEIL DUXBURY, *PATTERNS OF AMERICAN JURISPRUDENCE* 369 (1995) (citing MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 33 (Univ. of Chicago 1982) (1962)).

⁹⁷ Roland N. McKean, *The Unseen Hand in Government*, 55 AM. ECON. REV. 496 (1965).

⁹⁸ POSNER, *supra* note 91, at 640.

⁹⁹ *Id.*

¹⁰⁰ *See e.g.*, JENNIFER NEDELSKY, *PRIVATE PROPERTY AND THE LIMITS OF AMERICAN CONSTITUTIONALISM: THE MADISONIAN FRAMEWORK AND ITS LEGACY* 255 (Univ. of Chicago Press 1990).

¹⁰¹ McCluskey, *supra* note 95, at 785.
¹⁰² *Id.*
¹⁰³ T.H. MARSHALL, *CITIZENSHIP AND SOCIAL CLASS* 10-11 (Cambridge Univ. Press 1950).
¹⁰⁴ McCluskey, *supra* note 95, at 876.
¹⁰⁵ *Id.*
¹⁰⁶ *E.g.*, Williams & Sternthal, *supra* note 90, at S19.
¹⁰⁷ *E.g.*, Ichiro Kawachi ET AL., *Health Disparities by Race and Class: Why Both Matter*, 24 *HEALTH AFFAIRS*, 343 (2005).
¹⁰⁸ *Id.*
¹⁰⁹ *Id.*
¹¹⁰ JONATHAN KLICK & SALLY SATEL, *THE HEALTH DISPARITIES MYTH: DIAGNOSING THE TREATMENT GAP* 9 (The AEI Press 2006).
¹¹¹ *CERD Working Group on Health and Environmental Health*, *UNEQUAL HEALTH OUTCOMES IN THE USA: REP. TO THE U.N. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION*, 9 (JAN. 2008) <http://www.prrac.org/pdf/CERDhealthEnvironmentReport.pdf> [hereinafter *Unequal*].
¹¹² *Id.*
¹¹³ *Id.*; Centers for Disease Control and Prevention, *Health Disparities and Inequalities Report, 2011*, 60 *MORBIDITY & MORTALITY WKLY. REP.* 73-76 (2011).
¹¹⁴ *Unequal*, *supra* note 111, at 9.
¹¹⁵ *E.g.*, *Access*, *supra* note 7, at 39-40.
¹¹⁶ *Id.*
¹¹⁷ *Id.*
¹¹⁸ Williams & Sternthal, *supra* note 90, at S23.
¹¹⁹ *Id.* at S24.
¹²⁰ Neil Wrigley ET AL., *Assessing the Impact of Improved Retail Access on Diet in a "Food Desert": A Preliminary Report*, 39 *URB. STUD.* 2029, 2078 (2002).
¹²¹ *See Access*, *supra* note 7, at 85.
¹²² *Connecticut's Supermarkets*, *supra* note 12, at 6.
¹²³ *Id.*
¹²⁴ *See Access*, *supra* note 7, at 88.
¹²⁵ *See id.* Persuading supermarket chain to commit to entering an urban neighborhood is further complicated by the fact that most local officials who are responsible for land use planning in their communities do not see supermarkets as relevant to their job assignment, in contrast to duties related to affordable housing, transportation, and other community development issues. *Connecticut's Supermarkets*, *supra* note 12, at 5. Research shows many planners do not actively or systematically plan their communities' food access the way they plan

access to services and facilities like transportation, parks, hospitals, or schools. *Access*, *supra* note 7, at 110.
¹²⁶ IAN AYRES, *PERVASIVE PREJUDICE?: UNCONVENTIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION* 3-8 (William M. Landes & J. Mark Ramseyer eds., Univ. of Chicago Press 2001).
¹²⁷ *See id.* at 128.
¹²⁸ *HHS News Release*, *supra* note 59.
¹²⁹ *See* Cass R. Sunstein, *WHY MARKETS DON'T STOP DISCRIMINATION*, IN *FREE MARKETS AND SOCIAL JUSTICE* 3-9, 151-63 (Oxford Univ. Press 1999).
¹³⁰ *Id.*
¹³¹ *Id.*
¹³² *See e.g.*, Kohan, *supra* note 2.
¹³³ *See supra* Part III.B.
¹³⁴ *Id.*
¹³⁵ MATSUDA, *supra* note 70.
¹³⁶ Moran, *supra* note 78, at 2418.
¹³⁷ *Id.*
¹³⁸ *See* Eisenhower, *supra* note 10, at 129.
¹³⁹ *Bureau of Labor Statistics*, *CAREER GUIDE TO INDUSTRIES, 2010-11 EDITION: GROCERY STORES*, <http://www.bls.gov/oco/cg/cgs024.htm> (last updated Dec. 17, 2009).
¹⁴⁰ *E.g.*, COX ET AL., *LABOR LAW: CASES AND MATERIALS* (14th ed., Found. Press 2006).
¹⁴¹ *Bureau of Labor Statistics*, *supra* note 139.
¹⁴² *Id.*
¹⁴³ *Id.* The federal minimum wage in 2008 was \$6.55 per hour. Fair Labor Standards Act Advisor, U.S. DEPARTMENT OF LAB., <http://www.dol.gov/elaws/faq/esa/flsa/001.htm>. The minimum wage increased from \$5.85 to \$6.55 on July 24, 2008.
¹⁴⁴ *Id.*
¹⁴⁵ *Wakefern Food Corporation Wins FMI's 2006 Maximizing People Potential Award for Innovative Community-based Training Program*, *FOOD MKTG. INST.*, http://www.fmi.org/news_releases/index.cfm?fuseaction=mediatext&id=837 (last visited Jun. 4, 2011).
¹⁴⁶ *Id.*
¹⁴⁷ *Id.*
¹⁴⁸ Eisenhower, *supra* note 10, at 129.
¹⁴⁹ EMANUEL B. HALPER, *SHOPPING CENTER AND STORE LEASES VOL. 2* at 9-36.23 (Law Journal Press 2001).
¹⁵⁰ *Id.* On average, SNAP recipients make 10.1 trips to buy groceries each month. *Benefit Redemption Patterns in the Supplemental Nutrition Assistance*

Program, NUTRITION ASSISTANCE PROGRAM REP. SERIES (Feb. 2011), <http://www.fns.usda.gov/ora/menu/Published/SNAP/FILES/ProgramOperations/ARRASpendingPatterns.pdf> at xxv.

¹⁵¹ HALPER, *supra* note 149.

¹⁵² See Barbara Kiviat, *Gentrification: Not Ousting the Poor?*, TIME (Jun. 29, 2008), available at <http://www.time.com/time/business/article/0,8599,1818255,00.html>.

¹⁵³ *Task Force Report*, *supra* note 38.

¹⁵⁴ HHS Release, *supra* note 59.

¹⁵⁵ Although there are numerous examples, *The Task Force on Childhood Obesity* showcases two efforts in particular in its report to the President. *Task Force Report*, *supra* note 38, at 52. Specifically, the *Task Force* points to the Central Detroit Christian Community Development Corporation and their “Peaches & Greens” Produce Truck, which sells fresh produce like an ice cream truck on the streets of Detroit. *Id.* The *Task Force* also praises the efforts of the First African Methodist Episcopal Church of South Los Angeles, which hosts an open-air market with entertainment and meal demonstrations from local chefs. *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ DETROIT BLACK COMMUNITY FOOD SECURITY NETWORK, <http://detroitblackfoodsecurity.org/> (last visited Jun. 4, 2011). The stated goals of the DBCFSN are to “influence[e] public policy, promot[e] urban agriculture, encourag[e] co-operative buying, promot[e] healthy eating habits; facilitat[e] mutual support and collective action among members, [and] encourag[e] young people to pursue careers in agriculture, aquaculture, animal husbandry, bee-keeping and other food related fields. *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ A CITY OF DETROIT POL’Y ON FOOD SECURITY, <http://detroitblackfoodsecurity.org/policy.html> (last visited Jun. 4, 2011).

¹⁶⁰ *Id.* (numerals added).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ DETROIT BLACK COMMUNITY FOOD SECURITY NETWORK, *supra* note 157.

¹⁶⁴ A CITY OF DETROIT POL’Y ON FOOD SECURITY, *supra* note 159.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* (numerals added).

¹⁶⁷ Dr. Monica M. White, D-Town, AFRICAN AM. FARMERS, FOOD SECURITY AND DETROIT, <http://www.blackagendareport.com/?q=content/d-town-african-american-farmers-food-security-and-detroit> (last visited Jun. 4, 2011).

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ ABOUT LET’S MOVE, *supra* note 35.

¹⁷¹ *Progress Report*, *supra* note 54.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Connecticut’s Supermarkets*, *supra* note 12, at 6.

¹⁷⁵ *Id.* at 7.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Task Force Report*, *supra* note 38.

¹⁷⁹ Bell, *supra* note 73.

¹⁸⁰ *Id.*

¹⁸¹ The World Heath Organization Constitution states that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being...” *Health and Human Rights*, WORLD HEALTH ORG., <http://www.who.int/hhr/en/>.