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STRENGTHENING VENDOR STANDARDS IN THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: ARE HEALTHIER FOODS WITHIN REACH?

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I. INTRODUCTION

Millions of Americans currently live in low-income communities without convenient access to supermarkets and their abundant selection of healthier food options.¹ Supermarkets are more frequently located in middle-income and higher-

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1. See Renee E. Walker et al., *Disparities and Access to Healthy Food in the United States: A Review of Food Deserts Literature*, 16 HEALTH & PLACE 876, 877 (2010) (reviewing studies focusing on the impact of uneven geographic distribution of supermarkets); see also MICHELE VER PLOEG ET AL., U.S. DEP'T OF AGRIC., REPORT TO CONGRESS: ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES iii (2009) (noting that 2.2 percent of American households live more than a mile away from a supermarket and lack access to a vehicle); Deja Hendrickson et al., *Fruit and Vegetable Access in Four Low-Income Food Deserts Communities in Minnesota*, 23 AGRIC. & HUM. VALUES 371, 378-79 (2006) (concluding that families

income neighborhoods as well as in predominantly white communities.² Due to these disparities in supermarket siting, individuals who live in low-income or minority communities often depend on nearby convenience stores and other retailers to supplement their primary food shopping.³ These stores tend to carry a limited range of products and frequently exclude options like whole grain breads, perishable fruits and vegetables, lean meat, and low-fat dairy products.⁴

Food policy experts and community activists alike continue to search for innovative policies to bridge this gap.⁵ While some have worked to attract supermarkets to underserved areas,⁶ others have sought to build on existing community assets. For example, some groups seek to improve the food environment through voluntary private partnerships with corner stores.⁷ One promising idea, which adopts this assets-based approach, builds on the existing network of Supplemental Nutrition Assistance Program (SNAP) authorized retailers.⁸ Proponents of this approach support modifying the SNAP vendor standard to make healthier foods more widely available through the use of enhanced store stocking requirements.⁹ In keeping with these emerging ideas, this

living in certain low-income areas in Minnesota had less access to affordable healthy foods than those living in more affluent communities).

2. See Lisa M. Powell et al., *Food Store Availability and Neighborhood Characteristics in the United States*, 44 PREVENTIVE MED. 189, 193 (2007) (finding that low-income areas had fewer chain supermarkets but a higher number of non-chain supermarkets than higher-income areas); see also Kimberly Morland et al., *Neighborhood Characteristics Associated with the Location of Food Stores and Food Service Places*, 22 AM. J. PREVENTIVE MED. 23, 27–28 (2002) (noting a disproportionately higher number of supermarkets in predominately white neighborhoods as compared to black neighborhoods).

3. E.g., Manuel Franco et al., *Neighborhood Characteristics and Availability of Healthy Foods in Baltimore*, 35 AM. J. PREVENTIVE MED. 561, 564–66 (2008) (finding that many grocery stores in black and lower-income neighborhoods in Baltimore City and Baltimore County were “behind-glass stores” with limited food options).

4. See Tatiana Andreyeva et al., *Availability and Prices of Foods Across Stores and Neighborhoods: The Case of New Haven, Connecticut*, 27 HEALTH AFF. 1381, 1381 (2008) (noting that low-income Americans often live in neighborhoods with limited access to healthy, non-processed foods).

5. See Allison Karpyn et al., *Policy Solutions to the ‘Grocery Gap,’* 29 HEALTH AFF. 473, 473 (2010) (noting one state representative’s contributions to increasing access to healthy foods through the creation of an initiative to fund fresh-food outlets throughout Pennsylvania); see also *Corner Stores to Become Oases in Food Deserts?* (WBEZ 91.5 Chicago radio broadcast Feb. 23, 2012), available at <http://www.wbez.org/story/corner-stores-become-oases-food-deserts-96575> (describing emerging partnerships in Chicago to help corner stores stock healthier foods).

6. See Karpyn et al., *supra* note 5 (noting the recommendations of the Centers for Disease Control and Prevention and the Institute of Medicine advocating the development of supermarkets in areas without adequate access).

7. *Corner Stores to Become Oases in Food Deserts?*, *supra* note 5.

8. See generally U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., *SNAP Retail Locator*, <http://www.snapretailerlocator.com> (last updated Feb. 19, 2013) (providing locations for and directions to every retailer that accepts SNAP benefits).

9. “Store stocking requirements” refer to a component of the standards set by the federal government for vendor eligibility to participate in SNAP. See Christine Fry, *A New Take on the Food*

article proposes a new, robust stocking requirement that explicitly includes healthier foods, referred to as the Healthier Staple Food (HSF) Standard.¹⁰ The article analyzes the potential impact of implementing this new vendor standard for communities with low supermarket access and considers the retailers that will be most impacted by this policy change (*i.e.*, convenience stores and dollar stores).¹¹ It examines lessons learned from recent changes to the Special Supplement Nutrition Assistance Program for Women, Infants, and Children (WIC) food packages and stocking requirements, and considers the shopping habits of SNAP consumers.¹²

In June and July 2012, the U.S. Senate and the U.S. House of Representatives Committees on Agriculture passed their versions of the Farm Bill, which included language to strengthen the SNAP vendor standards.¹³ Specifically, both bills would have expanded the minimum number of required perishable food types—from two to three—that vendors must stock to be eligible to accept SNAP benefits.¹⁴ Eligible types of perishable food include meat/poultry/fish; bread/cereals; vegetables/fruits; and dairy.¹⁵ As we will explain, these Farm Bill proposals included some elements of the HSF standard, but omitted key provisions.¹⁶ Importantly, the 2012 Farm Bill process did not yield a law; instead,

Stamp Debate, THE HILL (Nov. 10, 2011, 4:20 PM), <http://thehill.com/blogs/congress-blog/healthcare/193003-a-new-take-on-the-food-stamp-debate> (noting that healthier store stocking requirements for SNAP stores would be beneficial to SNAP recipients and store owners); *see also* PUNAM OHRI-VACHASPATI ET AL., ARIZ. ST. UNIV., POLICY CONSIDERATIONS FOR IMPROVING THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: MAKING A CASE FOR DECREASING THE BURDEN OF OBESITY 9 (2011), *available at* http://www.azdhs.gov/phs/bnp/nupao/documents/SNAP_White_Paper_12-14-11.pdf (commenting that requiring SNAP vendors to offer healthier food options would benefit not only SNAP users but also other individuals living in the area).

10. *See infra* Part VI.

11. *See infra* Part VII.A.

12. *See infra* Parts VI, III.B.

13. S. 3240, 112th Cong. § 4005 (2d Sess. 2012) (changing the requirements for those who apply to become authorized SNAP retailers and certain rules governing participants' and retailers' redemption of SNAP benefits); H.R. 6083, 112th Cong. § 4001 (2d Sess. 2012).

14. S. 3240 § 4005; H.R. 6083, § 4001.

15. *See infra* Part VI. Both bills additionally propose a new requirement that would exclude stores from entering or being reauthorized by SNAP if at least forty-five percent of their sales come from the following excluded categories: "coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices." 7 U.S.C. § 2012(u)(2) (2006). This portion of the Farm Bill proposal exceeds the scope of this article, as it concerns sale-based eligibility for SNAP as opposed to vendor stocking requirements.

16. *See infra* Part VII.D. Of note, because the Farm Bill standard establishes a minimum, states could still consider applying for waivers to extend their healthy food requirements for vendors to reflect the HSF standard we propose. U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Supplemental Nutrition Assistance Program: Legislation, Rules, Waivers and Certification Policy*, http://www.fns.usda.gov/snap/2008_Farm_Bill.htm (last updated Apr. 11, 2012).

the 2008 Farm Bill was extended temporarily, and these new proposals were not included.¹⁷

This article consists of the following six sections: Part I defines the problem of inadequate access to healthier foods in the U.S. food environment. Part II describes SNAP, profiles participating retailers, and summarizes consumer shopping habits. Next, in Part III, the article introduces the WIC program and its recent reforms to food packages and stocking requirements. In Part IV, the current SNAP store eligibility standards are explained and the intervention of interest—the Healthier Staple Food Standard—is described. Part V contains a policy analysis of the intervention presented in Part IV using the Intervention Decision Matrix. Part VI summarizes the article’s findings and the Conclusion offers a policy recommendation with respect to the impact of enhanced SNAP vendor standards on the food environment.

II. THE FOOD ENVIRONMENT AND NUTRITION

A growing literature suggests that neighborhood socioeconomic status and the built environment¹⁸ influence diet.¹⁹ Much of this literature uses access to supermarkets as a proxy for access to sufficient quantities of healthier food options.²⁰ The United States Department of Agriculture (USDA) estimates that 23.5 million Americans live in low-income communities that are more than one mile from a supermarket.²¹ Supermarkets are contemporary Americans’ preferred source of fresh fruits, vegetables, and other lower-calorie, healthier options due to their superior product selection and lower prices compared to smaller food outlets.²²

17. Am. Taxpayer Relief Act, Pub. L. No. 112-240 (2013); JIM MONKE, MEGAN STUBBS & RANDY ALISON AUSSSENBERG, CONGRESSIONAL RESEARCH SERVICE, EXPIRATION AND EXTENSION OF THE 2008 FARM BILL 16–18 (2013).

18. The “built environment” refers to human-made aspects of the environment that humans inhabit (e.g., parks, buildings, transportation systems).

19. See Brian E. Saelens et al., *Obesogenic Neighborhood Environments, Child and Parent Obesity: The Neighborhood Impact on Kids Study*, 42 AM. J. PREVENTIVE MED. e57, e61 (2012) (studying environmental attributes related to childhood obesity and finding that neighborhoods that were more conducive to walking and had lower levels of fast food chains and higher levels of supermarkets had lower obesity levels); see also Sarah Stark Casagrande et al., *Association of Walkability with Obesity in Baltimore City, Maryland*, 101 AM J. PUB. HEALTH S318, S320–23 (2011) (discussing the correlation between white or high-socioeconomic status neighborhoods with high walkability and lower obesity rates compared to low-socioeconomic status neighborhoods with low walkability and higher obesity rates); Tamara Dubowitz et al., *Neighborhood Socioeconomic Status and Fruit and Vegetable Intake Among Whites, Blacks, and Mexican Americans in the United States*, 87 AM. J. CLINICAL NUTRITION 1883, 1889–90 (2008) (noting the higher consumption of fruits and vegetables in predominantly white neighborhoods as compared to predominantly black neighborhoods).

20. E.g., Melissa Nelson Laska et al., *Healthy Food Availability in Small Urban Food Stores: A Comparison of Four US Cities*, 13 PUB. HEALTH NUTRITION 1031, 1031 (2009).

21. VER PLOEG ET AL., *supra* note 1, at 35.

22. See Ed Watkins, *Customer Analysis and Market Strategy – Supermarkets vs. Convenience Stores*, 7 J. FOOD DISTRIBUTION RES. 110, 111, 112 (1976) (noting that consumers prioritize food quality when choosing a supermarket, but look at other factors in choosing a convenience store).

Without easy access to supermarkets, individuals are more likely to suffer ill-health. Individuals who have access to at least one neighborhood supermarket have been found to have a lower prevalence of overweight and hypertension than those without a local supermarket.²³ Furthermore, access to supermarkets is associated with healthier diets.²⁴ For example, individuals without a supermarket within one mile of their home were twenty-five to forty-six percent less likely to consume a healthy diet.²⁵ Individuals who live in neighborhoods without any store carrying five or more dark green or orange vegetables—as would be expected in a supermarket—consumed 0.17 fewer daily servings of these foods compared with individuals residing in communities with two or more stores carrying this array of vegetables.²⁶ Moreover, the prevalence of obesity is significantly and inversely associated with accessibility of fresh fruits, vegetables, and low-fat milk.²⁷

While most Americans consume insufficient quantities of fruits and vegetables,²⁸ low-income individuals are at higher risk for dietary deficiencies.²⁹ In particular, they tend to under-consume fiber and calcium-rich foods, such as fruits, vegetables, and dairy.³⁰ SNAP participants consume fewer fruits and vegetables than income-eligible nonparticipants.³¹ Disparities in access to “nutritionally important foods” due to the absence of supermarkets affect both low-income urban

23. Kimberly Morland et al., *Supermarkets, Other Food Stores, and Obesity: The Atherosclerosis Risk in Communities Study*, 30 AM. J. PREVENTIVE MED. 333, 335 (2006) (noting a nine percent lower prevalence of overweight, a twenty-four percent lower prevalence of obesity, and a twelve percent lower prevalence of hypertension in areas with at least one supermarket as compared to people in areas without a supermarket).

24. See Nicole Larson & Mary Story, *A Review of Environmental Influences on Food Choices*, 38 ANNALS BEHAV. MED. S56, S62 (2009) (finding that people who have access to supermarkets tend to have healthier diets than those without access).

25. See Latetia V. Moore et al., *Associations of the Local Food Environment with Diet Quality—A Comparison of Assessments Based on Surveys and Geographic Information Systems: The Multi-Ethnic Study of Atherosclerosis*, 167 AM. J. EPIDEMIOLOGY 917, 920 (2008); Manuel Franco et al., *Availability of Healthy Foods and Dietary Patterns: The Multi-Ethnic Study of Atherosclerosis*, 89 AM. J. CLIN. NUTRITION 897, 899 (2009) (discussing the finding that forty-six percent of white individuals as compared with twenty-three percent of black individuals in Baltimore live in close proximity to stores that offer healthy food options).

26. Betty T. Izumi et al., *Associations Between Neighborhood Availability and Individual Consumption of Dark-Green and Orange Vegetables Among Ethnically Diverse Adults in Detroit*, 111 J. AM. DIETETIC ASS'N 274, 276 (2011).

27. Akiko S. Hosler, *Retail Food Availability, Obesity, and Cigarette Smoking in Rural Communities*, 25 J. RURAL HEALTH 203, 208 (2009).

28. U.S. DEP'T OF AGRIC. & U.S. DEP'T OF HEALTH & HUMAN SERVS., *DIETARY GUIDELINES FOR AMERICANS 2010* 46 fig.5-1 (2010), available at http://www.cnpp.usda.gov/publications/dietary_guidelines/2010/policydoc/policydoc.pdf (illustrating that typical Americans are deficient in their intake of most recommended foods).

29. See *Nutrition and Health Characteristics of Low-Income Populations: Healthy Eating Index*, AGRIC. INFO. BULL. (U.S. DEP'T OF AGRIC., Washington, D.C.), Feb. 2005, at 2–3 (including graphs that illustrate dietary deficiencies among low-income study participants who receive food stamps).

30. *Id.*

31. *Id.*

communities and rural communities.³² These dietary disparities suggest that low-income individuals' ability to consume a healthy diet may be reduced by stores' stocking selections.³³

This does not imply that individuals residing in areas of low supermarket access do not shop at supermarkets. Rather, they expend more effort than affluent individuals to reach these destinations.³⁴ Reduced automobile ownership by low-income individuals, particularly in urban areas, increases reliance on public transportation and strategies such as ride-sharing to reach distant supermarkets.³⁵ As a consequence, these individuals tend to make less frequent supermarket shopping trips.³⁶ Between outings, these consumers may only have convenient access to neighborhood stores with a limited selection of food options.³⁷

To date, there has been no coordinated national response to the deterioration of the food environment in low-income and rural communities.³⁸ Responding in relative isolation, some communities court supermarkets with tax incentives.³⁹ Other organizations create work-around solutions like Baltimarket, a grocery delivery service that allows participants to order and pick up groceries at

32. See generally Moore et al., *supra* note 25 (finding that study participants who lived in rural and low-income areas lacked access to nutritious food); see also Angela D. Liese et al., *Food Store Types, Availability, and Cost of Foods in a Rural Environment*, 107 J. AM. DIETETIC ASS'N 1916, 1921 (2007) (studying the nutritional environment of one rural county and concluding that few stores offered healthful dietary choices and that convenience stores offering a low number of health food options were much more prevalent).

33. Laska et al., *supra* note 20, at 1033–34.

34. See MARK VALLIANATOS ET AL., URBAN & ENVTL. POL'Y INST., TRANSPORTATION AND FOOD: THE IMPORTANCE OF ACCESS 2 (2002).

35. *Id.* Low income households in the United States are six to seven times more likely than other households to not own cars. *Id.*

36. See LESLIE MIKKELSEN & SANA CHEHIMI, PREVENTION INST., THE LINKS BETWEEN THE NEIGHBORHOOD FOOD ENVIRONMENT AND CHILDHOOD NUTRITION 5, 6 (2007) (noting that low-income families average one trip to the grocery store per month as opposed to 2.2 weekly trips made by those with greater financial resources in 2002).

37. See, e.g., STEPHEN A. HAERING & MANUEL FRANCO, JOHNS HOPKINS SCH. OF PUB. HEALTH, THE BALTIMORE CITY FOOD ENVIRONMENT 21–23 (2010) (noting that, of the forty-one corner stores and convenience stores evaluated in Baltimore, only twenty-four percent sold skim milk, nearly seventy percent did not offer fresh vegetables, and over seventy-five percent did not sell fruit); JAMES C. OHLS ET AL., MATHEMATICA POL'Y RES., FOOD STAMP PARTICIPANTS' ACCESS TO FOOD RETAILERS 53 (1999) (noting that limited food options was a major consideration among individuals who chose not to shop in their neighborhoods).

38. See POLICYLINK, HEALTHY FOOD, HEALTHY COMMUNITIES: PROMISING STRATEGIES TO IMPROVE ACCESS TO FRESH, HEALTHY FOOD AND TRANSFORM COMMUNITIES 11 (2010) (discussing implementation of state and private initiatives seeking to increase access to healthy foods as well as increasing support for a program at the federal level).

39. Press Release, N.Y.C. Econ. Dev. Corp., City and Local Elected Officials Open the First Supermarket Built Using Targeted City Incentives to Bring Fresh Food to Underserved Neighborhoods (Aug. 25, 2011), available at <http://www.nycedc.com/press-release/city-and-local-elected-officials-open-first-supermarket-built-using-targeted-city> (discussing one New York City program that offers zoning and financial incentives to grocery stores in order to bring healthy food options to communities).

libraries.⁴⁰ Still others promote voluntary collaboration with corner store owners to increase healthier offerings and encourage healthier choices by consumers.⁴¹ More recently, the Obama administration launched the Healthy Food Financing Initiative, based on Pennsylvania's successful Fresh Food Financing Initiative.⁴² While these interventions may change the food environment in their host communities, their scale does not match the magnitude of the food access gap or the urgency of the nutrition crisis.

One untapped resource to change the food environment is the SNAP retail network.⁴³ SNAP, the nation's largest nutrition assistance program, already regulates the product offerings of participating retail stores to a limited extent.⁴⁴ Altering current standards to include more healthful options may increase the accessibility of healthier foods in communities that lack supermarkets.

III. IMPLEMENTATION OF THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

Created in 1964 as a federal and state cooperative "to provide for improved levels of nutrition among low-income households,"⁴⁵ SNAP today is an essential part of the social safety net, serving one in seven Americans, or 44.7 million people.⁴⁶ Formerly known as the Food Stamp Program, SNAP "operate[s] through the normal channels of trade"; that is, SNAP benefits are redeemed at private food vendors (*e.g.*, supermarkets or convenience stores).⁴⁷ SNAP benefits are issued to participants as cash value equivalents and participants' food and beverage product

40. *Baltimore: The Virtual Supermarket Project*, BALT. CITY HEALTH DEP'T, <http://www.baltimorehealth.org/virtualsupermarket.html> (last visited Feb. 2, 2013) (describing the success of the Baltimore online grocery ordering program in bringing healthy food options to areas without access to supermarkets).

41. See *Corner Stores to Become Oases in Food Deserts?*, *supra* note 5 (discussing a Chicago project that aims to increase the availability of healthy food items in convenience stores).

42. See ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., *Healthy Food Financing Initiative* (Jan. 18, 2011), http://www.acf.hhs.gov/programs/ocs/ocs_food.html (describing the Healthy Food Financing Initiative); see also Press Release, U.S. DEP'T OF HEALTH & HUMAN SERVS., Obama Administration Details Healthy Food Financing Initiative (Feb. 19, 2010), available at <http://www.hhs.gov/news/press/2010pres/02/20100219a.html> (noting that the Healthy Food Financing Initiative is based upon successful local models).

43. See *infra* Part VI.

44. VER PLOEG ET AL., *supra* note 1, at 61; see also LAURA TIEHEN ET AL., U.S. DEP'T OF AGRIC., ECON. RESEARCH REP. NO. 132, ALLEVIATING POVERTY IN THE U.S.: THE CRITICAL ROLE OF SNAP BENEFITS 2 (2012) ("SNAP is the largest U.S. food assistance program, providing 44.7 million individuals with an average monthly benefit of \$134 in 2011.").

45. Food Stamp Act of 1964, Pub. L. No. 88-525, 78 Stat. 703 (1964).

46. 7 U.S.C. § 2011 (2011); see also TIEHEN ET AL., *supra* note 44 (2012) (showcasing that SNAP "benefits reach a broad range of disadvantaged households" because eligibility does not depend on "family structure, age or disability status").

47. *Klaips v. Bergland*, 715 F.2d 477, 479 (10th Cir. 1983).

selections are unrestricted save prohibitions on ready-to-go foods, alcohol, and tobacco.⁴⁸ Over 216,000 stores accept SNAP.⁴⁹

A. Participating SNAP Vendors

Although much of the food literature focuses on two kinds of food retailers—supermarkets and convenience or corner stores—SNAP authorizes twenty-three types of firms to redeem SNAP benefits.⁵⁰ Supermarkets and superstores redeem the vast majority of benefits, with a combined \$53 billion or eighty-three percent of all benefits that were redeemed in 2010.⁵¹ In contrast, grocery stores of all sizes (*i.e.*, small, medium, and large) account for just \$3.7 billion in receipts and comprise fourteen percent of authorized retailers.⁵²

Convenience stores are the largest firm category, representing 78,754 businesses or thirty-six percent of all authorized SNAP retailers.⁵³ The second most common type of firm is “combination grocery/other” (CGO).⁵⁴ CGOs include independent drug stores, dollar stores, and general stores.⁵⁵ Together, convenience stores and CGOs make up fifty-nine percent of authorized firms and redeem nearly nine percent of benefits, worth over \$5.4 billion each year.⁵⁶

Eligibility for SNAP is income dependent.⁵⁷ Consequently, benefit redemption increases in periods of economic hardship. From Fiscal Year (FY) 2008 to FY 2010, the value of SNAP benefits redeemed increased by eighty-seven percent.⁵⁸ This uptick is attributable to the growing numbers of Americans who are

48. FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., *Determining Product Eligibility for Purchase with SNAP Benefits* (Jan. 26, 2010), available at <http://www.fns.usda.gov/snap/retailers/eligibility.pdf>; see also U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Supplemental Nutrition Assistance Program: How to Accept SNAP Benefits at Your Store*, <http://www.fns.usda.gov/snap/retailers/accepting-benefits.htm> (last updated Apr. 25, 2012) (stating that SNAP benefits are issued to recipients via EBT cards, which function as debit cards).

49. BENEFIT REDEMPTION DIV., U.S. DEP'T OF AGRIC., WE WELCOME SNAP: PUTTING HEALTHY FOOD WITHIN REACH, 2010 ANN. REP. 9 (2011) [hereinafter WE WELCOME SNAP] (illustrating that in fiscal year 2010 approximately 216,000 retailers participated in the SNAP program).

50. *Id.* at 12 (listing the twenty-three types of firms authorized to redeem SNAP benefits including bakeries, farmers' markets, communal dining facilities among a variety of others).

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. VER PLOEG ET AL., *supra* note 1, at 62 tbl.5.1.

56. WE WELCOME SNAP, *supra* note 49, at 12.

57. U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Supplemental Nutrition Assistance Program: Eligibility*, http://www.fns.usda.gov/snap/applicant_recipients/eligibility.htm (last updated Oct. 4, 2012).

58. *Compare* BENEFIT REDEMPTION DIV., PUTTING HEALTHY FOOD WITHIN REACH: ANNUAL REPORT 2008 11 (2008) (reporting total redemption of SNAP benefits as \$34,407,153,516 for FY 2008) with WE WELCOME SNAP, *supra* note 49, at 8 (documenting benefit redemptions at \$64,443,517,056 for FY 2010).

unable to afford food as well as an additional temporary increase in the benefit amount authorized by the American Recovery and Reinvestment Act of 2009.⁵⁹

Recently, additional firms have attempted to join SNAP and access these benefits.⁶⁰ In FY 2010, 216,738 firms accepted SNAP benefits, compared to 162,015 firms in FY 2006.⁶¹ This level of retailer participation last occurred during a similar period of joblessness in the early 1990s.⁶² During the last ten years, the largest growth in new authorized retailer applications occurred in FY 2009 and FY 2010 and was driven by a surge in applications from convenience stores and CGOs.⁶³

B. Store Preferences Among SNAP Consumers

Two key sources for understanding SNAP consumers' shopping habits are the *Food Stamp Participants' Access to Food Retailers Report* [hereinafter *Food Stamp Participants' Report*] and the *Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program Report* [hereinafter *Benefit Redemption Patterns Report*].⁶⁴ Each report answers fundamentally different questions. The *Food Stamp Participants' Report* queried Food Stamp Program participants and other low-income individuals about all the foods used within a household and the stores where that food was purchased.⁶⁵ In contrast, the *Benefit Redemption Patterns Report* analyzed electronic benefit transaction data to understand the redemption habits of SNAP consumers without considering other resources used to acquire food.⁶⁶

Five key themes, discussed *infra*, emerge from these two reports: 1) supermarkets are the primary food shopping destination for SNAP and other consumers; 2) very few SNAP consumers rely on convenience stores as their primary source of food, though convenience stores are part of consumers' shopping

59. Benefit Redemption Div., U.S. Dep't of Agric., End of an Era, 2009 Annual Report 7 (2010) [hereinafter End of an Era] (illustrating a forty-five percent increase in the amount of SNAP benefits redeemed from FY 2008 to FY 2009), at 2, 7; WE WELCOME SNAP, *supra* note 49, at 8–9.

60. WE WELCOME SNAP, *supra* note 49, at 9.

61. *Id.*

62. End of an Era, *supra* note 59, at 6; *see also* U.S. Dep't of Agric., Food & Nutrition Serv., Rep. No. SNAP-10-CHAR, Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2009 10–12 (2010) (explaining the correlation between periods of joblessness and increased SNAP participation).

63. WE WELCOME SNAP, *supra* note 49, at 9.

64. *See generally* Ohls et al., *supra* note 37 (examining and comparing the shopping habits of SNAP participants with the habits of low-income non-participant households); Laura Castner & Juliette Henke, U.S. Dep't of Agric., Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program: Final Report xxiii (2011) (examining the spending patterns of SNAP participants following the American Recovery and Reinvestment Act benefit increase and analyzing how those spending patterns differ across households).

65. *See* Ohls et al., *supra* note 37, at xiii–xvi, 27–28 (discussing food use and purchasing patterns in low-income households).

66. Castner & Henke, *supra* note 64, at xxiii–xxiv.

portfolio; 3) most SNAP consumers travel one mile or more to their preferred primary shopping destination and in doing so bypass a supermarket; 4) the location where SNAP consumers choose to complete their primary food shopping is associated with differentiated consumption of healthier foods; and 5) SNAP consumers choose to shop outside their neighborhoods for many reasons including unsatisfactory product selection and avoidance of high prices.

First, SNAP consumers, like most Americans, do most of their food shopping in supermarkets or superstores.⁶⁷ The *Food Stamp Participants' Report* found that ninety percent of SNAP consumers, and approximately eighty-seven percent of other low-income consumers, conduct their primary food shopping at supermarkets.⁶⁸ Similarly, the *Benefit Redemption Patterns Report* concluded that sixty-four percent of SNAP benefit transactions occur at supermarkets or supercenters.⁶⁹ On average these supermarket transactions were worth \$38.70 and were double the value of the average SNAP transactions at the next closest firm type (*i.e.*, large and medium grocery stores).⁷⁰

The dominance of supermarkets as the preferred source of “prepare-at-home” food does not render convenience stores and CGOs irrelevant to the food environment that surrounds low-income individuals.⁷¹ Although less than one percent of all consumers and a mere 0.3% of SNAP consumers use convenience stores as their primary source of food,⁷² these firms fill a niche distinct from supermarkets and grocers.⁷³ These retailers do not aspire to replace supermarkets, but present other value-added attributes to consumers.⁷⁴ Convenience stores offer easily accessible locations and small, easy to navigate spaces.⁷⁵ CGOs, like dollar

67. See Ohls et al., *supra* note 37, at 74; see also CASTNER & HENKE, *supra* note 64, at 22 tbl.11.10 (finding that 39.5% of households participating in SNAP redeem their benefits exclusively at supermarkets and supercenters).

68. Ohls et al., *supra* note 37, at 32 tbl.III.1.

69. Castner & Henke, *supra* note 64, at 20 fig.II.4.

70. *Id.* at 20 fig.II.5.

71. See Ohls et al., *supra* note 37, at 33 (finding that a substantial number of Food Stamp Program participants also purchase groceries at stores other than supermarkets).

72. See *id.* at 32 tbl.III.1 (illustrating the types of stores where participants and non-participants of the National Food Stamp Program made purchases). Note that this report was published prior to the Food Stamp Program changing its name to SNAP. Ver Ploeg et al., *supra* note 1, at 61 n.35 (noting that the Food Stamp Program was renamed SNAP).

73. INST. OF MED. & NAT'L RESEARCH COUNCIL, THE PUBLIC HEALTH EFFECTS OF FOOD DESERTS 12, 18 (2009) (noting that supermarkets and grocery stores offer fresh fruits and vegetables while most convenience and nontraditional food stores offer only canned options).

74. See U.S. DEP'T OF AGRIC., *Food Environment Atlas Documentation* (June 2012), <http://www.ers.usda.gov/media/825910/documentation.pdf> (defining convenience stores as vendors that sell limited food items such as milk, bread, soda, and snacks).

75. See ASS'N FOR CONVENIENCE & FUEL RETAILING, *Convenience Stores Offer More Convenience: Convenience Stores Sell Time*, NACS Online (Feb. 2, 2012), <http://www.nacsonline.com/NACS/News/FactSheets/ScopeofIndustry/Pages/Convenience.aspx> (discussing the appeal of convenience stores to consumers).

stores, offer general merchandise and discounted dry goods.⁷⁶ Thus, despite the dominance of supermarket shopping, SNAP beneficiaries, like other consumers, have complex interactions with the food environment and frequent other store types as they balance competing desires for convenience, customer service, personal relationships, product quality, store image, taste, variety, and value.⁷⁷

Second, convenience stores and CGOs are part of SNAP consumers' shopping portfolio. In particular, consumers supplement their supermarket purchases with goods procured from convenience stores and CGOs.⁷⁸ Using data from the *Food Stamp Participants' Report* and considering convenience stores and CGO equivalents together, one can estimate that sixty-three percent of SNAP consumers frequent these firm types.⁷⁹ Moreover, 45.8% of SNAP consumers shop for food at two or more stores in a given month.⁸⁰ Overall, SNAP consumers conduct twenty-two percent of their SNAP transactions at convenience stores or CGOs.⁸¹ The *Benefit Redemption Patterns Report* found that between fifteen and twenty-six percent of SNAP households redeemed benefits at a convenience store or CGO equivalent.⁸² The mean value of these transactions was \$7.86 and \$14.14, respectively.⁸³ SNAP households that include a child, a disabled person, or are located in a county with persistent poverty are likely to redeem benefits more frequently at convenience stores and CGOs.⁸⁴ Additionally, certain states exhibit much higher levels of patronage of these stores.⁸⁵ For example, thirty percent of SNAP households in West Virginia redeem benefits at convenience stores.⁸⁶ These

76. VER PLOEG ET AL., *supra* note 1, at 62.

77. See *Food Spending Patterns of Low-Income Households: Will Increasing Purchasing Power Result in Healthier Food Choices?*, AGRIC. INFO. BULL. (U.S. DEP'T OF AGRIC., Washington, D.C.), Sept. 2007, at 1–2 (finding factors such as taste, variety, convenience, and enjoyment play a role in the type of food expenditures consumers make even among low-income households).

78. See Ohls et al., *supra* note 37, at 74.

79. *Id.* at 32 tbl.III.1. Although the *Food Stamp Participants' Report* and the *Benefit Redemption Patterns Report* were completed for the Food and Nutrition Service within the USDA, they do not employ interchangeable definitions of firm type. In particular, the *Benefit Redemption Patterns Report* includes CGOs and several other types of firms within its "other" term. Castner & Henke, *supra* note 64, at xxx fig.5. Based on the annual reports of SNAP's Benefits Redemption Division, the firm types included in this "other" category—including delivery routes, farmers markets, nonprofit food buying cooperatives, and wholesalers—redeemed minimal benefits compared with the CGO category. *Id.* Therefore, this article treats the *Benefit Redemption Patterns Report's* "other" category as a proxy for CGOs.

80. OHLS ET AL., *supra* note 37, at 38 tbl.III.5.

81. CASTNER & HENKE, *supra* note 64, at xxx fig.5.

82. *Id.* at 27 tbl.II.19 (illustrating the percentage of SNAP households redeeming benefits at convenience stores or CGOs).

83. *Id.* at 20 fig.II.5.

84. *Id.* at A.11 tbl.A.5 (displaying the average number of monthly purchases of various households at such establishments).

85. *Id.* at 29 tbl.II.22 (showing the percentage of households in eleven states and territories that redeem benefits at such establishments).

86. *Id.* at 29 tbl.II.22.

data show that, despite supermarkets' important role in the food environment, SNAP participants rely on other outlets to meet their food shopping needs.⁸⁷

Third, the location, ease, and frequency of supermarket visits by SNAP consumers are associated with the healthfulness of their diets. A 2004 reanalysis of the data used in the *Food Stamp Participants' Report*—which categorized ease of supermarket access based on distance, time, car-ownership, and store preference⁸⁸—found that SNAP customers with low supermarket access consumed about one serving less of fruit per day than those with easy supermarket access.⁸⁹ A related study concluded that “infrequent” supermarket SNAP shoppers (*i.e.*, those shopping at the supermarket less than once every two weeks) purchased fewer fruits and vegetables, potatoes, beans, and milk than “frequent” supermarket SNAP shoppers.⁹⁰ In short, the evidence from these additional studies suggests that increased barriers to supermarket access and reduced supermarket patronage are associated with less healthful food purchases by SNAP consumers.⁹¹

Fourth, SNAP consumers are willing to travel to access desired products at affordable prices. In the public health and nutrition literature, distance travelled to the store is frequently used as a proxy for accessibility of healthier food.⁹² According to the *Food Stamp Participants' Report*, sixty-nine percent of SNAP consumers travelled one mile or more to their most often used store, with thirty-five percent of SNAP consumers travelling more than four miles to their preferred primary store.⁹³ These trips took thirty-eight percent of SNAP consumers out of their neighborhoods.⁹⁴ The distance travelled is evidence of a disparity in access to food. It has important implications for shopping habits which may, in turn, impact diet.⁹⁵

Finally, there are many motivations for SNAP consumers' travel to a preferred shopping destination. Three responses were repeated numerous times among study participants in the *Food Stamp Participants' Report*. They were: 1) lack of stores in the home neighborhood (fifty-one percent); 2) avoidance of high

87. *Id.* at 24–30 (finding that factors such as ethnicity, geographic location, and benefit redemption size impacted a household's reliance on supermarkets or other outlets).

88. Donald Rose & Rickelle Richards, *Food Store Access and Household Fruit and Vegetable Use Among Participants in the US Food Stamp Program*, 7 PUB. HEALTH NUTRITION 1081, 1081–83 (2004).

89. *Id.* at 1086.

90. Ver Ploeg et al., *supra* note 1, at 67–68.

91. *Id.* at 78; *see also* Rose & Richards, *supra* note 88, at 1085–86 (finding that study participants who lived farther away from supermarkets consumed less fruits and vegetables).

92. Adam Drewnowski et al., *The Supermarket Gap: How To Ensure Equitable Access To Affordable, Healthy Foods*, CPHN PUB. HEALTH RESEARCH BRIEF, May 2010, at 1; *see also* SARAH TREUHAF & ALLISON KARPYN, POLICYLINK, THE GROCERY GAP: WHO HAS ACCESS TO HEALTHY FOOD AND WHY IT MATTERS 13 (2010) (noting that researchers use supermarkets as a proxy for food access because such establishments usually offer more nutritious foods than other types of food outlets).

93. Ohls et al., *supra* note 37, at 46 tbl.IV.1.

94. *Id.* at 54 tbl.IV.5.

95. *Id.* at 5–6; VER PLOEG ET AL., *supra* note 1, at 39.

prices (forty-seven percent); and 3) limited product selection (fourteen percent).⁹⁶ SNAP consumers exhibited higher rates of dissatisfaction with the prices and product selection of their neighborhood stores than the reference groups who were eligible and near eligible for SNAP.⁹⁷ In conclusion, SNAP customers will compensate for geographically limited options by travelling to find the products they desire at prices they can afford.⁹⁸

IV. UPDATING WIC TO BETTER MEET NUTRITIONAL NEEDS

The Special Supplemental Nutrition Program for Women, Infants, and Children, more commonly known as WIC, is SNAP's sister program.⁹⁹ It provides healthy foods, nutrition education, and access to health services for women and children who are categorized as nutritionally at-risk.¹⁰⁰ In FY 2011, WIC served 8.9 million women, infants, and children, including fifty-three percent of all infants born in the United States.¹⁰¹ The administration of WIC is fundamentally different from SNAP in two ways. First, WIC food benefits are intended to supplement, not replace, the existing diets of participants.¹⁰² Second, eligible persons accepted into the WIC program are assigned a "food package."¹⁰³ A WIC consumer receives a voucher for a specific food package, which permits the recipient to then select among several brands in a number of food product categories designated by the

96. Ohls et al., *supra* note 37, at 54 tbl.IV.5.

97. *Id.* While approximately fourteen percent of SNAP participants indicated dissatisfaction with the product selection in their neighborhood stores, only 7.4% of eligible SNAP nonparticipants and 8.7% of near-eligible SNAP nonparticipants had this concern. Likewise, forty-seven percent of SNAP participants indicated dissatisfaction with high prices at their neighborhood stores, while only 40.8% of eligible SNAP nonparticipants and 33.2% of near-eligible SNAP nonparticipants had this concern. *Id.*

98. *See id.* at 47, 53 (demonstrating that numerous food stamp households choose stores other than the closest store for various reasons, including high prices and limited food selection).

99. U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Women, Infants, and Children*, <http://www.fns.usda.gov/wic/> (last updated Nov. 20, 2012).

100. U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *About WIC*, <http://www.fns.usda.gov/wic/aboutwic/mission.htm> (last updated Nov. 20, 2012). The Food and Nutrition Service defines "nutritional risk" as "[m]edically-based risks . . . such as anemia, underweight, maternal age, history of pregnancy complications, or poor pregnancy outcomes" and "[d]iet-based risks such as inadequate dietary pattern." *See* U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Frequently Asked Questions About WIC*, <http://www.fns.usda.gov/wic/FAQs/faq.htm#2> (last updated Nov. 20, 2012).

101. U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *WIC At A Glance*, <http://www.fns.usda.gov/wic/aboutwic/wicataglance.htm> (last updated Nov. 20, 2012); U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *WIC Program: Total Participation*, <http://www.fns.usda.gov/pd/26wifypart.htm> (last updated Feb. 8, 2013).

102. NANCY COLE ET AL., U.S. DEP'T OF AGRIC., REP. NO. WIC-11-FOOD, WIC FOOD PACKAGES POLICY OPTIONS STUDY FINAL REPORT 1 (2011) ("WIC provides nutritious foods to supplement existing diets, education about healthy eating, and referrals to social and health care services.").

103. *See* VICTOR OLIVEIRA ET AL., U.S. DEP'T OF AGRIC., RESEARCH REP. NO. 27, THE WIC PROGRAM: BACKGROUND, TRENDS, AND ISSUES 3 (2002) (noting that all WIC participants receive free food packages with foods high in nutrients as part of the program).

food package.¹⁰⁴ The additional foodstuffs provided in the food package are supposed to ensure that the recipients' most crucial nutritional needs—as a woman, infant, or child—are met.¹⁰⁵

During the early 21st century, in response to growing concern that WIC had not kept pace with nutritional science, the USDA commissioned an Institute of Medicine report to provide recommendations for updating the WIC food packages.¹⁰⁶ Incorporating the report's key conclusions, the Food and Nutrition Service (FNS) released an interim rule in 2007 that significantly changed the WIC food packages.¹⁰⁷ State agencies implement WIC and are the proximate conduit of benefits for participants.¹⁰⁸ By 2009, all state agencies were required to implement the new WIC food packages.¹⁰⁹ Noteworthy for this article's analysis, the new food packages added fruits and vegetables, whole wheat bread, and other whole grains, and instituted restrictions on milk-fat content.¹¹⁰ Moreover, breaking from WIC's strict use of an allowed quantity model, the new rule implemented cash value vouchers that are redeemable for fruits and vegetables.¹¹¹

WIC, unlike SNAP, is a block grant program as opposed to an entitlement program.¹¹² Administered by the FNS, the federal government provides block grants to state agencies to implement the WIC program.¹¹³ In doing so, the FNS provides state agencies with considerable autonomy to operate retail delivery systems and establish the stocking requirements for authorized WIC vendors.¹¹⁴ Prior to this initiative, state agencies enjoyed complete freedom to establish

104. *See id.* at 4; U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Frequently Asked Questions About WIC*, <http://www.fns.usda.gov/wic/FAQs/faq.htm#6> (last updated Nov. 20, 2012) (explaining how WIC participants receive vouchers or checks to purchase nutritional foods).

105. U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *WIC Food Packages*, <http://www.fns.usda.gov/wic/benefitsandservices/foodpkg.htm> (last updated Oct. 2, 2012).

106. *See* INST. OF MED., *WIC FOOD PACKAGES: TIME FOR A CHANGE 21* (2006); *see also* Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages, 72 Fed. Reg. 68,966 (Dec. 6, 2007) (to be codified at 7 C.F.R. pt. 246) (noting the growing support for the WIC program to be updated amidst new research concerning nutritional needs of women and children).

107. Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages, 72 Fed. Reg. at 68,966.

108. *WIC At A Glance*, *supra* note 101.

109. COLE ET AL., *supra* note 102, at 1–2.

110. *Id.* at 3–5 tbls.1 & 2.

111. *Id.* at 3 (“The dollar-value vouchers are intended to provide more flexibility for WIC participants to purchase fruits and vegetables, given their seasonal fluctuations in availability and price, and the availability of fresh fruits and vegetables primarily as variable weight items.”).

112. *WIC At A Glance*, *supra* note 101 (“WIC is not an entitlement program as Congress does not set aside funds to allow every eligible individual to participate in the program. WIC is a Federal grant program for which Congress authorizes a specific amount of funds each year . . .”).

113. OLIVEIRA ET AL., *supra* note 103, at 1.

114. *See* U.S. GEN. ACCOUNTING OFFICE, GAO-02-142, *WIC FACES CHALLENGES IN PROVIDING NUTRITION SERVICES 5* (2001) [hereinafter GAO-02-142] (explaining that states have leeway to tailor their own WIC program services to meet local needs).

stocking requirements for WIC-authorized stores.¹¹⁵ In 2008, the updated regulations mandated that state agencies require authorized WIC vendors to stock at least two varieties of fruits, two varieties of vegetables, and one whole grain cereal.¹¹⁶ Many state agencies opted to impose more stringent stocking requirements on stores participating in the WIC program.¹¹⁷ As a result, there is no uniformity in the WIC vendor stocking requirements across the state agencies.¹¹⁸ However, the federal rule creates a minimum standard.¹¹⁹ Additionally, as the state agencies implemented the new food packages, many also included whole wheat bread options and low-fat milk as part of their stocking requirements.¹²⁰

Several scholars have considered the early impact of this policy change. Hillier and colleagues documented the impact of the new food packages on all food stores in two Philadelphia neighborhoods, including those not participating in the WIC program.¹²¹ Gleason and colleagues examined the experiences of WIC-authorized stores with four or fewer cash registers in Colorado, New Hampshire, Pennsylvania, and Wisconsin.¹²² Finally, Andreyeva and colleagues evaluated changes in access to healthy foods after implementation of the new food packages in Connecticut,¹²³ and studied attitudes and beliefs of Connecticut food retailers inside and outside of the WIC program.¹²⁴

115. See 7 C.F.R. § 246.12(g)(3)(i) (mandating that effective February 4, 2008, the states' minimum stocking requirements shall include "two varieties of fruits, two varieties of vegetables, and at least one whole grain cereal," unlike prior versions of the same regulation which contained no specific guidance to states with respect to minimum standards other than that a minimum standard must be established).

116. 7 C.F.R. § 246.12(g)(3)(i) (2012).

117. See OLIVEIRA ET AL., *supra* note 103, at 46, 47 n.89 (noting that WIC state agencies have the option to set standards that are more stringent than the federal minimum stocking requirement).

118. See STACY GLEASON ET AL., ALTARUM INST., IMPACT OF THE REVISED WIC FOOD PACKAGE ON SMALL WIC VENDORS: INSIGHT FROM A FOUR-STATE EVALUATION 13–14 (2011) (providing examples of the variation among the states of minimum stocking requirements for WIC stores).

119. 7 C.F.R. § 246.12(g)(3)(i) (2012).

120. COLE ET AL., *supra* note 102, at 3–7; GLEASON ET AL., *supra* note 118, at 14 ("In addition to whole wheat bread, states could select whether to allow soft corn tortillas, whole wheat tortillas, brown rice, and/or oatmeal under this food package provision.").

121. Amy Hillier et al., *The Impact of WIC Food Package Changes on Access to Healthful Food in 2 Low-Income Urban Neighborhoods*, 44 J. NUTRITION EDUC. & BEHAV. 210, 214 (2012) (concluding that the availability of healthy food in such neighborhoods increased after the implementation of new changes to the WIC food packages). This study excludes specialty stores and dollar stores. *Id.* at 211.

122. See GLEASON ET AL., *supra* note 118, at 43 (finding that the revised WIC packages resulted in increased availability of more healthful foods within a year).

123. See TATIANA ANDREYEVA ET AL., RUDD CTR. FOR FOOD POL'Y & OBESITY, CHANGES IN ACCESS TO HEALTHY FOODS AFTER IMPLEMENTATION OF THE WIC FOOD PACKAGE REVISIONS 21 (2011) (noting healthier foods in WIC grocery and convenience stores in Connecticut after the WIC revisions).

124. See Tatiana Andreyeva et al., *Food Retailer Practices, Attitudes and Beliefs about the Supply of Healthy Foods*, 14 PUB. HEALTH NUTRITION 1024, 1029 (2011) (demonstrating how the addition of healthier food items to WIC food packages in 2009 led to increased demand for certain healthy foods in WIC stores).

V. PROPOSED POLICY INTERVENTION: HEALTHIER STAPLE FOOD STANDARD

This article considers the impact of strengthening SNAP vendor standards through the inclusion of healthier staple foods. Firms currently qualify to accept SNAP benefits in two ways: they must “sell food for home preparation” and either:

(A) Offer for sale, on a continuous basis, at least three varieties of qualifying foods in each of the following four staple food groups, with perishable foods in at least two of the categories:

- meat, poultry or fish
- bread or cereal
- vegetables or fruits
- dairy products

OR

(B) More than one-half (50%) of the total dollar amount of all retail sales (food, nonfood, gas and services) sold in the store must be from the sale of eligible staple foods.¹²⁵

Path (A) is referred to as the minimum stocking requirement.¹²⁶ Path (B) concerns stores’ total sales of certain foods.¹²⁷ The HSF standard only contemplates modifying the first path to SNAP eligibility—the minimum stocking requirement.¹²⁸ Table 1 compares the current vendor eligibility standard and the proposed HSF standard.¹²⁹

We developed the HSF standard based on the goal of making foods available to address nutritional deficits identified by American Dietary Guidelines and the Institute of Medicine in *WIC Food Packages: Time for a Change*.¹³⁰ The HSF standard seeks to increase access to fresh fruits and vegetables, low-fat milk, and whole grains.¹³¹ These products were selected for inclusion because all are under-consumed by Americans and they were recently added to the WIC food

125. U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., *Supplemental Nutrition Assistance Program: Retail Store Eligibility*, <http://www.fns.usda.gov/snap/retailers/store-eligibility.htm> (last updated Feb. 16, 2012).

126. See 7 C.F.R. § 246.12(g)(3)(i) (2012).

127. See 7 C.F.R. § 246.12(g)(4)(i); U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., *Supplemental Nutrition Assistance Program: Retail Store Eligibility*, *supra* note 125 (explaining food, non-food, gas and services are included in retail sales and eligible staple foods for retail store WIC eligibility exclude accessory foods, such as soda and candy).

128. See *infra* Table 1 (highlighting proposed changes to the current eligibility criteria).

129. See *infra* Table 1.

130. See U.S. DEP’T OF AGRIC. & U.S. DEP’T OF HEALTH & HUMAN SERVS., *supra* note 28, at ix (advising Americans to consume more fruits, vegetables, whole grains, fat-free and low-fat dairy products, and seafood as part of their daily diets); see also INST. OF MED., *supra* note 106, at 23 (identifying the priority nutrients and food groups needed in WIC food packages).

131. See *infra* Table 1.

packages.¹³² This policy proposal suggests four simple changes to the current minimum SNAP stocking criteria:

- 1) make fruits and vegetables independent and distinct categories of staple foods, thus creating five categories of staple foods;
- 2) strengthen the perishability requirement by requiring two fresh varieties in both the fruit and vegetable staple food groups and in two additional other categories (i.e., (i) meat, poultry or fish; (ii) bread or cereal; or (iii) dairy products);
- 3) require one whole grain bread option in SNAP's bread and cereal category; and
- 4) require a skim or one-percent milk option in the dairy products category.¹³³

Each new food category or product in the HSF standard makes important contributions to balanced nutrition. For example, fruits and vegetables are key sources of nutrients that are under-consumed in the U.S. diet, such as folate, magnesium, potassium, dietary fiber, and vitamins A, C, and K.¹³⁴ Increased produce consumption is linked to chronic disease risk reduction.¹³⁵ Fruits and vegetables may be used as low-calorie substitutes for processed, energy-dense, sodium laden foods.¹³⁶ Likewise, whole grains contain iron, magnesium, and B vitamins as well as dietary fiber.¹³⁷ Increased consumption of whole grains may reduce the risk of cardiovascular disease.¹³⁸ Turning to low-fat milk, most Americans, particularly adults, consume less milk than is recommended.¹³⁹ Furthermore, Americans' preferred milk varieties are two percent or whole milk, which are high in fat.¹⁴⁰ Transitioning Americans away from high-fat milk and towards low-fat milk is an easy way to reduce calorie consumption without sacrificing nutritional adequacy.¹⁴¹ The HSF standard aims to support consumers in

132. See U.S. DEP'T OF AGRIC. & U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 28, at 33 (noting that Americans consume less than the recommended amount of vegetables, fruits, whole grains, and milk products).

133. See *infra* Table 1.

134. U.S. DEP'T OF AGRIC. & U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 28, at 35.

135. See, e.g., Timothy J. Key et al., *Diet, Nutrition, and the Prevention of Cancer*, 7 PUB. HEALTH NUTRITION 187, 195 (2004) (explaining that a high intake of fruits and vegetables may reduce the risks of cancers of the stomach, larynx, lung, pancreas, breast and bladder, among others).

136. U.S. DEP'T OF AGRIC. & U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 28, at 35.

137. U.S. DEP'T OF AGRIC. & U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 28, at 36.

138. Vasanti S. Malik & Frank B. Hu, *Dietary Prevention of Atherosclerosis: Go With Whole Grains*, 85 AM. J. CLINICAL NUTRITION 1444, 1445 (2007).

139. U.S. DEP'T OF AGRIC. & U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 28, at 38.

140. *Id.*

141. See *id.* (explaining that fat free and low-fat milk provide the same nutrient content as whole milk with fewer calories).

making healthier choices while creating programmatic synergies for those stores authorized to accept both WIC and SNAP.¹⁴²

VI. APPLICATION OF THE INTERVENTION DECISION MATRIX

To guide our analysis of the HSF standard, this article uses the Intervention Decision Matrix.¹⁴³ Created by Fowler and Dannenberg, the Intervention Decision Matrix includes eight elements intended to assist policy-makers in distinguishing between various interventions. The elements are: effectiveness, feasibility, cost feasibility, sustainability, ethical acceptability, political will, social will, and potential unintended benefits and risks.¹⁴⁴ This section will examine each element of the Intervention Decision Matrix to compare the status quo with the impact of implementing the HSF standard.

A. Effectiveness

Effectiveness refers to the likelihood that a proposed intervention will result in the intended outcome.¹⁴⁵ Here, increased availability of healthier staple foods in areas of low supermarket access is the desired outcome.¹⁴⁶ The effectiveness of the HSF standard depends on two critical questions. First, to what extent do current stocking practices at certain stores already comply with the proposed new policy, or would compliance represent a change? Second, are impacted stores located in communities with low supermarket access?

All retailers seeking SNAP authorization under the stocking requirement criteria would be subject to the HSF standard.¹⁴⁷ However, many stores, like supermarkets, super stores, and grocers, would meet the HSF standard without any

142. See *supra* notes 131–33 and accompanying text. The vendor standard proposed by the Senate and House Committees on Agriculture leadership focuses primarily on perishability and excluded foods. See *supra* notes 9–16 and accompanying text. Narrower than the HSF standard, it requires SNAP vendors to stock three required categories of perishable foods. Compare *infra* Table 1 (comparing current eligibility criteria with the HSF Standard), with Agricultural Reform, Food, and Jobs Act of 2012, S. 3240, 112th Cong. § 242(c)(2)(B)(i) (2d Sess. 2012) (requiring retailers to include an increase in certain perishable foods in order to maintain eligibility without addressing the other elements of the HSF standard).

143. Carolyn J. Fowler & Andrew L. Dannenberg, *Intervention Decision Matrix* (2003), reprinted in JAMES M. CRUTCHER ET AL., OKLA. STATE DEP'T OF HEALTH, INJURY PREVENTION WORKS 96 (2004), available at http://ok.gov/health2/documents/CG_AppendixB.pdf [hereinafter *Matrix*].

144. *Id.*; INDIAN HEALTH SERV. PORTLAND AREA, *Guidelines to Planning an Effective Injury Prevention Program*, http://www.npaihb.org/images/epicenter_docs/injuryprevention/ProgramPlanning.pdf (last visited Feb. 2, 2013).

145. INDIAN HEALTH SERV. *supra* note 144.

146. See Nicole Larson et al., *Neighborhood Environments: Disparities in Access to Healthy Foods in the U.S.*, 36 AM. J. PREVENTIVE MED. 74, 75–76 (2009) (explaining that neighborhood disparities in store access are problematic because studies have found that increased access to supermarkets contributes to healthier eating habits).

147. U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Retail Store Eligibility*, *supra* note 125.

modification of their business practices due to their current product lines.¹⁴⁸ In contrast, convenience stores and CGOs would likely be most impacted by the HSF standard.¹⁴⁹ Firms designated as “convenience stores” by SNAP are “primarily engaged in the retail sale of a . . . variety of canned goods, dairy products, pre-packaged meats and other grocery items . . .”¹⁵⁰ Convenience stores and CGOs share two important similarities: 1) both firm types engage in food sales; and 2) food sales are not the majority of their total sales.¹⁵¹ Therefore, both store types qualify for SNAP through the stocking requirement criteria.¹⁵²

Numerous studies conclude that most convenience stores do not stock a variety of healthier foods.¹⁵³ For example, convenience stores scored poorly in a study conducted by Franco and colleagues, which ranked stores using a healthy food availability index that incorporated the presence of low-fat milk, fresh fruits and vegetables, whole wheat bread, and other products as part of its metric.¹⁵⁴ Confirming these results, fresh fruits and vegetables were conspicuously absent from most convenience stores examined in the literature, although these studies may disproportionately reflect non-chain stores.¹⁵⁵ Across studies, fresh fruits were found for sale in approximately one third of convenience stores surveyed.¹⁵⁶

148. Compare *supra* Part IV (listing the food groups included in the HSF standard), with Karen M. Jetter & Diana L. Cassady, *The Availability and Cost of Healthier Food Alternatives*, 30 AM. J. PREVENTIVE MED. 38, 40 (2006) (listing a variety of healthy foods that are “never available” by store type, the vast majority of which are found in supermarkets).

149. Compare *supra* Part IV (listing the food groups included in the HSF standard), with Larson, *supra* note 146, at 75 (noting that convenience stores tend to offer mostly prepared, high-calorie foods and little fresh produce).

150. U.S. CENSUS BUREAU, *1992 Census of Retail Trade, Definitions of Industries*, <http://www.census.gov/epcd/www/rc92sics.html> (last modified Nov. 21, 1996); cf. U.S. DEP’T OF AGRIC., *supra* note 74.

151. *Convenience Store Sales Topped \$680 Billion in 2011*, CSP DAILY NEWS (Apr. 5, 2012), <http://www.cspnet.com/news/general-merchandise/articles/convenience-store-sales-topped-680-billion-2011> (establishing that food sales comprise approximately thirty percent of convenience store profits while sales from packaged beverages, cigarettes, beer, and candy make up the rest).

152. U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., *Retail Store Eligibility*, *supra* note 125 (naming the stocking requirements for stores to qualify for SNAP eligibility).

153. See, e.g., Larson et al., *supra* note 146, at 75 (concluding that convenience stores primarily stock high-calorie foods).

154. See Franco et al., *supra* note 3, at 564 tbl.3 (illustrating that, on average, convenience stores scored lower on the Healthy Food Availability Index than supermarkets).

155. See Brenda Bustillos et al., *Availability of More Healthful Food Alternatives in Traditional, Convenience, and Nontraditional Types of Food Stores in Two Rural Texas Counties*, 109 J. AM. DIETETIC ASS’N 883, 885–86 tbl.1 & 2 (2009) (displaying availability of fresh fruits and vegetables in convenience stores); see also Darcy A. Freedman & Bethany A. Bell, *Access to Healthful Foods Among an Urban Food Insecure Population: Perceptions Versus Reality*, 86 J. URBAN HEALTH 825, 826 (2009) (finding that convenience stores are two times less likely than supermarkets to sell all varieties of fresh fruits and vegetables); Andreyeva et al., *supra* note 4, at 1385 exhibit 1 (listing the range of fruits and vegetables in low and high income neighborhoods); Liese et al., *supra* note 32 (finding that healthy foods, such as fruits and vegetables, were less available in convenience stores).

156. See Freedman & Bell, *supra* note 155, at 832 tbl.2 (finding that seventy percent of convenience stores do not stock any fresh fruit); Bustillos et al., *supra* note 155, at 885 tbl. 1 (listing a variety of fresh

Likewise, across studies, less than sixteen percent of convenience stores sold fresh vegetables.¹⁵⁷ Turning to whole wheat or high fiber bread, this healthier option was only available in approximately forty percent of surveyed convenience stores, across studies.¹⁵⁸ In contrast, studies of low-fat milk availability showed a greater degree of regional variation. One study in New Haven found that seventy-one percent of convenience stores stocked low-fat milk,¹⁵⁹ while studies conducted in Nashville, Baltimore, Minneapolis/St. Paul, Oakland, and Philadelphia reported that low-fat milk was available in about one-third of surveyed stores.¹⁶⁰ In contrast, in Orangeburg County, South Carolina and two rural Texas counties, studies found that low-fat milk was present in only two to twenty-three percent of convenience stores.¹⁶¹

Taken together, these studies demonstrate that convenience stores (potentially particularly the non-chain stores that are heavily represented in many urban areas) are less likely to stock healthier alternative staple products.¹⁶² Furthermore, they illustrate the heterogeneity of convenience store stocking practices across the country.¹⁶³ Based on these studies, it is reasonable to conclude that most convenience stores will have to modify their inventories to meet the HSF standard.¹⁶⁴

fruits, the majority of which are completely unavailable in convenience stores); Andreyeva et al., *supra* note 4, at 1385 exhibit 1 (finding that only thirty-four percent of convenience stores sold any fruit and twenty-one percent of convenience stores sold any vegetable).

157. See Bustillos et al., *supra* note 155, at 885 tbl.2 (listing a variety of fresh vegetables and their respective availability at convenience stores, the highest of which was 16.1%); Freedman & Bell, *supra* note 155, at 832 tbl.2 (finding that, of the surveyed convenience stores, none sold fresh vegetables).

158. See Bustillos et al., *supra* note 155, at 887 tbl.3 (finding that, of the surveyed convenience stores, only 41.9% carried 100% whole wheat bread); Freedman & Bell, *supra* note 155, at 832 tbl.2 (finding that sixty-one percent of convenient stores surveyed did not carry whole grain bread); Liese et al., *supra* note 32, at 1919 tbl.2 (finding that only four percent of convenience stores carried high-fiber bread).

159. Andreyeva et al., *supra* note 4, at 1385 exhibit 1.

160. See Freedman & Bell, *supra* note 155, at 832 tbl.2 (finding that only four percent of convenience stores in Nashville carry one-percent or skim milk); Laska et al., *supra* note 20, at 1033.

161. See Liese et al., *supra* note 32, at 1919 tbl.2 (finding that only two percent of convenience stores in Orangeburg County, South Carolina offer low-fat or non-fat milk); Bustillos et al., *supra* note 155, at 887 tbl. 3 (finding that only 22.6% of convenience stores in two rural Texas counties offer skim milk).

162. See *supra* notes 155–61 and accompanying text (comparing various studies examining convenience store healthy food availability).

163. Compare Liese et al., *supra* note 32, at 1918 (noting the low ratio of healthful foods found in convenience stores when compared to grocery markets), with Freedman & Bell, *supra* note 155, at 826 (noting that convenience stores are two times less likely to sell all varieties of fresh fruits and vegetables).

164. This conclusion does not apply to stores that accept both WIC and SNAP. Dual authorized stores carry products included in the WIC food packages and must meet the WIC stocking requirements. See HEALTHY FOODS HERE, SNAP AND WIC INFORMATION 3, <https://catalyst.uw.edu/workspace/file/download/2e308cbfc3955b7f7570f9745ad754b3beb551d99c886908d49c9275aef3455a?inline=1> (last visited Mar. 26, 2013) (listing retailer requirements for WIC eligibility, including that the retailer must have been an authorized SNAP vendor for at least a year). Therefore, these stores would meet the HSF

Considering the distribution of supermarkets as related to the location of convenience stores, researchers have found that supermarkets are more likely to be located in higher income and Caucasian neighborhoods than other communities.¹⁶⁵ Convenience stores, in contrast, are more prevalent in low-income communities.¹⁶⁶ Although no study has directly examined the geographic distribution of SNAP-authorized convenience stores and CGOs with respect to supermarket access, researchers often view the food environment through the lens of income.¹⁶⁷ Based on two large multi-site studies, supermarkets are up to three times less likely to be located in low-income communities than higher income communities.¹⁶⁸ In low-income communities, convenience stores and small grocers are the dominant unprepared food retailer.¹⁶⁹ In urban settings, too, convenience stores are more prevalent in low-income neighborhoods compared to middle-income or high-income areas.¹⁷⁰ Looking specifically at Baltimore, Geographic Information System mapping reveals that SNAP vendors generally cluster in low-income communities without supermarkets.¹⁷¹

The HSF standard would likely require a maximum of approximately 130,000 stores to stock healthier food (*i.e.*, the sum of convenience stores and CGOs, excluding those that are dual authorized for WIC and SNAP).¹⁷² However, true gains in access to healthier food are also impacted by variables like quality and

standard without changing their business practices. *Compare id.* at 2–3 (explaining the requirements for WIC) with Part IV (explaining the criteria for the HSF standard).

165. See Powell et al., *supra* note 2, at 193 (reporting that low-income urban areas had fewer chain supermarkets, seventy-five percent of which were available in middle-income urban areas, and that the availability of chain supermarkets in African American neighborhoods was only fifty-two percent of that of white neighborhoods); Morland et al., *supra* note 2, at 27–28 (reporting that supermarkets are four times more common in predominately white neighborhoods than predominately black neighborhoods).

166. See TREUHAFT & KARPYN, *supra* note 92, at 8 (reporting that low-income neighborhoods have thirty percent more convenience stores than middle-income neighborhoods).

167. See Powell et al., *supra* note 2, at 189 (noting that scholars widely recognize that social and economic factors influence eating habits).

168. See Morland et al., *supra* note 2 at 26–27 (reporting that more affluent neighborhoods in Mississippi, North Carolina, Maryland, and Minnesota have three times more supermarkets than low-income neighborhoods in those states); Powell et al., *supra* note 2, at 191 tbl.2 (noting that, throughout the country, low-income areas have 0.16 chain supermarkets per zip code, while high-income areas have 0.48).

169. See Morland et al., *supra* note 2, at 27 tbl.3. (finding that, in low-income areas, the most prevalent food stores were grocery stores, followed by convenience stores with gas stations, then convenience stores without gas stations).

170. See Powell et al., *supra* note 2, at 191 tbl.2 (noting that urban low-income areas have 3.72 convenience stores per zip code, whereas urban middle-income and high-income areas have 3.39 and 1.56, respectively).

171. JOHNS HOPKINS CTR. FOR A LIVABLE FUTURE, *Maryland Food System Map*, <http://mdfoodsystemmap.org/map/> (follow “Launch Map” hyperlink; then click “Food Consumption” and select “Supermarkets” and “SNAP Retailer;” then click “Demographics” and select “2010 Median Household Income”).

172. List of FY 2011 SNAP Authorized Retailers that are also FY 2011 Authorized WIC Vendors from Food & Nutrition Serv., U.S. Dep’t of Agric. to author (Apr. 10, 2012) (on file with author).

price.¹⁷³ In conclusion, the HSF standard would likely increase the physical availability of healthier staple foods particularly in communities with low supermarket penetration and low-income populations.

B. Feasibility

The next element of the Intervention Decision Matrix, feasibility, examines whether the proposed intervention is technically “possible, practical, and achievable.”¹⁷⁴ Here, this article relies on the recent experiences of small WIC-authorized vendors. As previously discussed, WIC’s food package reforms were contemporaneous with the establishment of a federal minimum stocking requirement and states’ implementation of enhanced stocking requirements.¹⁷⁵ Three studies document changes in the food environment after these regulatory reforms.¹⁷⁶ These studies reach similar conclusions, namely that the new food packages and stocking requirements increased the availability of healthier food options in WIC-authorized convenience stores and stores with four or fewer cash registers.¹⁷⁷ These results suggest that it is possible for small stores to carry healthier alternatives.¹⁷⁸

In particular, stores with fewer cash registers showed the greatest increase in the availability of healthier foods.¹⁷⁹ After implementation of the WIC reforms, all three studies found increased availability of low-fat milk, fresh fruit, fresh vegetables, and wheat bread in WIC stores.¹⁸⁰ For example, Gleason and colleagues determined that after the WIC reforms, the number of stores with four or fewer cash registers carrying low-fat milk increased by seventeen percent.¹⁸¹ For the same group of stores, fresh fruit was available in thirteen percent more stores, fresh

173. See generally Drownowski et al., *supra* note 92, at 3 (reporting that some consumers may travel further than the closest supermarkets to obtain foods with better quality and price); *supra* notes 96–98 and accompanying text (discussing the variety of motivations of SNAP consumers when choosing where to purchase groceries).

174. INDIAN HEALTH SERV., PORTLAND AREA, *supra* note 144, at 3.

175. See *supra* Part III.

176. See ANDREYEVA ET AL., *supra* note 123, at 5 (focusing on how the WIC food package revisions can affect the food environment); GLEASON ET AL., *supra* note 118, at 3 (focusing on the impact of the WIC food package changes on small stores); Hillier et al., *supra* note 121, at 214–16 (examining changes in healthy food availability in low-income areas after the WIC food package revisions).

177. See Hillier et al., *supra* note 121, at 214; ANDREYEVA ET AL., *supra* note 123, at 23; GLEASON ET AL., *supra* note 118, at 25, 44.

178. See Hillier et al., *supra* note 121, at 216; ANDREYEVA ET AL., *supra* note 123, at 23; GLEASON ET AL., *supra* note 118, at 45.

179. See GLEASON ET AL., *supra* note 118, at 25 tbl.9 (illustrating that, while stores with four registers had no changes in food availability as a result of implementing the new food package rules, stores with one register experienced substantial changes).

180. See Hillier et al., *supra* note 121, at 216; ANDREYEVA ET AL., *supra* note 123, at 34 tbl.5; GLEASON ET AL., *supra* note 118, at 25 tbl.10.

181. GLEASON ET AL., *supra* note 118, at 25 tbl.10.

vegetables were available in an additional five percent of stores, and twenty-eight percent more stores carried whole wheat bread.¹⁸²

Achieving this outcome was only possible because small store owners believed that the benefits of continued participation in the WIC program exceeded the burdens imposed by carrying the new products.¹⁸³ Gleason and colleagues also documented the challenges faced by stores to comply with the WIC reforms, such as adding new food items, decreasing the inventory of other goods, expanding shelf space to accommodate new products, and adding equipment like refrigerators or scales.¹⁸⁴ Due to the lack of space or funds to buy additional refrigeration units, small stores without air conditioning struggled in the summer with spoilage.¹⁸⁵ Loss to spoilage was not confined to fruits and vegetables, as anticipated by store owners, but also included bread and milk.¹⁸⁶ Moreover, small stores found their usual suppliers deficient in the quality or availability of products included in the new food packages, particularly fresh produce. These difficulties forced many small store owners to self-supply some items.¹⁸⁷ Many store owners succeeded in meeting the WIC reforms, but they did so only after adopting costly business practice modifications.¹⁸⁸

A small percentage of store owners concluded that compliance with the new regulations was too burdensome to justify their firms' continued participation in WIC.¹⁸⁹ Within Gleason and colleagues' pre-implementation sample, approximately six percent of originally authorized small WIC stores dropped out of the program prior to the post-implementation evaluation.¹⁹⁰ In subsequent qualitative interviews, these store owners reported that they could obtain goods for the new food packages, but that consumers failed to buy the products.¹⁹¹ This observation represents a threat to the sustainability of store-based interventions to

182. *Id.*

183. *Id.* at 35 ("Prior to the implementation of the WIC food package changes, some store managers expressed concerns about carrying fresh produce and the revised minimum stocking requirements, which may require them to carry greater quantities than they have demand for Store managers in the majority that responded positively to the policy changes noted the importance of these changes in helping their customers eat more healthfully, and they appreciated being able to offer a wider variety of foods that offer customers more choices.").

184. *Id.* at 37–39.

185. *Id.* at 37.

186. *Id.*

187. *Id.* at 39.

188. *Id.* at 37.

189. *See id.* at 23 (reporting that some retailers complained of insufficient space for all required WIC items, lower WIC sales than non-WIC sales, and expiration of WIC foods before sale).

190. *Id.* at 22.

191. *Id.* at 36.

increase access to healthier foods.¹⁹² It does not, however, undermine the conclusion that this type of intervention is feasible.

Training was an integral part of the rollout of the WIC reforms; it familiarized store owners with the new regulations.¹⁹³ State agencies were individually responsible for training vendors and used a variety of formats like conference calls, group trainings, and in-store trainings.¹⁹⁴ Many states incorporated information about the new stocking requirements into mandatory triennial in-person training sessions.¹⁹⁵ SNAP, unlike WIC, does not have an institutional history of group trainings. Instead, SNAP relies on vendors to familiarize themselves with educational materials individually using online resources.¹⁹⁶ Small WIC vendors found additional utility in trainings tailored to their specific needs and offered in foreign languages.¹⁹⁷ If the HSF standard were implemented, its successful rollout would require educational outreach to stores like that conducted by the WIC state agencies.¹⁹⁸

These early evaluations of the short-term impact of the WIC reforms illustrate that it is possible for small vendors to stock fresh fruits and vegetables, low-fat milk, and whole grain products. Gleason and colleagues report that approximately ninety percent of WIC stores in their study maintained their WIC authorization for six to twelve months after implementation of the new food packages.¹⁹⁹ For stores that continued to participate in WIC, getting healthier products on the shelf required investments of time and resources by the state agencies and store owners.²⁰⁰ The next element, cost feasibility, examines these expenditures in greater detail.²⁰¹

192. *See id.* (noting that some store owners feared that selling healthier foods would mean cultivating a different client base while others recognized that consumers needed time to adapt).

193. *Id.* at 15.

194. *Id.* at 14–15.

195. *Id.*

196. U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Supplemental Nutrition Assistance Program: Store Training Information*, <http://www.fns.usda.gov/snap/retailers/store-training.htm> (last updated Feb. 11, 2013) (providing authorized SNAP retailers with a training video and training guides containing information about the program and regulations).

197. *See* GLEASON ET AL., *supra* note 118, at 41, 48 (reporting that some store managers voiced interest in learning more about better business practices and that others wanted to receive materials in Spanish to help them to understand and interpret changes to the program).

198. *Id.* The HSF standard should incorporate the specific strategies cited by store managers who adopted WIC, such as advance notice in HSF changes, an array of HSF training sessions, and training materials on HSF implementation in Spanish. *Id.*

199. *See id.* at 10 tbl.2, 21 (reporting that although 275 stores had completed initial inventories at the first round of data collection, only 248 stores were left during the second round of data collection, which occurred from six months to twelve months after implementation of the revised WIC food package).

200. *See id.* at 14, 37 (explaining that training and resources offered by states to WIC vendors are essential to maintaining an effective program).

201. *See infra* Part VI.C.

C. Cost Feasibility

The third element of the Intervention Decision Matrix is cost feasibility.²⁰² In this article, cost feasibility refers to two broad categories of costs: 1) costs imposed on SNAP stores; and 2) costs borne by SNAP. Consumer costs are outside the scope of this analysis, as the goal of the HSF standard is increased stocking of healthier food products and it does not attempt to influence the prices of these goods.²⁰³

First, costs imposed on SNAP vendors include increased product spoilage due to reduced shelf life, greater shelf space dedicated to products perceived as being less profitable, increased durable goods spending, and additional person-hours spent learning about the HSF standard, determining the impact on the store's operations, and devising compliance strategies.²⁰⁴ The available research on costs and perceptions of small store retailers is limited.²⁰⁵ Based on these studies, some inferences may be drawn about the effects of the WIC reforms and the likely impact of the HSF standard.

When confronted with the need to change their store operations to stay in the WIC program, many small stores with one or two cash registers made multiple changes.²⁰⁶ Small store owners had to increase their inventory of healthier foods.²⁰⁷ Acquiring these products imposed three types of costs on retailers. The first set of costs relates to securing the healthier product. Healthier products are more likely to be obtained through self-supplying or a general distributor than to be delivered directly to the store.²⁰⁸ Self-supplying, for some vendors, was a strategy to minimize product spoilage and its associated costs.²⁰⁹ Stores resorted to self-supplying for a variety of reasons related to distributors' limited product selection, distributors' poor quality produce, and distributors' failure to uphold custom and take back spoiled products.²¹⁰ Self-supplying, while the preferred option by some small store owners, may consume additional person-hours if the store owner has to

202. INDIAN HEALTH SERV., PORTLAND AREA, *supra* note 144, at 3.

203. *See supra* Part V.

204. *See* GLEASON ET AL., *supra* note 118, at 37–38, 40, 46.

205. *See generally* Hillier et al., *supra* note 121, at 214 (stating that one study failed to include non-WIC-authorized vendors); GLEASON ET AL., *supra* note 118, at 49 (noting that the study was limited in that the selection of the small WIC stores in the study was not random, and the data was therefore not representative of all small WIC stores); Andreyeva et al., *supra* note 124, at 1030 (pointing out that study results could not be generalized to other environments because the study lacked diversity of retailers).

206. GLEASON ET AL., *supra* note 118, at 44–46.

207. *Id.* at 44.

208. Andreyeva et al., *supra* note 124, at 1027; *see also* GLEASON ET AL., *supra* note 118, at 39 (pointing out difficulties in obtaining WIC foods, such as whole wheat bread, led some store managers to self-supply certain food items).

209. GLEASON ET AL., *supra* note 118, at 39.

210. *Id.* at 37–39.

visit multiple locations, such as grocery stores, supermarkets, or wholesalers, to secure inventory.²¹¹

The second set of costs concerns the dedication of shelf space to products that are perceived as less profitable by retailers.²¹² Andreyeva and colleagues' study of comparable WIC and non-WIC stores, excluding chain supermarkets, found that although perceptions of healthier product profitability increased after implementation of the new WIC food packages, healthier products in both the pre- and post-evaluations were perceived as less profitable than alternatives like soda and candy.²¹³ Additionally, WIC-authorized store owners frequently had to reorganize shelf and cooler space to accommodate these products, imposing additional labor costs.²¹⁴

The third set of costs is increased durable goods spending. Gleason and colleagues found that store owners predictably reported an unmet need for additional refrigeration equipment and scales.²¹⁵ After six to ten months of evaluation, however, these vendors still had not acquired the cooling equipment.²¹⁶ The discordance between the store owners' actions and desires highlights two points. First, store owners may overestimate their actual need as opposed to desire for additional cooling units.²¹⁷ Second, these vendors likely are limited in their capital spending and may not be able to afford the investment in new cooling equipment or may not have space to accommodate additional cooling units.²¹⁸

Based on the foregoing costs reported by small vendors during the implementation of the WIC reforms, it is reasonable to anticipate that the HSF standard will impose similar costs on the owners of small SNAP stores.²¹⁹ The study conducted by Gleason and colleagues provides evidence that the increased costs were not a sufficient deterrent in the short run to discourage small vendors from seeking or maintaining WIC authorization.²²⁰ The number of small stores participating in WIC increased during the study period in two of the four participating states, while one state experienced a decline in small WIC store

211. *Id.* at 39.

212. Andreyeva et al., *supra* note 124, at 1028.

213. *Id.*

214. GLEASON ET AL., *supra* note 118, at 40.

215. *Id.* at 47.

216. *Id.*

217. *See id.* at 37 (reporting that about twenty-six percent of interviewed store managers anticipated a need for more refrigeration equipment; however, post-implementation interviews revealed that fewer store managers had actually added refrigeration equipment).

218. *See id.* (reporting that many of the store managers who had anticipated a need for more freezer equipment specifically noted that new equipment purchases would depend on profit margins from new food items).

219. *Id.* at 37–39 (explaining the impact of WIC changes on stores, such as difficulties associated with self-supplying foods).

220. *Id.* at 44.

participation, and the final state reported no change.²²¹ The aforementioned decline may be artifactual as the state simultaneously imposed a temporary moratorium on acceptance of new stores into WIC.²²² Additionally, in the states studied, most stores that were no longer WIC authorized had experienced a change in ownership and were seeking reauthorization.²²³

Reliance on the foregoing WIC studies to predict the impact of the HSF standard on small SNAP stores has two weaknesses. The first limitation, of less significance, is that three of the four studies excluded to varying degrees store types which would be affected by the HSF standard.²²⁴ Andreyeva and colleagues excluded pharmacies, a component of the CGO category.²²⁵ One study, conducted by Hillier and colleagues, also explicitly excluded dollar stores, a SNAP vendor of increasing importance.²²⁶ Finally, Gleason excluded any store with more than four registers, which could result in the exclusion of larger convenience stores, general stores, dollar stores, and pharmacies.²²⁷

The second, more important, consideration limiting the predictive value of these findings for SNAP is that WIC consumers and SNAP consumers face radically different pricing regimes.²²⁸ The result is that SNAP consumers are more price-sensitive than WIC consumers when redeeming benefits.²²⁹ WIC operates under an “allowed quantity” model, providing beneficiaries with vouchers that may be redeemed for a particular good regardless of its price, so long as the voucher is

221. *Id.* at 22–23, 44. The study reported an increase in participation among small stores in Pennsylvania and Wisconsin, a decline in participation among small stores in New Hampshire and no change in participation among small stores in Colorado. *Id.*

222. *Id.* at 44.

223. *Id.*

224. See *infra* notes 230–32 and accompanying text. One study, Andreyeva et al., *supra* note 124, did not facially exclude convenience stores or CGOs. Andreyeva et al., *supra* note 124, at 1025 (using a matched study design that paired WIC and non-WIC retailers other than chain supermarkets).

225. ANDREYEVA ET AL., *supra* note 123, at 8 (excluding pharmacies because they only accept WIC for formula).

226. Hillier et al., *supra* note 121, at 211.

227. See GLEASON ET AL., *supra* note 118, at 5 (limit the study to small stores defined by having four or fewer cash registers).

228. See HEALTHY FOODS HERE, *supra* note 164 at 1 (explaining that SNAP participants buy eligible foods using an EBT card, which acts like a debit card, while WIC participants receive specialized checks with no specific dollar amount that may be used only for the specific food items indicated on the check).

229. Compare FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., NUTRITION PROGRAM FACTS: WIC, <http://www.fns.usda.gov/wic/FAQs/faq.htm> (last modified Nov. 20, 2012) (noting that WIC provides participants with checks or vouchers each month to buy certain nutritious foods) with FOOD & NUTRITION SERV., U.S. DEP’T OF AGRIC., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM ELECTRONIC BENEFITS TRANSFER (EBT), <http://www.fns.usda.gov/snap/ebt/> (last modified Nov. 21, 2012) (explaining that SNAP relies on an electronic system in which recipients transfer benefits from an account to pay a retailer for products purchased); see also OHRI-VACHASPATI ET AL., *supra* note 9, at 14 (discussing the effect that food prices have on SNAP users’ purchasing of healthier foods).

presented at a participating retailer.²³⁰ In contrast, SNAP, via debit cards, provides beneficiaries with a cash equivalent benefit that may be redeemed as they see fit for any qualifying product at any participating store.²³¹ This benefit distribution scheme pushes SNAP beneficiaries to maximize the redemptive power of their benefits by substituting away from relatively more expensive foods or beverages in favor of lower cost goods.²³² When SNAP consumers find and buy lower price products, they are rewarded with the retention of the unspent benefit amount.²³³

Additionally, SNAP consumers enjoy greater freedoms to satisfy their personal tastes using SNAP benefits.²³⁴ WIC constrains consumer choice to the food package lists.²³⁵ This limitation allows the WIC program to self-induce demand for healthier foods that consumers may not have selected if the WIC benefit did not make the item effectively free to the participant.²³⁶ For the aforementioned reasons, SNAP consumers' purchases of healthier foods at convenience stores and CGOs may be more limited than the purchases completed by WIC consumers.²³⁷ Thus, the SNAP stores may be burdened with additional costs unsupported by corresponding revenue gains.

To effectively implement the HSF standard within SNAP, costs would include educational materials to inform SNAP vendors of the new requirements, marketing materials to inform store patrons of the change, and additional enforcement to ensure compliance.²³⁸ Enforcement activities that generate fines could reduce the net cost of implementing this standard. Cost feasibility is always a contextual question; in the current fiscal and political climate where the social safety net is under attack, additional funding to support these costs may not align

230. U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Nutrition Program Facts: WIC*, *supra* note 228 (discussing how WIC participants receive food benefits).

231. U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Electronic Benefits Transfer*, *supra* note 228.

232. *See, e.g.*, OHRI-VACHASPATI ET AL., *supra* note 9, at 14 (noting that SNAP users significantly increased purchase of fruits and vegetables in response to a decrease in the prices of such items).

233. *See* CASTNER & HENKE, *supra* note 64, at 43 (displaying unspent benefit amounts of SNAP households for FY 2009).

234. *See* U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Supplemental Nutrition Assistance Program: Eligible Food Items*, <http://www.fns.usda.gov/snap/retailers/eligible.htm> (last updated Feb. 14, 2013) (noting that SNAP eligible foods include soft drinks, baked goods, seafood, and steak, among other items).

235. *See* HEALTHY FOODS HERE, *supra* note 164, at 1; *see also* U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *SNAPSHOT OF THE WIC FOOD PACKAGES (2010)*, <http://www.fns.usda.gov/wic/benefitsandservices/Snapshot-WIC-Children-WomenFoodPkgs.pdf> (last revised Mar. 2010) (displaying WIC's maximum monthly allowances of supplemental foods).

236. *See supra* Part IV.

237. *See* U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., *Eligible Food Items*, *supra* note 234.

238. *See* GLEASON ET AL., *supra* note 118, at 48, 53 (discussing the importance of expanded training and resources to WIC vendors in implementing revised food package policies).

with national political priorities.²³⁹ This line of questioning concerning the feasibility of additional administrative spending for SNAP is intimately connected to the question of political will.²⁴⁰

If the HSF standard were implemented, SNAP convenience stores and CGOs that add healthier products would likely face additional costs to comply with the law.²⁴¹ In the case of WIC, in the short term these costs did not discourage vendors from entering or staying in the program.²⁴² In the case of SNAP, given SNAP consumers' increased price sensitivity with respect to benefit redemption, these additional costs might discourage SNAP consumers from selecting a particular product or store and consequently chill retailer participation in SNAP.²⁴³

D. Sustainability

Sustainability is the potential for continued effect; it refers to the ability of an intervention to persist, become institutionalized, and embody long term success.²⁴⁴ This article's sustainability analysis presupposes the inclusion of the HSF standard in the Farm Bill.²⁴⁵ Reauthorized every five to seven years, the Farm Bill is the nation's leading nutrition and agriculture legislation.²⁴⁶ On the spectrum of potential interventions, policies that are codified into law are typically more easily sustained.²⁴⁷ Inclusion of the HSF standard in the Farm Bill would make it relatively stable until the next reauthorization cycle.²⁴⁸

239. See, e.g., Chad Stone, *Mitt Romney and Newt Gingrich Don't Get the Social Safety Net*, U.S. NEWS & WORLD REP. (Feb. 8, 2012), <http://www.usnews.com/opinion/blogs/economic-intelligence/2012/02/08/mitt-romney-and-newt-gingrich-dont-get-the-social-safety-net>; cf. PSC SOCIAL SAFETY NET WORKING GROUP, DEFENDING THE SOCIAL SAFETY NET: A CALL TO ACTION 2 (2012), <http://www.psc-cuny.org/sites/default/files/SafetyNetBrochureApril2012.pdf> ("Without a social safety net—a set of federal, state and local programs, legislated and contractual, intended to provide protection against economic calamity—anyone facing old age, infirmity, the unexpected misfortune of unemployment, disability or the death of a wage earner, runs the risk of being unable to fend for herself.").

240. See *infra* Part VI.F.

241. See GLEASON ET AL., *supra* note 118, at 39.

242. See *id.* at 23–24, 44 (noting that most small stores maintained their WIC authorization status following the food packaging changes).

243. VER PLOEG ET AL., *supra* note 1, at 83 (finding that price is a determinant of food demand and low-income consumers demand lower priced goods).

244. INDIAN HEALTH SERV., PORTLAND AREA, *supra* note 144, at 3.

245. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651; see *infra* Part VI.F.

246. CHANGE LAB SOLUTIONS, GROWING CHANGE: A FARM BILL PRIMER FOR COMMUNITIES 1 (2012), available at http://changelabsolutions.org/sites/default/files/GrowingChange_FarmBillPrimer_Final_20120514_0.pdf.

247. DEBORAH STONE, POLICY PARADOX: THE ART OF POLITICAL DECISION MAKING 284 (2002) (stating that policy-making is significantly based upon written laws and other "official rules" such as common law).

248. *Id.*

Stepping back from these pragmatic realities, this analysis also briefly considers political theory and economic concerns related to the sustainability of the HSF standard. As a legislative intervention, a necessary—but insufficient—condition for a law to achieve sustainability is that the statute not be repealed.²⁴⁹ Sustainability of a law then depends in part on its ability to avoid the ire of a motivated public, committed special interest groups, or influential elected officials.²⁵⁰ Applied to the HSF standard, the most proximate threat of repeal comes from retailers like convenience stores, dollar stores, pharmacies, and corner stores.²⁵¹ These groups' inclination to challenge the law may be neutralized if the new healthier products generate more profits than the status quo.²⁵²

Consumer price sensitivity and lack of consumer demand for healthier products are twin threats to the sustainability of the HSF standard along with supply side costs. One reason that consumers prefer supermarkets over convenience stores is supermarkets' lower prices.²⁵³ Likewise, the search for lower priced food motivates many SNAP consumers to shop outside their neighborhoods.²⁵⁴ The HSF standard is not intended to transform convenience stores or CGOs into supermarkets, yet the sustainability of the healthier product offerings will depend on the affordability of the healthier options or stores' ability to recoup the cost of these items through the sales of other products.²⁵⁵ The experience of WIC vendors offers few insights into the questions of price sensitivity or consumer demand, for reasons previously discussed.²⁵⁶

Understanding consumer demand and price elasticity for healthier staple foods outside of supermarkets is fundamental to gauging the sustainability of this proposed policy change.²⁵⁷ Research that directly answers this question is unavailable.²⁵⁸ Sophisticated econometric modeling would give the most accurate

249. A law ceases to have effect when it is repealed; thus, a repealed statute is not sustainable. BLACK'S LAW DICTIONARY 1413 (9th ed. 2009) (defining "repeal" as "abrogation of an existing law by legislative act").

250. See JOHN W. KINGDON, AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES 45 (Eric Stano ed., 2d ed. 2003) (explaining that laws are influenced by the revolving door of lawmakers who are influenced by lobbying interest groups).

251. VER PLOEG ET AL., *supra* note 1, at 77 (finding that prices are higher at convenience stores and people shop where prices are lower, notably at supercenters).

252. See, e.g., *id.* at 87–88 (finding that in response to competition from supercenters, traditional supermarkets remain competitive by offering more organic products, more store brand products, and fewer national brands).

253. VER PLOEG ET AL., *supra* note 1, at 77 (finding that between twenty and twenty-two percent of lower and middle income households' food budgets are spent at supercenters that offer lower prices).

254. See *supra* Part III.B.

255. See *supra* Part VI.C (examining cost-feasibility).

256. See *id.* (explaining that the WIC analysis excluded convenience stores and CGOs and that SNAP consumers are more price sensitive than WIC consumers).

257. *Id.*; see also VER PLOEG ET AL., *supra* note 1, at 77 (noting that people will travel to purchase more inexpensive products).

258. See *supra* Part I. (noting that the authors propose HSF for the first time in this article).

answer to the question of whether an equilibrium price exists that meets both store owners' needs as profit seekers and low-income consumers' budgetary constraints.²⁵⁹

In the absence of other evidence, Andreyeva and colleagues offer some limited insights into consumer demand for fruit and milk.²⁶⁰ Demand for fruit is relatively more elastic than that for other staple foods; that is, when the price of fruit increases, the demand for fruit declines more steeply than, for example, the demand for eggs.²⁶¹ Additionally, when confronted by a price increase in whole milk, consumers are more likely to make a smaller switch to reduced fat milk rather than to purchase skim milk.²⁶² This may be evidence of consumers' aversion to skim milk and their willingness to do without fruit, which has important implications for the sustainability of the HSF standard.

Also, in the absence of empirical evidence, if vendors' perceptions are used as barometers of consumer demand, then consumer demand for healthier products in convenience stores is weak.²⁶³ Before the WIC program reforms, both WIC and non-WIC store owners reported that consumer demand for unhealthy products exceeded demand for healthier products.²⁶⁴ After implementation of the WIC reforms, however, one of the evaluations found that WIC store owners reported increases in demand for products that would be included in the HSF standard.²⁶⁵ Nonetheless, these demand increases were insufficient to surpass the owners' perceptions of consumer demand for unhealthy products.²⁶⁶ Meanwhile, matched comparable non-WIC retailers reported no gains in consumer demand for healthier products of a similar magnitude.²⁶⁷

The meaning of these increases in perceived consumer demand is difficult to discern.²⁶⁸ Andreyeva and colleagues' use of a control group helps to rule out a secular trend as the causal element of the increased consumer demand for healthier

259. Saul H. Hymans, *Forecasting and Econometric Models*, CONCISE ENCYCLOPEDIA OF ECONOMICS, <http://www.econlib.org/library/Enc/ForecastingandEconometricModels.html> (last visited Mar. 3, 2013) (explaining that econometric models make economic forecasts by assessing relationships between variables such as consumer spending, employment, and tax rates, among others).

260. See generally Tatiana Andreyeva et al., *The Impact of Food Prices on Consumption: A Systematic Review of Research on the Price Elasticity of Demand for Food*, 100 AM. J. PUB. HEALTH 216, 216–17 (2010) (reviewing studies on the impact of food prices on consumer demand for various foods and beverages).

261. *Id.* at 219.

262. *Id.*

263. See GLEASON ET AL., *supra* note 118, at 36 (discussing store managers' concerns about a negative customer response to the changes because such managers felt that customers did not like healthy foods).

264. Andreyeva et al., *supra* note 124, at 1027.

265. *Id.* at 1029.

266. See *id.* at 1028.

267. *Id.*

268. See *id.* at 1029 (noting that examination of long-term changes in customer preferences will be integral to better understanding how such changes occur).

products at WIC-authorized stores.²⁶⁹ The most compelling question is: who purchased the healthier products? Was it WIC consumers or other patrons? If only WIC consumers bought the healthier products, this would suggest that the success of WIC stores in sustaining healthier product offerings is attributable to the ability of the WIC program to induce demand for healthier food. If other store patrons purchased the products, it could suggest pent up demand for healthier foods in these stores' clienteles. Perhaps prices were sufficiently affordable or consumers are willing to pay more for convenient, healthier food. If it could be shown that non-WIC customers bought the healthier products, this increases the likelihood that the HSF standard would be sustainable.

On the supply side, retailers perceive suppliers as price setters.²⁷⁰ Retailers' access to healthier products may be restricted by the limited number of suppliers offering these products.²⁷¹ In particular, small stores self-supply produce from supermarkets and warehouse clubs.²⁷² Reliance on these sources may lead to a double retail mark-up and increased spoilage due to multiple handlings of fresh fruits and vegetables.²⁷³ Despite the initially muted response from suppliers to meet the new demand of small WIC retailers for healthier products, suppliers may be more apt to modify their business practices if a larger share of the retail market demanded these products.²⁷⁴

The HSF standard would impact a maximum of approximately 130,000 small stores and may create sufficient incentives for suppliers to stock healthier food products at prices that are attractive to retailers.²⁷⁵ This change in retailer demand may permit previously unrealized economies of scale to develop if convenience stores and CGOs en masse demand healthier foods from their suppliers to meet the HSF standard.²⁷⁶ This would likely drive changes in supplier behavior and the cost savings may help achieve a market equilibrium that makes healthier staple foods affordable.²⁷⁷ If weak consumer demand saddles store owners

269. *Id.* at 1025.

270. *Id.* at 1029.

271. *Id.*

272. *Id.*

273. *Id.* at 1029–30.

274. *See id.* at 1030 (explaining that smaller retailers would be more likely to sell healthy foods if they had access to distributors who could provide them with healthy foods in necessary quantities and through convenient delivery methods).

275. FY 2011 SNAP Authorized Retailers that are also FY 2011 Authorized WIC Vendors from Food & Nutrition Serv., *supra* note 172 (noting 133,970 WIC-authorized convenience stores and CGOs in FY 2011).

276. *See* Dragan Miljkovic & Daniel Mostad, *Impact of Changes in Dietary Preferences on U.S. Retail Demand for Beef: Health Concerns and the Role of Media*, 23 J. AGRIBUSINESS 183, 196 (2005) (explaining that health concerns have the potential to shift demand, and thus economies of scale as a whole for certain food products).

277. *See* Adam Drewnowski & Nicole Darmon, *Food Choices and Diet Costs: an Economic Analysis*, 135 J. NUTRITION 900, 902 (2005) (noting studies that found that healthier diets are more

with unreimbursed expenses related to meeting the enhanced stocking requirements then, through their trade associations, they could potentially apply political pressure to repeal the HSF standard. Any resulting repeal of the HSF standard would, of course, make the intervention unsustainable.

Aside from the threat of outright repeal of the HSF standard, the law, though still valid, may be self-defeating under multiple scenarios. First, inadequate consumer demand, supplier difficulties, or other obstacles might erode profits and drive small stores out of SNAP or, worse yet, out of business altogether.²⁷⁸ Second, if enforcement is toothless and infrequent, stores may stay in SNAP, but fail to comply with the HSF standard.²⁷⁹ In these scenarios, the law exists, but the outcome of interest—increased access to healthier foods—is not realized.²⁸⁰ The sustainability of improving healthier food availability in communities that lack supermarkets ultimately lies in the ability of the HSF standard to release unrealized consumer demand and secure dependable, affordable supply chains to deliver healthier staple foods to convenience stores and CGOs.²⁸¹

E. Ethical Acceptability

The next element of the Intervention Decision Matrix, ethical acceptability, addresses the frequent values conflicts that occur in public policy and public health. Ethics concerns the values embodied by human action and the “rightness and wrongness” of those actions.²⁸² This element of the matrix allows us to identify the values that are privileged by our actions and reflect on the alignment of those values with the values of: 1) the populations affected by the policy change; 2) policy-makers advocating for the change; and 3) public health as a discipline.²⁸³

Public health ethics, as distinguished from bioethics, favors the values of population-level utility, justice, fairness, and accountability above other principles

expensive to maintain than lower-quality diets but also pointing out that there is disagreement on the issue).

278. See GLEASON ET AL., *supra* note 118, at 51 (stating that small business owners’ participation in programs geared toward supplying healthy food will depend on whether such programs make business sense).

279. See Andreyeva et al., *supra* note 124, at 1028–29 (noting that customers frequently pressure vendors to break the rules of the WIC program).

280. *Id.* at 1029 (explaining that some stores lost their WIC authorizations by committing program violations).

281. See FOOD TRUST FOR HEALTHY CORNER STORES NETWORK, HEALTHY CORNER STORES ISSUE BRIEF 5 (2012) (highlighting the challenge posed by the “supplier-retailer gap” and arguing that demand exists for fresh produce in corner stores).

282. Sam Fullerton et al., *Consumer Ethics: An Assessment of Individual Behavior in the Market Place*, 15 J. BUS. ETHICS 805, 806 (1996).

283. Carolyn Cumpsty Fowler, Conference Presentation, Dell Children’s Medical Ctr. of Cent. Tex., Guiding Intervention Selection: The Revised Intervention Decision Matrix, 33, http://www.dellchildrens.net/services_and_programs/safety_and_injury_prevention/texas_injury_and_violence_prevention_conference/conference_presentations/Dr_Carolyn_Cumpsty_Fowler_2.pdf; see also *supra* note 144–45 and accompanying text.

when ethical conflicts arise.²⁸⁴ The HSF standard embodies many of the values at the core of public health.²⁸⁵ Making healthier food more available at the retail level gives all store patrons more choices, not just the individuals who participate in SNAP.²⁸⁶ It addresses a fundamental injustice or unfairness, which is that low-income communities are underserved by healthier food vendors.²⁸⁷ Residents of low-income communities without supermarkets face obstacles to procuring perishable healthier foods, particularly if those households rely on public or active transport.²⁸⁸ Implementing the HSF standard would reduce these obstacles and potentially increase access to healthier food options.

Examining the HSF standard's impact in terms of accountability yields mixed results. Looking first at the HSF standard in isolation, it does not promote accountability.²⁸⁹ Its accountability quotient may rise if a complementary robust enforcement mechanism accompanied the implementation of the new vendor standards.²⁹⁰ Taking a more holistic view, this policy intervention promotes government accountability. Implementation of the HSF standard would assist the federal government in realizing the often ignored objective of the Food Stamp Act of 1964: to "safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households."²⁹¹ The proposed policy also promotes government accountability because it would alter the nation's food environment, which currently restricts at least 23.5 million Americans' ability to choose a healthier diet due to inferior supermarket access.²⁹²

What of the ethical considerations with respect to the populations primarily affected by this proposed change: patrons of convenience stores and CGOs that participate in SNAP and the owners of said firms? From the patrons' perspective, the proposed policy respects their autonomy by providing more food options, which in turn enhances the meaningfulness of their personal food selections.²⁹³ However, it was not developed in direct consultation with the individuals whose

284. See Nancy M. Baum et al., *Looking Ahead: Addressing Ethical Challenges in Public Health Practice*, 35 J.L. MED. & ETHICS 657, 658 (2007) (providing that bioethics value autonomy while public health ethics favor population-level utility, justice, fairness, and accountability).

285. See *supra* note 130 and accompanying text.

286. See Andreyeva et al., *supra* note 124, at 1024 (noting that low-income communities are likely to have limited supermarket access and thus fewer healthy food choices).

287. *Id.*; see also Powell et al., *supra* note 2, at 194.

288. MIKKELSEN & CHEHIMI, *supra* note 26, at 6.

289. See *supra* note 142 and accompanying text (stating that the HSF standard aims to support consumers in making healthier choices, but does not mention any ways to make consumers accountable for their actions).

290. See *supra* notes 235–36 and accompanying text.

291. 7 U.S.C. § 2011 (2011).

292. VER PLOEG ET AL., *supra* note 1, at iii.

293. See BEN MEPHAM, FOOD ETHICS COUNCIL, ETHICAL MATRIX 2 (2010), available at http://www.foodethicscouncil.org/system/files/Ethical%20Matrix_1.pdf (expounding upon Immanuel Kant's theory of ethics in which individual autonomy is respected and others are treated as an end in themselves).

diet it ultimately hopes to improve. Because it was developed by the authors alone, the HSF standard may be criticized as paternalistic.²⁹⁴

From the perspective of store owners, the ethics analysis is more complicated. Firms enter voluntarily into SNAP and are free to withdraw from the program.²⁹⁵ For contractual arrangements like this one, in the absence of duress or evidence of unconscionability, it is presumed that entering into the contract is an autonomous act by the parties.²⁹⁶ Here, a firm that is given the option to comply with the HSF standard or leave SNAP may view this choice as a desperate exchange if a significant portion of the business's revenue comes from SNAP benefits.²⁹⁷ A persuasive argument can be made, however, that this is no different from innumerable other decisions faced by business owners where offering a service desired by prospective clients imposes costs the firm would prefer not to bear.²⁹⁸ The level of respect afforded to store owners' autonomy by the proposed policy is less than that afforded to consumers.²⁹⁹ Whether this contractual arrangement affords sufficient respect to the autonomy of stores whose survival depends on SNAP revenue is debatable.

This issue raises a larger question: if these firms abandon SNAP en masse, particularly in high need areas such as rural communities with few other options, or alternatively if these stores go out of business, is this result ethically acceptable from the consumer or population perspective? If the long-term outcome of the proposed policy change is a further reduction in access to food for individuals with low access to supermarkets, then the HSF standard is ethically unacceptable because it promotes greater injustice with respect to nutritional access.³⁰⁰

294. See Phil Rabinowitz, *Ethical Issues in Community Interventions*, THE CMTY. TOOLBOX, http://ctb.ku.edu/en/tablecontents/sub_section_main_1165.aspx (last visited Mar. 3, 2013) (stating that it is sensible to include community input in implementing a standard or program that will affect community members).

295. U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., SNAP: TRAINING GUIDE FOR RETAILERS 1 (2012), available at http://www.fns.usda.gov/snap/retailers/pdfs/Retailer_Training_Guide.pdf (stating that retailers may withdraw from SNAP).

296. See Banks McDowell, *Party Autonomy in Contract Remedies*, 57 B.U. L. REV. 429, 429 (1977) ("Freedom of Contract theory . . . is the ethical justification for widespread party autonomy respecting contract provisions . . .").

297. WE WELCOME SNAP, *supra* note 49, at 7 (noting the major impact SNAP has on businesses, providing more than \$64 billion of revenue from SNAP participants in 2010 and generating up to nine dollars for local economies for every five dollars spent).

298. GLEASON ET AL., *supra* note 118, at 2 (stating that store owners often face difficult decisions that require cost benefit analyses, such as determining how to use limited shelf space or equipment in order to keep perishable foods fresh).

299. See *supra* note 142 and accompanying text (noting that the HSF standard seeks to increase consumer autonomy by fostering more meaningful dietary choices).

300. See PHILLIP R. KAUFMAN ET AL., FOOD & RURAL ECON. DIV., U.S. DEP'T OF AGRIC., AGRICULTURAL ECONOMICS REPORT NO. AER759, DO THE POOR PAY MORE FOR FOOD? ITEM SELECTION AND PRICE DIFFERENCES AFFECT LOW-INCOME HOUSEHOLD FOOD COSTS 16 (1997) (arguing that low-income households currently forfeit nutritional food for economical foods in order to save money).

F. Political Will

The next element of the Intervention Decision Matrix is political will.³⁰¹ In many instances, legislators' and executive branch officials' actions are manifestations of the prevailing political will.³⁰² These actions are instigated by a triad of forces, namely an official's philosophical or political beliefs, advocacy groups' influence over the official, and the weight of voters' pressure on the official. This section considers these forces in the context of including the HSF standard in a future version of the Farm Bill prospectively. The article's previous discussions of political considerations took a retrospective orientation, as if the HSF standard had already been passed into law.³⁰³

The Farm Bill,³⁰⁴ an omnibus spending authorization bill historically passed by Congress every five years, is the most likely avenue for enacting the HSF standard.³⁰⁵ Although both the Senate and the House Agriculture Committees passed versions of a 2012 Farm Bill, the bills were never reconciled, and a one-year extension of the expiring Farm Bill was signed into law by President Obama on January 2, 2013.³⁰⁶ However, the next Farm Bill could provide a vehicle for the HSF standard. Nutrition programs accounted for sixty-eight percent of budget allocations in the 2008 Farm Bill and SNAP made up sixty-one percent of nutrition spending in FY 2007.³⁰⁷ Through the legislative wrangling that accompanies the passage of this \$100 billion bill, as described previously,³⁰⁸ modest enhancements to the SNAP vendor standard were included by both the Senate and House Committees on Agriculture leadership in the 2012 bills.³⁰⁹

301. *Matrix*, *supra* note 143; INDIAN HEALTH SERV., PORTLAND AREA, *supra* note 144, at 2, 4.

302. See Lori Ann Post et al., *Using Public Will to Secure Political Will*, in GOVERNANCE REFORM UNDER REAL-WORLD CONDITIONS 113, 113 (Sina Odugbemi & Thomas Jacobson eds., 2008) (addressing how public opinion has the ability to influence and direct legislative efforts).

303. See *supra* Part VI.D.

304. Versions of the Farm Bill will likely be reintroduced in 2013. Agriculture Reform, Food and Jobs Act of 2012, S. 3240, 112th Cong. tit. IV (2d Sess. 2012); Federal Agriculture Reform and Risk Management Act, H.R. 6083, 112th Cong. tit. IV (2d Sess. 2012).

305. The House Agriculture Committee's Subcommittee on Nutrition and Horticulture had several nutrition programs within their jurisdiction during the 2012 session, and such programs would have received nearly eighty percent of the Farm Bill spending. Press Release, House Comm. on Agric., Subcomm. Focuses on Specialty Crop & Nutrition Programs During Fourth D.C. Farm Bill Hearing (May 8, 2012), available at <http://agriculture.house.gov/press-release/subcommittee-focuses-specialty-crop-and-nutrition-programs-during-fourth-dc-farm-bill>.

306. S. 3240 § 4005; H.R. 6083 § 4001.

307. RENEE JOHNSON & JIM MONKE, CONG. RESEARCH SERV., RS22131, WHAT IS THE "FARM BILL"? 3 tbl.1 (2010) (providing that nutrition programs comprised \$37.8 billion of the 2008 Farm Bill budget); Edwin Young et al., *2008 Farm Act: Where Will the Money Go?*, AMBER WAVES, Nov. 2008, at 40, available at <http://webarchives.cdlib.org/sw1vh5dg3r/http://www.ers.usda.gov/AmberWaves/November08/PDF/Datafeature.pdf> (illustrating the Farm Bill's budget and the amount of SNAP spending on nutrition programs).

308. See *supra* notes 13–15, 304 and accompanying text.

309. S. 3240 § 4005; H.R. 6083 § 4001.

Since the 2010 midterm elections, the political discourse led by conservatives has been increasingly anti-regulatory and skeptical of the value of social welfare programs like SNAP.³¹⁰

In March 2012, Democrats speculated that the House Oversight and Government Reform Committee's hearing on fraud in SNAP was a tactic to build a case for cutting funding from the program.³¹¹ Pressures from the right contributed to the Democratically-controlled Senate cutting the SNAP program by \$4 billion in its version of the Farm Bill, while the House version of the Farm Bill proposed to cut the program by four times as much—\$16.5 billion.³¹² These cuts epitomize conservative political philosophy in terms of reduction of the federal deficit and valuation of the social safety net, respectively.³¹³

In this chilly political climate, anti-hunger and nutrition activists banded together to support a platform of priorities for the Farm Bill.³¹⁴ Organized and circulated by the Public Health Institute, this list of priorities included “strengthen[ing] SNAP national vendor standard to improve availability of healthy foods while balancing adequate access to retailer outlets.”³¹⁵ This document secured over ninety signatories representing a diverse coalition of anti-poverty groups, children's advocates, farmer advocates, environmental groups, faith-based groups, the produce industry, and public health organizations.³¹⁶

The expected countervailing force to this advocacy block may include the trade associations that represent convenience stores and dollar stores, such as the National Association of Convenience and Fuel Retailers (NACS)³¹⁷ and the

310. See, e.g., PEW RESEARCH CTR., TRENDS IN AMERICAN VALUES: 1987–2012: PARTISAN POLARIZATION SURGES IN BUSH, OBAMA YEARS 51 (2012), available at <http://www.people-press.org/files/legacy-pdf/06-04-12%20Values%20Release.pdf> (commenting that the majority of Americans believe that it is the government's responsibility to take care of individuals who cannot take care of themselves, but that this number continues to decrease).

311. See Pam Fessler, *House Committee Urges Action on Food Stamp Fraud*, NPR NEWS (Mar. 8, 2012), <http://www.npr.org/2012/03/08/148235246/house-committee-urges-action-on-food-stamp-fraud> (noting one Democratic Representative's concern that Republicans could use fraud arguments to support legislative action cutting benefits).

312. See Teresa Welsh, *Should Congress Be Using the Farm Bill to Cut Food Stamps?*, U.S. NEWS (July 12, 2012), <http://www.usnews.com/opinion/articles/2012/07/12/should-congress-be-using-the-farm-bill-to-cut-food-stamps> (describing and discussing these monetary cuts).

313. See, e.g., REPUBLICAN NAT'L COMM., REPUBLICAN PLATFORM 2012 3 (2012), available at <http://www.gop.com/wp-content/uploads/2012/09/2012GOPPlatform.pdf> (demonstrating the Republican Party's strong beliefs regarding decreasing spending and debt reduction).

314. Matthew Marsom, *90 Hunger and Nutrition Organizations Urge Congress to Protect Nutrition Programs in the Upcoming Farm Bill*, PUB. HEALTH INST. (Apr. 9, 2012), <http://www.pnnewswire.com/news-releases/90-hunger-and-nutrition-organizations-urge-congress-to-protect-nutrition-programs-in-the-upcoming-farm-bill-146645185.html>.

315. *Id.*

316. *Id.*

317. See *About NACS*, NACS ONLINE, http://www.nacsonline.com/NACS/About_NACS/Pages/default.aspx (last visited Mar. 3, 2013) (stating that NACS is a trade association that advocates the interests of its convenience and retail store industry members).

National Retail Federation,³¹⁸ as well as processed food manufacturers. The NACS represents 148,000 convenience stores nationwide including the major national chains.³¹⁹ Based on its recent publication, *You're Under Arrest!*, criticizing the so-called "food police," NACS is likely to oppose the HSF standard.³²⁰ That said, this article's proposed SNAP vendor requirements may not rise to the top of these organizations' policy agendas, given the immediacy of other legislative concerns.³²¹ In addition, this issue will probably not resonate with the vast majority of voters.³²² Beyond a small circle of committed activists and store owners, who would potentially be impacted if the proposal gained traction in Congress, this issue is unknown to the general public.³²³

Given the deficit reduction orientation in the House of Representatives,³²⁴ it is worthwhile to note other positive attributes of the HSF standard. The HSF standard is cost neutral with respect to taxpayer spending on benefits.³²⁵ Moreover, the HSF standard, in addition to increasing access to nutritious food, may also deter fraud within SNAP by eliminating marginal stores that are overrepresented among stores trafficking benefits.³²⁶ Trafficking occurs more frequently in convenience stores and small grocery stores.³²⁷ According to one study, the rate of trafficking in those small firms is 7.6 cents per benefit dollar while the rate for large groceries and

318. See *About NRF*, NAT'L RETAIL FED'N, http://www.nrf.com/modules.php?name=Pages&sp_id=146&pmenu_id=1&mn_type=1 (last visited Jan. 21, 2013) (asserting that the National Retail Federation is the world's largest retail trade association).

319. See *About NACS*, *supra* note 317.

320. See Scott Orr, *You're Under Arrest!*, NACS MAGAZINE, Feb. 2012, available at http://www.nacsonline.com/NACS/MAGAZINE/PASTISSUES/2012/February2012/Pages/Cover_Story.aspx (arguing that the food police have used "scare tactics and misinformation to gain traction in their drive to force their dietary values on all Americans").

321. See, e.g., *Government Relations*, NACS ONLINE, <http://www.nacsonline.com/NACS/GOVERNMENT/NUTRITIONPOLICY/Pages/default.aspx> (last visited Mar. 3, 2013) (listing specific governmental policies that NACS monitors, such as food safety and menu labeling, but not listing any SNAP-related issues).

322. See generally *Election Center*, CNN POLITICS, <http://www.cnn.com/election/2012/campaign-issues.html> (last visited Mar. 3, 2013) (noting that the leading economic issues in the 2012 elections were unemployment, reduction of the nation's debt, and taxes).

323. See *supra* notes 313–18.

324. See e.g., DOTTIE ROSENBAUM, CTR. ON BUDGET & POL'Y PRIORITIES, RYAN BUDGET WOULD SLASH SNAP FUNDING BY \$127 BILLION OVER TEN YEARS 1 (2011), <http://www.cbpp.org/files/4-11-11fa.pdf> (arguing that SNAP program cuts would affect low-income families enormously).

325. See *supra* Part VI.C.

326. *SNAP: Payment Errors and Trafficking Have Declined, but Challenges Remain: Hearing Before the Subcomm. on Department Operations, Oversight, Nutrition, and Forestry of the H. Comm. on Agriculture*, 111th Cong. 11 (2010) [hereinafter *SNAP Hearing*] (Statement of Kay E. Brown, Director Education, Workforce, and Income Security Issues, U.S. Gov't Accountability Office) (noting that between 2002 and 2005, the Food and Nutrition Service estimated that \$241 million in SNAP benefits were trafficked, with much higher trafficking rates in smaller stores as compared to rates in supermarkets and large grocery stores).

327. *Id.* at i.

supermarkets is 0.2 cents per benefit dollar.³²⁸ The Government Accountability Office (GAO) identified the minimal stocking requirements as a defect in the program that allows unscrupulous businesses to gain SNAP authorization solely for the purpose of benefit theft.³²⁹ This is possible because the current standard is so low that an applicant may meet it at nominal cost.³³⁰ Strengthening the stocking requirement, as envisioned in the HSF standard, would raise the floor and create a higher barrier of entry to those who seek to defraud the government.³³¹ The stores that would be pushed out of SNAP or dissuaded from joining it under this rubric provide little nutritional support to SNAP consumers.³³²

Ensuring the success of the HSF standard as a fraud prevention measure and nutrition intervention depends on deterrence that comes with robust enforcement. Currently, the FNS's attitude towards vendor standards is lax.³³³ In 2011, just 929 stores or 0.004 percent were temporarily terminated from SNAP for noncompliance with store eligibility rules.³³⁴ According to the GAO, in areas of high need, some stores are admitted to SNAP without carrying the requisite products.³³⁵ Also, stores often may not be inspected for five years unless their conduct arouses suspicion.³³⁶ The failure by FNS to verify that stores stock staple foods on a continuous basis compromises the food security of the population the agency intends to serve.³³⁷ The success of the HSF standard depends on FNS devoting resources to ensuring compliance with vendor standards.³³⁸

The seeds of the political will necessary to implement the HSF standard exist as the Farm Bill moves forward in 2013. The concept of strengthening vendor standards is favored by a broad coalition of farmers, anti-poverty activists,

328. *Id.* at 11.

329. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-53, FOOD STAMP TRAFFICKING: FNS COULD ENHANCE PROGRAM INTEGRITY BY BETTER TARGETING STORES LIKELY TO TRAFFIC AND INCREASING PENALTIES 22 (2006) [hereinafter GAO-07-53] (noting that the minimal food stocking requirements, lack of FNS oversight, and delays in transaction reporting data allow retailers to enter and defraud the program for several months before being discovered).

330. See *SNAP Hearing*, *supra* note 326, at 5 (stating that a retailer may obtain SNAP authorization as long as at least three varieties of foods in each of the four staple food categories are offered or over fifty percent of sales come from a staple group).

331. See GAO-07-53, *supra* note 329, at 23 (explaining that retailers are able to defraud the government as a result of minimal food stock requirements and lack of government oversight).

332. See *supra* Part II.

333. *Cf.* GAO-07-53, *supra* note 329, at 14. FNS has made efforts to use new technology to strengthen its monitoring and sanctioning of food stamp retailers that abuse the program and permit trafficking. *Id.*

334. WE WELCOME SNAP, *supra* note 49, at 13 (illustrating the number of stores terminated from SNAP).

335. See GAO-07-53, *supra* note 329, at 23 (explaining that such stores are admitted because of the shortage of large grocery stores in urban, low-income areas).

336. *Id.*

337. *Id.*

338. *Id.* at 23–24 (noting that FNS does not independently verify the contractor reports it relies upon).

environmentalists, and faith-based groups.³³⁹ While the political climate disfavors enhancements to entitlement programs,³⁴⁰ measures to root out wasteful government spending are in vogue.³⁴¹ Agriculture Secretary Tom Vilsack and Agriculture Undersecretary for Food, Consumer and Nutrition Services Kevin Concannon support strengthening vendor standards to reduce fraud.³⁴² Emphasizing that the HSF standard strengthens stocking requirements, and in doing so may reduce SNAP benefit trafficking, may increase support for this policy change.³⁴³

G. Social Will

The next element of the Intervention Decision Matrix, social will, asks whether the population affected by the intervention supports the change.³⁴⁴ In the absence of polling data answering this question directly, alternative evidence must be examined to discern whether affected consumers and store owners would support the proposed policy change as well as how the HSF standard might be received by the American public at large.

After implementation of the HSF standard, consumers who patronize SNAP convenience stores and CGOs will have the option of purchasing healthier staple foods at locations where these food stuffs were previously unavailable.³⁴⁵ Faced with these additional food choices, it is likely that consumers' reactions will be neutral to positive.³⁴⁶ Unless accompanied by an outreach campaign, most consumers will not know why the product selection changed, if the improvement is noticed at all.³⁴⁷ One qualitative study of low-income women, ninety percent of

339. See, e.g., Marsom, *supra* note 314 (listing several groups in favor of strengthening vendor standards).

340. See PEW RESEARCH CTR., *supra* note 310, at 55 (noting that public support for government safety net programs has steadily dropped).

341. See, e.g., Michael Silvy, *The Best Way to Cut Government Spending: Get Really Tough on Fraud*, TIME (Dec. 5, 2012), <http://business.time.com/2012/12/05/the-best-way-to-cut-government-spending-get-really-tough-on-fraud/> (arguing that the best way to cut government spending is by instituting policies to crack down on fraudulent government payments).

342. Vilsack, Concannon: *Tighten Food Stamp Store Definition*, THE HAGSTROM REPORT (Mar. 8, 2012), http://www.hagstromreport.com/2012news_files/2012_0308_foodstamps.html.

343. Cf. SHEILA ZEDLEWSKI ET AL., URBAN INST., SNAP'S ROLE IN THE GREAT RECESSION AND BEYOND 7 (2012), available at <http://www.urban.org/UploadedPDF/412613-SNAPs-Role-in-the-Great-Recession-and-Beyond.pdf> (suggesting that the decline in SNAP benefit trafficking is due to the program's change to electronic benefit transfer cards to track benefit redemption behaviors at stores).

344. *Matrix*, *supra* note 143; INDIAN HEALTH SERV., PORTLAND AREA, *supra* note 144, at 4.

345. See *supra* Part V.

346. See Shannon N. Zenk et al., "You Have to Hunt for the Fruits, the Vegetables": Environmental Barriers and Adaptive Strategies to Acquire Food in a Low-Income African American Neighborhood, 38 HEALTH EDUC. & BEHAV. 282, 285 (2011) (noting that while availability of food options was a focus for female shoppers in low-income areas, factors such as store cleanliness, food quality, and food prices also influenced consumers' perceptions).

347. See generally Briana Banks, *What is SNAP and Why is it Important?* CAPITAL AREA FOOD BANK (Feb. 16, 2012), <http://www.capitalareafoodbank.org/2012/02/what-is-snap-and-why-is-it->

whom participated in SNAP, found that very few participants chose stores based on their selection of healthy food.³⁴⁸ Instead, they based their decisions on other factors like price, quality, store environment, customer service, and neighborhood security.³⁴⁹ Given that these other factors carry more weight in individuals' store selection decisions, it is reasonable to infer that altering product availability alone will not draw new customers into stores.³⁵⁰ Likewise, simply increasing availability does not predict whether patrons will be comfortable buying these products outside of the supermarket context.³⁵¹ Based on these inferences, low-income consumers' support for the HSF standard could be tepid. Conversely, opposition from consumers would likely be weak or nonexistent unless motivated by a deeper philosophical belief about the role of government in society. If consumers view the HSF standard as another nanny state intervention threatening small business, opposition could be strong and swift.³⁵²

Store owners' reactions to the implementation of the HSF standard are more difficult to gauge.³⁵³ Andreyeva and colleagues report that eighty-three percent of convenience store and other small food store owners/managers were interested in selling healthier products.³⁵⁴ This desire to add healthier options was tempered by perceived customer dislike of these offerings and competition from supermarkets.³⁵⁵ But, these observations only tell part of the story. Convenience store and CGO owners may be open to selling healthier products, but this receptiveness likely will not translate into support for a government mandate that may necessitate multiple alterations to their business practices.³⁵⁶ As the object of the regulation, small store owners have a strong incentive to band together in vocal,

important (noting that without SNAP outreach programs, millions of dollars in benefits would go unclaimed by eligible families).

348. Zenk et al., *supra* note 346, at 287 (finding that low-income women were more focused on obtaining reasonably priced foods rather than healthy foods).

349. *Id.* at 288.

350. *Id.* at 285 (explaining that store cleanliness, food quality, and food prices were additional factors that affected how patrons chose where to purchase food).

351. *Id.*

352. See generally Susan Milligan, *Maybe Americans Need Michael Bloomberg's 'Nannystate' Government*, U.S. NEWS (June 5, 2012), <http://www.usnews.com/opinion/blogs/susan-milligan/2012/06/05/americans-should-learn-from-the-french-on-portion-size> ("Ideally, the consumer would demand that cafes and manufacturers offer food items that are genuinely single-serving sized. But there is also a tendency to think we're getting a bargain if we're getting more—even if 'more' ends up meaning more heart disease and diabetes. In an ideal world, government would not have to act like our nannies or parents. But perhaps someone has to.").

353. See Andreyeva et al., *supra* note 124, at 1028–29 (finding that storeowners who participated in the WIC program reported mixed reactions stemming from program advantages such as increased sales, but also disadvantages such as extra time for processing).

354. *Id.* at 1027.

355. *Id.*

356. See Orr, *supra* note 320 (arguing that the solution to increasing healthy eating among Americans does not lie in "heavy-handed, economy-crushing government regulations" because the choice in what foods to purchase ultimately resides with consumers).

persistent opposition to the HSF standard.³⁵⁷ Among this group, there will likely be low levels of social will to support the HSF standard.³⁵⁸ The depth and passion of opposition from store owners will depend largely on the level of technical support vendors receive from SNAP while implementing the policy.³⁵⁹

The public at large is likely to be ambivalent about the proposed policy change. Restricting SNAP benefits has become a lightning rod for Americans of all political stripes.³⁶⁰ If the HSF standard is wrongly swept up in the movement to improve SNAP beneficiaries' diet by limiting access to products like soda, then it is more likely to be perceived in the same way as these other controversial proposals.³⁶¹ Instead, if the HSF standard can carve out its own identity, as a pro-consumer alternative, it may gain more widespread support.³⁶² Emphasizing the proposal's cost neutrality with respect to benefits and its potential to leverage government resources to improve health will warm the public to the idea.³⁶³ A substantial number of Americans who disfavor regulations categorically will likely oppose this policy change.³⁶⁴ In any case, implementing the HSF standard is such a technical change that few Americans will likely be aware of its implementation or defeat.³⁶⁵

H. Results of the Successful Implementation of the HSF Standard

The desired outcome of the HSF standard is to increase the availability of healthier staple foods in communities with limited supermarket access by placing these products on the shelves of convenience stores, drug stores, dollar stores, and other small SNAP retailers.³⁶⁶ This improved access aims to support store patrons

357. *See id.* (giving the perspective of the National Association of Convenience Stores in opposing government regulation of consumer eating habits).

358. *See, e.g., id.*

359. *See supra* Part VI.B.; *see also* GLEASON ET AL., *supra* note 118, at 41, 48 (reporting that the training store managers received on implementing the food packaging changes was not only helpful but also ensured the successful implementation of the reform policies).

360. *See, e.g., SNAP and Restrictions*, SNAP TO HEALTH!, <http://www.snaptohealth.org/snap-innovations/snap-and-restrictions> (last visited Jan. 22, 2013) (detailing how New York City's application for a waiver to allow restrictions of soda purchases with SNAP benefits raised the issue of weighing the rights of SNAP clients against controlling the emerging obesity epidemic).

361. *E.g.*, Robert Pear, *Soft Drink Industry Fights Proposed Food Stamp Ban*, N.Y. TIMES, Apr. 30, 2011, at A11 (noting how food and beverage lobbyists see Mayor Bloomberg's plan as "misguided" because it would stigmatize poor people who use food stamps).

362. *Cf.* Jonathan D. Shenkin & Michael F. Jacobson, *Using the Food Stamp Program and Other Methods to Promote Healthy Diets for Low-Income Consumers*, 100 AM. J. PUB. HEALTH 1562, 1563 (2010) (discussing one consumer friendly strategy employed by SNAP in which participants can receive money back on their benefits as a reward for purchasing healthier foods).

363. *See supra* Part VI.C.

364. *See* PEW RESEARCH CTR., *supra* note 310, at 62 (reporting that seventy-six percent of Republicans believe government regulation of business does more harm than good).

365. *See supra* Part V. (outlining the process for implementation of the HSF standard).

366. *Id.*

in making healthier food purchases.³⁶⁷ If consumers incorporate these foods into their diet, the result will be some combination of two possible outcomes. The most desirable result is the substitution away from less healthy processed, higher fat, lower fiber options.³⁶⁸ The alternative outcome is that consumers buy and eat the healthier foods while maintaining their current food consumption habits, resulting in increased total calorie intake. Most Americans consume more calories than are recommended.³⁶⁹ This behavior contributes to negative health outcomes and sustains the obesity epidemic.³⁷⁰ The addition of healthier products like whole grains and fresh produce adds vitamins, nutrients, and fiber that are less available in processed foods.³⁷¹ The increased nutritional value of healthier foods might counterbalance the negative consequences of overconsumption.³⁷²

Beyond these anticipated results, other positive externalities may occur. For instance, implementation of the HSF standard may increase the availability of healthier foods in stores outside of SNAP.³⁷³ Hillier and colleagues observed this change in food stores in two low-income Philadelphia neighborhoods.³⁷⁴ Following the implementation of the new WIC food packages, the availability of healthier food increased for all stores in their study.³⁷⁵ In particular, the greatest gains were observed in the availability of reduced-fat milk and whole grain products.³⁷⁶ Gains were also noted in the availability of fresh fruits and vegetables.³⁷⁷ These results, while encouraging, are tempered by the findings of Andreyeva and colleagues.³⁷⁸ They did not find a generalized improvement in healthier food availability following the implementation of the new WIC food packages.³⁷⁹ Instead, their

367. *Id.*

368. *Cf. Incentives to Help SNAP Households Purchase Healthy Foods*, THE HUNGER REPORT, <http://hungerreport.org/issues/healthy-food/incentives-for-snap-households> (last visited Mar. 3, 2013) (detailing how SNAP achieves its goals by creating incentives to encourage participants to purchase healthier foods instead of processed foods that contribute empty calories).

369. *See* U.S. DEP'T OF AGRIC. & U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 28, at 46 fig.5-1 (showing that Americans' calorie consumption of solid fats and added sugars is 280% more than the recommended amounts).

370. *See id.* at 8–9 (noting that high rates of obesity are due to Americans' consumption of more calories than are expended).

371. *See* U.S. DEP'T OF AGRIC. & U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 28, at 33.

372. *See id.* at 15 (noting that while the intake of macronutrients is essential to any nutritious diet, it is also important to reduce calorie intake and maintain calorie reduction over time).

373. *See* Hillier et al., *supra* note 121, at 21 (noting how WIC food packaging changes have resulted in an increase of availability of healthy food options in stores, especially in smaller local stores).

374. *Id.* (reporting that a federal subsidy of WIC food package items resulted in significant changes in the food environments of two low-income neighborhoods).

375. *Id.*

376. *Id.* at 213.

377. *Id.*

378. ANDREYEVA ET AL., *supra* note 123.

379. *Id.* at 22 (observing how WIC food package revisions had a larger impact on the availability and variety in healthy foods in low-income areas compared to WIC stores in higher-income areas).

study found differentiated increases in healthier food availability, with most gains in availability of healthier foods confined to WIC stores.³⁸⁰

Potential unexpected negative externalities that may accompany the successful implementation of stronger vendor standards include reduced willingness of chain supermarkets to locate in low-income neighborhoods.³⁸¹ Chain supermarkets are often already reluctant to locate in low-income and minority communities.³⁸² Increasing the availability of healthier staple foods might erode the limited attractiveness of these communities to supermarkets due to increased competition from small SNAP stores for sales of healthier staple foods.³⁸³ This possibility seems rather extreme given the price and quality advantages commonly associated with chain supermarkets.³⁸⁴

I. Results of the Failed Implementation of the HSF Standard

Many of the potential negative unintended consequences of the failed implementation of the HSF standard were described previously, and can be traced to the inability of small vendors to maintain their desired profit margins.³⁸⁵ Stores may opt to leave SNAP or close their doors altogether if executing the HSF standard is too costly.³⁸⁶ If stores leave SNAP, this could result in reduced access to nutritionally important foods like milk for SNAP consumers.³⁸⁷ However, if convenience stores and CGOs leave SNAP and remain open, it would preserve access to these products for the general public and for those SNAP consumers with the resources to complete their purchase using cash instead of benefits.³⁸⁸ Alternatively, if these stores go out of business, their wares will be unavailable to all consumers. The potential magnitude of this impact is unknown.

380. *Id.* at 21.

381. Powell et al., *supra* note 2, at 193; Morland et al., *supra* note 2, at 27–28; *see also supra* Part II (indicating that supermarkets are less likely to locate in low-income areas compared to higher-income areas).

382. Powell et al., *supra* note 2, at 193.

383. POLICYLINK, GROCERY STORE ATTRACTION STRATEGIES: A RESOURCE GUIDE FOR COMMUNITY ACTIVISTS AND LOCAL GOVERNMENTS 21 (2008) (listing competitor location and size as factors that influence grocery store demand and therefore affect market potential).

384. *See supra* text accompanying note 22.

385. *See supra* Parts VI.B–C.

386. *See supra* text accompanying notes 191–94 (demonstrating the voluntariness of the HSF standard by paralleling it to rates of WIC participation among stores, six percent of which dropped out of the program prior to evaluation).

387. OHLS ET AL., *supra* note 37, at 74 (indicating that many SNAP customers rely on stores other than supermarkets for their shopping needs). If these stores leave SNAP due to the increased cost associated with offering healthy food choices, SNAP customers are deprived not only of access to these new food offerings, but of access to the food staples that these stores formerly offered as well. *Id.*

388. *Id.* If the convenience stores that many SNAP customers rely on as a secondary food source remain open, though not in the SNAP program, customers will at least be able to shop at these stores using cash. *Id.*

Very few SNAP consumers rely on convenience stores and CGOs as their primary shopping destinations.³⁸⁹ There are, however, specific exceptions. In some states, such as West Virginia, Rhode Island, and Oklahoma, twenty to thirty percent of SNAP households redeem benefits at convenience stores and more than forty percent of SNAP households do not redeem benefits at supermarkets.³⁹⁰ Small independent stores are well-known for surviving on narrow profit margins.³⁹¹ It is unknown what portion of SNAP stores relies on SNAP revenues to survive. Urban consumers would be protected from the most deleterious effects of potential store closures by the availability of alternative retail outlets.³⁹² In rural areas, these scenarios could have profound implications depending on the distance to retailers of interest and the price of gasoline.³⁹³

VII. REVISITING THE INTERVENTION DECISION MATRIX RESULTS

Replacing current SNAP vendor standard with the more robust HSF standard would increase the availability of fresh fruit and vegetables, low-fat milk, and whole wheat bread in communities with limited access to supermarkets.³⁹⁴ Using the Intervention Decision Matrix as a guide, the evidence indicates that this proposed policy change would likely be an effective tool to increase access to these healthier staple foods.³⁹⁵ First, the HSF standard would only impact the business operations of convenience stores and CGOs.³⁹⁶ Although the stocking practices of CGOs were not evaluated, it is well documented that convenience stores frequently do not stock these healthier food options.³⁹⁷ Additionally, convenience stores and

389. *Id.* at 32 tbl.III.1 (indicating that only 0.2% of SNAP households shop primarily at convenience stores, while 87.1% of SNAP households shop primarily at supermarkets); Castner & Henke, *supra* note 64, at 20 figs.II.4 & II.5 (revealing that SNAP households made far less transactions and spent less money at convenience and small grocery stores than at supermarkets and large grocery stores).

390. Castner & Henke, *supra* note 65, at 29 tbl.II.22 (illustrating that in West Virginia, Rhode Island, and Oklahoma SNAP customers rely on convenience stores as their primary shopping destinations more heavily than in other states). Additionally, in these three states, only fifty-one to fifty-nine percent of SNAP households redeem benefits at supermarkets, and therefore, more than forty percent do not. *See id.*

391. Jane Birnbaum, *Rising Taxes Squeeze Local Operations*, N.Y. TIMES, Oct. 22, 2009, at B4 (noting that small businesses are disproportionately affected by rising property taxes because they operate on narrower profit margins).

392. *See supra* Part III.B. (showing that ninety percent of SNAP customers rely primarily on supermarkets, but supplement their diet by shopping at two or more stores in a given month).

393. *See* Bustillos et al., *supra* note 155, at 883 (explaining that individuals living in isolated rural areas are already more likely to have difficulty reaching supermarkets and rely even more on convenience stores and other small stores for food purchases).

394. *See supra* Part VI.A.

395. *Matrix, supra* note 143; INDIAN HEALTH SERV., PORTLAND AREA, *supra* note 144, at 2; *see also supra* Part VI.A.–G.

396. *See supra* Part VI.A.

397. Bustillos et al., *supra* note 155, at 883–86; Laska et al., *supra* note 20, at 1031, 1033–34; Freedman & Bell, *supra* note 155, at 825–26; Andreyeva et al., *supra* note 4, at 1384; Franco et al., *supra* note 25, at 901; Liese et al., *supra* note 32, at 1916, 1918.

SNAP retailers are often located in low-income communities, which are more likely to have poor supermarket access.³⁹⁸

Second, implementing the HSF standard is feasible, as shown by numerous studies evaluating the impact of the new WIC food packages.³⁹⁹ Small WIC stores demonstrated that convenience stores and CGOs can procure the products of interest and get them on the shelf.⁴⁰⁰ WIC stores made multiple concurrent changes to their business operations to accommodate these products.⁴⁰¹ Only a few stores in these studies left WIC as a result of the changes, and the stronger regulations did not appear to discourage new small stores from joining the program.⁴⁰²

Third, moving from simple feasibility to cost feasibility, small stores would likely face increased costs associated with self-supplying, spoilage, and potential consumer substitution away from higher profit products if the HSF standard were in effect.⁴⁰³ The impact of these additional costs on small stores cannot be accurately ascertained from the experiences of WIC stores.⁴⁰⁴ Due to SNAP's use of cash equivalent benefits, its participants are far more price sensitive when redeeming benefits than WIC consumers.⁴⁰⁵ Therefore, it is unknown if the HSF standard is cost feasible because SNAP store owners may not be as successful as WIC store owners in recouping the costs associated with selling healthier products. Independent owner/operated stores, as opposed to chain stores, risk greater harm from these additional costs.⁴⁰⁶ Implementing the HSF standard is cost neutral to tax payers with respect to SNAP benefits.⁴⁰⁷ Additional costs to the FNS as a result of implementing the HSF standard depend on the agency's desire to invest in a robust program rollout, but may be partially recouped through fines if coupled with meaningful enforcement.⁴⁰⁸

If passed in a future Farm Bill, the HSF standard would achieve remarkable sustainability due to its status as a law.⁴⁰⁹ Threats to the policy's sustainability are

398. See *supra* note 2 and accompanying text.

399. Hillier et al., *supra* note 121, at 214–16; GLEASON ET AL., *supra* note 118, at 5; ANDREYEVA ET AL., *supra* note 123, at 21 (reporting that the availability of healthful foods increased following the implementation of new WIC standards requiring vendors to carry such foods, especially in WIC-authorized convenience and grocery stores located in low-income areas).

400. See *supra* note 2 and accompanying text.

401. See GLEASON ET AL., *supra* note 118, at 37.

402. See *supra* Part VI.C. (indicating that small store owners believed that the benefits of participating in the WIC program outweighed the burdens associated with carrying more healthy foods, and that small vendors continued to seek WIC authorization).

403. See GLEASON ET AL., *supra* note 118, at 37–39, 47.

404. See *supra* notes 227–36 (indicating that the differences between WIC and SNAP operating models limit the predictive value of the experience of WIC stores implementing heightened healthy food standards, with regard to the potential effects of the proposed HSF standard on SNAP stores).

405. *Id.*

406. See *supra* note 392 and accompanying text.

407. See *supra* note 325 and accompanying text.

408. See *supra* notes 235–36 and accompanying text.

409. See STONE, *supra* note 238, at 284.

the same as the threats to cost feasibility.⁴¹⁰ If consumers do not buy the new healthier products at SNAP convenience stores and CGOs, and these stores cannot ameliorate these losses in other ways, then these stores will likely leave SNAP or lobby to have the HSF standard repealed.⁴¹¹ Ethically, the HSF standard increases population level utility, addresses a fundamental injustice in terms of food access, and promotes government accountability by updating SNAP to meet the changing needs of American communities.⁴¹² The HSF standard increases consumer autonomy by fostering more meaningful dietary choices.⁴¹³ In terms of store owner autonomy, differing conclusions persist with respect to the measure of respect given to this group of stakeholders.⁴¹⁴

A coalition of farm, nutrition, and anti-poverty groups has included the HSF standard among its priorities for Farm Bill inclusion.⁴¹⁵ These groups are not the proposal's sole supporters. Stronger vendor standards' potential to reduce fraud has attracted attention from fiscal hawks and the Secretary of Agriculture.⁴¹⁶ However, trade groups representing store owners and processed food manufacturers are likely to oppose the measure.⁴¹⁷ Although the 2012 legislative cycle did not yield a new Farm Bill, the versions passed by the House and Senate respectively each included a modest strengthening of the perishability requirement fueling hopes that the political will exists to implement more robust store stocking rules like the HSF standard.⁴¹⁸

Public support for the HSF standard is low.⁴¹⁹ Store owners are interested in selling healthier products, but do not perceive consumer demand for these goods.⁴²⁰

410. See *supra* notes 237–57 and accompanying text (noting that a law's sustainability depends in part on economic concerns).

411. See *supra* text accompanying notes 268–69.

412. See *supra* Part VI.

413. The HSF standard would increase consumer autonomy by affording SNAP participants access to more healthy foods where such foods would otherwise have been unavailable. See MEFHAM, *supra* note 292, at 2.

414. See *supra* Part VI.E. (discussing the ethics surrounding the implementation of the HSF standard, including its impact on businesses); *cf. id.* (asserting that respect for autonomy includes a responsibility to treat others as one would like others to treat oneself).

415. See Marsom, *supra* note 314 (discussing a coalition of organizations interested in increasing nutritional requirements as part of its key priorities for the Farm Bill, which would be more in line with the HSF standard).

416. See, e.g., ROSENBAUM, *supra* note 324 (discussing the budget plan of House Committee Chairman Paul Ryan and his proposal to tighten eligibility requirements for the SNAP program); Vilsack, *Concannon: Tighten Food Stamp Store Definition*, *supra* note 342 (noting the Secretary of Agriculture's support for more rigorous standards on stores eligible to participate in the food stamp program as a means to reduce fraud).

417. See Orr, *supra* note 320.

418. See *supra* Part VI.F.

419. See *supra* Part VI.G.; PEW RESEARCH CTR., *supra* note 310, at 51 (discussing decreased public support for government social safety net programs).

420. See Andreyeva et al., *supra* note 124, at 1027 (reporting that retailers perceive higher customer demand for unhealthy foods).

Consumers, unlike advocates of this policy, likely are not familiar with the minutiae of SNAP regulations and may be unaware of the policy change even if implemented.⁴²¹

Lastly, the most probable result of this intervention is an improvement in food environments in communities that lack supermarkets due to small SNAP stores' healthier product offerings.⁴²² Two less likely outcomes are that small SNAP stores' entry into the market as sellers of healthier staple foods will lead similar non-SNAP stores to match their selection, improving the food environment.⁴²³ In the alternative, this additional competition may discourage supermarket siting in low-income communities with a high density of small SNAP vendors.⁴²⁴ If implementation of the HSF standard fails, SNAP consumers and residents of communities lacking supermarkets may be left with fewer options as firms leave SNAP or close.⁴²⁵ Non-chain, owner/operated stores are most likely to close or leave SNAP in the face of higher costs, but the magnitude of this impact is unknown.⁴²⁶ When considering the potential harmfulness of this negative impact, weight should be given to the stores' current contribution to the food environment and the availability of alternative stores.⁴²⁷ The loss of marginal stores in urban areas will have little impact on SNAP consumers' ability to redeem benefits; in rural areas of high car dependence and low store density, this outcome will have the most severe impact on SNAP consumer's ability to purchase food.⁴²⁸

VII. CONCLUSION

The political tide is rising in favor of strengthening SNAP vendor standards, with identical proposals in the 2012 Farm Bills from the Senate and House Committees on Agriculture leadership.⁴²⁹ The current stocking standards are inadequate because they do not ensure sufficient access to healthier foods.⁴³⁰ Improved access to affordable, healthier food is associated with better nutrition.⁴³¹ Simple and concise, the HSF standard goes further than these Congressional

421. See *supra* note 347 and accompanying text.

422. See Andreyeva et al., *supra* note 124, at 1029–30 (discussing the benefits of increasing healthy food options through vendors).

423. See GLEASON ET AL., *supra* note 122, at 35 (reporting some store managers hope that supplying healthier food options would make their stores more competitive).

424. See *supra* note 379–80 and accompanying text.

425. See *supra* Part VI.I.

426. *Id.*

427. *Id.*

428. *Id.*

429. See *supra* Part I.

430. See generally HEALTH & MED. PROGRAM, CTR. FOR THE STUDY OF THE PRESIDENCY AND CONGRESS, SNAP TO HEALTH: A FRESH APPROACH TO STRENGTHENING THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM 7 (2012) (commenting on the need to enhance stocking requirements in participating SNAP stores).

431. See, e.g., Morland et al., *supra* note 23, at 334.

proposals and builds on the current SNAP store eligibility criteria by incorporating healthier alternatives to traditional American staple foods.⁴³² The maximum impact of the HSF standard would put healthier products in approximately 130,000 additional retail locations across the country at minimal cost to taxpayers.⁴³³ The HSF standard boosts the ability of all patrons of SNAP stores to make healthier choices by removing geographic barriers that restrict access to healthier food.⁴³⁴ Easy access to healthier food is a necessary support for individuals who take up the call to change their food consumption behavior.⁴³⁵ The HSF standard is part of American society's reorientation towards prioritizing healthy eating.⁴³⁶

Adopting the HSF standard is not without risks. The greatest risk is that SNAP stores, unlike WIC stores, will not find ways to transfer the costs of stocking healthier products to consumers.⁴³⁷ The ultimate result in that scenario is a leaner, supermarket-oriented SNAP program with few convenience store and CGO options. The weakness of the HSF standard is that it provides access without ensuring affordability. Consumer demand hinges on the affordability of these products.⁴³⁸ In turn, SNAP stores' success may depend on consumers' willingness to buy healthier products in nontraditional settings. We argue, however, that the likely gains from implementing the HSF standard outweigh any potential risks with respect to reduced food access for SNAP consumers.

Two future studies would provide insights into these and other unanswered questions raised in this article's analysis. The first, a multi-state pilot implementing the HSF standard, would produce the most accurate information about SNAP retailers, their revenue needs, and patrons' appetites for healthier foods.⁴³⁹ The second option, which may be politically easier and less costly to organize, is a study of small WIC stores and WIC/SNAP dual eligible stores to observe which patrons buy whole wheat bread, fresh produce, and low-fat milk.⁴⁴⁰ Furthermore, by looking at where WIC consumers redeem their cash value voucher for fresh

432. Compare *supra* Part I. (discussing current Congressional proposals), with *supra* Part V. (describing the HSF standard).

433. FY 2011 SNAP Authorized Retailers that are also FY 2011 Authorized WIC Vendors from Food & Nutrition Serv., *supra* note 172 (noting 133,970 WIC-authorized convenience stores and CGOs in FY 2011).

434. See *supra* Part VI.A.

435. See WHITE HOUSE TASK FORCE ON CHILDHOOD OBESITY, SOLVING THE PROBLEM OF CHILDHOOD OBESITY WITHIN A GENERATION 49 (2010) (establishing that limited access to healthy food leads to poor diet outcomes).

436. Pam Belluck, *Obesity Rates Hit Plateau in U.S., Data Suggest*, N.Y. TIMES, Jan. 14, 2010, at A20 (indicating that obesity rates in the U.S. have leveled off due to increased emphasis on eating healthy).

437. See *supra* Part VII.

438. See, e.g., Zenk et al., *supra* note 346, at 289 (noting that unless healthy foods are affordable, availability might not guarantee increased access).

439. See *supra* Part VI.H.–I. (discussing the possible results and unknowns surrounding implementation of the HSF standard).

440. See *supra* Part VI.D.

fruits and vegetables, additional knowledge may be gained with respect to low-income consumers' willingness to purchase produce in non-supermarket settings when subject to a more restrictive budget constraint.⁴⁴¹ The results of these studies would help elucidate how the government can move beyond merely putting healthier food on the shelf and get it onto the tables of more Americans. Only then will healthier food truly be within reach.

441. See, e.g., Zenk et al., *supra* note 346, at 288 ("Nonetheless when resources were lacking, women in our sample settled for what they needed at local stores.").

TABLE 1. SNAP VENDOR ELIGIBILITY STANDARDS:
CURRENT AND PROPOSED STOCKING REQUIREMENTS

Current Eligibility Criteria – Minimum Stocking Requirement
<p>“Offer for sale, on a continuous basis, at least three varieties of qualifying foods in each of the following four staple food groups, with perishable foods in at least two of the categories:</p> <ul style="list-style-type: none"> • meat, poultry or fish • bread or cereal • vegetables or fruits • dairy products⁷⁴⁴²
Healthier Staple Foods Standard (proposed changes are underlined)
<p>Offer for sale, on a continuous basis, at least three varieties of qualifying foods in each of the following <u>five staple groups</u>, with <u>perishable foods</u> in the <u>fruit and vegetable groups</u> and two additional categories:</p> <ul style="list-style-type: none"> • Meat, poultry or fish • Bread or cereal <u>with at least one whole grain bread option</u> • Fruits <u>with at least two fresh options</u> • Vegetables <u>with at least two fresh options</u> • Dairy products <u>with at least one low-fat or skim milk option</u>

442. U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., *Supplemental Nutrition Assistance Program: Retail Store Eligibility*, *supra* note 125.