


6-2-2017

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Ryelle Seymour

Boston College Law School, ryelle.seymour@bc.edu

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Recommended Citation

Ryelle Seymour, *Food Deserts Are Ripe for Business*, 44 B.C. Env'tl. Aff. L. Rev. 421 (2017), <http://lawdigitalcommons.bc.edu/ealr/vol44/iss2/8>

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FOOD DESERTS ARE RIPE FOR BUSINESS

RYELLE SEYMOUR*

Abstract: People living in food deserts lack access to nutritious food. Although growing awareness of food deserts has prompted federal and state governments to allocate resources to combat the problem, many municipal and state governments lack the funding, personnel, and expertise necessary to develop and implement programs to address food deserts. The private sector can take advantage of federal and local governmental incentive programs to establish an enterprise to serve food desert areas. The successful food desert initiatives implemented around the country can serve as a model for future programs. Because these businesses have proved to be profitable but are created to serve a social purpose, the business should be organized under a hybrid entity structure that allows the for-profit company to prioritize its social mission. An innovative corporate structure will allow the mission of the company to persist and will provide the entrepreneur with resources and funding that would otherwise be foreclosed.

INTRODUCTION

It is estimated that 23.5 million people live in food deserts.¹ People living in food deserts typically live at or below the Federal Poverty Level, lack vehicle access, are more than a quarter mile from the nearest supermarket, and do not have access to nutritious food.² Instead of access to healthy and nutritious food, people living in these areas rely on convenience stores and fast-food res-

* Executive Note Editor, BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW, 2016–2017.

¹ U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES, at iii (2009) [hereinafter USDA ACCESS], https://www.ers.usda.gov/webdocs/publications/ap036/12716_ap036_1_.pdf [<https://perma.cc/ZK4T-3QP9>].

² *Food Access*, BALT. CITY HEALTH DEP'T, <http://health.baltimorecity.gov/programs/food-access> [<https://perma.cc/5FR3-LE7Z>]. The definition of food desert varies. *Food Access Research Atlas*, U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV. (May 18, 2017), <https://www.ers.usda.gov/data-products/food-access-research-atlas/documentation.aspx> [<https://perma.cc/D2K4-2W49>]. The U.S. Department of Agriculture (USDA) defines food deserts as a census tract with a substantial share of residents (1) living in low-income areas that (2) have low levels of access to a grocery store or healthy, affordable food retail outlet. *Id.* Low-income areas are defined as areas that have a poverty rate of twenty percent or greater or a median family income at or below eighty percent of the median family income in that state as a whole or just in that area. *Id.* Further, a community is deemed to be low-access if at least five hundred people or thirty-three percent of the area's population, live more than one half mile from a supermarket or large grocery store in an urban area or ten miles from the nearest grocery store in rural areas. *Id.*

taurants for sustenance.³ Lack of access to healthy food is not only linked to higher rates of diet-related disease and death, but also impacts educational outcomes, as well as crime.⁴

One of the issues contributing to the prevalence of food deserts is the inequitable distribution of food.⁵ Many of the healthy foods that grow in the United States, such as fruits and vegetables, end up in supermarkets and grocery stores, but there are some areas in the United States where these stores do not operate.⁶ Supermarkets have flourished as a result of increased automobile use, the proliferation of suburban areas, and the relatively inexpensive cost of land.⁷ Accordingly, in urban areas where vehicle access is low and real estate cost is high, supermarkets are often reluctant to open new stores, particularly in already underserved areas.⁸ Instead in these areas, food purchases are usually made in neighborhood corner stores and at fast-food restaurants.⁹ The neighborhood corner stores in food deserts usually stock their shelves with cheaper, processed foods because they are less expensive and they contain preservatives to maximize shelf life.¹⁰ The lack of nutritious options in these stores and limited transportation options force individuals in food deserts to subsist on a diet that is nutritionally deficient.¹¹

³ Emily M. Broad Leib, *All (Food) Politics Is Local: Increasing Food Access Through Local Government Action*, 7 HARV. L. & POL'Y REV. 321, 324 (2013).

⁴ Broad Leib, *supra* note 3, at 322; Andrea Freeman, *The 2014 Farm Bill: Farm Subsidies and Food Oppression*, 38 SEATTLE U. L. REV. 1271, 1275 (2015) (noting that diet-related diseases include diabetes, heart disease, cancer, and obesity); Diana F. Jyoti et al., *Food Insecurity Affects School Children's Academic Performance, Weight Gain, and Social Skills*, 135 J. NUTRITION 2831, 2831 (2005).

⁵ See *infra* notes 6–11 and accompanying text.

⁶ See USDA ACCESS, *supra* note 1, at iii. Supermarkets and grocery stores offer a large variety of foods needed for a healthy diet, but individuals in food deserts may be more reliant on food retailers or fast food restaurants that offer more limited varieties of foods. See *id.* at iii–iv.

⁷ See *id.* at 87.

⁸ See Broad Leib, *supra* note 3, at 324; Angelica I. Ambrose, Comment, *A National School Garden Program: A Holistic and Sustainable Approach to Combating Food Deserts*, 21 SAN JOAQUIN AGRIC. L. REV. 51, 53 (2012) (explaining that those living in food deserts cannot adequately access supermarkets). People living in food deserts spend more time on average traveling to a grocery store than the national average. See USDA ACCESS, *supra* note 1, at 30–32.

⁹ See USDA ACCESS, *supra* note 1, at iii; see also Ambrose, *supra* note 8, at 53 (explaining how the inaccessibility of supermarkets forces people living in food deserts to rely on fast-food and convenience stores, which offer few healthy options and typically offer goods at higher prices than supermarkets).

¹⁰ Freeman, *supra* note 4, at 1286; see Andrea M. Brace et al., *The Relationship Between Food Deserts, Farmers' Markets and Food Assistance in Georgia Census Tracts*, 5 J. GA. PUB. HEALTH ASS'N 250, 250–51 (2016) [<https://perma.cc/D4LD-DG5A>] (describing how the available food in the food desert convenience stores is often processed, and high in calories, fat, sugar, sodium, and preservatives). The heightened cost of nutritious food in food deserts leads to greater reliance on less expensive processed food. *Id.* at 251.

¹¹ See Brace et al., *supra* note 10, at 251 (explaining that in addition to limited access to healthy foods, there are also barriers to obtaining healthy food outside a food desert); Ambrose, *supra* note 11, at 53 (explaining that people living in food deserts do not have the choice to eat fresh produce and therefore do not have the opportunity to have a more balanced diet). Lack of transportation and ex-

Although growing awareness of food deserts has prompted federal and state governments to allocate resources to combat the problem, many municipal and state governments lack the funding, personnel, and expertise necessary to develop and implement programs to address food deserts.¹² In recent years, the private sector has played an increasing role in social programs often more traditionally associated with government.¹³ By capitalizing on governmental incentive programs and through the use of innovative entity structures, entrepreneurs in the private sector can maximize the work they are already doing to better address the problem of food deserts.¹⁴

Part I of this Note will discuss Federal and local initiatives aimed at increasing access to healthy food.¹⁵ Part II will describe various entity structures and how choice of entity impacts business decisions based on the fiduciary duties inherent in the particular structure.¹⁶ Part III will explain how the private sector can work with the local, state, and federal government to address food deserts.¹⁷

I. PROVISIONS AND PROGRAMS TO INCREASE ACCESS TO HEALTHY FOODS

A. Federal Programs Under the Farm Bill

During the Great Depression, crop prices fell substantially while farmers struggled to sell the surplus crops.¹⁸ As a result, Congress enacted the United States' first farm bill, the Agricultural Adjustment Act of 1933 ("AAA").¹⁹ At

tended travel times increase the time it takes to get the food home, thereby limiting the type of food that can be purchased. Brace et al., *supra* note 10, at 251. Thus, people living in food deserts often purchase foods that are processed and shelf-stable. *Id.*; see USDA ACCESS, *supra* note 1, at iii (defining food deserts to include areas with low access to vehicles and healthy food); Freeman, *supra* note 4, at 1285 (explaining how residents of low-income communities have limited dining options within walking distance, consisting mostly of fast food restaurants).

¹² See *infra* notes 69–117 and accompanying text (describing various governmental programs to address healthy food access); see PRACTICAL LAW CO., PUBLIC PRIVATE PARTNERSHIPS: ISSUES AND CONSIDERATIONS 1 (2013) [hereinafter PRACTICAL LAW, PUBLIC PRIVATE PARTNERSHIPS] (explaining that government may lack the personnel and expertise necessary to develop and manage social infrastructure projects).

¹³ Jane Nelson, *Scaling Up Impact Through Public-Private Partnerships*, in GETTING TO SCALE: HOW TO BRING DEVELOPMENT SOLUTIONS TO MILLIONS OF POOR PEOPLE 305, 308 (Laurence Chandy et al. eds., 2013) [hereinafter Nelson, *Scaling Up Impact*].

¹⁴ See *infra* notes 202–253 and accompanying text.

¹⁵ See *infra* notes 18–140 and accompanying text.

¹⁶ See *infra* notes 141–201 and accompanying text.

¹⁷ See *infra* notes 202–253 and accompanying text.

¹⁸ *The History of SNAP*, SNAP TO HEALTH [hereinafter *History of SNAP*], <https://www.snapttohealth.org/snap/the-history-of-snap/> [<https://perma.cc/T6N7-JZTS>].

¹⁹ Agricultural Adjustment Act, ch. 25, tit. 1, 48 Stat. 31 (codified as amended 7 U.S.C. §§ 601–622 (2012)); Freeman, *supra* note 4, at 1277. See generally *A Short History and Summary of the Farm*

the time, the AAA was aimed both at providing financial support to farmers and maintaining an available food supply even in the face of mass poverty.²⁰ The AAA aimed to control crop prices by incentivizing farmers to limit production, essentially paying farmers not to farm all of their land.²¹ To do so, the AAA allowed the government to buy up excess grain and provided a sort of insurance policy that guarded against the impact of weather on crop yields.²² Additionally, the AAA included a program called the Federal Surplus Relief Corporation, which distributed surplus pork, dairy products, and wheat to those in need.²³

In 1938, Congress turned the AAA into a permanent piece of legislation, creating the modern farm bill.²⁴ The farm bill is an omnibus bill that is passed every five to seven years covering topics such as conservation, trade, nutrition, and credit relating to food and agriculture.²⁵ Programs are written into the farm bill with either mandatory or discretionary funding.²⁶ For discretionary programs, agricultural appropriators must decide how much funding to award a program on a yearly basis.²⁷ Because the programs in the farm bill are funded

Bill, FARM POL'Y FACTS, <http://www.farmpolicyfacts.org/farm-policy-history/> [<https://perma.cc/9Y2W-C6SH>] (providing an overview of the contents of the Farm Bill and the legislation's history).

²⁰ Freeman, *supra* note 4 at 1277; see MIKE RUSSO & DAN SMITH, U.S. PUB. INTEREST RESEARCH GRP., APPLES TO TWINKIES 2013: COMPARING TAXPAYER SUBSIDIES FOR FRESH PRODUCE AND JUNK FOOD 2–3 (2013), http://www.uspirg.org/sites/pirg/files/reports/Apples_to_Twinkies_2013_USPIRG.pdf [<https://perma.cc/9LBK-GL8S>] (noting that as a result of the Great Depression, the farm payments were aimed to protect farmers from crop losses and provide a safety net for family farmers, and a stable food supply).

²¹ See FARM POL'Y FACTS, *supra* note 19; Alison Crissman, *Senate Approves New Farm Bill*, DAILY IOWAN (June 12, 2013), <http://www.dailyiowan.com/2013/06/12/Metro/33464.html> [<https://perma.cc/7XHX-XD37>]; see Kathleen Masterson, *The Farm Bill: From Charitable Start to Prime Budget Target*, NAT'L PUB. RADIO: THE SALT (Sept. 26, 2011), <http://www.npr.org/sections/thesalt/2011/09/26/140802243/the-farm-bill-from-charitable-start-to-prime-budget-target> [<https://perma.cc/59PZ-WLV8>].

²² Masterson, *supra* note 21. From 1933 to 1996, the federal government bought and stored grain, controlling its release on the market to control prices. *Id.* The Secretary of Agriculture dictated to farmers how much of their land needed to be left unfarmed in order to get paid. *Id.* In 1996, the government stopped managing the grain business. *Id.*

²³ Gordon W. Gunderson, *National School Lunch Program (NSLP)*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV. (Nov. 18, 2016), https://www.fns.usda.gov/nslp/history_4 [<https://perma.cc/2DS4-X7BX>].

²⁴ Masterson, *supra* note 21.

²⁵ *2014 Farm Bill*, U.S. SENATE COMM. ON AGRIC., NUTRITION, & FORESTRY, <http://www.agriculture.senate.gov/issues/farm-bill> [<https://perma.cc/5X5P-P39Z>].

²⁶ *Projected Spending Under the 2014 Farm Bill*, U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., <https://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/projected-spending-under-the-2014-farm-bill/> [<https://perma.cc/E3N5-E2VM>] (explaining that the Supplemental Nutrition Assistance Program and most commodity programs receive mandatory funding). Many research and rural development programs are discretionary. *Id.*

²⁷ See *id.* (explaining that Congress decides each year what level of funds, if any, to appropriate to programs with discretionary funding).

by the yearly federal budget, there is a continuous debate about how much money should be appropriated to various programs in the farm bill.²⁸

The most recent farm bill is the 2014 version.²⁹ When it was being debated by Congress, the independent Congressional Budget Office projected that the 2014 Farm Bill would cost \$490 billion over the next five-years.³⁰ The 2014 Farm Bill engendered so much debate that it was the sixth most heavily lobbied piece of legislation in 2013.³¹ In addition to large agribusiness lobbyists, insurance companies also contributed considerable resources by way of campaign contributions and lobbying, resulting in the Bill's requirement that all farm subsidies pass through insurance companies, rather than directly payments to farmers.³² The 2014 Farm Bill resulted in a seven billion dollar increase in crop insurance and an eight billion dollar decrease to the Supplemental Nutrition Assistance Program ("SNAP"), a federal subsidy that benefits low income individuals and helps those individuals afford food.³³

1. Farm Subsidies

The 1996 farm bill established a direct payment program for farm subsidies, which provided annual payments to farmers based on historical yields and acreage.³⁴ Members of Congress in both chambers criticized the direct payment subsidy program as wasteful and expensive because it paid farmers,

²⁸ *What Is the Farm Bill?*, NAT'L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/our-work/campaigns/fbcampaign/what-is-the-farm-bill/> [<https://perma.cc/4DTC-CXTU>].

²⁹ *See* Agricultural Act of 2014, Pub. L. No. 113-79, 128 Stat. 649 (2014) (codified in scattered sections of 7, 15, 16, 18, 19, 20, 21, 22, 25, 31, 33, 40, 42 U.S.C.).

³⁰ *Projected Spending Under the 2014 Farm Bill*, *supra* note 26.

³¹ Robbie Feinberg, *Special Interests Heavily Involved in Farm Bill Maneuvering*, CTR. FOR RESPONSIVE POLITICS (Jan. 30, 2014), <http://www.opensecrets.org/news/2014/01/special-interests-heavily-involved/> [<https://perma.cc/29F5-AZER>].

³² *Id.* at 1288–89; *see* 7 U.S.C. §§ 8713, 8753 (2012) (repealed by Agricultural Act of 2014, Pub. L. 113-79, § 1001, 128 Stat. 649, 658 (2014)); Feinberg, *supra* note 31; David Steinbach, *Crop Insurance Figured as Key Issue in Farm Bill Debate*, CTR. FOR RESPONSIVE POLITICS (June 21, 2013), <http://www.opensecrets.org/news/2013/06/crop-insurance-funding-characterize/> [<https://perma.cc/VDH2-7YZX>]. The direct payments were replaced with two new insurance-based programs. *See* 7 U.S.C. §§ 9016, 9017 (Supp. 2015).

³³ Feinberg, *supra* note 31; *see* Press Release, U.S. Pub. Interest Research Grp., New Farm Bill Contains Massive Taxpayer Handouts to Big Ag, Last Minute Deal Removed Even Modest Taxpayer Savings (Jan. 28, 2014), <http://www.uspirg.org/news/usp/new-farm-bill-contains-massive-taxpayer-handouts-big-ag-last-minute-deal-removed-even> [<https://perma.cc/FUN8-7L2E>] (explaining that a handful of famers receive over \$1 million in a single year, while the majority of farmers receive on average \$5000 a year.); *see also* Chris Edwards, *Agricultural Subsidies*, CATO INST.: DOWNSIZING THE FED. GOV'T (Oct. 7, 2016), <https://www.downsizinggovernment.org/agriculture/subsidies> [<https://perma.cc/7L7X-8Z3K>] (explaining that the majority of agricultural subsidies go toward the largest producers).

³⁴ ROMAN KEENEY, PURDUE EXTENSION: APEX—AG POLICY EXPLAINED, THE END OF THE DIRECT PAYMENT ERA IN U.S. FARM POLICY 1–2 (2013), <https://www.extension.purdue.edu/extmedia/ec/ec-774-w.pdf> [<https://perma.cc/HL4P-QPQ7>].

even in good economic times, when there was no need for assistance.³⁵ As a result, the 2014 Farm Bill replaced the direct subsidy program with a crop insurance program.³⁶ Under this program, the federal government will pay almost two-thirds of the farmer's crop insurance premium, and most of the insurance claims, guaranteeing revenue regardless of crop failure or market conditions.³⁷ Crop insurance is available for "covered commodities," including corn, wheat, rice, peanuts, soybeans, and other oilseeds.³⁸

Large-scale commercial farms have benefited from the federal crop insurance system, with twenty percent of farmers receiving between \$100,000 and \$1,000,000 annually while eighty percent of small scale farmers receive only \$5000 annually.³⁹ As a result of the subsidy and crop insurance programs, the majority of United States' farmland is used for growing commodity crops.⁴⁰ The agricultural techniques used on these commercial farms, though, render much of these commodity crops unfit for human consumption.⁴¹

When crops are unfit for human consumption, they enter a secondary market to be processed into something other than pure food.⁴² For example, when corn is insufficient as pure food, it enters the secondary market to be

³⁵ *Farm Bill Ends Direct Payment Subsidies*, U.S. SENATE COMM. ON AGRIC., NUTRITION, & FORESTRY, MINORITY NEWS (Jan. 28, 2014), <http://www.agriculture.senate.gov/newsroom/press/release/farm-bill-ends-direct-payment-subsidies> [<https://perma.cc/E7ZG-HUBM>].

³⁶ *Id.*; see 7 U.S.C. §§ 1502, 1508, 1508b, 1515, 1516, 1522, 1523, 1531 (Supp. 2015); 19 U.S.C. § 2497 (Supp. 2015).

³⁷ David Dayen, *The Farm Bill Still Gives Wads of Cash to Agribusiness. It's Just Sneakier About It*, NEW REPUBLIC (Feb. 4, 2014), <https://newrepublic.com/article/116470/farm-bill-2014-its-even-worse-old-farm-bill> [<https://perma.cc/B9C4-SFGD>].

³⁸ *Agricultural Act of 2014: Highlights and Implications, Crop Commodity Programs*, U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., <https://www.ers.usda.gov/agricultural-act-of-2014-highlights-and-implications/crop-commodity-programs/> [<https://perma.cc/XA3D-E57N>]; see 7 U.S.C. § 9011(6) (Supp. 2015) (defining covered commodities).

³⁹ Dayen, *supra* note 37; see *What Is in the 2014 Farm Bill for Sustainable Farms and Food Systems?*, NAT'L SUSTAINABLE AGRIC. COAL.: NSAC'S BLOG (Jan. 31, 2014) [hereinafter NSAC's Blog, *2014 Farm Bill*], <http://sustainableagriculture.net/blog/2014-farm-bill-outcomes/> [<https://perma.cc/95Q2-77XT>] (explaining that the federal crop insurance system has historically been oriented to large scale monoculture commodity operations).

⁴⁰ See AMY RADICAN-WALD, CTR. FOR MISS. PUB. HEALTH, FROM FIELD TO FITNESS: ALIGNING FARM POLICY WITH HEALTH POLICY TO IMPROVE NUTRITION AND HEALTH 5 (2014), https://www.researchgate.net/publication/265125183_From_Field_to_Fitness_Aligning_Farm_Policy_with_Health_Policy_to_Improve_Nutrition_Health [<https://perma.cc/EYX6-2T8M>] (discussing the amount of federal farm subsidies that go to each commodity crop); Freeman, *supra* note 4, at 1272 (stating that the most heavily subsidized commodity crops are corn, wheat, and soy); Tamar Haspel, *Farm Bill: Why Don't Taxpayers Subsidize the Foods That Are Better for Us?*, WASH. POST (Feb. 18, 2014), https://www.washingtonpost.com/lifestyle/food/farm-bill-why-dont-taxpayers-subsidize-the-foods-that-are-better-for-us/2014/02/14/d7642a3c-9434-11e3-84e1-27626c5ef5fb_story.html [<https://perma.cc/92HW-TMFM>] (stating that more than half of the 300 million acres of farmland used to grow food in the United States is used for growing commodity crops).

⁴¹ Freeman, *supra* note 4, at 1280.

⁴² *Id.*

used in goods such as animal feed, ethanol gas, and high fructose corn syrup.⁴³ The food industry has capitalized on these crops and manufactures many products with these cheap commodities.⁴⁴ For instance, high fructose corn syrup and hydrogenated vegetable oils, both ubiquitous in American food products, derive from two of the most subsidized crops, corn and soy.⁴⁵ Thus, subsidized corn and soy have made sugars and fats some of the cheapest food products for both producers and consumers.⁴⁶

Although research shows a strong correlation between fat and sugar consumption and poor health, the 2014 Farm Bill continues to provide subsidies, making unhealthy food products derived from commodity crops less expensive and more attractive than unsubsidized, healthier foods.⁴⁷ Processed forms of soy, such as partially hydrogenated oils, known as trans fats, were classified as

⁴³ *Id.*; see Katherine Zeratsky, *Nutrition and Healthy Eating*, MAYO CLINIC (Aug. 13, 2015), <http://www.mayoclinic.org/healthy-lifestyle/nutrition-and-healthy-eating/expert-answers/high-fructose-corn-syrup/faq-20058201> [<https://perma.cc/5R3T-VDUW>] (explaining that high-fructose corn syrup is a sweetener used in products such as soda and fruit beverages). As consumption of high-fructose corn syrup has increased obesity levels have risen causing some to ask if there is a connection. *Id.*

⁴⁴ See INST. FOR AGRIC. & TRADE POL'Y, ENV'T & AGRIC. PROGRAM, *FOOD WITHOUT THOUGHT: HOW U.S. FARM POLICY CONTRIBUTES TO OBESITY* 3, 5–6 (2006) [hereinafter *FOOD WITHOUT THOUGHT*], http://www.iatp.org/files/421_2_80627.pdf [<https://perma.cc/HV5T-TVHT>]; see also RUSSO & SMITH, *supra* note 20, at 6 (concluding that federal payments disproportionately subsidize commodity crops, favoring corn and soy producers).

⁴⁵ See *FOOD WITHOUT THOUGHT*, *supra* note 44, at 3 (explaining how high fructose corn syrup and hydrogenated vegetable oils are now ubiquitous in food products as added sugars and fats and have proliferated due to the artificially cheap corn and soybeans); see also RUSSO & SMITH, *supra* note 20, at 4 (explaining that high fructose corn syrup derives from corn and hydrogenated vegetable oil from soybean). Subsidies have allowed high fructose corn syrup to become the filler of choice in American food and beverage products. RUSSO & SMITH, *supra* note 20, at 4. Oil from soy accounts for sixty-five percent of all edible oils ingested by people in the United States, costing taxpayers approximately \$11.1 billion since 1995. *Id.* at 5.

⁴⁶ See *FOOD WITHOUT THOUGHT*, *supra* note 44, at 3; see also David Wallinga, *Agricultural Policy and Childhood Obesity: A Food Systems and Public Health Commentary*, 29 *HEALTH AFF.* 405, 405 (2010) (describing the federal policy since 1974 of encouraging the production of high-calorie crops such as corn and soy). Because commodity crops, such as corn and soy, are converted into sugar and fats this policy has resulted in Americans consuming more fat, sugar, and calories than ever before. Wallinga, *supra*, at 405. The products derived from these foods with high levels of fat, sugar, and calories, such as cooking oils, fast food, and sugared sodas, are some of the least expensive foods in the United States. *Id.* at 406–07.

⁴⁷ See Brian Kennell, *World Population Day: Addressing Food Deserts in the Land of Plenty*, *HUFFINGTON POST* (July 9, 2015), http://www.huffingtonpost.com/brian-kennell/world-population-day-addr_b_7756372.html [<https://perma.cc/9JQ2-YLMQ>] (describing research linking diets high in sugar, fat, and salt, typical of residents of food deserts, to higher rates of obesity and chronic health problems); Aaron Sankin, *Agricultural Subsidies Promote Obesity, Charges New Study*, *HUFFINGTON POST* (July 18, 2013), http://www.huffingtonpost.com/2013/07/18/agriculture-subsidies-obesity_n_3607481.html [<https://perma.cc/4NRH-PDGJ>] (describing a report by the California Public Interest Research Group that found unhealthy food is more attractive to consumers because federal subsidies of commodity crops make unhealthy food less expensive).

unsafe for human consumption in 2016.⁴⁸ This classification occurred, however, twenty years after medical research revealed a correlation between trans fats and heart disease.⁴⁹ Some scholars posit that the Food and Drug Administration (FDA) held off on banning trans fats during the twenty-year period in part because of surplus soy in the market.⁵⁰

The United States Department of Agriculture (“USDA”) and Department of Health and Human Services (“HHS”) publish the Dietary Guidelines every five years.⁵¹ These guidelines provide daily nutritional information for Americans ages two and older as a means to promote health, prevent chronic disease, and help people reach and maintain a healthy weight.⁵² The Dietary Guidelines also form the basis of federal nutrition policy and programs, and help guide local, state, and national health promotion initiatives.⁵³ The most recent edition of the Dietary Guidelines, published on January 7, 2016, suggests for the first time, that Americans should limit their consumption of added sweeteners.⁵⁴ The Dietary Guidelines recommend a reduction of twenty percent in the average American’s daily sugar consumption, amounting up to an annual use reduction of 3.7 million tons of sugar and high-fructose corn syrup.⁵⁵

Critiques of the Dietary Guidelines come from both health advocates and the sugar industry.⁵⁶ The Sugar Association claims the guidelines were not scientifically sufficient.⁵⁷ Health advocates believe the new guidelines are ambiguous.⁵⁸ Instead of straightforward recommendations not to eat processed food or drink soda, the recommendations suggest eating less sugar and limiting saturated fat.⁵⁹ Some nutritionists believe the drafted recommendations are the

⁴⁸ Freeman, *supra* note 4, at 1281.

⁴⁹ *Id.*; see Penny M. Kris-Etherton, *Trans-Fats and Coronary Heart Disease*, 50 CRITICAL REVIEWS IN FOOD, SCI., & NUTRITION, Dec. 2010, at 29, 29.

⁵⁰ Freeman, *supra* note 4, at 1281.

⁵¹ *Dietary Guidelines: Purpose*, U.S. DEP’T OF HEALTH & HUMAN SERVS., <http://health.gov/dietaryguidelines/purpose.asp> [<https://perma.cc/39ZU-JWYM>].

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Chris Prentice, *New U.S. Diet Rules Would Take 20 Percent Bite Out of American Sugar Use*, REUTERS (Jan. 7, 2016), <http://www.reuters.com/article/us-usa-healthcare-guidelines-sugar-idUSKBN0UL2Q920160108> [<https://perma.cc/JMW7-26Z6>].

⁵⁵ *Id.*

⁵⁶ See *id.* (noting that the Sugar Association, a trade association, denounced the guidelines, claiming that “they were based on ‘weak science’”); see also *Critics Slam New Federal Dietary Guidelines*, CBS NEWS (Jan. 8, 2016), <http://www.cbsnews.com/news/new-dietary-guidelines-usda-department-of-health-and-human-services-face-criticism/> [<https://perma.cc/JXY3-TXU9>]. One critic of the guidelines has described the guidelines as having ambiguous language, which benefits junk food industries. *Critics Slam New Federal Dietary Guidelines*, *supra* note 56.

⁵⁷ Prentice, *supra* note 54.

⁵⁸ *Critics Slam New Federal Dietary Guidelines*, *supra* note 56.

⁵⁹ *Id.* One expert in nutrition argued that the guidelines should advise avoidance of soda or meat, but rather, they should encourage people to eat a diet where only ten percent of calories come from added sweeteners and saturated fats. *Id.*

result of food industry pressure to water down the guidelines.⁶⁰ In commenting on the new Dietary Guidelines, one scholar noted that the food industry is a multibillion dollar industry expending enormous resources not just on advertising their products, but also on changing federal policy.⁶¹

Although fruits and vegetables provide the greatest health benefits, the farm bill has never provided subsidies for these crops.⁶² In fact, although the price of fruits and vegetables has increased, the price of subsidized foods—and their secondary products such as fats, oils, and sugar—has continued to decline.⁶³ Research shows an elastic relationship between consumption and price.⁶⁴ For example, from 1997 to 2007 prices of fruits and vegetables increased while consumption decreased.⁶⁵ At the same time, decreasing prices of fats, oils, and sweeteners correlated to an increase in consumption.⁶⁶ In spite of

⁶⁰ *Id.*

⁶¹ *Id.* Dr. Neal Barnard, the president of Physicians Committee for Responsible Medicine, which attempted to sue the government based on an alleged conflict of interest between the egg industry and those charged with defining the federal dietary guidelines argued, “the egg industry is paying universities where these people are, then putting them on the committee to decide whether eggs are safe or not.” *Id.*; see Complaint at 18–19, Physicians Committee for Responsible Med. v. Vilsack, No. 3:16-cv-00069-LB (N.D. Cal. Oct. 12, 2016) (alleging that the relationship between the federal government, researchers, and the egg industry was inappropriate and violated federal law); see also Agustina Saenz, *Will USDA’s \$31 Million Egg and Cheese Bailout Influence Dietary Guidelines?* MORNING CONSULT (Sept. 1, 2016), <https://morningconsult.com/opinions/will-usdas-31-million-egg-cheese-bailout-influence-dietary-guidelines/> [<https://perma.cc/MU7S-P643>] (discussing the lawsuit brought by the Physicians Committee and explaining that the federal Guidelines Committee erroneously claimed “cholesterol is not a nutrient of concern for overconsumption”). The lawsuit was dismissed for lack of subject matter jurisdiction and no appeal has been filed. Order Dismissing Case at 6, 15, Physicians Committee for Responsible Med. v. Vilsack, No. 3:16-cv-00069-LB (N.D. Cal. Oct. 12, 2016).

⁶² Freeman, *supra* note 4, at 1281 (noting that federal agricultural legislation has historically omitted fruit and vegetable subsidies). Fruits and vegetables provide essential nutrients vital for good health, reduce risk of disease, and are relatively low in calories. See *Vegetables: Nutrients and Health Benefits*, U.S. DEP’T OF AGRIC., CHOOSE MY PLATE (Jan. 12, 2016), <https://www.choosemyplate.gov/vegetables-nutrients-health> [<https://perma.cc/W6VA-M9RJ>]. Compare Wallinga, *supra* note 52, at 408 (explaining how U.S. agricultural policy does not incentivize farmers to grow fruit and vegetables and even prohibits farmers who receive federal funding support from planting fruit and vegetables), with *Fruit and Vegetable Regime*, E.U. AGRIC. & RURAL DEV. (May 21, 2017), https://ec.europa.eu/agriculture/fruit-and-vegetables_en [<https://perma.cc/XWR6-RMHR>] (explaining that the EU actively supports and promotes growing and consuming fruits and vegetables).

⁶³ Freeman, *supra* note 4, at 1281–82 (showing that between 1985 and 2000, the price of fats, oils, and sugars dropped while the price of fruits and vegetables increased.); see Wallinga, *supra* note 46, at 407 (explaining how the overproduction of commodity crops has resulted in the proliferation of cheap, unhealthy foods derived from these subsidized crops); see also Adam Drewnowski & SE Spector, *Poverty and Obesity: The Role of Energy Density and Energy Costs*, 79 AM. J. CLINICAL NUTRITION 6, 6 (2004) (explaining that grains, fats, and sugars are often a cheaper option for consumers than more healthful foods and positing that this lower cost could be one of the reasons why poverty and obesity are often linked).

⁶⁴ Freeman, *supra* note 4, at 1282.

⁶⁵ *Id.*

⁶⁶ *Id.*

this relationship between pricing and consumption, prior to the 2014 Farm Bill, commodity growers were not permitted to grow fruits and vegetables on their land.⁶⁷ While the 2014 Farm Bill does not subsidize fruits and vegetables, it does increase research funds for fruit and vegetable growers and allows commodity growers to devote up to fifteen percent of their land to farming fruits and vegetables without losing other federal benefits.⁶⁸

2. The Supplemental Nutrition Assistance Program

SNAP is administered by the USDA under the Food and Nutrition Service (“FNS”).⁶⁹ It was first included in the 1973 farm bill and is now the largest component of the bill.⁷⁰ This program is aimed at providing nutrition assistance to low-income individuals by providing funds to purchase eligible food items at participating food retailers.⁷¹ The 2014 Farm Bill reduced funding for the SNAP program by over eight billion dollars.⁷² This cut will reduce recipi-

⁶⁷ Haspel, *supra* note 40.

⁶⁸ *Id.*

⁶⁹ *Supplemental Nutrition Assistance Program (SNAP)*, U.S. DEP’T OF AGRIC., FOOD AND NUTRITION SERV. (Jan. 30, 2017), <http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap> [<https://perma.cc/6A4M-MXKY>].

⁷⁰ *A Short History and Summary of the Farm Bill*, *supra* note 19.

⁷¹ *Supplemental Nutrition Assistance Program (SNAP)*, *supra* note 69 (explaining that Supplemental Nutrition Assistance Program (“SNAP”) provides nutrition assistance to low-income individuals and families). Retailers must be authorized to accept SNAP benefits by the U.S. Department of Agriculture (“USDA”) and the Food and Nutrition Service. *Supplemental Nutrition Assistance Program (SNAP), Application Instructions*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV. (Feb. 8, 2017), <https://www.fns.usda.gov/snap/retailer-apply> [<https://perma.cc/FW3X-2PRT>]. For a store to be to participate in the Supplemental Nutrition Assistance Program (“SNAP”) the store must sell at least three varieties of qualifying meats, grains, fruits and vegetables, or dairy products, or these same kinds of qualifying foods must account for half of the store’s total sales. *Retail Store Eligibility USDA Supplemental Nutrition Assistance Program*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV. (Mar. 21, 2016), <https://www.fns.usda.gov/snap/retail-store-eligibility-usda-supplemental-nutrition-assistance-program> [<https://perma.cc/DC9P-MSP7>]; see *Supplemental Nutrition Assistance Program (SNAP): Eligible Food Items*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., (Mar. 21, 2016) [hereinafter *Eligible Food Items*], <http://www.fns.usda.gov/snap/eligible-food-items> [<https://perma.cc/HYP9-N42G>]. The USDA provides a list of “Eligible Items” that specifically excludes alcoholic beverages, nonfood items, and medicines, but otherwise all food items—even candies, cookies, and similar products—are eligible for purchase with SNAP benefits. See *Eligible Food Items*, *supra*.

⁷² See RANDY ALISON AUSSENBERG, CONG. RESEARCH SERV., R43332, SNAP AND RELATED NUTRITION PROVISIONS OF THE 2014 FARM BILL (P.L. 113-79), at 4 (2014) <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43332.pdf> [<https://perma.cc/5K9Y-HDP5>] (explaining that the independent Congressional Budget Office projected that the SNAP provisions included in the 2014 Farm Bill would amount to a ten-year savings of roughly eight billion dollars); Margarette Purvis, Letter to the Editor, *Part of the Farm Bill: Cuts to Food Stamps*, N.Y. TIMES (Feb. 7, 2014), http://www.nytimes.com/2014/02/08/opinion/part-of-the-farm-bill-cuts-to-food-stamps.html?_r=0 [<https://perma.cc/QWT4-APTW>] (explaining that SNAP recipients will notice significant reductions in their ability to afford food as a result of the reduced funding); Joshua Smith, *There Are Plenty of Ways to Cut the Budget. Food Stamps Shouldn’t Be One That Congress Can Agree On.*, ECON. POL’Y INST.: WORKING ECON. BLOG (Feb. 3, 2014, 2:11 PM), <http://www.epi.org/blog/plenty-ways-cut->

ent benefits by an average of ninety dollars per month.⁷³ This loss is significant because food stamps already only allow spending, on average, \$1.40 per meal.⁷⁴ In New York City, eighty-five percent of food pantries and soup kitchens experienced more people needing food a month after SNAP benefits were cut than in the immediate aftermath of Hurricane Sandy, and about half of these food pantries and soup kitchens reported food shortages within the first month of the cut.⁷⁵ In 2014, according to the USDA, nearly twenty-two percent of SNAP households had no cash income, forty-three percent had income at or below half of the poverty line, and the average income for SNAP households was \$759 per month.⁷⁶

Despite the cuts, the 2014 Farm Bill did include some beneficial provisions for SNAP recipients.⁷⁷ The 2008 farm bill allocated twenty million dollars for pilot projects to determine if financial incentives provided to SNAP participants would increase consumption of fruits, vegetables, and other healthy foods.⁷⁸ Based on the success of these pilot programs, the 2014 Farm Bill included support for these and similar programs.⁷⁹ For instance, under the

budget-food-stamps-shouldnt/ [https://perma.cc/EJV9-ENXK] (criticizing the 2014 changes to the SNAP program). *But see* Daren Bakst and Rachel Sheffield, *The “Heat and Eat” Food Stamp Loophole and the Outdated Cost Projections for Farm Programs*, HERITAGE FOUND. (Apr. 7, 2014), <http://www.heritage.org/agriculture/report/the-heat-and-eat-food-stamp-loophole-and-the-outdated-cost-projections-farm> [https://perma.cc/U6D9-D3L4] (arguing that the 2014 Farm Bill’s SNAP reductions did not go far enough and that further cuts to the program are needed).

⁷³ Purvis, *supra* note 72 (noting that in New York recipients of SNAP benefits will disproportionately see a reduction in their ability to afford food under the 2014 changes to the program).

⁷⁴ U.S. DEP’T OF AGRIC., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (2017), <https://www.fns.usda.gov/sites/default/files/pd/34SNAPmonthly.pdf> [https://perma.cc/VX2P-B5GS] (providing the average monthly and yearly SNAP benefits received per person and per household as of February 3, 2017).

⁷⁵ Purvis, *supra* note 72.

⁷⁶ U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., CHARACTERISTICS OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM, HOUSEHOLDS: FISCAL YEAR 2014, at 1 (SUMMARY) (2015), <https://www.fns.usda.gov/sites/default/files/ops/Characteristics2014-Summary.pdf> [https://perma.cc/7RP5-XKD4].

⁷⁷ *See* AUSSENBERG, *supra* note 72.

⁷⁸ Billy Hall, *Food Stamps and WIC*, in *THE SAGE ENCYCLOPEDIA OF FOOD ISSUES* 625, 627 (Ken Albala ed., 2015); *see* SUSAN BARTLETT ET AL., U.S. DEP’T OF AGRIC., EVALUATION OF THE HEALTHY INCENTIVES PILOT (HIP) FINAL REPORT 1 (2014), <https://www.fns.usda.gov/sites/default/files/HIP-Final.pdf> [https://perma.cc/SBT2-WGGV] (evaluating the Healthy Incentives Pilot (HIP) program). The Healthy Incentives Pilot (“HIP”) program gave SNAP participants 30 cents back for every dollar spent on fruits and vegetables at participating retailers. *Id.* at 1. The study randomly designated households to either the HIP or non-HIP group. *Id.* Those who received the financial incentive—the participants in the HIP group—purchased significantly more fruits and vegetables than those in the non-HIP group. *Id.* at 3. Overall in the HIP group, fruit and vegetable consumption increased by twenty-six percent. *Id.*

⁷⁹ *See New Grant Funding Available to Encourage SNAP Participants to Buy from Local Produce Farmers*, NAT’L SUSTAINABLE AGRIC. COAL.: NSAC’S BLOG (Sept. 29, 2014), <http://sustainableagriculture.net/blog/fini-rfa-2014/> [https://perma.cc/C4LF-L4N4] (explaining one of the new programs in the 2014 Farm Bill, the Food Insecurity Nutrition Program (“FINI”)). FINI grants are pro-

Food Insecurity Nutrition Incentive (“FINI”) program, the USDA allocated \$31.5 million to fund programs that help SNAP recipients increase their purchases of fruits and vegetables.⁸⁰ The 2014 Farm Bill has also enabled farmers markets, community supported agriculture programs, and online retailers to accept food stamps, and requires SNAP retailers to stock more healthy foods.⁸¹

3. Additional Programs in the 2014 Farm Bill

The Farm Service Agency (“FSA”) provides low-interest loans to farmers and ranchers to purchase equipment, seeds, animals, and other small investments needed to operate a farm.⁸² The 2014 Farm Bill has improved the FSA’s microloan program, furthering the Obama Administration’s objective of assisting beginning farmers by expanding eligibility, providing favorable interest rates, increasing loan limits, and making youth loans available in urban areas.⁸³

The Healthy Food Financing Initiative (“HFFI”) brings together the USDA, the United States Treasury, and HHS to fund grocery stores and healthy food retailers in food deserts.⁸⁴ The 2014 Farm Bill authorized \$125 million to the HFFI program to provide financial and technical assistance to eligible healthy food retailers for the purposes of market planning, advertising,

vided to nonprofit organizations and government agencies to create point of purchase incentive programs that encourage SNAP recipients to purchase fruits and vegetables. *Id.*; see *Food Insecurity Incentive (FINI) Grant Program*, U.S. DEP’T OF AGRIC., NAT’L INST. OF FOOD AND AGRIC., <http://nifa.usda.gov/program/food-insecurity-nutrition-incentive-fini-grant-program> [<https://perma.cc/67F5-J7BS>] (describing the FINI program and providing relevant information about funding criteria).

⁸⁰ *History of SNAP*, *supra* note 18; see Press Release, U.S. Dep’t of Agric., Agriculture Secretary Vilsack Announces \$16.8 Million in Grants to Encourage Healthy Food Purchases for SNAP Participants (June 8, 2016) [hereinafter SNAP Press Release], <https://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2016/06/0143.xml&printable=true&contentidonly=true> [<https://perma.cc/H57B-Y2YM>]. FINI is authorized by the 2014 Farm Bill and administered by USDA’s National Institute of Food and Agriculture. See *id.* The 2016 FINI grants were awarded to a variety of projects including small pilot projects, multi-year community-based projects, and large-scale multi-year projects. See *id.*

⁸¹ Freeman, *supra* note 4, at 1294; Press Release, U.S. Dep’t of Agric., Food and Nutrition Serv., USDA Proposes Policies to Improve Food Access, Healthy Choices for Low-Income Americans (Feb. 16, 2016) [hereinafter USDA Press Release, Policy Proposal for Food Access], <https://www.fns.usda.gov/pressrelease/2016/004516> [<https://perma.cc/6Z4S-2UN2>].

⁸² *Microloans Now Available for Young and Beginning Farmers*, NAT. SUSTAINABLE AGRIC. COAL.: NSAC’S BLOG (Jan. 17, 2013), <http://sustainableagriculture.net/blog/usda-microloan-program/> [<https://perma.cc/6VSA-E433>]. The Farm Service Agency (“FSA”), which is the USDA’s credit lending arm, provides loans up to \$35,000. *Id.* These loans are aimed at small farms and less-established producers who typically have smaller credit needs. *Id.* The purpose of this credit program is to pay for smaller expenses that farmers need to run their operations, such as light equipment, seeds, and livestock. *Id.*

⁸³ U.S. DEP’T OF AGRIC., FARM SERV. AGENCY, 2014 FARM BILL FACT SHEET (2014), https://www.fsa.usda.gov/Internet/FSA_File/2014_farm_bill_customers.pdf [<https://perma.cc/J59Q-D6Z9>].

⁸⁴ *Healthy Food Financing Initiative*, U.S. DEP’T OF HEALTH & HUMAN SERVS., OFFICE OF COMMUNITY SERV. (Feb. 14, 2017), <https://www.acf.hhs.gov/ocs/programs/community-economic-development/healthy-food-financing> [<https://perma.cc/Q5Y4-AQYD>].

infrastructure, and operational improvements aimed at increasing demand, access, and availability of healthy foods in food deserts.⁸⁵ HHS awards grants to Community Development Corporations to help finance grocery stores, farmers markets, and other healthy food retailers.⁸⁶ The Treasury provides financial assistance, specialized training, and technical assistance to Community Development Financial Institutions that invest in businesses providing healthy food options.⁸⁷

The 2014 Farm Bill expanded funding for the Farmers Market and Local Food Promotion Program.⁸⁸ This program provides grants to be used for outreach, training, and technical assistance to enhance access to locally and regionally produced agricultural products and new market opportunities for farmers.⁸⁹ The 2014 Farm Bill's Farmers Market and Local Food Promotion Program provides grants to intermediaries that work with producers, such as farmers, and buyers to carry out more local and regional supply chain activities, such as distributing locally produced food products to meet market demand.⁹⁰

B. Local Initiatives

To combat the problem of food deserts in Baltimore, the Baltimore City Health Department has initiated a handful of programs to increase access to healthy foods.⁹¹ One program is called the Virtual Supermarket Project.⁹² Customers may order groceries online from a Shop Rite grocery store and pick them up at a designated delivery site, such as a local library.⁹³ The groceries

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See Freeman, *supra* note 4, at 1296.

⁸⁹ *Farmers Market Promotion Program*, U.S. DEP'T OF AGRIC., AGRIC. MKTG. SERV., <https://www.ams.usda.gov/services/grants/fmpp> [<https://perma.cc/Z4TJ-QXZG>]; see *Farmers Market and Local Food Promotion Program*, NAT'L SUSTAINABLE AGRIC. COAL., <http://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/farmers-market-promotion-program/> [<https://perma.cc/M374-66KJ>].

⁹⁰ *Farmers Market Promotion Program*, *supra* note 89.

⁹¹ See Press Release, John Hopkins Bloomberg Sch. of Pub. Health, Ctr. for a Livable Future, 1 in 4 Baltimore Residents Live in a Food Desert (June 10, 2015), <http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/news-room/News-Releases/2015/1-In-4-Baltimore-Residents-Live-Food-Desert.html> [<https://perma.cc/YQG6-VNXD>].

⁹² Stephanie Rawlings-Blake, Address at the U.S. Conference of Mayors 5 (Oct. 4, 2015) [hereinafter Rawlings-Blake Address], http://www.usmayors.org/foodpolicy/uploads/Baltimore_Food_Policy_Initiative_2015_Reader.pdf [<https://perma.cc/AL33-3NWA>]; see *Virtual Supermarket*, BALTIMARKET, <http://www.baltimarket.org/virtual-supermarket/> [<https://perma.cc/R68G-FP8H>] (describing the goal of the Virtual Supermarket program as increasing access to healthy foods in areas with limited food access). Although there are supermarkets in Baltimore offering online ordering and food delivery programs, Baltimarket operates in neighborhoods that do not have access to supermarkets, and thus do not otherwise have access to these food delivery programs. *Virtual Supermarket*, *supra*.

⁹³ *Virtual Supermarket*, *supra* note 92.

may be purchased with Electronic Benefit Transfer (“EBT”) or SNAP.⁹⁴ The program even provides SNAP beneficiaries with ten bonus dollars to incentivize the purchase of healthy foods on the customer’s first order and on every fourth subsequent order.⁹⁵ This program is funded by the Stulman Foundation, Kaiser Permanente, and the United Way of Central Maryland.⁹⁶ One of the goals of this program is to show other grocers and national companies that they can still make a profit while increasing access to nutritious foods in food deserts.⁹⁷ As of July 2015, the Virtual Supermarket had served over 530 customers, totaling over \$150,000 in sales.⁹⁸ In light of this success, Baltimore recently expanded the program to seven Virtual Supermarket locations.⁹⁹

Los Angeles created the Healthy Grocery Stores Project to incentivize healthy food grocers to establish stores in food deserts.¹⁰⁰ To ensure that new grocery stores are not built in areas with existing access to quality grocers, the project is working to establish a conditional use permitting process for any new grocery store, or renovation of an existing grocery store.¹⁰¹ The project aims to add quality food grocers in food deserts by requiring grocers to show that they are investing in food desert communities.¹⁰² If a new store or renovation project is not in a food desert, the grocer would have to pay an additional fee into a mitigation fund that offers funding to grocers who do open or renovate stores in food deserts.¹⁰³ This program has successfully led to the first new supermarket in southern Los Angeles in about a decade.¹⁰⁴

⁹⁴ *Baltimarket*, BALT. CITY HEALTH DEP’T, <http://health.baltimorecity.gov/programs/baltimarket> [<https://perma.cc/QRD6-JQBZ>]. Customers can also use debit cards, credit cards, and cash. *Id.* EBT cards are basically debit cards that hold the beneficiary’s SNAP benefits. Anna John, *SNAP, WIC, EBT—What’s the Difference?*, DCENTRIC (May 19, 2011), <http://dcentric.wamu.org/2011/05/snap-wic-ebt-whats-the-difference/> [<https://perma.cc/5XPA-XJ5C>].

⁹⁵ Megan Wakefield, *Mobile Farmer’s Markets in Baltimore City: Food Deserts in Baltimore City*, CMTY. LAW CTR.: URBAN AGRIC. LAW PROJECT (Jan. 24, 2014), <http://communitylaw.org/urbanagriculturelawproject/mobile-farmers-markets-in-baltimore-city/> [<https://perma.cc/G4CD-4JLU>].

⁹⁶ *See Virtual Supermarket*, *supra* note 92.

⁹⁷ Tess Feldman, *Re-Stocking the Shelves: Policies and Programs Growing in Food Deserts*, 16 PUB. INT. L. REP. 38, 42 (2010).

⁹⁸ Rawlings-Blake Address, *supra* note 92, at 18.

⁹⁹ Stephen Babcock, *Baltimore Now Has 7 Virtual Supermarket Locations*, TECHNICALLY (Dec. 29, 2015), <http://technical.ly/baltimore/2015/12/29/baltimore-now-7-virtual-supermarket-locations/> [<https://perma.cc/9MJD-KUH2>].

¹⁰⁰ Feldman, *supra* note 97, at 43.

¹⁰¹ *Id.* at 42–43.

¹⁰² *Id.*

¹⁰³ *Id.* at 43.

¹⁰⁴ *Food Deserts*, FOOD EMPOWERMENT PROJECT, <http://www.foodispower.org/food-deserts/> [<https://perma.cc/8PHS-FK5Y>]; *see* Broad Leib, *supra* note 3, at 340 (noting that Los Angeles has banned new fast-food restaurants from opening up in certain low-income areas).

New York City has implemented various financial and zoning incentives to increase access to fresh foods in food desert areas.¹⁰⁵ New York City created the Food Retail Expansion to Support Health (“FRESH”) Program, which uses financial and zoning incentives to establish and retain grocery stores in underserved neighborhoods.¹⁰⁶ FRESH stores are eligible for additional development rights, required parking reductions, larger stores, and many state tax benefits.¹⁰⁷ FRESH stores are required to designate retail space to home preparation foods, perishable goods, and fresh produce.¹⁰⁸ New York City has also created the Green Carts program that allocates permits to mobile food carts selling only fresh fruits and vegetables in neighborhoods with limited access.¹⁰⁹

Chicago has increased healthy food access by amending zoning codes to increase urban agriculture.¹¹⁰ Chicago’s amended zoning regulations allow community gardens, urban farms, and onsite produce sales.¹¹¹ The amended zoning regulations for urban agriculture allow more local food production, which can increase food security and accessibility while supporting economic development, community building, and reduced environmental impacts.¹¹² Even agricultural space as small as a ten by ten meter plot can yield the majority of a household’s total annual vegetable needs.¹¹³ Urban agriculture can also facilitate for-profit farms growing food in a relatively small agricultural space.¹¹⁴ The Chicago Department of Housing and Economic Development also requires green roofs for all projects that receive public funding, are built

¹⁰⁵ *Food Retail Expansion to Support Health*, CITY OF NEW YORK, <http://www.nyc.gov/html/misc/html/2009/fresh.shtml> [<https://perma.cc/JG44-8DLK>].

¹⁰⁶ *Id.* (explaining the various zoning and financial incentives New York City implemented under the Food Retail Expansion to Support Health program as a response to neighborhoods lacking grocery stores).

¹⁰⁷ *Id.* (describing the details of the incentive programs).

¹⁰⁸ *Id.*

¹⁰⁹ ESTER R. FUCHS ET AL., COLUM. UNIV. SCH. OF INT’L & PUB. AFFAIRS, INNOVATIVE PARTNERSHIP FOR PUBLIC HEALTH: AN EVALUATION OF THE NEW YORK CITY GREEN CART INITIATIVE TO EXPAND ACCESS TO HEALTHY PRODUCE IN LOW-INCOME NEIGHBORHOODS 1 (2014), <http://www.foodpolitics.com/wp-content/uploads/Green-Carts-Report-Final-June-11.pdf> [<https://perma.cc/5PLY-J2JY>].

¹¹⁰ Broad Leib, *supra* note 3, at 322. Urban agriculture is the practice of farming and distributing food in urban areas. *Land Use Planning and Urban/Peri-Urban Agriculture*, CTRS. FOR DISEASE CONTROL & PREVENTION (June 3, 2010), <http://www.cdc.gov/healthyplaces/healthtopics/healthyfood/landuse.htm> [<https://perma.cc/X4ZB-LT8F>].

¹¹¹ Broad Leib, *supra* note 3, at 338 (explaining that Chicago’s zoning ordinance for community gardens and urban agriculture).

¹¹² *Id.* at 340.

¹¹³ ANNE C. BELLOWS ET AL., HEALTH BENEFITS OF URBAN AGRICULTURE, COMMUNITY FOOD SEC. COAL. 2 (2004), [http://www.co.fresno.ca.us/uploadedfiles/departments/behavioral_health/mhsa/health%20benefits%20of%20urban%20agriculture%20\(1-8\).pdf](http://www.co.fresno.ca.us/uploadedfiles/departments/behavioral_health/mhsa/health%20benefits%20of%20urban%20agriculture%20(1-8).pdf) [<https://perma.cc/X95Y-A87V>].

¹¹⁴ *Id.*

as a Lakefront Protection Ordinance Development, or are built in a Planned Development.¹¹⁵

Other cities, such as Seattle, have gone a step further to mandate urban agriculture by requiring at least one community garden for every 2500 households.¹¹⁶ The Seattle Department of Neighborhoods and the nonprofit P-Patch Trust, secures vacant land for urban agriculture and allows community members to apply for one-year land leases that can be used for individual or community farming.¹¹⁷

C. Food Policy Councils

Many food, legal, and policy experts believe that local input is vital to increasing food access because of the ties between food, culture, and community.¹¹⁸ This is pertinent because food deserts exist in predominantly ethnic and cultural minority communities where there may be varying cultural practices.¹¹⁹ Food Policy Councils benefit the community by providing a forum to discuss food issues and a platform to coordinate solutions.¹²⁰ Food Policy Councils work at the state, local, and regional level and can bring together a variety of actors such as city and state transportation departments, local school

¹¹⁵ *Id.* at 339; see *About Green Roofs*, GREEN ROOFS FOR HEALTHY CITIES, <http://www.greenroofs.org/index.php/about/aboutgreenroofs> [<https://perma.cc/TTA9-T9YU>] (explaining that a green roof is an extension of the existing roof and includes a growing system and plants); *Green Roof Benefits*, GREEN ROOFS FOR HEALTHY CITIES, <http://www.greenroofs.org/index.php/about/greenroofbenefits> [<https://perma.cc/X4AG-L62X>] (contending that green roofs offer many benefits in addition to providing space for urban agriculture, including waste diversion, storm water management, moderation of the urban heat island effect, and improved air quality).

¹¹⁶ BELLOWS ET AL., *supra* note 113, at 338.

¹¹⁷ *Id.* at 339.

¹¹⁸ See MAGUELONNE TOUSSAINT-SAMAT, A HISTORY OF FOOD 3–4 (Anthea Bell trans., 1992) (describing how food is unique to particular social and ethnic groups); Broad Leib, *supra* note 3, at 323 (advocating for local municipalities to become involved in food policy to address food system challenges); see Sophie Theriault et al., *The Legal Protection of Subsistence: A Prerequisite of Food Security for the Inuit of Alaska*, 22 ALASKA L. REV. 35, 38 (2005) (describing the interrelatedness between Inuit cultural practices and food security).

¹¹⁹ See TOUSSAINT-SAMAT, *supra* note 118, at 3–4 (describing how food is unique to particular social and ethnic groups); Nareissa Smith, *Eatin' Good? Not In This Neighborhood. A Legal Analysis of Disparities in Food Availability and Quality at Chain Supermarkets in Poverty-Stricken Areas*, 14 MICH. J. RACE & L. 197, 208 (2009) (analyzing disparities in food availability and quality in poverty-stricken areas, and ultimately finding that African-Americans and Latinos residing in America's inner cities have low-quality food stores, higher prices, dirtier stores, and worse quality of fresh produce than would be found in more affluent neighborhoods); Kelly Brooks, *Research Shows Food Deserts More Abundant in Minority Neighborhoods*, JOHNS HOPKINS MAG. (2014), <https://hub.jhu.edu/magazine/2014/spring/racial-food-deserts/> [<https://perma.cc/VY6C-Q5JU>] (explaining research showing healthy food access is more dependent on the racial composition of the neighborhood than on poverty level—finding that black and Hispanic neighborhoods have smaller food markets, more junk food options, and less healthy food options than their white counterparts).

¹²⁰ Alethea Harper et al., *Food Policy Councils: Lessons Learned*, FOOD FIRST (Dec. 1, 2009), <http://foodfirst.org/publication/food-policy-councils-lessons-learned/> [<https://perma.cc/S27N-F4GS>].

districts, economic development officials, health departments, and social service agencies.¹²¹ Ordinarily, these groups all work to interact and improve the food system, but their work is rarely integrated.¹²²

Food Policy Councils are great tools for figuring out what the community needs and working with the local constituents to address these areas of concern.¹²³ For instance, to address lack of vehicle access in Austin, Texas, the Austin Food Policy Council worked with Austin Capital Metro Transit to implement a grocery bus line to transport individuals living in food desert neighborhoods to two supermarkets.¹²⁴ A similar program in Hartford, Connecticut was implemented to provide transportation to people living in low-income neighborhoods.¹²⁵ Riders cited food shopping as a top reason for taking the bus and in less than a year, the ridership more than doubled.¹²⁶

D. Public-Private Partnerships

In recent years, social entrepreneurs have played an increased role in social development programs traditionally considered the exclusive purview of government.¹²⁷ Virtually all effective programs in agriculture, rural development, and nutrition involve actors from various sectors, including national, state, and local governments, civil society organizations, private businesses, public and private external donors, farmers, and rural communities.¹²⁸ One way to utilize the skills and assets of each of these actors in pursuit of delivering a service or development for the benefit of the public is through the agreement of a Public-Private-Partnership (“PPP”).¹²⁹

PPPs are partnerships between public and private sector actors who agree to work together to accomplish a shared goal or undertake a specific task and to share the risks, responsibilities, competencies, and benefits.¹³⁰ Through public funding and private sector performance, these partnerships have been used to enhance market-based solutions aimed at poverty reduction and sustainable

¹²¹ *Id.*

¹²² *Id.*

¹²³ See Broad Leib, *supra* note 3, at 323.

¹²⁴ See *id.* at 337.

¹²⁵ ROBERT GOTTLIEB ET AL., CTR. FOR FOOD & JUSTICE & CMTY. FOOD SEC. COAL., TRANSPORTATION AND FOOD: THE IMPORTANCE OF ACCESS 4 (2002), http://eatbettermovemore.org/sa/pdf/transportation_and_food.pdf [<https://perma.cc/ZWM4-EYLK>].

¹²⁶ *Id.*

¹²⁷ Nelson, *Scaling Up Impact*, *supra* note 13, at 308.

¹²⁸ *Id.*

¹²⁹ 7 *Keys to Success*, NAT’L COUNCIL FOR PUB.-PRIV. P’SHPIS, <http://www.ncppp.org/ppp-basics/7-keys/> [<https://perma.cc/UBK8-BB2Z>].

¹³⁰ Nelson, *Scaling Up Impact*, *supra* note 13, at 312–13 (citing JANE NELSON, U.N. GLOB. COMPACT OFFICE, A FRAMEWORK FOR BUSINESS ENGAGEMENT WITH THE UNITED NATIONS (2008), http://www.un.org/millenniumgoals/2008highlevel/pdf/background/UN_Business%20Framework.pdf [<https://perma.cc/VQA6-YJFU>]).

development.¹³¹ PPPs often utilize more inclusive business models focused on serving or working with low-income individuals while also turning a profit.¹³² Most PPPs are driven by the shared recognition that many complex problems are interdependent, and the financial, technical, and managerial resources for tackling them can be best accessed by partnerships that draw on the resources, skills, and capacities of all sectors.¹³³ Government motivations for joining a PPP include achieving better outcomes through greater efficiency, information, and expertise, and more resources.¹³⁴ On the other hand, businesses may be motivated to join a PPP to increase investments, mitigate risk, and leverage corporate social investments and philanthropy.¹³⁵

Under a PPP arrangement, the local or state government may enter into a contract with a private actor, typically for a term limited to the specific project.¹³⁶ The contract would outline the obligations and liabilities of each party, and the payment structure.¹³⁷ PPPs can also be less structured where the public and private sector agree orally to work together to accomplish a shared goal.¹³⁸ In these more informal arrangements, the public and private sector may work together on activities such as marketing, vouchers, health service delivery, and training.¹³⁹ Regardless of the level of formality, a PPP allows for the social entrepreneur and local municipality to work together to draw upon the expertise, resources, and skills of each sector to address food deserts.¹⁴⁰

II. CHOICE OF CORPORATE STRUCTURE IMPACTS BUSINESS DECISIONS BASED ON FIDUCIARY DUTIES OF DIRECTORS, OFFICERS, AND MANAGERS

As the local initiatives around the country demonstrate, there are ample opportunities for innovative solutions to food deserts.¹⁴¹ The 2014 version of the federal omnibus agricultural bill, the 2014 Farm Bill, provides incentive programs for the private sector and local government to take advantage of in working to eradicate food deserts.¹⁴² Because local municipalities have limited

¹³¹ Nelson, *Scaling Up Impact*, *supra* note 13, at 311.

¹³² *Id.*

¹³³ *See id.* at 315.

¹³⁴ *Id.*

¹³⁵ *Id.* at 317.

¹³⁶ *Id.* at 313

¹³⁷ PRACTICAL LAW, PUBLIC PRIVATE PARTNERSHIPS, *supra* note 12, at 2, 7, 9.

¹³⁸ HEALTHY PEOPLE & CMTYS.—STEERING COMM., DISCUSSION PAPER: PUBLIC-PRIVATE PARTNERSHIPS WITH THE FOOD INDUSTRY 5 (2013) <http://studylib.net/doc/18822408/public-private-partnerships-with-the-food-industry> [<https://perma.cc/BKU7-V2AT>] [hereinafter PUBLIC-PRIVATE PARTNERSHIPS WITH THE FOOD INDUSTRY].

¹³⁹ *Id.*

¹⁴⁰ PRACTICAL LAW, PUBLIC PRIVATE PARTNERSHIPS, *supra* note 12, at 1–3.

¹⁴¹ *See supra* notes 91–117.

¹⁴² *See supra* notes 68, 69–71, 77–90.

resources to allocate to various endeavors, private sector involvement could enhance the success of current efforts.¹⁴³ When forming a company, it is useful to think about factors such as investor permutations and exit strategies.¹⁴⁴ Specifically, as it pertains to food deserts, choice of entity structure can impact how far a business can go towards addressing social problems.¹⁴⁵

A. Traditional Entity Structures

1. Partnership

Partnerships are the most basic entity structures.¹⁴⁶ Partnerships can be structured in various ways, such as a general partnership (“GP”) and limited partnership (“LP”).¹⁴⁷ If two or more people operate a business for profit without specifying an entity structure, they would be general partners by default, as a matter of law.¹⁴⁸ Most states have adopted the uniform statutes for the GP and LP.¹⁴⁹ The Revised Uniform Partnership Act (“RUPA”) defines a GP as an “association of two or more persons to carry on as co-owners of a business for profit.”¹⁵⁰

Unless the partners in a GP execute a partnership agreement specifying the terms of the partnership, RUPA specifies the parties’ obligations under the partnership, including how profits and losses are shared, and the liabilities and debts of the partnership.¹⁵¹ Under RUPA, each partner in a GP can be held personally liable for all debts and all obligations incurred by the partnership whether arising in contract, tort, or otherwise.¹⁵²

An LP is similar to a GP except that there is one or more general partner and one or more limited partners.¹⁵³ The distinction between an LP and a GP is

¹⁴³ See Nelson, *Scaling Up Impact*, *supra* note 13, at 315.

¹⁴⁴ ALICIA ALVAREZ & PAUL R. TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE 330–31 (2013).

¹⁴⁵ See *infra* notes 236–253 and accompanying text.

¹⁴⁶ ALAN R. PALMITER & FRANK PARTNOY, CORPORATIONS, A CONTEMPORARY APPROACH 136 (2d ed. 2014).

¹⁴⁷ *Id.* at 136–37 (explaining the different types of partnerships including General Partnerships, Limited Partnerships, limited liability partnerships (“LLPs”), and limited liability limited partnerships (“LLLPs”).)

¹⁴⁸ ALVAREZ & TREMBLAY, *supra* note 144, at 334

¹⁴⁹ PALMITER & PARTNOY, *supra* note 146, at 137.

¹⁵⁰ REVISED UNIFORM PARTNERSHIP ACT § 202A (UNIF. LAW COMM’N 1997).

¹⁵¹ ALVAREZ & TREMBLAY, *supra* note 144, at 334 (citing REVISED UNIFORM PARTNERSHIP ACT § 103).

¹⁵² REVISED UNIFORM PARTNERSHIP ACT § 306.

¹⁵³ PALMITER & PARTNOY, *supra* note 146, at 137 (citing REVISED UNIFORM LIMITED PARTNERSHIP ACT § 101(7) (UNIF. LAWS. ANN. 2016)). An LP is a partnership between two or more people, having at least one general partner and at least one limited partner. *Id.*

that in an LP the partners do not have equal roles.¹⁵⁴ For example, the limited partner does not participate in the control of the business.¹⁵⁵ The general partner is liable for all obligations of the LP but the limited partner is only liable up to the amount of capital he invested in the partnership.¹⁵⁶

2. Corporation

In contrast to a GP, a corporation is a legal entity, distinct from its shareholders, officers, and directors.¹⁵⁷ Corporations are creatures of state law and the state of incorporation authorizes the corporation to issue shares to shareholders.¹⁵⁸ The corporation is owned by the shareholders and managed by the board of directors and officers.¹⁵⁹ The divide between ownership and management, especially in public corporations, puts the board of directors and officers in a fiduciary relationship with the corporation and the corporation's owners that requires the board to act in the interest of the corporation and board.¹⁶⁰ Failure to do so can result in liability for breach of fiduciary duty.¹⁶¹ As long as the shareholders abide by the corporate formalities outlined in the state's corporation statute, debts and liabilities incurred by the corporation are distinct from the shareholders, limiting the shareholders' liability to their investment in the corporation.¹⁶²

3. Limited Liability Company

A Limited Liability Company ("LLC") is a hybrid entity, combining attributes of a partnership and corporation.¹⁶³ Similar to a corporation, an LLC is a distinct entity from its owners, who are called "members" in an LLC.¹⁶⁴ Like the shareholders in a corporation, the members' liability in an LLC is limited to

¹⁵⁴ PALMITER & PARTNOY, *supra* note 146, at 137 (citing REVISED UNIFORM LIMITED PARTNERSHIP ACT §101 (7)).

¹⁵⁵ *Id.* (citing REVISED UNIFORM LIMITED PARTNERSHIP ACT § 303, which explains that the "limited partner has no voice in the active management of the LP").

¹⁵⁶ *Id.*

¹⁵⁷ *Sonora Diamond Corp. v. Superior Court*, 99 Cal. Rptr. 2d 824, 836 (Ct. App. 2000).

¹⁵⁸ ALVAREZ & TREMBLAY, *supra* note 144, at 336.

¹⁵⁹ *Id.*

¹⁶⁰ *See Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (explaining that the director, as the manager of the corporations' affairs, must act on behalf of others, namely shareholders).

¹⁶¹ *See id.*

¹⁶² *See PALMITER & PARTNOY, supra* note 146, at 138 (explaining that shareholder liability is limited to the amounts they have agreed to contribute to the corporation and does not extend to the debts or liabilities incurred by the corporation); *see also ALVAREZ & TREMBLAY, supra* note 144, at 336 (noting that the owners obtain the limited liability benefits only if they respect the corporate formalities).

¹⁶³ PALMITER & PARTNOY, *supra* note 146, at 138.

¹⁶⁴ *Id.*

their respective investments in the company.¹⁶⁵ Just as partners in a GP can execute a partnership agreement specifying the obligations of each of the partners, the members in an LLC typically outline their respective rights, duties, and management obligations in an Operating Agreement.¹⁶⁶

4. Nonprofit Organizations and Tax-Exempt Entities

The term “nonprofit” refers to an organization that is maintained for purposes other than generating a profit.¹⁶⁷ Although nonprofit organizations are not prohibited from earning a profit, state or federal law prescribes what must be done with any profits earned or received by the organization.¹⁶⁸ The nonprofit sector has been said to be an essential third sector, which compliments and ensures freedom against the excesses of the private and governmental sector.¹⁶⁹

Tax-exempt organizations represent a subset of the nonprofit sector.¹⁷⁰ A tax-exempt organization refers to an organization that is granted federal tax-exemption if it meets certain statutory requirements.¹⁷¹ Under section 501(c)(3) of the tax code, an organization must be organized and operated for a specific purpose such as charitable, religious, educational, or scientific.¹⁷² The organization must not be operated for the benefit of private interests and the earnings may not inure to any individual—all earnings must stay within the organization and be dedicated to achieving the purpose for which the organization was formed.¹⁷³ An organization will receive many benefits if the Internal Revenue Service grants it 501(c)(3) tax-exempt status.¹⁷⁴ For instance, contributions to the organization can be tax deductible to the donor up to a certain amount, the organization may be eligible to receive grants from foundations and government agencies, and the organization may be exempt from paying certain state and local taxes.¹⁷⁵

¹⁶⁵ ALVAREZ & TREMBLAY, *supra* note 144, at 341.

¹⁶⁶ *Id.*

¹⁶⁷ *See, e.g.*, 26 U.S.C. § 501(c)(3) (2012) (defining a non-profit corporation for federal tax purposes as a corporation that is operated for a purpose other than benefitting shareholders).

¹⁶⁸ BRUCE R. HOPKINS, *THE LAW OF TAX-EXEMPT ORGANIZATIONS* 4 (11th ed. 2016).

¹⁶⁹ *See id.* at 5 (describing the three sectors in society as governmental, nonprofit, and private). The nonprofit sector has been termed, among other titles, the voluntary or philanthropic sector. *Id.*

¹⁷⁰ *Id.* at 6.

¹⁷¹ ALVAREZ & TREMBLAY, *supra* note 144, at 358.

¹⁷² *Id.*

¹⁷³ *Id.*; *see* HOPKINS, *supra* note 168, at 4–5 (distinguishing for-profit entities from non-profits. Whereas for-profit entities are operated for the benefit of its owners, non-profit organizations are generally not permitted to distribute its profits to those who control it, because nonprofit organizations rarely have owners).

¹⁷⁴ *See* 26 U.S.C. § 501(c)(3).

¹⁷⁵ ALVAREZ & TREMBLAY, *supra* note 144, at 361.

5. Fiduciary Duties

In for-profit corporations, the individuals responsible for management of the company have certain fiduciary duties to the organization and its shareholders.¹⁷⁶ These duties include the duty of loyalty and care.¹⁷⁷ If managers breach these duties, shareholders can bring a derivative lawsuit against the managers.¹⁷⁸

The duty of care requires the board of directors to be attentive and prudent in making decisions and managing the corporation's affairs.¹⁷⁹ The duty of care requires these fiduciaries to take into account all relevant information before taking action or making a decision that will affect the entity, and thereby the shareholders.¹⁸⁰ Judicial review of the board's decision is subject to the business judgment rule, which creates the presumption that the board's decision itself is sound, so long as the board employed an adequate procedure in reaching its decision.¹⁸¹ The duty of loyalty requires managers to act only in the interest of the corporation rather than in their own interest.¹⁸²

Ultimately, the duty of any corporate manager is to ensure that the shareholders of the company receive a maximum return on investment.¹⁸³ Although some courts and scholars have advocated for a more nuanced version of the board's duty, profit maximization remains a hallmark of for-profit companies.¹⁸⁴

¹⁷⁶ See *id.* at 347 (introducing the fiduciary duties of entity directors, officers and managers. Managers of for-profit enterprises owe the organization fiduciary responsibilities); Michael A. Hacker, Note, "Profit, People, Planet" Perverted: Holding Benefit Corporations Accountable to Intended Beneficiaries, 57 B.C. L. REV. 1747, 1761–62 (2016) (discussing the role of the board of directors and shareholders in public corporations). Even though shareholders own the majority of the corporation's stock, they lack any real control over business operations and decision making. ALVAREZ & TREMBLAY, *supra* note 144, at 347. Because of this, the directors owe fiduciary duties to the shareholders. *Id.*

¹⁷⁷ Renee M. Jones, *Law, Norms, and the Breakdown of the Board: Promoting Accountability in Corporate Governance*, 92 IOWA L. REV. 105, 110 (2006).

¹⁷⁸ See DEL. CODE ANN. tit. 8, § 327 (West 2017) (providing the mechanism for a derivative suit).

¹⁷⁹ Jones, *supra* note 177, at 110–11 (describing the duty of care as requiring directors to diligently manage the corporation's affairs, acting as a reasonably prudent person in similar circumstances. In Delaware, the standard for duty of care is gross negligence.).

¹⁸⁰ ALVAREZ & TREMBLAY, *supra* note 144, at 348.

¹⁸¹ See Jones, *supra* note 177, at 111 (citing *Van Gorkom*, 488 A.2d at 874).

¹⁸² *Id.* at 112. When a director conducts business on behalf of the corporation, there is a risk of abuse as the director is both the decision-maker and potential beneficiary of the transaction. *Id.*

¹⁸³ See *Guth v. Loft*, 5 A.2d 503, 510 (Del. 1939) (explaining that that the basic principle is that corporate directors "stand in a fiduciary relation to the corporation and its stockholders."); *Dodge v. Ford Motor Co.*, 170 N.W. 668, 684 (Mich. 1919) (noting that a corporation is operated for the benefit of stockholders and that the directors therefore cannot pursue purposes other than profit maximization.). In other words, the director must not only protect the interests of the corporation, but also refrain from doing anything that would deprive the corporation of profit. *Guth*, 5 A.2d at 510.

¹⁸⁴ ALVAREZ & TREMBLAY, *supra* note 144, at 348; see KENT GREENFIELD, *THE FAILURE OF CORPORATE LAW: FUNDAMENTAL FLAWS AND PROGRESSIVE POSSIBILITIES* 154 (2006) (proposing the relaxation of profit maximization and extending management's fiduciary duties beyond shareholders). Compare *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1986)

B. Innovative Entity Structures

Social enterprises use market-driven approaches to solve social problems.¹⁸⁵ According to the Social Enterprise Alliance, a social enterprise (1) addresses a social need either through its products and services, or by employing disadvantaged people, (2) employs commercial strategies to drive revenue, and (3) has the social mission as the central purpose of the business.¹⁸⁶ In many states, social entrepreneurs are able to take advantage of hybrid organizational statutes entitling them to establish entities to pursue social missions while receiving equity investments and issuing debt instruments.¹⁸⁷ This type of business organization allows a for-profit company to prioritize its social goals without running afoul of the fiduciary obligations inherent in the management of for-profit businesses.¹⁸⁸

1. Low-Profit Limited Liability Company

Although members in an LLC can contractually agree to deemphasize profits, a Low-profit Limited Liability Company (“L3C”) statutorily authorizes and protects managers from breach of fiduciary duty claims when acting from a socially directed rather than economic standpoint.¹⁸⁹ The L3C also provides a means to connect the social entrepreneur to private foundation funding by authorizing nonprofit private foundations to invest in socially oriented for-profit entities.¹⁹⁰ Additionally, since the L3C is a form of an LLC, its operating

(explaining when the break-up of a company is inevitable, directors have a duty to sell the company to the highest bidder, and when the board of directors agree to sell control, the board has a duty to get the best price), *with* Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 955 (Del. 1985) (finding that when resisting a takeover, a board of directors may consider constituents other than just shareholders).

¹⁸⁵ *What Is Social Enterprise?*, SOC. ENTER. ALL., <https://socialenterprise.us/about/social-enterprise/> [<https://perma.cc/9PPZ-FKCV>].

¹⁸⁶ Laurie Ristino, *Back to the New: Millennials and the Sustainable Food Movement*, 15 VT. J. ENVTL. L. 1, 25 (2013).

¹⁸⁷ ALVAREZ & TREMBLAY, *supra* note 144, at 347; *see* Chloe Holderness & Dave Roll, *Can New Legal Structures Help Social Entrepreneurs Succeed?*, SKOLL FOUND. (Aug. 30, 2014), <http://archive.skoll.org/2014/08/30/can-new-legal-structures-help-social-entrepreneurs-succeed/> [<https://perma.cc/D9G5-EKUE>] (explaining that some jurisdictions in the United States are blurring the lines between for-profits and charitable organizations, enabling social entrepreneurs to pursue their social mission and at the same time raise capital).

¹⁸⁸ ALVAREZ & TREMBLAY, *supra* note 144, at 347; *see infra* notes 225–242 and accompanying text.

¹⁸⁹ ALVAREZ & TREMBLAY, *supra* note 144, at 350.

¹⁹⁰ *See id.* at 350–51 (explaining that nonprofit private foundations are typically unable to invest in for-profit businesses). Robert Lang and Marcus Owens designed the Low-profit Limited Liability Company (“L3C”) after recognizing that some activities that would typically fall under the nonprofit umbrella were not profitable enough profitable or too high risk to attract for-profit investors. *Id.* When Vermont legislators enacted the first L3C statute in 2008, they intentionally drafted the statute to work with IRS regulations to provide a means for non-profit private foundations to invest in private for-profit enterprises that advance socially desirable goals. *Id.* at 351; *see* Anne Field, *Limited Fiscal Sponsor-*

agreement may specify how its managers prioritize business and investment decisions, providing further protection to managers when prioritizing social concerns above profit.¹⁹¹

2. Benefit Corporation

More than half of the states have enacted benefit corporation legislation authorizing for-profit corporations to have a public benefit focus.¹⁹² Model Benefit Corporation Legislation, which is the model for most states' benefit corporation statutes, requires that the board of directors appoint one director as the benefit director to be in charge of issuing annual reports and assessing compliance with the corporation's public benefit purpose.¹⁹³ Furthermore, most benefit corporation statutes include a right of action for shareholders whereby shareholders can enforce the duties of the benefit corporation directors and officers as well as the public benefit purpose.¹⁹⁴

3. B Corporation

A B Corporation ("B Corp") provides an additional vehicle for entrepreneurs interested in establishing a company with a social purpose.¹⁹⁵ Unlike the

ship: A New Tool in the Arsenal of Social Enterprise, FORBES (Sept. 30, 2015, 4:10 PM), <http://www.forbes.com/sites/annefield/2015/09/30/limited-fiscal-sponsorship-a-new-tool-in-the-arsenal-of-social-enterprise/#5add9b371e1c> [<https://perma.cc/NF6V-DWMP>] (discussing limited fiscal sponsorship as an approach to funding and structuring social enterprise ventures). For example, Boston-based Fresh Truck, which is a mobile market that stops in food desert areas, is incorporated under a hybrid entity structure and therefore has been able to receive financial and administrative support from the nonprofit Third Sector New England ("TSNE"). Field, *supra* note 190. This greatly benefits Fresh Truck because TSNE is able to accept charitable contributions to support Fresh Truck's mission. *Id.*

¹⁹¹ ALVAREZ & TREMBLAY, *supra* note 144, at 353.

¹⁹² J. Haskell Murray, *Social Enterprise Innovation: Delaware's Public Benefit Corporation Law*, 4 HARV. BUS. L. REV. 345, 348 (2014); see ALVAREZ & TREMBLAY, *supra* note 144, at 353 (describing benefit corporations as corporations with a mission of creating a "general public benefit."). The aim of the benefit corporation legislation is "to permit founders to establish a for-profit business vehicle where its officers and directors do not have an unfettered duty to maximize profits." ALVAREZ & TREMBLAY, *supra* note 144, at 353.

¹⁹³ MODEL BENEFIT CORP. LEGIS. §§ 302, 401 (B LAB 2016), http://benefitcorp.net/sites/default/files/Model%20Benefit%20Corp%20Legislation_4_16.pdf [<https://perma.cc/Q7L9-NQVX>]; see Brett McDonnell, *Benefit Corporations and Strategic Action Fields or (The Existential Failing of Delaware)*, 39 SEATTLE U. L. REV. 263, 282 (2016) (noting that Model Benefit Corporation Legislation has become the basis for most state statutes); Dana Brakman Reiser, *Benefit Corporations—A Sustainable Form of Organization?* 46 WAKE FOREST L. REV. 591, 604–05 (2011) (explaining that certain states not only require a benefit director, but also permit the appointment of a benefit officer).

¹⁹⁴ Reiser, *supra* note 193, at 605 (explaining that these enforcement proceedings limit the plaintiffs to shareholders of the corporation, unless otherwise specified in the corporation's charter).

¹⁹⁵ See *Why B Corps Matter*, B LAB, <http://www.bcorporation.net/what-are-b-corps/why-b-corps-matter> [<https://perma.cc/NN6P-3XH3>] (explaining that B Corps use business and the market to solve social and environmental problems).

L3C and benefit corporation, a B Corp is not statutorily prescribed.¹⁹⁶ To become a B Corp, an entity must be certified by the nonprofit 501(c)(3) organization, B Lab.¹⁹⁷ Before certification, B Lab will conduct an Impact Assessment of the company to determine if the company is meeting the social and environmental performance standards B Lab requires.¹⁹⁸ B Corps are subject to random audits, must update their Impact Assessment every two years, and must sign the B Corp declaration that outlines, among other tenets, that B Corps will benefit all stakeholders, not just shareholders.¹⁹⁹ Furthermore, if a B Corp is in a jurisdiction that enacts a benefit corporation statute, a B Corp is required to reincorporate as a benefit corporation within four years of the first effective date of the benefit corporation legislation.²⁰⁰ Additionally, B Lab requires that companies in certain jurisdictions amend the purpose of the company and the directors' duties in their Articles of Incorporation after receiving approval by either a majority or supermajority vote from both the board of directors and shareholders.²⁰¹

III. FOOD DESERTS ARE RIPE FOR BUSINESS

The private sector can take advantage of federal and local governmental incentive programs to establish social-minded enterprises to serve food desert areas.²⁰² Successful initiatives addressing food deserts around the country can serve as a model for private sector involvement.²⁰³ Because these businesses have proved to be profitable but are created to serve a social purpose, the business should be organized under a hybrid entity structure that allows the for-profit company to prioritize its social mission.²⁰⁴ An innovative corporate structure will

¹⁹⁶ See ALVAREZ & TREMBLAY, *supra* note 144, at 354 (Noting that “A B Corp. has no statutory or regulatory status aside from its original corporate status.”).

¹⁹⁷ See *About B Lab*, B LAB, <http://www.bcorporation.net/what-are-b-corps/about-b-lab> [https://perma.cc/6UJK-39ZW].

¹⁹⁸ *Performance Requirements*, B LAB, <http://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/performance-requirements> [https://perma.cc/9CGY-BG5H]; see *How to Become a B Corp*, B LAB, <http://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp> [https://perma.cc/FG9L-KSWR] (outlining the process to become a B Corp and stating there are specific legal and performance requirements).

¹⁹⁹ See *Performance Requirements*, *supra* note 192; see also *B Corp Declaration*, B LAB, <http://www.bcorporation.net/what-are-b-corps/the-b-corp-declaration> [https://perma.cc/8XUR-8TNV] (outlining the B Corp Declaration).

²⁰⁰ *Corporation Legal Roadmap*, B LAB, <https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/legal-roadmap/corporation-legal-roadmap> [https://perma.cc/PCR4-SH6U].

²⁰¹ *Id.*

²⁰² See, e.g., GOTTLIEB ET AL., *supra* note 125 (describing efforts in Hartford to combat food deserts); SNAP Press release, *supra* note 80 (discussing federal efforts to help people who receive SNAP benefits make more healthful food purchases); *Virtual Supermarket*, *supra* note 92 (describing one of Baltimore's efforts to address food deserts).

²⁰³ See *infra* notes 231–233 and accompanying text.

²⁰⁴ See *infra* notes 236–253 and accompanying text.

allow the social mission of the company to persist and will provide the entrepreneur with resources and funding that would otherwise be foreclosed.²⁰⁵

A. How The Private Sector Can Work with the Local, State, and Federal Government to Address Food Deserts

Under the 2014 Dietary Guidelines, the United States would have needed thirteen million more acres of land devoted to farming fruits and vegetables in order to provide each individual with enough servings of fruits and vegetables to meet its recommendations.²⁰⁶ Without incentives for fruit and vegetable farming, it is unlikely that commercial farmers in the United States will convert their land to produce these crops.²⁰⁷ The crop insurance program in the 2014 Farm Bill provides a huge incentive for commercial farmers to continue to farm commodity crops, thereby limiting risk and guaranteeing a revenue stream.²⁰⁸ Based on agribusiness lobbying efforts prior to the 2014 Farm Bill, it is unlikely that Congress will take action to amend the subsidy program to benefit food desert areas.²⁰⁹ With the reduction in funding to the Supplemental Nutrition Assistance Program (“SNAP”) in the 2014 Farm Bill, there is now even more need for private sector participation.²¹⁰ Without private sector and local government participation, solutions to address food deserts will fall short of success.²¹¹ Fortunately, the 2014 Farm Bill includes some beneficial provi-

²⁰⁵ See *infra* notes 236–253 and accompanying text.

²⁰⁶ Freeman, *supra* note 4 at 1282; see RENÉE JOHNSON, CONG. RES. SERV., RL34468, THE U.S. TRADE SITUATION FOR FRUIT AND VEGETABLE PRODUCTS 2–4 (2016), <https://fas.org/sgp/crs/misc/RL34468.pdf> [<https://perma.cc/V94A-BQGM>] (noting that in 2015 the amount of money spent to import fruits and vegetables into the United States totaled \$17.6 billion and that the leading supply countries were Mexico, Canada, and Chile); Food Access, *supra* note 2 (explaining that because most of the fruits and vegetables end up in grocery stores, people living in food deserts lack access to these higher quality foods because they live far from a grocery store and do not have vehicle access).

²⁰⁷ See Haspel, *supra* note 40 (outlining the percentage of U.S. farmland devoted to growing commodity crops). As of 2014, more than half of the land in the United States used for growing food was devoted to corn, soy, and wheat. *Id.* When the crop insurance subsidy program was added in 1980, farmers began to devote their land to the crops that would receive subsidies. *Id.*

²⁰⁸ See Dayen, *supra* note 37 (explaining how the federal government will pay almost two-thirds of the farmer’s crop insurance premium, most of the insurance claims, guaranteeing revenue regardless of crop failure or market conditions for commodity crops).

²⁰⁹ See Freeman, *supra* note 4, at 1288–89 (explaining that prior to the 2014 Farm Bill, Agribusiness spent more on lobbying than the defense industry and labor unions); Feinberg, *supra* note 31 (explaining that in the 2014 Farm Bill there was an eight billion dollar cut to the Supplemental Nutrition Assistance Program).

²¹⁰ See AUSSENBERG, *supra* note 72 (that between 2014 and 2023 cuts to the SNAP program could total as much as eight billion dollars); Purvis, *supra* note 72 (explaining that after the cuts to SNAP, food banks in New York City experienced more need than after Hurricane Sandy and that the food banks reported shortages a month after the cuts to SNAP).

²¹¹ See Broad Leib, *supra* note 3, at 323 (explaining that local initiatives, more so than the federal government, are particularly well suited to deal with food deserts because they can better identify need and are closer to their constituency); William D. Eggers & Paul MacMillan, *Government Alone Can’t*

sions for individuals outside of commercial farms that may help increase access to healthy food.²¹² Additionally, some cities and individuals around the country have taken the initiative to implement programs to address food deserts.²¹³ The programs implemented around the country can serve as a model for future programs.²¹⁴

One way entrepreneurs interested in making a difference in food deserts can increase access to healthy food is by starting an urban farm.²¹⁵ Farmers can take advantage of the Farm Service Agency's low-interest loans when starting the farm to purchase the equipment, seeds, and other necessary investments.²¹⁶ Once the farm is up and running, the farm may be eligible for further funding, such as impact investments, allowing the farm to expand its operations or make further investments.²¹⁷ Urban farms are a great way to raise awareness, increase access, and educate the community about healthy foods.²¹⁸ The Farmers Market and Local Food Promotion Program in the 2014 Farm Bill provides

Solve Society's Biggest Problems, HARVARD BUS. REV. (Sept. 19, 2013), <https://hbr.org/2013/09/government-alone-cant-solve-societys-biggest-problems> [<https://perma.cc/SM39-4ACN>] (explaining that there has been a paradigm shift where private actors engage in roles that have traditionally been considered governmental to provide social services).

²¹² See NSAC's Blog, *2014 Farm Bill*, *supra* note 39 (explaining the various provisions in the farm bill includes \$1.2 billion for beginning farmers, local food, organic agriculture, and rural development).

²¹³ See Rawlings-Blake Address, *supra* note 92 (describing the Baltimore Food Policy Initiative); Feldman, *supra* note 100 (explaining the Los Angeles Healthy Grocery Stores Project); *Food Retail Expansion to Support Health*, *supra* note 105 (outlining the Food Retail Expansion to Support Health program as well as other initiatives in New York).

²¹⁴ See *Center for a Livable Future*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH, <http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/projects/index.html> [<https://perma.cc/Y9AW-G3T6>] (explaining the school's various efforts to promote public health through more comprehensive food policy).

²¹⁵ Amanda Lewan, *The Business of Urban Farming Takes Root in Detroit*, ENTREPRENEUR (Dec. 2, 2014), <https://www.entrepreneur.com/article/239844> [<https://perma.cc/JE3A-73TW>] (describing stories of various individuals who started urban farms in Detroit, Michigan and the financial success of their efforts).

²¹⁶ *Microloans Now Available for Young and Beginning Farmers*, *supra* note 82.

²¹⁷ See *About GIIN*, GLOBAL IMPACT INVESTING NETWORK, <https://theiiin.org/about> [<https://perma.cc/P8ZV-EXKU>]. Impact investments are investments made with the dual goal of having positive social and environmental impact while also making a profit. *Id.*; see Cheryl Dorsey, *Impact Investing: What Do Emerging Social Entrepreneurs Really Need?*, FORBES (Oct. 5, 2015, 11:06 AM), <http://www.forbes.com/sites/echoinggreen/2015/10/05/impact-investing-what-do-emerging-social-entrepreneurs-really-need/#22d162532ea9> [<https://perma.cc/EB7W-3P89>] (explaining that impact investments can be essential to starting and maintaining a social enterprise).

²¹⁸ See BELLOWS ET AL., *supra* note 113 (explaining that personally growing food positively impacts dietary habits). Studies show that fruit and vegetable intake is higher among gardeners than non-gardeners. *Id.* Gardeners report that the increased availability influences their consumption of fresh produce. *Id.* Urban agriculture contributes to food security by providing a relatively secure and more locally controlled source of food. *Id.* Better interaction between farmer and local consumer increases awareness of local food options, and knowledge and commitment to healthy, sustainable food products and practices. *Id.*

grants for programs such as farmers markets, community supported agriculture programs, and other direct producer-to-consumer market opportunities.²¹⁹ The supply of local produce from urban growing operations can further promote supermarkets, cooperatives, community supported agriculture programs, and farmers markets in food deserts.²²⁰

Additionally, entrepreneurs have ample opportunities if they want to start their own healthy food grocery store.²²¹ Through the Healthy Food Financing Initiative, entrepreneurs interested in establishing a grocery store or other healthy food store can receive funding for financial and technical assistance for the purposes of market planning, advertising, infrastructure, and operational improvements to stimulate demand, access, and availability of healthy foods in food deserts.²²² Studies have shown that supermarkets established in food deserts have been economically successful, sometimes even more so than established supermarkets in more affluent areas.²²³

Some cities have addressed the lack of vehicle access and have successfully increased food access through virtual supermarket programs that deliver fresh, healthy groceries to food deserts, and by enhancing public transportation

²¹⁹ Farmers Market Promotion Program, *supra* note 89.

²²⁰ See *Community Supported Agriculture*, U.S. DEP'T OF AGRIC., NAT'L AGRIC. LIBRARY, <http://afsic.nal.usda.gov/community-supported-agriculture-3> [<https://perma.cc/29VP-AQL4>]. Community Supported Agriculture is when individuals, as a group, pledge to support a farm operation, with the growers and consumers sharing the risks and benefits of the production. *Id.* Typically, members of the farm or garden pledge in advance to cover anticipated costs of the farm operation and farmer's salary. *Id.* In return, they receive part of the harvest throughout the growing season. *Id.* By direct sales to community members who have invested in the farm, growers receive better prices for crops, gain some financial security, and are relieved of much of the burden of marketing. See BELLOWS ET AL., *supra* note 113. Many federal programs encourage direct sales of produce at farm stands and farmers markets and allow for voucher and EBT redemption. See *id.*; *What is a Co-op?*, NEIGHBORING FOOD CO-OP ASS'N, <http://nfca.coop/definition> [<https://perma.cc/2BXS-4EAC>] (explaining that cooperatives, or co-ops, are owned and governed by its members, and their principal purpose is to meet the aspirations of those members, not to accumulate profit for investors). Any surplus generated by a co-op is reinvested in the business or returned to members based on their use of its service. See *Healthy Foods, Healthy Communities*, NAT'L CO+OP GROCERS, <http://strongertogether.coop/food-coops/food-co-op-impact-study/> [<https://perma.cc/N9YL-9TGV>] (explaining that food co-ops work with more local farmers and offer more local products than conventional grocers).

²²¹ See *Healthy Food Financing Initiative*, *supra* note 88.

²²² *Id.*

²²³ See Feldman, *supra* note 97, at 42 (“[R]esearch has shown that communities without adequate nutrition access are in fact more likely to support a new grocery store”). *But see If You Build It, They May Not Come*, ECONOMIST (Jul. 7, 2011), <http://www.economist.com/node/18929190> [<https://perma.cc/UE5A-8WNL>] (arguing that establishing a supermarket in a food desert will not solve the problem because people will not necessarily change their eating habits). In Detroit, the opening of a new Whole Foods provides an interesting example of both the successes and failures that follow the opening of a new healthful, but expensive grocery store in a low income area. Tracie McMillan, *Can Whole Foods Change the Way Poor People Eat?*, SLATE (Nov. 19, 2014, 11:30 PM), http://www.slate.com/articles/life/food/2014/11/whole_foods_detroit_can_a_grocery_store_really_fight_elitism_racism_and.html [<https://perma.cc/6EVL-CLZ3>] (providing anecdotal evidence of both positive and negative impacts on individual consumers health, eating habits, and financial situation).

options from food deserts to grocery stores.²²⁴ Whether addressing food deserts by starting a grocery store, increasing vehicle access, or increasing healthy food, entrepreneurs should engage the local community to determine what is needed and ensure that their efforts will be received well by the community.²²⁵ The population and culture of the area will determine the best way to target the respective audience to raise awareness and educate those living in food deserts of the new programs and options.²²⁶ Allowing the community to participate in the planning process will help ensure that the establishment is not only something the community can use, but is something the community desires, leading to more business once the company is established.²²⁷

Local or regional Food Policy Councils can help to facilitate initiatives with a local or state government.²²⁸ The healthy grocery store mitigation fund in Los Angeles, financial and zoning incentives for healthy grocery stores in New York City, and amended zoning regulations to allow for urban farms in Chicago and Seattle all demonstrate initiatives and programs that were successful and possible due to local government involvement.²²⁹

Through Public Private Partnerships (“PPP”), the private sector and government can work together to address food deserts.²³⁰ The decision to open a Whole Foods Market in Detroit, Michigan would not have been possible without collaboration between Whole Foods and the public sector.²³¹ The city coordinated \$5.8 million in public subsidies and private grants to develop the Whole Foods, lowering the rent for Whole Foods to less than one-third of market rates.²³² The reduced rent not only served as a sort of insurance policy for Whole

²²⁴ See Broad Leib, *supra* note 3 (explaining the grocery bus line that was implemented in Austin to transport individuals from food deserts to grocery stores); Rawlings-Blake Address, *supra* note 92 (outlining the Virtual Supermarket Program as one of the Food Policy Initiatives in Baltimore).

²²⁵ Broad Leib, *supra* note 3, at 323.

²²⁶ See *id.* at 329–30 (explaining that community input is essential for a more effective food system.).

²²⁷ See TOUSSAINT-SAMAT, *supra* note 118, at 3–4.

²²⁸ Alethea Harper et al., *Food Policy Councils: Lessons Learned*, INST. FOR FOOD & DEV. POL’Y, FOOD FIRST (Dec. 1, 2009), <https://foodfirst.org/publication/food-policy-councils-lessons-learned/> [<https://perma.cc/QWD4-DQKU>] (explaining that Food Policy Councils address the food system as a whole, bringing together local, county, or state government behind grassroots initiatives). Food Policy Councils aim to integrate all sectors that are working on food issues to coordinate action at the local level. *Id.*

²²⁹ See Broad Leib, *supra* note 3, at 338–340; Feldman, *supra* note 97, at 43; *Food Retail Expansion to Support Health*, *supra* note 105.

²³⁰ PUBLIC-PRIVATE PARTNERSHIPS WITH THE FOOD INDUSTRY, *supra* note 138, at 1.

²³¹ See McMillan, *supra* note 223, at 6–7.

²³² *Id.* at 6–8 (explaining that local politics helped make this a reality). Detroit’s city planners saw Whole Foods as a way to gentrify the neighborhood. *Id.* The city’s economic development head praised Whole Foods as a “game-changer” for the city as it potentially could employ fifteen-percent of Detroit’s unemployed citizens. *Id.* The quasi-public agency Detroit Economic Growth Corporation, in charge of overseeing the city’s economic strategy, saw Whole Foods as a keystone to development. *Id.* After the store opened, Whole Foods CEO stated his intention for Whole Foods to serve both wealthy

Foods—allowing Whole Foods to turn a profit even if there were negligible sales—but it also allowed Whole Foods to lower the cost of food at this location.²³³ Many municipal and state governments lack the funding, personnel, and expertise necessary to develop and implement programs to address food deserts.²³⁴ Just as state and local governments could benefit from the private sector’s execution and management of the project, financial contributions, and expertise, the private sector can benefit from the public sector’s advice, technical input, and use of publicly funded research and development incentives.²³⁵

B. Entrepreneurs Should Utilize Innovative Corporate Structures to Address Food Deserts

Traditional organizational structures are less appropriate for companies that wish to pursue a positive social impact because traditional entity structures require boards to manage these companies solely for the financial gain of shareholders.²³⁶ If a corporate manager considers other interests when making business decisions—such as deciding to sell the company to a bidder who offers a lower price, but promises to increase access to healthy foods in food deserts—the manager could face liability for breach of fiduciary duty.²³⁷ Consider the recent example of Ben & Jerry’s, an ice cream company that prides itself on being both socially conscious and for-profit.²³⁸ Ben & Jerry’s consistently donates 7.5% of its profits to charity and purchases ingredients from suppliers who employ disadvantaged populations.²³⁹ In 2000, Ben & Jerry’s accepted an

and poor residents, despite the store’s reputation as an expensive grocer. *Id.* at 8; see PRACTICAL LAW, PUBLIC PRIVATE PARTNERSHIPS, *supra* note 235 at 2, 7, 9 (explaining how and why to contractually structure a public-private partnership between the government and private sector to fund and implement physical and social infrastructure projects).

²³³ McMillan, *supra* note 223, at 7.

²³⁴ See PRACTICAL LAW, PUBLIC PRIVATE PARTNERSHIPS, *supra* note 12, at 1 (explaining that governments may lack the personnel and expertise necessary to develop and manage social infrastructure projects).

²³⁵ Nelson, *Scaling Up Impact*, *supra* note 13, at 311–12.

²³⁶ See *Guth v. Loft*, 5 A.2d 503, 510 (Del. 1939) (explaining that the basic principle is that corporate directors are fiduciaries to the corporation and its stockholders); *Dodge v. Ford Motor Co.* 170 N.W. 668, 684 (Mich. 1919) (noting that because a corporation is structured and operated for the profit of the stockholders, the directors must work towards that end and cannot divert profits away from the shareholders as a means to devote the proceeds to another purpose).

²³⁷ See, e.g., *Guth*, 5 A.2d at 510 (explaining the director’s duty to put the interest’s of the corporation and its shareholders above all other interests); *Dodge*, 170 N.W. at 684 (rejecting business decisions made with “philanthropic and altruistic” motives and instead stating that decisions must be made “primarily for the profit of the stockholders”); see also DEL. CODE ANN, tit. 8, § 327 (West 2017) (providing a means for shareholders to bring a derivative lawsuit against managers).

²³⁸ *Ben & Jerry’s Merger with Unilever*, B REVOLUTION CONSULTING (May 7, 2012), www.brevolutionconsulting.com/articles/ben-and-jerrys-unilever-merger/ [https://perma.cc/53EG-UZQ2].

²³⁹ *Id.*

offer from the multinational company Unilever to purchase the company.²⁴⁰ The founders of Ben & Jerry's believed that the acquisition would compromise their social efforts, but because Ben & Jerry's was a traditional for-profit public company, the board of directors had an obligation to maximize returns to shareholders and to accept the offer without consideration of the founders' social mission.²⁴¹

Nonprofit tax-exempt organizations represent the quintessential organization devoted to serving interests beyond profit.²⁴² Some social entrepreneurs will meet the IRS requirements, allowing the company to become a nonprofit tax-exempt entity.²⁴³ Many social entrepreneurs, though, will not meet these strict requirements or they may want to own the company outright, which is legally impossible with a nonprofit entity.²⁴⁴

Entrepreneurs who wish to own or operate a socially driven for-profit company should instead consider a hybrid entity structure that will allow them to pursue socially desirable goals without fear of personal liability for breach of fiduciary duty.²⁴⁵ Per state statute, low-profit limited liability companies ("L3C") and benefit corporations protect managers from breach of fiduciary duty claims when pursuing both positive social impact and profit.²⁴⁶ In contrast to typical corporations where shareholders can bring a derivative suit when actions are taken without regard to profit maximization, most benefit corporation statutes envision the derivative suit differently and allow shareholders to use these suits to enforce the public benefit purpose of the corporation.²⁴⁷

For jurisdictions that have not yet enacted statutes for social enterprises, a B Corporation ("B Corp") provides an attractive alternative.²⁴⁸ Although B

²⁴⁰ *Id.*

²⁴¹ *Id.*; see Alex Goldmark, *Ben and Jerry's Become a B Corporation*, FAST COMPANY (Oct. 22, 2012, 9:00 AM), <http://www.fastcoexist.com/1680771/ben-and-jerry-s-becomes-a-b-corporation> [<https://perma.cc/YN7T-4T9G>] (explaining that shareholders sued and demanded the sale of the company and that the company's board inevitably decided to go through with the sale reasoning that there was a legal obligation to maximize shareholder return).

²⁴² See 26 U.S.C. § 501(c)(3) (2012); HOPKINS, *supra* note 168, at 4–5 (describing the nonprofit sector as the voluntary or philanthropic sector). Although for-profit entities are operated for the benefit of shareholders, non-profit organizations are generally not permitted to distribute its profits to those who control it. HOPKINS, *supra* note 168, at 4–5.

²⁴³ See ALVAREZ & TREMBLAY, *supra* note 144, at 350.

²⁴⁴ *Id.*

²⁴⁵ See *id.* at 349–50.

²⁴⁶ See *id.* at 350, 353 (explaining that L3Cs statutorily authorize and protect managers from breach of fiduciary duty claims when acting towards a socially rather than economically desirable end). The aim of state benefit corporation legislation is to allow officers and directors of for-profit businesses to consider goals aside from profit maximization. *Id.*

²⁴⁷ See Reiser, *supra* note 193, at 605 (explaining that most benefit corporation statutes include a right of action for shareholders to enforce the public benefit purpose).

²⁴⁸ See *About B Lab*, *supra* note 197 (explaining that B Corps are certified by the private nonprofit company, B Lab).

Corps are typically traditional, for-profit businesses that do not have a public purpose outlined in the company charter, history has proved that this certification has successfully allowed traditional entities to pursue missions that benefit a more broad category of stakeholder than just shareholders.²⁴⁹ Furthermore, B Lab, which certifies companies as B Corps, requires that in certain jurisdictions the board amend the Articles of Incorporation after receiving certification and further protects managers against fiduciary duty claims.²⁵⁰

Hybrid entity structures not only protect the board against breach of fiduciary duty claims, but also enable the business to accept investments from charitable organizations.²⁵¹ Many public health organizations are interested in working with the private sector to achieve solutions to food deserts.²⁵² Without forming a hybrid entity company, private charitable foundations may not be able to invest in the for-profit business without facing tax penalties or risking its tax-exempt status.²⁵³

CONCLUSION

Although the original Farm Bill was enacted to support farmers and provide a supply of nutritious food to feed the nation, its modern day iteration works chiefly to benefit commercial farms, which produce commodity crops that do not adequately meet the nutritional needs of the United States. Over time, the preference for commodity crops has created the problem of food deserts in rural and urban areas across the United States. The characteristics of food deserts—limited access to fresh, healthy food—can be addressed by expanding the role of the private sector in dealing with food insecurity. As many initiatives around the country illustrate, there are profitable solutions to these problems. While these businesses are profitable, they also have a primary social purpose, namely eradicating the problem of food deserts. This social purpose strains traditional corporate structures and could subject directors to personal liability for pursuing an end other than profit maximization. Businesses that wish to address these social problems should consider a hybrid entity structure because these emerging corporate entities make it possible for businesses to pursue both profit and social good. Organizing under one of these

²⁴⁹ See ALVAREZ & TREMBLAY, *supra* note 144, at 355.

²⁵⁰ See *Corporation Legal Roadmap*, *supra* note 200.

²⁵¹ See ALVAREZ & TREMBLAY, *supra* note 144, at 350–51 (explaining that the L3C was created to encourage charitable giving).

²⁵² See FOOD TRUST, HEALTHY CORNER STORES 1 (2011), http://thefoodtrust.org/uploads/media_items/spring2011issuebrief.original.pdf [<https://perma.cc/4GSP-3PDB>] (explaining that public health organizations are confronting the issue of lack of access to affordable healthy food by developing partnerships with small grocers). The Virtual Supermarket program in Baltimore is funded by the Stulman Foundation and Kaiser Permanente, both nonprofit organizations with a health driven mission. *Virtual Supermarket*, *supra* note 92.

²⁵³ See 26 U.S.C. § 501(c)(3) (2012); ALVAREZ & TREMBLAY, *supra* note 144, at 352.

hybrid structures would allow companies to balance their social mission against their pursuit of profit and, in turn, could do much to alleviate some of the problems faced by food desert communities.

