

Poor American Health: Addressing  
Weight-Related Problems in the Low  
Income Community in a  
Comprehensive Manner

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## TABLE OF CONTENTS

<b>I.</b>	<b>Introduction.....</b>	<b>3</b>
<b>II.</b>	<b>American Poverty and Weight-Related Problems: An Overview.....</b>	<b>6</b>
<b>III.</b>	<b>The Relationship Between Poverty and Weight-Related Problems.....</b>	<b>8</b>
<b>IV.</b>	<b>Reform Agricultural Subsidies and Allow Market Forces to Create a Healthier Food Supply.....</b>	<b>10</b>
<b>V.</b>	<b>Increase the Nutritional Value of School Meal Programs.....</b>	<b>14</b>
<b>VI.</b>	<b>Use Government Assistance Programs to Provide Incentives for Low-Income Americans to Eat Healthier.....</b>	<b>16</b>
<b>VII.</b>	<b>Reform Land-Use and Zoning Policies to Encourage Private Development of Healthier Local Communities.....</b>	<b>18</b>
<b>VIII.</b>	<b>Recognize that a Sin Tax is Unnecessary, Unwarranted, and Inappropriate to Deal with Weight-Related Problems.....</b>	<b>21</b>
<b>IX.</b>	<b>Enact Additional Reforms to the Health Care Industry that Take Into Account the Costs Incurred as a Result of Weight-Related Problems Among Our Low-Income Population.....</b>	<b>23</b>
<b>X.</b>	<b>Conclusion.....</b>	<b>26</b>
<b>XI.</b>	<b>Footnotes.....</b>	<b>29</b>

## **XII.**

### **I. Introduction<sup>1</sup>**

There are real problems that face low-income families in the United States. Not only do many low-income families live month-to-month, sometimes on fixed incomes, but they also have to deal with statistically higher crime rates and fewer educational opportunities. Many live in blighted communities or inadequate public housing. On top of all that, low-income families are at a higher risk of illness and have a much lower life expectancy.

Walt Disney once said, “I always like to look on the optimistic side of life, but I am realistic enough to know that life is a complex matter.” That’s how I felt while I was writing this note. Looking through the research and pouring over the data, I could not help but feel like the American public was simply a cog in a giant machine controlled by special interests and lobbyists whose goal is to make money at our expense. When you realize the sheer enormity of the system that has developed to influence American behavior in more and more unhealthy ways, I must admit, keeping optimistic is sometimes a tall order.

But not always. The more I researched, the more my understanding of the problems associated with both unhealthy behavior and low economic status led me to believe that there is something we can do to fix the very things which had me so discouraged. By understanding the real complexity of the machine I saw that *we can fix it*. I began to realize that many of the reasons for lower health quality among low-income families arose from policy decisions made

by our elected leaders throughout the years; some because of good intentions, some with questionable motives.

People are complex creatures, so social issues *about* people are complex, as well. We're not one dimensional and our problems aren't, either. If we want to fix those social problems it is imperative that we understand that.

Looking at the relationship between poverty and weight-related problems is no different. Indeed, understanding the interrelated nature of the two problems can get complicated enough. But just because it's complicated it doesn't mean that it cannot be done. Current public policy in the United States is inadequately addressing how weight-related problems are affecting the low-income population because it fails to consider the comprehensive nature of the problem. We cannot fix the problem by focusing only on enacting a new sin tax on sodas or by enacting new regulation of school meal programs. Adjusting food stamp values, in and of itself, will not help low-income Americans live healthier lifestyles.

Let me be clear: there are two problems this paper addresses: (1) weight-related problems that affect the low-income population at a higher level than the United States as a whole; and (2) problems with how those reformers have been approaching the problem for years. Simply put, reform efforts desperately need to connect the dots and create public policy that addresses all of these issues at once in one sweeping attempt at reform. This paper will begin to move our public policy in the right direction.

I will begin by giving a brief overview and statistics regarding both poverty and weight-related issues in America followed by a brief explanation of how the two intertwine.

Understanding the almost symbiotic relationship between the two social ills is essential to understanding how to address them.

Next, I will examine how the Farm Bills have affected our nation's food supply, and how the subsidization of commodity crops in this county has incredibly far-reaching effects. We simply cannot address weight gain issues without addressing one of its biggest causes: food. Our food has become too unhealthy for us, as a nation, to avoid this obesity epidemic any longer. We do not produce food on farms anymore, we make our food in factories subsidized by the federal government; that's something that must to stop.

Then I will talk about school meal programs and how those programs are dependent on how we address agricultural subsidies. We absolutely have to change how we operate our school meal programs to effectively curb the prevalence overweight and obese children among our nation's low-income population. Much in the same way that an uneducated youth will lead to an uneducated adult populace, without a healthy youth population there simply will not be healthy adults.

Next, I will talk about government assistance programs and how those programs are also a major influencing factor with regards to weight-related problems in the low income population. There are many interesting things happening right now with respect to our government assistance programs, some effective reforms are happening at levels of government both local and national.

Following that, I will discuss how the built environment is also affecting low income families and their ability to choose healthier behaviors. Local communities are on the front lines of the fight against weight-related problems, and they can make a huge difference in the outcome. Local governments can encourage the prosperity of local farmer's markets, bringing

the effects of a re-worked Farm Bill directly into the communities. In fact, by stressing the importance of farmer's markets we can make our food supply safer and protect against more illnesses than just those associated with weight gain.

I will also argue that a sin tax (or soda tax or fat tax) will only exacerbate the problem and unfairly burden low income families. Essentially, we have prohibited the market from working effectively to serve our health-related needs for too long. The last thing that the American public can afford to do is to let our government stifle competition in the marketplace through the use of a new tax. Regulation of various sectors can yield some real results, but I fear that a so-called "fat tax" will leave us spinning our wheels.

Finally, I will briefly address how insurance reform is in some ways dependent on our ability to solve these problems. Health care costs have risen to incredible levels, in no small part due to the costs of diseases and illnesses that arise *because* of people's weight. With many low-income patients either relying on the government for insurance coverage or simply relying on emergency care, the price of the obesity epidemic is exponential.

Hopefully you, the reader, leave this paper with a better understanding of why we cannot hope to solve this problem in a piecemeal fashion. Real solutions and real change will need nothing less than a health policy paradigm shift, the factors are too complex and too intertwined to treat them any other way.

## **II. American Poverty and Weight-Related Problems: An Overview**

Approximately 39 million people in the United States are affected by poverty, the highest number since 1960 and the highest percentage of the overall population since 1997.<sup>2</sup> It is a complex issue that is caused by an intricate web of factors.<sup>3</sup> "Poverty and economic distress

result from a complex interaction between the structure of society and the economy, on the one hand, and characteristics of the people who live and work in them, on the other.”<sup>4</sup> For instance, a family can fall below the poverty threshold when one or both of the parents gets laid off from work, from gambling debt, from medical costs, from an accident that leaves a parent unable to work, credit card debt, home foreclosure, and so on. Limiting a discussion of poverty and its causes to one factor does a huge disservice to the problem and cannot possibly lead to a meaningful solution.

But the poverty threshold is not the only measure one can use; rather than classifying families as “poor” based on an arbitrary line in the sand, one can correlate the poverty line to the national annual median income. For example, in 1960 the poverty threshold was about 50% of the annual median income. Today, though, the approximate \$20,000 poverty threshold is about 30% of the annual median income.<sup>5</sup> The idea is that deprivation isn’t an absolute concept. A poverty line that allows for the bare essentials can still be damaging to society, as Adam Smith pointed out over two hundred years ago:

By necessaries I understand not only the commodities which are indispensably necessary for the support of life, but what ever the customs of the country renders it indecent for creditable people, even the lowest order, to be without. A linen shirt, for example, is, strictly speaking, not a necessary of life. The Greeks and Romans lived, I suppose, very comfortably, though they had no linen. But in the present times, through the greater part of Europe, a creditable day-laborer would be ashamed to appear in public without a linen shirt, the want of which would be supposed to denote that disgraceful degree of poverty which, it is presumed, nobody can well fall into, without extreme bad conduct. Custom, in the same manner, has rendered leather shoes a necessary of life in England.<sup>6</sup>

This relative measurement paradigm is more useful for this paper’s present purposes because this paper is essentially about the relation between health and income in a system that has proven unable to address the issue. While low-income families may not go as hungry as

poor families in other countries, the fact of having “bare essentials” has proven to be an inadequate measurement of the struggle. Low-income families may have food, but that food is all too often of lower quality and lower nutritional value. Low-income families may have a roof over their heads, but they quite often do not have the means to live healthy lifestyles or make healthy life decisions. When one especially considers the vast income inequality in the United States today, it becomes clearer that an arbitrary line in the sand simply will not suffice when addressing health inequalities along with income inequalities.

If you live in the United States, odds are that you’re overweight or obese.<sup>7</sup> The number of obese Americans has tripled since the 1960s, today with almost a third of Americans qualifying as “obese.”<sup>8</sup> Obesity has been linked to higher risks of hypertension, diabetes, depression, and sleep apnea.<sup>9</sup> Like poverty, obesity is caused by a wide range of factors and cannot be addressed through one “solution” alone.

Even certain cancers have been linked to obesity.<sup>10</sup> In fact, some experts think that obesity is the single biggest cause of some cancers, after smoking.<sup>11</sup> Both the American diet and the American way of life have changed dramatically over the past 30 years. Our diets are increasingly loaded with fats and sugars, and we are becoming more and more sedentary every day; we simply cannot ignore the societal changes that are going on around us and refuse to adapt our lifestyles accordingly. For instance, we now rely on technology to accomplish tasks for us that 50 years ago would have required manual labor. As one author put it, “a person can: drive to a store rather than ride a bicycle, use a dishwasher rather than wash dishes by hand, and play a video game of basketball rather than a real game.”<sup>12</sup> When analyzing how to address both poverty, weight gain, and their related illnesses together, the analysis gets even more complex.

### **III. The Relationship Between Poverty and Weight-Related Problems**

There can be no doubt that poverty and obesity have become intertwined social ills over the past few decades.<sup>13</sup> What used to be a poor man's problem has now infected all social and economic ranks of American society. Now, however, the percentage of low income Americans who are overweight is higher than that of Americans of higher economic status.<sup>14</sup>

The data suggests that the relationship between poverty and obesity can be cyclical and interrelated in nature, meaning that we cannot begin to address the problem before we understand the complex interplay of all the relevant factors.<sup>15</sup> “[S]ickness, poverty, and obesity are spun together in a dense web of reciprocal causality. Anyone who’s fat is more likely to be poor and sick. Anyone who’s poor is more likely to be fat and sick. And anyone who’s sick is more likely to be poor and fat.”<sup>16</sup>

Economists analyze the paradigm through largely two economic models: a food-choice-restraint model and a broader health-wealth gradient.<sup>17</sup> The first model can help explain weight gain among low-income families<sup>18</sup> while the latter addresses health issues among poor Americans on a more general basis.<sup>19</sup>

The food-choice restraint model basically works like this: poor Americans cannot afford expensive healthy food, but can quite often afford the cheaper, less healthy, alternatives. “[O]ne’s ability to purchase healthy foods falls with income in a standard budget constraint shift fashion because healthy foods (non-energy dense foods) are relatively costly[.]”<sup>20</sup> In discussing

how poverty and weight-related issues interact in the United Kingdom, one general practitioner comments:

A lot of people are on benefits, living from week to week, relying on convenience foods and eating out of the chippy. Give people jobs and the ability to be masters of their own destinies and they will make healthy decisions about their lives. You bring employment into here and I guarantee the pubs will empty, the kids will stay at school and the place will flourish. You can't blame the people when they are victims of circumstances. It's not really a medical problem, it's something for the politicians to sort out. I hope the drop in life expectancy is a turning point and the politicians are called to account. They should hang their heads in shame.<sup>21</sup>

As another commentator put it, "[t]his is not rocket science. Poor health is a well-known feature of deprivation. Mothers are not daft and they do know fat and crisps are bad for children but they cannot afford the alternative . . . Initiatives are not going to change anything unless you've got the cash in your pocket."<sup>22</sup> The commentator refers to price elasticity; when a family on a budget goes to the store to get groceries, they do not have very much wiggle room when it comes to product prices -- they are price *inelastic*. More affluent consumers have more room in their budget to spend on groceries; they are price *elastic*.

The health-wealth gradient essentially establishes that as a person moves higher up the economic ladder, his health will increase proportionately to his economic level.<sup>23</sup> "Health improves with income throughout the income distribution, and poverty has more than a 'threshold' effect on health."<sup>24</sup> "Harmful behavior . . . is negatively associated with income and education . . . and so helps to induce and maintain the gradient."<sup>25</sup> "Several studies find that socioeconomic status predicts health and mortality, not only contemporaneously, but many years after status is measured."<sup>26</sup> In fact, "economists and others have documented the effects of health on earnings in many contexts, perhaps most notably as a proximate cause of retirement."<sup>27</sup>

In other words, a person's health can certainly affect his or her earning capacity many years after a health issue develops.

#### **IV. Reform Agricultural Subsidies and Allow Market Forces to Create a Healthier Food Supply**

To begin to understand how public policy has shaped the poverty/weight paradigm, one must understand where the public policy began. In 1933 as part of the New Deal program, the Roosevelt administration and Congress passed the first Farm Bill.<sup>28</sup> This bill had many objectives: bringing crops back to stability, utilizing surplus crops in a productive way, providing nutritional assistance to children by way of a school meal program, preventing erosion and soil loss, providing crop insurance and credit assurances for subsistence farmers, and building rural farming community infrastructure.<sup>29</sup> The program was meant to keep the agricultural industry stable at a very fragile time in our nation's history, to help small farmers who might not otherwise have been able to survive on their own.

After about thirty years, Richard Nixon's administration changed the way the Farm Bill affected millions of farmers by encouraging the development of large scale "megafarms" that prioritized crop yields above anything else.<sup>30</sup> "For example, New Deal programs such as loan-based market regulations--mainstays in past Farm Bills that protected the family farmer by issuing government-backed loans that need not be repaid if drought, flood, or other unforeseeable events struck--were stripped from the 1973 Farm Bill 'in favor of farm crop payments based on maximizing yields.'"<sup>31</sup> Those new subsidies encouraged farmers to overproduce, because the American taxpayer would cover the costs of that overproduction.<sup>32</sup> Farming was now big business.

As a result of this transition, five crops (corn, cotton, wheat, rice, and soybeans) received almost \$150 million from 1997 through 2006 (more than 80% of all subsidies), even though the big agribusinesses are making record profits.<sup>33</sup> The wealthiest 10% of farm bill recipients now receive over 65% of all subsidies.<sup>34</sup> “Although many Americans have a false perception that the government provides financial support to family farms, three in five farmers receive no subsidies while the richest 5% of farmers each receive a whopping average of \$470,000 annually.”<sup>35</sup> Now, rather than subsidizing the little guy so that he can keep his farm afloat our government is subsidizing big agricultural conglomerates so that they can keep churning out more of the *same five crops* at record pace. Incredibly, more than half of the Farm Bill subsidies go to seven states that produce these five crops.<sup>36</sup>

Every aspect of agriculture has felt the effect of these Farm Bills, causing the quality of our food supply to diminish to dangerous levels. Concentrated animal feeding operations (CAFOs) have become a mainstay of American food production, and “are only possible because of the sheer surplus of corn grown on American farmland that can feed such large groups of animals for meat production.”<sup>37</sup> Because corn is cheap, it has become the main ingredient in most livestock feed. But cows are not supposed to eat corn, their bodies do not digest the corn-based feed the right way.<sup>38</sup> The corn-based feed leads to more virulent bacteria in the livestock’s digestive system, which leads to more virulent bacteria ending up in the animals’ manure.<sup>39</sup> That manure gets on the cows and then into the meat during the slaughtering process.<sup>40</sup> If it is in the meat, it is on our dinner plate.<sup>41</sup>

The problems with the Farm Bills do not end there. Many of the pesticides used in food production today are known to be carcinogenic and/or are classified as endocrine disruptive

chemicals.<sup>42</sup> Over 16,000 pesticides are on the market today,<sup>43</sup> causing 10,000-20,000 farmworker poisonings each year.<sup>44</sup> “These chemicals ‘are synthetic compounds that affect the functioning of the endocrine system by either blocking the effect of naturally produced hormones in the endocrine system or by altering the effect of naturally occurring hormones.’ These chemicals ‘trick the organism's body into believing that they are supposed to play a role in the body's functions,’ but they instead sabotage the body's normal functions after gaining access.”<sup>45</sup> Furthermore, these EDCs have been linked to low sperm counts; breast, prostate, and testicular cancer; and also certain neurological disorders.<sup>46</sup> While the EDCs have been banned in the European Union, they have not been banned in the United States.<sup>47</sup>

The problem created by the Farm Bill subsidies becomes quite apparent when one realizes that the cost of unsubsidized fresh vegetables and fruits has increased almost 40%, while the price of sodas has decreased by almost 25%, between 1985 and 2000.<sup>48</sup> Notably, one of the main ingredients of sodas is high-fructose corn syrup, an ingredient that is made almost entirely from corn.<sup>49</sup> One dollar now buys over 1,200 calories worth of junk food, while that same dollar is only worth about 250 calories worth of whole foods.<sup>50</sup> Simple economics tells us that this drastic price inequality has led many consumers who, especially in today's economy, are on a tight budget to choose low-priced foods over nutrient-rich foods.<sup>51</sup> Accordingly, many Americans even consume *over 50 gallons* of soda a year.<sup>52</sup>

The free market is quite often the perfect tool to use when dealing with a problem largely created by government ineptitude. Studies have shown that when given an option between healthy options offered at a reduced price and unhealthy foods offered at an equally reduced price the consumer will choose the healthy option more often than not.<sup>53</sup> Allowing the market to

reflect this demand for healthier food options will put food with higher nutritional value within reach of many Americans who, today, cannot afford it. Taking the subsidies out of the equation altogether removes the de facto government price cut and puts unhealthy products back on an even playing field with the healthier, organic options. “[A]llowing the market to operate properly with respect to agricultural prices will result in healthier foods on supermarket shelves and in better food decisions as prices of nutritious foods normalize against their less nutritious counterparts.”<sup>54</sup>

While the United States government does provide some regulations of these industrial farming practices, they have proven inadequate to safeguard the public from their immense problems. The EPA must follow the lead of the European Union and ban EDCs, or at least prohibit their usage on food crops. Moreover, the USDA should author regulations putting a cap on the number of animals able to be kept in the same building, and require enough room per animal so that the animal isn’t forced to get manure on itself or in its feed. The USDA should also require industrial farmers to feed cattle a grass-only diet for at least five days prior to slaughter to eliminate most the E.Coli that could be developing in their digestive systems.<sup>55</sup>

These changes must be part of the paradigm-central reform effort, because low-income Americans rely on these subsidized commodity crops as a staple of their diet. Government assistance programs like the School Lunch and Breakfast programs, as well as the Supplemental Nutritional Assistance Program, (“SNAP,” formerly referred to as the Food Stamp program), which benefit many low-income Americans, provide the quintessential example of how agricultural subsidies affect low-income Americans at disproportionately higher rates.

## **V. Increase the Nutritional Value of School Meal Programs**

As previously mentioned, the 1933 Farm Bill was introduced as a way to provide meals to school children during the day in the form of a school lunch program.<sup>56</sup> The Bill would cause farmers to end up with surplus crops, which could then be turned into meals for children. However, the problem used to be malnutrition among school children -- today the situation has been reversed. “[A]ctual practices of Farm Bill ‘nutrition’ programs illustrate that these programs have become nothing more than a way to dump cheap calories from corn and other commodity crops that have no other useful purpose.”<sup>57</sup> What began as a well-intentioned program has developed into an incredibly poor one.<sup>58</sup>

School meal programs serve over thirty million children.<sup>59</sup> Studies have shown that children who are overweight or obese are more likely to be overweight or obese as adults.<sup>60</sup> So by filling school cafeterias with calorie-dense, but nutrient-bare, food, children from poor families have unhealthy eating habits forced on them.<sup>61</sup> In fact, many children receive most of their caloric intake while at school -- and unhealthy foods make up an unhealthy portion of that intake.<sup>62</sup> It is no surprise that the USDA recognizes that schoolchildren aren’t eating enough fruits and vegetables and that their diets are much too high in saturated fats and sodium.<sup>63</sup> Surplus crops *are supposed to be used for school meal programs*; the very same unhealthy food options offered to consumers at large are often the only options schoolchildren have in the lunch line.

In fact, the same problems that low-income families face at the grocery store are present in the school lunch setting: often school with high percentages of low-income students do not serve fresh fruits and fresh vegetables as often as other schools.<sup>64</sup>

Even the White House head chef has recognized that America's school meal programs are not serving our children well:

In 2003, U.S.D.A. spent \$939.5 million dollars buying surplus commodities for School Lunch. Two-thirds of that bought meat and dairy, with little more than one quarter going to vegetables that were mostly frozen; and we should not forget that potatoes are the top selling vegetable in our country. The problem that arose is that between 80 and 85 percent of schools fail the basic government standards for the percentage of fat in the lunches due to the food it supplies schools.<sup>65</sup>

Moreover, changes in the school meal programs must result from the same paradigm-focused-type reforms that have been advocated throughout this paper. We should not only change *what* our children are eating at school, but *how* they are eating it. Changing school breakfasts and lunches into actual sit-down meals, rather than ten minute "eat as fast as you can before the teacher makes you go to your next class" sessions can have positive impacts on the health of our children. "School is the center. Remember those stop smoking campaigns that were taught at school? Kids would come home and throw parents' cigarettes away. School is where you have the kids. School can be the most efficient way to spread good habits. I think having the kids sit at a family table and get used to it at schools — and then bring the parents in to encourage that at home — that would be huge."<sup>66</sup>

Furthermore, The Institute of Medicine has made concrete recommendations to ensure a healthier school meal program,<sup>67</sup> including increasing the amounts of fruits, vegetables, and whole grains; setting both a maximum and minimum level of calories; and focusing on reducing saturated fat and sodium levels in school meals. <sup>68</sup> "The combination results in meals that are nutrient-rich but moderate in calories."<sup>69</sup>

Because children who are overweight or obese are more likely to become overweight or obese as adults,<sup>70</sup> we need to address how school meal programs are run in our public schools.

We need to stop reimbursing schools based on caloric intake<sup>71</sup> and start funding the programs based on nutritional value. We must stop treating our kids as disposals meant to consume surplus corn-modified foods. We also have to fund our schools adequately to reduce the need to rely on contracts with junk food companies. Either the federal or state governments must adopt regulations prohibiting vending machines from offering only unhealthy food options. The New York City Department of Education has already switched vendors who will provide machines that comply with stricter nutritional guidelines.<sup>72</sup> If companies cannot find a way to offer more healthy items in the vending machines, then they should be banned from schools altogether.

## **VI. Use Government Assistance Programs to Provide Incentives for Low-Income Americans to Eat Healthier**

The weight gain/poverty correlation cannot be fully addressed without talking about food assistance programs. The Food Stamp Program provided about \$30.4 billion in food benefits to about 26.5 million individuals each month in 2007.<sup>73</sup> The evidence suggests at least a positive correlation between participating in government food assistance programs and weight-related problems.<sup>74</sup>

Moreover, government statistics show that the “average recipient received \$81 in federal food stamps per month in 2002,”<sup>75</sup> according to a study conducted by research scientists from The Ohio State’s Center for Human Resources. The study used data from the National Longitudinal Survey of Youth, and compared “nearly 4,000 survey participants who used food stamps with almost 6,000 survey participants who did not. They looked at BMI and food stamp use among the participants from 1989 to 2002.”<sup>76</sup> “The average food stamp users saw their BMI go up 0.4 points per year when they were in the program, compared to 0.07 points per year

before and 0.2 points per year after they no longer received the benefits.”<sup>77</sup> In fact, the study found that the longer participants received food stamps, the higher their BMI tended to be.

Jay Zagorsky, co-author of the study and a research scientist at the Ohio State University, said, “I think it would be very difficult for a shopper to regularly buy healthy, nutritious food on that budget.”<sup>77</sup>

Our government, though, appears to recognize this problem. One of the few good things to come out of the 2008 Farm Bill was the \$20 million Healthy Incentive Pilot (HIP) program, which studies the effect that financial incentives have on buying patterns of SNAP benefit recipients.<sup>78</sup> The Government Accountability Office also recently wrote a report on this very subject, finding that by utilizing targeted point of sale incentives benefit recipients would purchase more fresh fruits and vegetables than they would otherwise.<sup>79</sup> “[The Economic Research Service] estimated that a 10 percent reduction in the price of fruits and vegetables would result in increases in the amount purchased, ranging from 6 percent to 7 percent, and would increase consumption by the average [Food Stamp Program] participant from 1.95 cups per day to an estimated 2.08 cups per day. A 20 percent reduction in price would raise consumption by about 1/4 cup, bringing total daily consumption up to 2.20 cups.”<sup>80</sup> The market works.

Interestingly, local communities are also getting on board. Boston has recently teamed with The Food Project<sup>81</sup> to sponsor what is called the “Bounty Bucks” program.<sup>82</sup> More than 82,000 Boston residents participate in SNAP, and those participants can use their benefits at local farmer’s markets.<sup>83</sup> What’s most important, though, is that when participants in SNAP purchase food at the local farmer’s markets, all purchases are matched up to \$10; that means that a \$20

purchase is essentially half priced.<sup>84</sup> Boston is currently one of five cities participating in a joint-voucher program.<sup>85</sup>

The government needs to take the findings from the GAO and turn the HIP into a permanent program, mirrored off of programs like the “Bounty Bucks” program in Boston. Mike Huckabee suggested similar reforms to government food assistance programs when he ran for President in 2008: he suggested increasing the value of food stamps for fresh fruits and vegetables and decreasing the values for unhealthy food items like candy and other junk food as one way to combat weight gain across America.<sup>86</sup> Indeed, The GAO suggests that offering a 10% price set-off would cost anywhere from \$300 to \$500 million,<sup>87</sup> a figure that could be paid for quite easily with an adjustment to subsidies in the next Farm Bill.<sup>88</sup> Jay Zagorsky, a research scientist at the Ohio State University Center for Human Resource Research, was quoted as saying, “Modifying the Food Stamp Program to include economic incentives to eat healthier might be an important tool for fighting obesity[.]”<sup>89</sup>

## **VII. Reform Land-Use and Zoning Policies to Encourage Private Development of Healthier Local Communities**

The “built environment” can be referred to as the environment that humans create.<sup>90</sup> It can include everything from how many businesses are located in an area, what the sidewalks look like, how many parks or recreation facilities there are, where the supermarkets are located, etc.<sup>91</sup> Essentially, the built environment is everything non-natural that you see when you look out the window. The built environment is most certainly contributing to the problems of obesity and poverty.<sup>92</sup>

It should be no surprise that most low income families are located in crowded, urban environments; environments like these do not lend well to healthy habits and practices.<sup>93</sup>

Because of the nature of the areas, they also tend to be less aesthetically pleasing than some suburban neighborhoods may be.<sup>94</sup> Or, as one scholar argues, “[o]besity and inactivity are not necessarily personal choices, nor are they merely the result of poor eating or exercise habits. The physical environment plays a crucial role in shaping lifestyles and activity patterns.”<sup>95</sup>

Moreover, low income neighborhoods have less supermarkets than more affluent neighborhoods,<sup>96</sup> and the stores they do have tend to offer products of lower quality or simply do not offer healthier items altogether.<sup>97</sup> “[W]hen shopping for food, poor persons in inner cities face a disparity in selection. The supermarkets in their neighborhoods do not carry the same products as their suburban counterparts. . . .”<sup>98</sup> The effect of agricultural subsidies is quite apparent here. The “massive food industry built on commodity crops, namely corn and soybeans, that present[s] the American public with fewer healthy options than might otherwise exist . . . [makes] corn-based and soy-based food items appear cheaper than their more nutritious competitors in the supermarket aisles.”<sup>99</sup> Those artificially cheap products, much of the time, are the only things that low income families can afford to buy.<sup>100</sup>

Low income neighborhoods usually do not have many play areas for children nor do they have many places for adults in the neighborhood to get exercise.<sup>101</sup> There are, however, a higher concentration of fast food chains in low income neighborhoods.<sup>102</sup> Healthy options simply do not exist for many Americans who would utilize them if they could.<sup>103</sup>

Our local governments can go a long way towards fostering healthy lifestyles among their citizens. Land use and zoning laws can be passed or changed to promote (or establish) local farmer’s markets in urban areas,<sup>104</sup> providing alternatives to the usual corn-infused supermarket shelves. Allowing the farmer’s markets to compete directly with big supermarket chains will

undoubtedly lead towards supermarkets beginning to offer healthier foods at lower prices, too.<sup>105</sup> Those same zoning can work to prohibit a certain number of fast food restaurants in a given area, or at least prohibit a certain number based on the number of supermarkets or farmers markets.<sup>106</sup>

The USDA has gotten behind farmer's markets, too, recently launching a pilot program called "Know Your Farmer, Know Your Food."<sup>107</sup> The USDA describes the program as, "a department-wide collaboration that will connect people more closely with the farmers who supply their food and increase the production, marketing and consumption of fresh, nutritious food that is grown locally in a sustainable manner."<sup>108</sup> "In September of 2009, Agriculture Deputy Secretary Kathleen Merrigan announced that \$4.8 million would be awarded to local organizations in 14 states to build community food systems.<sup>109</sup> "Building local sustainable food systems to be proactive in fighting hunger and obesity is a priority for the Obama Administration, and USDA's 'Know Your Farmer, Know Your Food initiative will help meet that goal," Merrigan said.<sup>110</sup> "These grants put funds in low-income communities that struggle with access to healthy food and they are an important step toward achieving our goal of having healthy, nutritious food available to everyone, especially children."<sup>111</sup> The grants would go towards funding "food policy council training, urban agriculture, new farmers on preservation farmland, promotion of native food sovereignty, youth, urban and rural food production projects and community food assessments."<sup>112</sup>

Agriculture Secretary Tom Vilsack said, "There is, I think, a movement in the country where people are very interested in knowing where their food comes from . . . as we focus on health care, and as the health care debate focuses more specifically on prevention and wellness, people are going to be exceedingly interested in fresh food and food that's nutritious."<sup>113</sup>

Notably, these farmer's markets accept food stamps, and those food stamps are worth twice as much as they are in the bigger supermarket chains.<sup>114</sup>

Local governments can use their eminent domain power to create more green space to provide an area for people to spend time outside<sup>115</sup> -- increasing energy expenditure can reduce some of those extra calories we accumulate throughout the day.<sup>116</sup> The built environment can be used to increase overall wellness and combat the effects of weight gain and weight-related illnesses if local governments can do it right.<sup>117</sup>

However, these land use reforms mean nothing unless enacted with the same adjustments to our food supply and government assistance programs. Organic food that is too expensive when compared to sodas and subsidized food is expensive no matter the location; the local, healthy options have to be affordable before the national low-income population will be attracted to them.

#### **VIII. Recognize that a Sin Tax is Unnecessary, Unwarranted, and Inappropriate to Deal with Weight-Related Problems**

Taxes are a convenient way to deal with social ills and are often thought of as a silver bullet.<sup>118</sup> For instance, San Francisco Mayor Gavin Newsome proposed a tax on sugary soft drinks, with the tax profits going to encouraging healthier eating and more exercise among city residents.<sup>119</sup> In 2004, Oakland's mayor proposed taxing alcohol and junk food to solve California's budget woes.<sup>120</sup>

In this case, a "fat tax" or "soda tax" or "sin tax" (whatever one wants to call it) simply will not work. Proponents of the proposal essentially set up their argument like this:

- (1) Unhealthy food prices are too cheap;
- (2) Taxing unhealthy options will make the prices rise;
- (3) Higher prices will remove the incentive to purchase those foods; so

- (4) Less people will buy unhealthy foods; and
- (5) Revenue gained could be put towards subsidizing healthier food items.

As proof-of-concept, many sin tax advocates cite taxes on cigarettes and alcohol to show that taxes can reduce the prevalence of undesired behavior throughout society.<sup>121</sup> But, what those advocates forget is that cigarette smoking in America didn't really start to decline until *social attitudes* towards smoking started to change; indeed, one could argue that the decline of individuals who smoked happened less because of taxes and more because it began to be perceived as something undesirable.<sup>122</sup>

Moreover, it's not the job of taxes to influence social policy, in the first place. Taxing is, and should always be, about generating revenue.<sup>123</sup> Social policy should be influenced through other types of legislation or through public awareness programs, not through the state's taxing power. In other words, "government should regulate crime, not vice."<sup>124</sup> In fact, *why tax products when removing (or adjusting) government subsidies would have the same effect?* If we can adjust how we subsidize unhealthy foods, then there is no need to levy an additional tax. We can adjust subsidies to give money to organic farmers producing healthy food more easily than we could distribute tax revenue. For instance, there wouldn't be a dollar for dollar subsidy to organic farmers from a sin tax; all taxes have a certain amount of deadweight loss before anybody can judge the total amount of revenue the tax generates.<sup>125</sup> The result this type of tax would be to give money to the big agribusinesses and then tax it right back -- let's cut out the middleman.

Furthermore, a sin tax would burden low income families much more than it would burden Americans of higher economic status.<sup>126</sup> Low income families are price-inelastic so they do not have much room in their pocketbooks for an additional, and unnecessary, tax on unhealthy

food items. As one scholar notes, “after poorer taxpayers attempt to provide themselves with the basic necessities of life, they do not have any real tax- paying ability.”<sup>127</sup> A sin tax would only serve to increase dependence on government assistance programs or already struggling food banks to provide food to the most vulnerable among us. Sin taxes “actually make [the poor] worse off to the benefit of those who would otherwise pay higher property and income taxes.” “[L]ike any flat point-of-sale tax, [a sin tax] will consume a greater proportion of a poorer person’s income, and is thus automatically regressive.”<sup>128</sup> Low income families spend a disproportionate amount of their income on food, they simply do not have the room in their budgets to support a new government tax.<sup>129</sup> “Food is certainly a necessity that consumers will not be able to give up, and while buyers have a choice in the kinds of food they buy, their choices are constrained by affordability and influenced by convenience, and it is unlikely that junk food will ever disappear entirely.”<sup>130</sup>

Importantly, the burden of sin taxes doesn’t fall proportionately on those committing the “sin,” either.<sup>131</sup> For instance, a person who is morbidly obese will not pay any more in taxes when buying a Mountain Dew than will a person within normal BMI range. That means that even if low income families eat better, lose weight, and become healthier, they will still be burdened by taxes aimed to influence behavior of those in other income brackets.<sup>132</sup>

#### **IX. Enact Additional Reforms to the Health Care Industry that Take Into Account the Costs Incurred as a Result of Weight-Related Problems Among Our Low-Income Population**

Few topics are as “hot button” in today’s political climate as health care reform. President Obama campaigned for it for almost two years, and now is attempting to deal with a stubborn Congress that is reluctant to enact his promised reforms. Indeed, many Americans want

some sort of health care reform but, like Congress, are undecided on what the best way to reform the health care industry is.<sup>133</sup> The bottom line is that we cannot successfully address weight-related issues in our low-income population without the health care industry. Wellness and preventative health programs have shown to be successful in preventing obesity in the general population; it's important that we implement these reforms and make them more available to people of low income.

Moreover, decreasing the number of overweight and obese people in our country can have incredibly beneficial effects on the cost of health care generally: “The annual healthcare cost of obesity in the US has doubled in less than a decade and may be as high as 147 billion dollars a year[,]” according to a new study conducted by RTI International, the Agency for Healthcare Research and Quality, and the US Centers for Disease Control and Prevention (CDC).<sup>135</sup> The rise in obesity over the last decade has added more than \$40 billion to health care bills, and obesity is now responsible for over 9% of medical costs.<sup>136</sup> It is worthwhile to note that costs associated with obesity now account for almost 12% of Medicaid costs.<sup>137</sup> While Medicare has the highest prevalence of overweight and obese people combined, Medicaid has the highest number of obese patients.<sup>138</sup> “The main driver of the increased economic burden of obesity is that more people are obese than ever before, not that medical care is more expensive[.]”<sup>139</sup>

Since 2000, private insurance coverage has fallen in every age group.<sup>140</sup> “Overall health insurance coverage, under either a public or a private plan, has fallen among Americans in every adult age group.”<sup>141</sup> Indeed, “[t]he coverage rate dropped more than 5 percentage points among 25-34 year-olds and fell 4.3 percentage points in the population between 35 and 54.”<sup>142</sup>

Americans in the bottom tenth of the income distribution . . . consume medical care that costs 104% of their gross money income. To receive this care they must pay health insurance premiums and doctor, hospital, and pharmacy bills that represent 24% of their gross money income. The remainder of the care they receive is paid by health insurers or is received as uncompensated care from providers. If insurance reimbursements and the value of uncompensated care were counted in households' incomes, we would have to increase the average household income in the bottom one-tenth of the income distribution by 80%.<sup>143</sup>

In other words, the enormous costs that are shouldered by the public because of uncompensated care could be reduced quite substantially by addressing weight-related problems head on.

Wellness and preventative health programs have proven successful in reducing overweight and obese individuals, and the illnesses associated with their weight. The Obesity Treatment and Wellness Act of 2009,<sup>144</sup> introduced in the House of Representatives in June of 2009, would “[amend] title XIX (Medicaid) of the Social Security Act to require Medicaid coverage of medical nutrition therapy to treat or prevent the progression of a chronic condition or disease which an individual is considered as having, or at risk of developing, as the result of being overweight and obese.”<sup>145</sup> The author of the proposed legislation, Rep. Kathleen Dahlkemper<sup>146</sup> has recognized that if we “are serious about reforming our healthcare system, we need to get serious about controlling these preventable costs.”<sup>147</sup>

To that end, Rep. Dahlkemper has also introduced the Healthy Communities Act of 2009.<sup>148</sup> According to her, the Healthy Communities Act would set up “a five-year, public-private community grant program to combat obesity . . . [T]he bill would direct the secretary of Health and Human Services to award grants to communities who can form a diverse coalition of stakeholders, including parents, hospitals, school districts, health insurance companies, pediatricians and local employers.”<sup>149</sup> “The program’s emphasis would be on physical exercise, nutritional counseling and obesity prevention education. Each year, the program would have to

meet certain benchmarks with regard to reducing obesity in order to continue to receive funding.”<sup>150</sup> As such, she says, the Healthy Communities Act will “not only demonstrably improve the health and well-being of the individual but improve the overall environment to encourage sustainable and healthy living.”<sup>151</sup>

Congress should pass Rep. Dahlkemper’s bills immediately. Medicaid insures many low-income individuals and the Obesity Treatment and Wellness Act would go a long way to providing people with an opportunity to live better, healthier lives. Reforming the insurance industry to provide coverage for everybody (whether it be a single-payer system or reforms based on free-market principles) cannot happen until we get costs under control. We cannot get costs under control until we address the costs associated with preventable diseases like those associated with an individual’s weight. Therefore, it is not merely just the *right* thing to do to address these problems, but the *most cost-effective* thing to do.

## **IX. Conclusion**

In conclusion, we have to address weight-related issues in our low income population from a variety of angles to satisfactorily address the problem at all. We have to begin by addressing the Farm Bills and how they have allowed big agribusinesses to hijack our food supply. We have to adjust how we subsidize the agricultural industry to favor healthier foods.

Next, we have to reform the school meal programs. Our schools should offer our children healthy options in the cafeteria, but that will be hard to do without fixing the Farm Bill, first. Basically, if we want to stop “dumping” unhealthy food into school meals we have to eliminate the need to dump it in the first place.

Then, we also have to reform food assistance programs. Because such a large number of families rely on food assistance programs, using those programs to encourage healthier habits can go a long way to help. By adjusting our crop subsidies to favor healthier foods, we can put the food assistance programs to work to solve the problem because the healthier foods will then be the most attractive foods to purchase. Indeed, our governments can begin to assist by enacting programs like Boston's "Bounty Bucks" program -- a perfect example of how government and the private sector can partner together to solve this issue.

The local governments can also help address the problems by using their zoning powers. Zoning areas in ways to encourage local farmer's markets and promote their sustainability will provide access to healthier foods for thousands of Americans. Promoting local farmer's markets will also result in the localization of our food supply, allowing us to deal with contaminations on a more efficient basis that poses less of a risk to consumers as a whole. For price-inelastic consumers, promoting a localized food supply decreases the risk that low-income families will fall victim to contaminants in the subsidized food supply. So, low-income families then not only have better access to more nutritional food, but *safer* food.

It is important to deal with all of these contributing factors on a scale that accounts for their complex interactions. There's no one silver bullet that will address the problems on a paradigm scale, which is what proponents of a sin-tax based on unhealthy food will do. Sin taxes seem like a convenient solution, and that's precisely what they are: convenient. They are *not* solutions. A new "fat tax" would only serve to place a higher burden on the American low-income population, and still would probably not solve the problem. It's quite apparent that *lowering prices* of healthy foods will lead to an increase in their consumption, why in the world

would we want to ignore that? Indeed, this is one situation where government needs to let the market work the way it is supposed to: freely.

Our ability to deal with weight-gain related problems also impacts our ability to reform the health care industry, and vice versa. We can use Medicaid to cover wellness and preventative health programs to low-income families, which would drive down costs as much as twelve percent. By promoting healthier habits through Medicaid we can communicate directly with patients and provide direct care that not only benefits the patients but our national pocketbook, as well.

There is no reason we cannot do this if we take an honest look at how we've been approaching the problem up until this point. The time for incremental measures has to end. We need a smarter way forward and the solutions offered in this paper will at least make strides in the right direction.<sup>152</sup>



- <sup>1</sup> I am indebted to James Sidney for teaching me, a lowly Philosophy major, what I needed to know about economics to write intelligently on this topic.
- <sup>2</sup> U.S. CENSUS BUREAU, *Income Poverty and Health Insurance Coverage in the United States: 2008* 20 (2009). In the United States, “[a] family is counted as poor if its pretax money income is below its poverty threshold. Money income does not include noncash [sic] benefits such as public housing, Medicaid, employer-provided health insurance and food stamps.” National Poverty Center, University of Michigan, *Poverty Facts*, <http://npc.umich.edu/poverty/> (last visited Nov. 8, 2009). (The Census Bureau provides a complete list of poverty thresholds at <http://www.census.gov/hhes/www/poverty/threshld.html>)
- <sup>3</sup> MARION CRAIN AND ARNE L. KALLEBERG, INTRODUCTION, *ENDING POVERTY IN AMERICA: HOW TO RESTORE THE AMERICAN DREAM* 5 (Sen. John Edwards, Marion Crain, & Arne L. Kalleberg, eds., The New Press in conjunction with the Center of Poverty, Work and Opportunity University of North Carolina at Chapel Hill) (2007).
- <sup>4</sup> *Id.*
- <sup>5</sup> Jared Bernstein, *Economic Opportunity and Poverty in America*, The Economic Policy Institute, Feb. 26, 2007, available at [http://www.epi.org/publications/entry/webfeatures\\_viewpoints\\_econ\\_oppty\\_and\\_poverty/](http://www.epi.org/publications/entry/webfeatures_viewpoints_econ_oppty_and_poverty/)
- <sup>6</sup> John Cassidy, *Relatively Deprived*, *The New Yorker*, April 3, 2006, available at [http://www.newyorker.com/archive/2006/04/03/060403fa\\_fact](http://www.newyorker.com/archive/2006/04/03/060403fa_fact)
- <sup>7</sup> THE ROBERT WOOD JOHNSON FOUND., AMERICAN HEART ASSOCIATION, *A Nation at Risk: Obesity in the United States*, 9, available at <http://www.americanheart.org/presenter.jhtml?identifier=3030570>.
- <sup>8</sup> NATIONAL CENTER FOR HEALTH STATISTICS, *Health, United States, 2008* 336 (Table 75) (2009). (Obesity rate from 1960-62 was 13.3%, from 2003-06 it was 34.1%)
- <sup>9</sup> Benjamin Montgomery, *The American Obesity Epidemic: Why the U.S. Government Must Attack the Critical Problems of Overweight & Obesity through Legislation*, 4 *J. HEALTH & BIOMED. L.* 375, 379 (2008).
- <sup>10</sup> William S. Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 *STAN. ENVTL. L.J.* 213, 291-93 (2009).

<sup>11</sup> Associated Press sports staff, *Obesity Could Become Top Cancer Cause*, Cleveland.com, Sept. 24, 2009, [http://www.cleveland.com/healthfit/index.ssf/2009/09/obesity\\_could\\_become\\_top\\_cance.html](http://www.cleveland.com/healthfit/index.ssf/2009/09/obesity_could_become_top_cance.html).

Being overweight or obese accounts for up to 8 percent of cancers in Europe. Experts said that figure is poised to increase substantially as the obesity epidemic continues, and as major causes of cancer, such as smoking and hormone replacement therapy for menopausal women, drop dramatically.

"Obesity is catching up at a rate that makes it possible it could become the biggest attributable cause of cancer in women within the next decade," said Andrew Renehan, a cancer expert at the University of Manchester. Renehan presented his findings to a joint meeting of the European Cancer Organisation and the European Society for Medical Oncology in Berlin on Thursday.

Renehan and colleagues designed a model to estimate the number of cancers that could be blamed on being fat in 30 European countries. In 2002, they calculated that 70,000 cases of cancer out of about 2 million cancer cases were attributable to being overweight or obese. By 2008, the number had jumped to at least 124,000.

Colorectal cancer, breast cancer in menopausal women and endometrial cancer accounted for 65 percent of all cancers linked to being fat. Renehan said that in the U.S., some studies found obesity was responsible for up to 20 percent of cancers.

*Id.*

<sup>12</sup> Montgomery, *supra* note 9.

<sup>13</sup> Daniel Engbar, *Give Me Your Tired, Your Poor, Your Big Fat Asses*, Slate, Sept. 28, 2009, <http://www.slate.com/id/2229523/>.

<sup>14</sup> News-Medical.net, *Obesity Disproportionately Burdens Low-Income, Ethnic Minority Populations*, <http://www.news-medical.net/news/2004/12/02/6603.aspx> (last visited Dec. 3, 2009).

<sup>15</sup> Engbar, *supra* note 13.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Seth S. Martin, *From Poverty to Obesity: Exploration of the Food Choice Constraint Model and the Impact of an Energy-Dense Food Tax*, *American Economist*, October 1, 2005, available at <http://www.allbusiness.com/accounting/1086324-1.html>

<sup>19</sup> See generally Angus Deaton, *Policy Implications of the Gradient of Health and Wealth*, 27 *HEALTH AFFAIRS* 2, 13 (2002).

<sup>20</sup> Martin, *supra* note 13.

<sup>21</sup> Peter Marsh, THE SOCIAL ISSUES RESEARCH CENTRE, *Poverty and Obesity*, March 15, 2004, [http://www.sirc.org/articles/poverty\\_and\\_obesity.shtml](http://www.sirc.org/articles/poverty_and_obesity.shtml).

<sup>22</sup> *Id.*

<sup>23</sup> See Deaton, *supra* note 18.

<sup>24</sup> *Id.* at 14.

<sup>25</sup> *Id.* at 18.

<sup>26</sup> <sup>19</sup> *Id.* at 16.

<sup>27</sup> *Id.*

<sup>28</sup> <sup>21</sup> Eubanks, *supra* note 10 at 219.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 224.

<sup>31</sup> *Id.* at 225

<sup>32</sup> *Id.* at 226. Indeed, the “sell at any price” mentality has had devastating effects all around the world. “Just as immense overproduction of subsidy-dependent commodity crops depresses domestic prices, American subsidies result in depressed global commodity prices that severely affect the ability of farmers in the developing world to survive financially.” *Id.* at 234. “Not only do farmers in developing nations feel the immense burden placed on their continued survival, but most inhabitants of the developing world suffer from poverty and hunger that is due at least in part to U.S. agricultural subsidies.” *Id.* at 235. It’s no surprise that 75% of people living in extreme poverty (less than \$2 per day) are farmers. *Id.* at 236.

The libertarian-leaning Reason Foundation has produced a short eight-and-a-half-minute documentary as part of the Drew Cary Project (yes, the star of *The Drew Cary Show*) regarding agricultural subsidies and their effect on not only the national market, but the international one as well. The Reason Foundation, In the commentary provided along with the video, Reason states:

Consider these facts. Ninety percent of all subsidies go to just five crops: corn, rice, cotton, wheat, and soybeans. Two thirds of all farm products—including perishable fruits and vegetables—receive almost no subsidies. And just 10 percent of recipients receive 75 percent of all subsidies. A program intended to be a “temporary solution” has become one of our government’s most glaring examples of corporate welfare.

U.S. taxpayers aren’t the only ones who pay the price. Cotton subsidies, for example, encourage overproduction which lowers the world price of cotton. That’s great for people who buy cotton, but it’s disastrous for already impoverished cotton farmers in places such as West Africa.

The video can be found at <http://reason.tv/video/show/agricultural-subsidies>.

What many Americans also do not realize, Eubanks says, is that American farm policy has lead directly to an increase in illegal immigration. *Eubanks, supra* note 10, at 238. “Mexican immigration to the United States over the past decade provides a poignant example of the Farm Bill’s impact in this context. During that time, ‘an estimated 1.4 million Mexicans have been forced off their lands in search for work . . . north of the border . . . because of [f]ree trade policies and the ‘dumping’ of cheap U.S. subsidized corn [that has] devastated Mexico’s traditional agriculture.’” *Id.* Moreover, “The surge of immigrants from Mexico to the United States over the last decade “is inextricably linked to the flow of [subsidized, cheap] American corn in the opposite direction.” *Id.* (citations omitted).

<sup>33</sup> *Id.* at 227. Eubanks continues:

Since corn production alone accounts for 25% of U.S. cropland and much more is committed to growing wheat, rice, soybeans, and cotton because of their subsidy value, farmers are using the majority of American cropland for a few low-nutrient crops solely because these crops are favored by federal agricultural policy. Second, Farm Bill subsidies have created a massive food industry built on commodity crops, namely corn and soybeans, that present the American public with fewer healthy options than might otherwise exist.

*Id.* at 279-80.

<sup>34</sup> *Id.* at 228.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* “With the exception of Texas and Illinois, these states tend to be sparsely populated, which gives the politically active agribusiness industry amplified congressional power to control national farm policies because of the inequitable senatorial distribution discussed above.” *Id.*

<sup>37</sup> *Id.* at 259.

<sup>38</sup> Corn Fed Cattle: Bigger Cows, Bigger E. Coli Threat, More Foodborne Illness, NBA Food Advocate, <http://www.nbafoodadvocate.com/corn-fed-cattle-bigger-cows-bigger-e-coli-threat-more-foodborne-illness-1177> (July 27, 2009).

Prior to World War II, most beef was “grass finished”, meaning that from start to finish of the cows life, grass was the feed of choice for ranchers. In grass finished beef, before the cow is sent to slaughter, grass is the only food used to sustain the cow. Grass feeding is an effective way to nourish cows as grass is their natural food. The end result is a leaner but more natural beef.

But after the war, a new practice began to gain prevalence among ranchers, the “corn finished” cow. For anywhere from 60 days to 120 days before slaughter, cattle are feed and almost exclusive diet of corn. The corn rich diet fattens the cattle faster and allows for year round beef production in colder climates. The fatter corn fed cows have a more marbled meat than grass fed cows and this is what the consumer in today’s beef market has come to know as the standard.

Though “corn finishing” produces bigger, fatter cows in less time, corn is not a natural diet for a cow. Because of this unnatural corn rich diet, some unhealthy side effects take place. Most notably, a higher incidence of *E. coli* O157:H7 occurs in corn fed beef than in grass fed beef. In 1998, a Cornell University study revealed that cows fed on a natural grass diet had at least 80% less *E. coli* O157:H7 than grain fed cows.

The problem is that the corn heavy diet acidifies the cow’s digestive tract. Under normal circumstances *E. coli* O157:H7 is killed by stomach acids. But the increased acidity in the cow’s stomachs allows for the more acid resistant *E. coli* bacteria to survive and replicate. When these acid resistant *E. coli* enter the food supply, it is especially dangerous because a person’s primary defense against *E. coli*, stomach acid, is now useless.

*E. coli* O157:H7 is responsible for the majority of hemolytic uremic syndrome (HUS) cases in the U.S. and hemolytic uremic syndrome (HUS) is not something to scoff at; it is a very real threat and it can be devastating.

*Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Michael Moss, *E. Coli Path Shows Flaws in Beef Inspection*, The New York Times, Oct. 3, 2009, available at [http://www.nytimes.com/2009/10/04/health/04meat.html?\\_r=2&pagewanted=all](http://www.nytimes.com/2009/10/04/health/04meat.html?_r=2&pagewanted=all).

Ground beef is usually not simply a chunk of meat run through a grinder. Instead, records and interviews show, a single portion of hamburger meat is often an amalgam of various grades of meat from different parts of cows and even from different slaughterhouses. These cuts of meat are particularly vulnerable to *E. coli* contamination, food experts and officials say. Despite this, there is no federal requirement for grinders to test their ingredients for the pathogen.

*Id.*

[C]orn-fed livestock in CAFOs produce tons of manure in a small space, creating a breeding ground for some of the deadliest bacteria known to man. *E. coli*, for example, derives from animal manure and has mutated into numerous drug-resistant strains such as 0157:H7. This lethal strain of *E. coli*, never seen before 1980, gained notoriety in 2006 when an outbreak traced to Californian spinach farms resulted in many illnesses and a public health scare. The likely cause? Water contaminated by livestock manure from upstream CAFOs. Therefore, rather than creating breeding pools for bacterial disease in the form of corn-dependent CAFOs, our agricultural policies must become more forward-thinking[.]

Eubanks, *supra* note 10 at 279.

<sup>41</sup> *Id.*

<sup>42</sup> Eubanks, *supra* note 10 at 277.

<sup>43</sup> *Id.* at 276.

<sup>44</sup> *Id.* at 277.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 278.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 287.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 288. Eubanks states: “[t]hus, if the Farm Bill either subsidized healthy fruits and vegetables at the same rate as unhealthy commodity crops or if the Farm Bill allowed the free market to work properly so that healthy and unhealthy foods are on equal footing, the evidence shows that consumers would make better health decisions for themselves and their families.” *Id.* at 288.

<sup>54</sup> *Id.* at 289.

<sup>55</sup> NBA Food Advocate, *supra* note 38. See also FOOD, INC., (River Road Entertainment, Participant Media 2009).

<sup>56</sup> Eubanks, *supra* note 10 at 219.

<sup>57</sup> *Id.* at 274-75.

<sup>58</sup> “Processed commodities and other commercially prepared food products, such as pizza, breaded chicken nuggets, beef patties and burritos, accounted for 40 percent of the lunch entrees available. These menu items were among the top contributors of calories, fat and sodium in the lunches.” *Improving Child Nutritional Policy*. Shockingly, “Only 8 percent of schools offered lunches that were consistent with the 2005 Dietary Guidelines recommendation for fiber, and no schools met the recommendation for sodium.” *Id.*

<sup>59</sup> FOOD AND NUTRITION SERV., U.S. DEPT. OF AGRIC., NATIONAL SCHOOL LUNCH PROGRAM, 1 (2009) *available at* <http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactSheet.pdf>

<sup>60</sup> L. Bellows, J. Roach, Colorado State University Extension, *Childhood Overweight*, May 2009, <http://www.ext.colostate.edu/pubs/foodnut/09317.html>

<sup>61</sup> “The USDA programs provide meals to children in about 95 percent of public schools and many private schools across the country. On an average day in 2007, 30.5 million children participated in the National School Lunch Program, and about 10 million participated in the School Breakfast Program.” THE ROBERT WOOD JOHNSON FOUND., *Improving Child Nutrition Policy: Insights from National USDA Study of School Food Environments*, 3, *available at* [http://schoolmealsmatter.org/resources/pdfs/food/Improving\\_Child\\_Nutrition\\_Policy.pdf](http://schoolmealsmatter.org/resources/pdfs/food/Improving_Child_Nutrition_Policy.pdf).

Not unsurprisingly, “[m]ost of these meals—59 percent and 80 percent, respectively—were served free or at a reduced price to children from low-income families.” *Id.*

<sup>62</sup> Unhealthy, or “competitive” foods (those offered in vending machines, a la carte lines, school stores, etc.) are “available in 73 percent of elementary schools, 97 percent of middle schools and 100 percent of high schools.” *Id.*

<sup>63</sup> FOOD AND NUTRITION SERV., U.S. DEPT. OF AGRIC., DIET QUALITY OF AMERICAN SCHOOL-AGE CHILDREN BY SCHOOL LUNCH PARTICIPATION STATUS: DATA FROM THE NATIONAL HEALTH AND NUTRITION EXAMINATION SURVEY (SUMMARY) 1 (2008), *available at*

<http://www.fns.usda.gov/ora/MENU/Published/CNP/FILES/NHANES-NSLPsummary.pdf>

<sup>64</sup> “Forty-two percent of schools did not offer fresh fruits or raw vegetables daily in the school lunch, and whole-grain bread products were offered in fewer than 5 percent of lunches overall.” THE ROBERT WOOD JOHNSON FOUND., *supra* note 61, at 3. Moreover, “[a]mong schools with a higher percentage of low-income students, fresh fruits and raw vegetables were served significantly less often as part of National School Lunch Program meals.” *Id.*

<sup>65</sup> Tara Parker Pope, *Obama’s New Chef Skewers School Lunches*, Well Blog, NYTimes.com, January 29, 2009, <http://well.blogs.nytimes.com/2009/01/29/new-white-house-chef-skewers-school-lunches/> (last visited March 22, 2010).

<sup>66</sup>Tara Parker-Pope, *Slowing Down School Lunch*, Well Blog, NYTimes.com, Feb. 20, 2009, <http://well.blogs.nytimes.com/2009/02/20/slowing-down-school-lunch/> (last visited Feb. 17, 2010).

<sup>67</sup> “The committee makes recommendations for Meal Requirements, which encompass two types of standards: 1) standards for menu planning and 2) standards for meals as selected by the student (in contrast to those that are simply offered to students).” THE INSTITUTE OF MEDICINE, *School Meals: Building Blocks for Healthy Children*, 1, available at [http://schoolmealsmatter.org/resources/pdfs/food/School\\_Meals\\_Building\\_Blocks.pdf](http://schoolmealsmatter.org/resources/pdfs/food/School_Meals_Building_Blocks.pdf).

<sup>68</sup> This table sets out the difference between the current school meal nutritional requirements and shows how the IOM’s approach differs. *Id.* Notice the calorie requirements:

Type of Specification	Current Requirements	Recommendations
Fruits	Considered together as a fruit and vegetable group. No specifications for the type of vegetable	Required daily amount increased
Vegetables		Two servings required daily, amount increased. Must include dark green, bright orange, legumes, starchy, and other vegetables each week
Grains/ Breads	No requirement for whole grains	At least half must be whole grain rich
Milk	Whole, reduced-fat, low-fat, fat-free milks (plain or flavored)	Fat-free (plain or flavored) and plain low-fat milk only
Calories	Must meet minimum level	Must be within minimum and maximum level
Sodium	None (decreased level recommended)	Gradually but markedly decrease sodium to the specified level by 2020

*Id.*

It seems almost elementary that there would be a calorie limit placed on school meals. The fact that such limit did not exist when the school meal programs were enacted, however, highlights the need for paradigm-driven reform. Not only did not drafters of the school meal programs fail to include a maximum caloric requirement in the program, but the omission shows that such requirement was not even thought to be necessary. Indeed, the only reason *not* to include a maximum caloric level is that the legislature didn’t think it was needed.

<sup>69</sup> *Id.* On February 23, 2010, Agriculture Secretary Tom Vilsack delivered remarks at the National Press Club regarding school meal programs and the need for reform. Among the pertinent remarks:

At the beginning of the 20th century, school districts and community organizations began providing meals to ensure that school children wouldn't sit hungry in our nation's classrooms. The federal government joined the effort in the 1930's, providing excess commodities to schools. But the leaner years of the Second World War led to a drop in available commodities – and resulted in fewer students being served. Immediately after the War, our leaders understood the importance of investing in good nutrition to ensure that the country would never want for healthy, strong, young people to serve in uniform. And so, in 1946, President Harry Truman signed the National School Lunch Act, declaring that - “in the long view, no nation is healthier than its children.

...

You might be shocked to learn that in 2008, 16.7 million American children lived in households that had difficulty putting enough food on the table. And in over 500,000 households, children skipped meals or ate less than they needed because of a lack of resources. At the same time nearly one third of all children in America are obese or over-weight. This is an epidemic.

...

A recent Institute of Medicine study commissioned by USDA sounded an alarm about the nutritional value of school meals. The study concluded that our children are eating too much sugar, salt, and fats and too few fruits, vegetables, whole grains, and low fat dairy products. This mix may help explain why one half of the calories consumed by children ages 6-11 in this country are "empty" calories. USDA is working as aggressively as possible to implement changes based on the Institute of Medicine recommendations to better align our meals with the Dietary Guidelines, but we also know that the improved foods will require increase costs for local schools. That is why I am calling on Congress to increase the reimbursement rate for the National School Lunch Program, to help schools purchase the whole grains, fruits, vegetables, and low fat and fat free dairy products that our children need to grow strong and healthy. Let me be clear -- our expectation is that school meals will improve as USDA issues new meal requirements that emphasize fruits, vegetables, whole grains, and low-fat dairy products. Any increases in the reimbursement rate must be conditioned on the fact that the increases will pay for improved quality and improved nutrition, not just the status quo.

U.S. DEPT. OF AGRIC., Tom Vilsack, Remarks as Prepared for Delivery: Agriculture Secretary Vilsack Presents Obama Administration's Priorities to Improve National School Lunch and Breakfast Programs, available at [http://www.schoolmealsmatter.org/news/2010\\_02\\_23\\_Vilsack\\_Remarks.pdf](http://www.schoolmealsmatter.org/news/2010_02_23_Vilsack_Remarks.pdf).

<sup>70</sup> Bellows, *supra* note 46. “The prevalence of overweight children in the United States has increased dramatically in recent years. Recent reports have reached epidemic levels, with approximately 16 percent of children, 2 to 19 years old, classified as overweight . . . Excess weight has both immediate and long-term consequences and the current issue demands serious attention.” *Id.*

<sup>71</sup> See Eubanks, *supra* note 7 at 273-76.

<sup>72</sup> Jennifer Medina, *In Schools, New Rules on Snacks for Sale*, The New York Times, Oct. 6, 2009, available at <http://www.nytimes.com/2009/10/07/nyregion/07contract.html>. “The snack contract would limit items to 200 calories and 200 milligrams of sodium. Sugars and fats would make up no more than 35 percent of the total calories, and saturated fat would not be more than 10 percent of total calories.” *Id.*

<sup>73</sup> U.S. GOV'T ACCOUNTABILITY OFF., OPTIONS FOR DELIVERING FINANCIAL INCENTIVES TO PARTICIPANTS FOR PURCHASING TARGETED FOODS, 1, 2008.

<sup>74</sup> *Food Stamp Use Linked to Weight Gain, Study Finds*, ScienceDaily, Aug. 12, 2009, <http://www.sciencedaily.com/releases/2009/08/090810122139.htm>.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Lynne Peeples, *Do Food Stamps Lead to Obesity?*, *Scientific American*, <http://www.scientificamerican.com/blog/post.cfm?id=do-food-stamps-lead-to-obesity-2009-08-11>, (Aug. 11, 2009).

And the number of Americans eating on this budget is growing, surpassing 34 million for the first time in May. As Stacy Dean of the Center on Budget and Policy Priorities, a think tank, told Reuters, "Food stamp enrollment is rising because the economy is having a devastating impact on low-income families and they need this program to eat."

Various groups have posed possible solutions to the country's obesity epidemic. The Urban Institute, for example, has suggested "punishing" bad choices through a tax on fattening foods. Zagorsky, however, suggests a "positive reinforcement" approach: modify the food stamp program to include incentives to eat healthier.

*Id.*

<sup>79</sup> FOOD AND NUTRITION SERV., U.S. DEPT. OF AGRIC., Healthy Incentives Pilot (HIP) - Basic Facts, <http://www.fns.usda.gov/snap/HIP/qa-s.htm#HIP> (last visited Dec. 3, 2009).

<sup>80</sup> U.S. GOV'T ACCOUNTABILITY OFF., DIET QUALITY OF AMERICAN SCHOOL-AGE CHILDREN BY SCHOOL LUNCH PARTICIPATION STATUS: DATA FROM THE NATIONAL HEALTH AND NUTRITION EXAMINATION SURVEY (SUMMARY), *supra* note 46 at 3.

<sup>81</sup> *Id.* at 16.

<sup>82</sup> From the Food Project's website:

Since 1991, The Food Project has built a national model of engaging young people in personal and social change through sustainable agriculture. Each year, we work with over a hundred teens and thousands of volunteers to farm on 37 acres in eastern Massachusetts in the towns and cities of Beverly, Boston, Ipswich, Lincoln and Lynn. We consider our hallmark to be our focus on identifying and transforming a new generation of leaders by placing teens in unusually responsible roles, with deeply meaningful work.

Food from our farms is distributed through our Community Supported Agriculture programs, Farmers' Markets, and to hunger relief organizations. The young people working in our programs participate in all of these distribution streams, giving them valuable job experiences and a personal connection to our food system and issues of food justice.

In addition to producing and distributing food, we help others grow their own through our Community Programs, and provide training resources based on all we've learned since '91. The Food Project is a founding sponsor of the Real Food Challenge, a campaign organizing students to increase the amount of real food at their schools.

The Food Project, What We Do, <http://thefoodproject.org/what-we-do> (last visited Feb. 15, 2010). For a great video profiling the food Project, visit <http://thefoodproject.org/blog/2009/10/28/MSN-Kashi-video>.

<sup>83</sup> The Food Project, Bounty Bucks Program, <http://thefoodproject.org/boston-bounty-bucks>, (last visited Feb. 15, 2010).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* The participating cities are Boston, Atlanta, Holyoke, Providence, and San Diego. *Id.*

<sup>87</sup> Mike Huckabee, LiveStrong Presidential Cancer Forum 6 (August 28, 2007) available at [http://www.livestrong.org/atf/cf/%7BD0794917-422C-499C-9C48-9ED3DDC42947%7D/PCF\\_DAY2\\_HUCKABEE.PDF](http://www.livestrong.org/atf/cf/%7BD0794917-422C-499C-9C48-9ED3DDC42947%7D/PCF_DAY2_HUCKABEE.PDF). In his interview with Lance Armstrong during the 2008 Presidential Campaign, Mike Huckabee said:

Here's something, Chris, we could be doing with our agricultural policy that is not being done. For the people who are on Food Stamps, why don't we leverage the purchases of Food Stamps so that if your dollar of Food Stamps is used toward a fresh fruit, a vegetable, or some type of produce or a healthy food, that dollar could be worth a dollar and a quarter.

If you wanted to use your Food Stamp on junk food you know, by law you couldn't prohibit because then you'd get into the whole issue of discrimination but make it only worth 75¢ cents. Create the incentive so people are willing to try the fruits and vegetables. . .

Look, if you ingest chemicals, which is what many foods are, if you look at the label, people aren't eating food. They're eating food products. Read it. You don't even know. All you see is a big, long list of chemicals. The simple thing is if it wasn't a food a hundred years ago, it isn't a food today; it's a food product . . .

It's in a box. You'd be better off throwing the contents away and eating the package because at least you would get some, some fiber out of the cardboard.

<sup>88</sup> U.S. GOV'T ACCOUNTABILITY OFF., DIET QUALITY OF AMERICAN SCHOOL-AGE CHILDREN BY SCHOOL LUNCH PARTICIPATION STATUS: DATA FROM THE NATIONAL HEALTH AND NUTRITION EXAMINATION SURVEY (SUMMARY), *supra* note 46 at 24.

<sup>89</sup> Eubanks, *supra* note 10 at 227.

<sup>90</sup> *Food Stamp Use Linked to Weight Gain, Study Finds*, *supra* note 74.

<sup>91</sup> See Wendy C. Perdue, *Obesity, Poverty, and the Built Environment: Challenges and Opportunities*, 15 GEO. J. OF POV. L. & POL'Y. 821, 822 (2008).

<sup>92</sup> *Id.* Perdue explains:

Even before researchers began to focus on obesity, the connection between human behavior and physical surroundings was observed and documented. Jane Jacobs' pioneering work on public spaces observed that some parks and public spaces feel welcoming and safe and draw people in, while other spaces, because of their design, have the opposite effect. Likewise, architects and planners have observed that crime within particular neighborhoods is affected by design characteristics such as lighting, sight lines, and the presence of "eyes on the street." Except for people inhabiting highly rural and undeveloped areas, the primary features of people's physical environment are man-made, and encompass everything from land use patterns and urban planning, to the design, location, uses and interrelations among buildings, to transportation systems. All of these man-made physical features are known collectively as the "built environment." Increasingly, evidence suggests that the features of the built environment affect behaviors related to obesity.

*Id.* at 822.

<sup>93</sup> *Id.* at 822-26.

<sup>94</sup> *Id.* “Poor inner-city communities are disproportionately denied the benefits of safe open spaces for physical activity in parks and schools.” The lack of these open spaces means that “[m]inorities and low-income persons are significantly less likely than whites and moderate-income individuals to engage in the regular physical activity that is absolutely crucial to good health.” Adrienne Lyles-Chockley, *Building Livable Places: The Importance of Landscape in Urban Land Use, Planning, and Development*, 16 BUFF. ENVTL. L.J. 95, 128 (2008-2009). Adrienne Lyles-Chockley does a wonderful job of explaining the difficulties that low-income families face in their environment:

A person's level of physical activity depends on one's neighborhood and the access, convenience, and safety of spaces available for activity. Robert Garcia has considered the many environmental factors that contribute to inactivity and has found tremendous discrepancies in the allocation of municipal services and the provision of parks and open space for white versus nonwhite and low-income versus moderate-income communities. For example, communities like Los Angeles, California, were designed around the automobile, making walking nearly impossible and preventing children from being able to play together. Low-income black communities have less access to park space than white and higher-income areas. At the same time, there are significant differences in landscape use and perception among ethnic groups and between center city and suburban residents: whites are far less likely to go to parks in groups than blacks, are less likely to participate in social activities like festivals and parties, are less likely to use urban environments for recreation -- but are *more* interested in nature, the outdoors, and environmental concerns.

Low-income and minority communities face objective environmental barriers to physical activity that more affluent communities do not, and these barriers arise from a lack of facilities and fears about safety. Parks near inner-city public housing neighborhoods have historically been inaccessible to children due to their being controlled by local gangs and drug-dealers. The lack of parks in low-income communities is exasperated by a decrease in school yards, which are disappearing with the increased scarcity and price of land. Even if there are parks in urban areas, they are likely unreachable except by car or transit system, neither of which most low-income residents have access to. For example, within a five-mile radius of Baldwin Hills state park, located in the heart of African-American Los Angeles, there is one picnic table for every 10,000 people, one playground for 23,000 children, one soccer field for 30,000 people, and one basketball court for 36,000 people. This does not take into consideration the “privatized public space” like backyards, swimming pools, and basketball hoops over garages that are the exclusive domain of higher income individuals (i.e., suburban, white, middle-class families).

*Id.* at 129.

<sup>95</sup> THE ROBERT WOOD JOHNSON FOUND., *supra* note 8 at 10.

<sup>96</sup> *Id.* “There is simply no way that children and adults can increase their physical activity if they do not have accessible, safe, and affordable opportunities to be active in the first place.” *Id.* at 128-129.

<sup>97</sup> *Id.* at 9.

- <sup>98</sup> Nareissa Smith, *Eatin Good? Not in this Neighborhood: A Legal Analysis of Disparities in Food Availability and Quality at Chain Supermarkets in Poverty-Stricken Areas*, 14 MICH. J. RACE & L. 197, 201 (2009). Smith states, “[b]y ignoring the food environment, nutrition education programs designed to encourage healthier eating habits may be ineffectual, not because consumers are unresponsive to educational efforts, but because the food environment creates extra barriers to their adoption.” *Id.* at 206.
- <sup>99</sup> *Id.* at 214. “Empirical evidence shows a correlation between higher calorie consumption and obesity rates [and] proximity to fast food restaurants. Thus, whatever the merits of individual moderation as a response to weight gain, many poorer communities have limited access to healthy foods and abundant access to unhealthy foods.” Perdue, *supra* note 91 at 824.
- <sup>100</sup> Eubanks, *supra* note 10 at 281.
- <sup>101</sup> Smith, *supra* note 98 at 209.
- <sup>102</sup> THE ROBERT WOOD JOHNSON FOUND., *supra* note 8 at 10.
- <sup>103</sup> Andrea Freeman, *Fast Food: Oppression Through Poor Nutrition*, 95 CAL. L. REV. 2221, 2226 (2007) (“While the growth of fast food in poor urban neighborhoods has increased steadily, supermarkets stocking fresh, high-quality food have simultaneously relocated to the more spacious and affluent suburbs.”).
- <sup>104</sup> *Id.* at 215 (“... it simply cannot be said that poorer people do not care for healthier foods.”).
- <sup>105</sup> Perdue, *supra* note 91 at 830-31.
- <sup>106</sup> Eubanks, *supra* note 7 at 288.
- <sup>107</sup> Prevalence of fast food restaurants is associated with poor health quality of neighborhood residents. *Number of Fast Food Restaurants Associated with Stroke Risk*, ScienceDaily, Feb. 20, 2009, <http://www.sciencedaily.com/releases/2009/02/090219202714.htm>. Likewise, more supermarkets leads to a greater consumption of fruits and vegetables. THE ROBERT WOOD JOHNSON FOUND., *supra* note 8 at 10.
- <sup>108</sup> UNITED STATES DEP’T OF AGRICULTURE, *Know Your Farmer, Know Your Food*, <http://www.usda.gov/wps/portal/knowyourfarmer?navid=KNOWYOURFARMER> (last visited Feb. 15, 2010).
- <sup>109</sup> UNITED STATES DEP’T OF AGRICULTURE, *Agriculture Deputy Secretary Merrigan Awards \$4.8 Million for Community Food Projects as Part of "Know Your Farmer, Know Your Food" Initiative*, [http://www.csrees.usda.gov/newsroom/news/2009news/09161\\_community\\_foods.html](http://www.csrees.usda.gov/newsroom/news/2009news/09161_community_foods.html) (last visited Feb. 15, 2010).
- <sup>110</sup> *Id.*
- <sup>111</sup> *Id.*
- <sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Guy Raz, *Farmers Markets: Fresh, Local, Government-Approved*, NPR, October 4, 2009, available at <http://www.npr.org/templates/story/story.php?storyId=113484871>. ““In the last five years, we saw 108,000 new farming operations get started with sales of less than \$10,000,’ Vilsack says. ‘These are very small farms, but they are a very important component of our agriculture. There is a real opportunity for us to grow those smaller operations to mid-income-sized operations, and the way to do that is by creating opportunities locally for local production to be consumed locally.’” *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Perdue, *supra* note 91 at 830.

<sup>117</sup> *Id.* at 822.

<sup>118</sup> *See generally, id.*

<sup>119</sup> Rachel E. Morse, *Resisting the Path of Lease Resistance: Why the Texas “Pole Tax” and the New Class of Modern Six Taxes are Bad Policy*, 29 B.C. THIRD WORLD L.J. 189, 201 (2009). Why are sin taxes so popular? Morse argues that “[s]in taxes are generally the easiest kinds of taxes to impose, and so they are often the first choice of lawmakers who are looking to close gaps in state budgets or make up deficits. Sin taxes appeal to voters, the majority of whom will not be affected by any given tax.” *Id.* “Although they burden the poor and working classes disproportionately, they are indirect taxes that affect only one select minority at a time, and so they rarely face much opposition.” *Id.*

<sup>120</sup> *Id.* at 201.

<sup>121</sup> *Id.* at 206. Morse explains:

In 2004, the mayor of Oakland, California proposed taxing alcohol and junk food explicitly to solve the state's “budget woes.” This candid proposal prompted a surprised remark from the Cato Institute's Radley Balko, who noted that politicians usually attribute their sin tax proposals to a desire to stop unhealthy behavior. Balko marvels: “I've never before heard an elected official say that the real purpose is to raise money. That's a novel approach.” Balko goes on to note that sin taxes do make money for the state, and that he does not generally take a government at its word when officials say their primary purpose in passing a sin tax is to stop the behavior at issue. “Sin taxes usually are proposed only when governments face large budget shortfalls.” Balko claims state and local governments are “addicted” to the revenue they generate from cigarette taxes and would take a hit if people stopped smoking. Although the Oakland mayor's proposal did not materialize into law, it demonstrated that he thought the city needed higher taxes in some form to “put the state's financial house in order.”

*Id.*

<sup>122</sup> *Id.* at 192-93.

<sup>123</sup> Pope, *supra* note 60.

<sup>124</sup> *Id.* 217-18. Morse argues that “. . . morally ambiguous activities should be left to those ‘social institutions that are often more trustworthy in determining the limits of nonviolent behavior.’ Allowing the community to regulate behavior, rather than the state, which has impure and conflicted interests, will alleviate the problem of moral hazard.” *Id.*

<sup>125</sup> *Id.* at 217.

<sup>126</sup> Deaton, *supra* note 19. “As economists like to point out, redistribution through the tax system typically means that the rich lose more than one dollar for each dollar redistributed to the poor. This effect, known as “deadweight loss,” further raises the bar for any policy of improving population health through income redistribution.” *Id.* at 22.

<sup>127</sup> Morse, *supra* note 119, at 197.

<sup>128</sup> *Id.* at 208.

<sup>129</sup> *Id.* “Elizabeth Whelan, president of the American Council on Science and Health has said that taxing food is an unscientific way to combat obesity, noting that people in lower income brackets spend a disproportionate amount of their income on food to begin with, and adding: ‘food obviously supports life.’” *Id.* at 208-09.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 206.

<sup>132</sup> *Id.* at 214.

<sup>133</sup> *Id.*

<sup>134</sup> MarketWatch.com, the Wall Street Journal, *Half of U.S. Adults Want Health Care Reform in the Next Two Years*, The Wall Street Journal, Digital Edition, [http://www.marketwatch.com/story/half-of-us-adults-want-healthcare-reform-in-next-two-years-2010-02-11?reflink=MW\\_news\\_stmp](http://www.marketwatch.com/story/half-of-us-adults-want-healthcare-reform-in-next-two-years-2010-02-11?reflink=MW_news_stmp). A Harris Interactive/Health Daily Poll conducted between Feb. 3-5, 2010 showed that “a substantial 50% to 27% plurality want to see health reform in the next two years, [although] the public is split on whether the reform proposed by the President and the Democrats should be passed.” *Id.* Notably, “[t]his survey was conducted on the heels of Scott Brown's election into the Massachusetts Senate --which some say sent a loud message against the current healthcare reform efforts, followed by the President's State of the Union address, where he reiterated the importance of this initiative.” *Id.*

<sup>135</sup> Catherine Paddock, *Obesity Healthcare Costs US 147 Billion Dollars A Year, New Study Says*, Medical News Today, <http://www.medicalnewstoday.com/articles/158948.php> (last visited Feb. 17, 2010).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* Lead author of the study, Dr. Finkelstein, told the press, “Although bariatric surgery and other treatments for obesity are increasing in popularity, in actuality these treatments remain rare.” *Id.* Because of the rarity of treatments that directly treat obesity, “. . .the medical costs attributable to obesity are almost entirely a result of costs generated from treating the diseases that obesity promotes,” he added, suggesting that as long as obesity prevails to the extent that it does today, it will continue to be a significant burden on health care.” *Id.*

<sup>138</sup> WebMD Health News, *Americans Spend Billions on Obesity-Related Health Care Costs*, <http://www.webmd.com/diet/news/20030515/obesity-costs-rival-smoking> (last visited Feb. 17, 2010). “Since the amount of money spent on obesity-related health problems now rivals that spent on smoking, “it may be increasingly difficult to justify the disparity between many interventions that have been implemented to reduce smoking rates and the paucity of interventions aimed at reducing obesity rates,” says Finkelstein.” *Id.*

<sup>139</sup> Emily Walker, *Rising Obesity Rates Increase Nation's Healthcare Tab*, ABCNews.com, <http://abcnews.go.com/Health/WellnessNews/story?id=8185848&page=1> (last visited Feb. 17, 2010).

<sup>140</sup> Gary Burtless, *The 2008 Statistics on Income, Poverty, and Health Insurance Coverage*, THE BROOKINGS INSTITUTION, Sept. 10, 2009, available at [http://www.brookings.edu/speeches/2009/0910\\_poverty\\_statistics\\_burtless.aspx](http://www.brookings.edu/speeches/2009/0910_poverty_statistics_burtless.aspx).

<sup>141</sup> *Id.* Burtless highlights, “There are a couple of bright spots in an otherwise gloomy health insurance picture. Coverage under government insurance plans expanded fast enough to offset the drop in private health coverage for Americans under 18 and past age 65.” *Id.* However, Burtless says, “government health insurance did not expand fast enough to offset the drop in private health coverage for the adult population between 18 and 64.” *Id.*

<sup>142</sup> *Id.* “The aged have been covered by Medicare since 1966, and starting in the late 1980s the federal government and the states have taken big steps to make health insurance freely available or affordable for children in working-poor families. Outside of those two groups, the situation is pretty grim, and it is getting worse over time.” *Id.*

<sup>143</sup> Gary Burtless, *The 2008 Statistics on Income, Poverty, and Health Insurance Coverage*, (the full commentary) THE BROOKINGS INSTITUTION, 4, Sept. 10, 2009, available at [http://www.brookings.edu/~media/Files/rc/speeches/2009/0910\\_poverty\\_burtless/0910\\_poverty\\_census\\_burtless.pdf](http://www.brookings.edu/~media/Files/rc/speeches/2009/0910_poverty_burtless/0910_poverty_census_burtless.pdf).

<sup>144</sup>The statute provides:

### **SECTION 1. SHORT TITLE.**

This Act may be cited as the ‘Obesity Treatment and Wellness Act of 2009’.

### **SEC. 2. FINDINGS.**

(a) Congress finds the following:

- (1) The Centers for Disease Control and Prevention (CDC) reports that between 1976 and 1980 approximately five percent of youth aged 2-19 were obese. In 2006, the rate had increased to 16.3 percent.
- (2) The National Center for Education Statistics report in 2009 finds that almost 1 in 5 American 4-year-olds are obese.
- (3) A New England Journal of Medicine study in 1997 found that children who become obese after age 6 have a 50 percent greater chance of being obese adults.
- (4) The CDC reports that in 2003, approximately half the costs of treating obesity were paid through Medicare or Medicaid.
- (5) The CDC reports that in 2000, the total cost of obesity in the United States was estimated to be \$117 billion.
- (6) To address the obesity epidemic, both prevention and treatment strategies are needed.

### **SEC. 3. REQUIRING MEDICAID COVERAGE TO INCLUDE COVERAGE OF MEDICAL NUTRITION THERAPY.**

(a) Requirement- Section 1902(a)(10)(A) of the Social Security Act (42 U.S.C. 1395a(a)(10)(A)) is amended by striking ‘and (21)’ and inserting ‘, (21), and (28)’.

(b) Services Described- Section 1905 of such Act (42 U.S.C. 1396D-(a)) is amended--

- (1) by striking ‘and’ at the end of paragraph (27);
- (2) by redesignating paragraph (28) as paragraph (29); and
- (3) by inserting after paragraph (27) the following new paragraph:

‘(28) medical nutrition therapy (as defined in section 1861(vv)(1)) where a physician or primary care provider considers it medically necessary to treat or prevent the progression of a chronic condition or disease which the individual is considered as having, or at risk of developing, as the result of being overweight and obese; and’.

(c) Effective Date-

- (1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall apply to calendar quarters beginning on or after October 1, 2010, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.
- (2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsections (a) and (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

H.R. 3092 As Introduced in the House, Open Congress, <http://www.opencongress.org/bill/111-h3092/text> (last visited Feb. 17, 2010).

<sup>145</sup> H.R.3092 - Obesity Treatment and Wellness Act of 2009, Official Summary Open Congress,

<http://www.opencongress.org/bill/111-h3092/show> (last visited Feb. 17, 2010).

<sup>146</sup> Congresswoman Kathleen Dahlkemper, Official House website, <http://www.dahlkemper.house.gov/> (last visited Feb 17, 2010).

<sup>147</sup> Kathleen Dahlkemper, *Healthcare: House Bills 3092, 3144 Aim to Cut Obesity Rate and Related Illnesses*, The Hill, July 16, 2009, available at <http://thehill.com/special-reports/healthcare-july-2009/55607-healthcare-house-bills-3092-3144-aim-to-cut-obesity-rate-and-related-illnesses>.

<sup>148</sup> *Id.* The Official Summary to the Healthy Communities Act of 2009 states that the Act:

[a]mends the Public Health Service Act to direct the Secretary of Health and Human Services (HHS) to make five-year grants to community partnerships for programs to combat obesity. Sets forth eligibility requirements. Provides for an executive council and a steering committee. Requires a community obesity prevention program to address all the different components of fighting obesity and to include:

- (1) physical exercise and a physical activity environment;
- (2) nutritional counseling and nutritional environment activities;
- (3) education to provide to the community information about the importance of eating healthily and maintaining a balanced diet and of being physically fit and to provide strategies for addressing varying individual capabilities to attain physical fitness; and
- (4) an evidence-based curriculum using the National Institutes of Health's (NIH's) Ways to Enhance Children's Activity and Nutrition (We Can) program and curriculum to guide the program. Requires a program to:

- (1) make use of evidence-based practices, strategies, programs, and policies in designing program guidelines;
- (2) develop a communications plan that involves the entire community;
- (3) have both in-school and workplace wellness programs; and
- (4) identify a Wellness Coordinator. Requires the executive council and the steering committee to:

- (1) perform an assessment of the obesity problem in each respective community; and
- (2) work with the Wellness Coordinator to lay out achievable short- and long-term goals for reducing childhood obesity. Directs the Secretary to:

- (1) prohibit a community partnership from using the grant to pay for administrative expenses, with exceptions; and
- (2) give preference in selecting grant recipients to communities with high levels of obesity and related chronic diseases.

H.R. 2092, Healthy Communities Act of 2009, Official Summary, Open Congress, <http://www.opencongress.org/bill/111-h3144/show> (last visited Feb 17, 2010).

<sup>149</sup> Dahlkemper, *supra* note 140.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> As Claudia Kalb explains in *Newsweek*, “We need schools and workplaces that reward us for exercising our bodies, not just our brains. ‘If you want people to make the right choices, they need to have the right choices to make,’” says Dr. William Dietz, director of the CDC’s Division of Nutrition, Physical Activity, and Obesity.” Claudia Kalb, *Culture of Corpulence*, *Newsweek*, available at <http://www.newsweek.com/id/234886/page/1>. She continues, “We need forceful and well-enforced policies, a government that invests dollars in improving the diet of school kids and puts limitations on the advertising that targets them.” *Id.* Kalb also argues in support of connecting the dots between the issues and solutions advocated in this paper; she discusses (albeit briefly and more generally) the role that the built environment plays in addressing the weight crisis, how advertising affects what our children eat, and how the market (because of government subsidies for commodity crops) has encouraged bigger portions of less-than-healthy food. *Id.* “An entire cultural shift is required . . .” *Kalb* says, “[w]e must all join the journey. ‘When we come together as a nation and really commit ourselves, we can do it[.]’” *Id.*