IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, *et al.*, *Plaintiffs*, v. U.S. DEPARTMENT OF AGRICULTURE, *et al.*, *Defendants*.	No. 20-cv-119 (BAH)
BREAD FOR THE CITY, *et al.*, *Plaintiffs*, v. U.S. DEPARTMENT OF AGRICULTURE, *et al.*, *Defendants*.	

BRIEF OF U.S. HOUSE OF REPRESENTATIVES
AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae is the United States House of Representatives (House), an institution with a strong interest in the appropriate administration of the Supplemental Nutrition Assistance Program (SNAP) and the availability of critical food and nutritional assistance for those most in need. In 2018, Congress enacted, and the President signed, the Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (2018 Farm Bill), following rigorous debate and deliberate consideration and rejection of more stringent eligibility requirements for SNAP benefits. As such, the House is ideally positioned to address the history and rationale behind this critical food and nutritional assistance safety net and the individual and societal benefits created by the program. Indeed, SNAP was the topic of more than 20 congressional hearings with nearly 100 witnesses over a three-year span from 2015 through 2017. The House thus has particular knowledge about and a substantial interest in whether the final rulemaking of the U.S. Department of Agriculture (USDA or the Department) is consistent with the 2018 Farm Bill.

INTRODUCTION

SNAP has long been an essential antihunger and nutrition program providing crucial support for millions of Americans in need. Since the 1960s, SNAP benefits, previously known as "food stamps," have served as a bulwark against malnutrition and hunger in the United States, improving the health of countless low-income households. The program has been diverse both in its geography, covering all fifty states, the District of Columbia, and U.S. territories, and in its recipients, benefitting individuals of various races and ethnicities throughout rural and urban communities alike. SNAP beneficiaries nonetheless all share a profound level of need and food

[1] No person other than *amicus* and its counsel assisted in or made a monetary contribution to the preparation or submission of this brief.

insecurity. Indeed, nearly all SNAP benefits go to those households trying to survive on incomes below the poverty line. It is no surprise then that SNAP has been recognized as a critical program for lengthening and strengthening the lives of low-income people in the United States.[2]

The advantages of SNAP benefits are numerous, with SNAP combating food insecurity, erosion of public health, and family instability. These harms compound over time and manifest themselves through nutritional deficiencies, stunted physical development, physical and mental illness and disease, and diminished academic and job performance. Despite the historic contributions of SNAP to the well-being of individuals, their families, and their communities, the recent USDA rulemaking contravenes historical practices and the long-standing administration of SNAP by significantly narrowing the class of currently qualifying beneficiaries.

Since 1973, Congress has reauthorized the Food Stamp Program (and later, SNAP) through the enactment of Farm Bills.[3] The Nutrition title constitutes about 76 percent of the 2018 Farm Bill spending, with SNAP accounting for the "vast majority[.]"[4] Given the nation's significant investment in SNAP, it is understandably the subject of much attention and debate by Members of Congress. Nevertheless, following such debate, Congress has reaffirmed the importance of SNAP time and time again, recognizing, on a bipartisan basis, the significance of the program for the livelihood of Americans and effectively adopting USDA's longstanding administration of the program.

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[2] *See, e.g.*, *The Past, Present, and Future of the Supplemental Nutrition Assistance Program: Hearing Before the Subcomm. on Nutrition of the H. Comm. on Agric*., pt. 1, 114th Cong. 22-43 (2015) (statement of Robert Greenstein, President, Center on Budget and Policy Priorities).

[3] *See* Randy A. Aussenberg & Kara C. Billings, Cong. Research Serv., *2018 Farm Bill Primer: SNAP and Nutrition Title Programs* 1 (Jan. 30, 2019), https://fas.org/sgp/crs/misc/IF11087.pdf.

[4] *Id.*

Most recently, Congress enacted the 2018 Farm Bill, endorsing the continued implementation of SNAP and the crucial support it provides beneficiaries through the existing administration and practices of the program. After the President signed the 2018 Farm Bill into law, however, the USDA Food and Nutrition Service (FNS) issued a rule subverting the program and restricting the availability of benefits for "able-bodied" adults without dependents (able-bodied adults)—those without custodial children or other dependents living with them and/or who fail to be categorized as "disabled" because they do not receive federal disability benefits. *See* Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, 84 Fed. Reg. 66,782 (Dec. 5, 2019) (to be codified at 7 C.F.R. pt. 273) (the Rule).

This Rule targets the use of SNAP benefits during periods of lower unemployment for able-bodied adults. Under the statute, SNAP benefits for able-bodied adults generally are time limited, and able-bodied adults may not receive benefits for more than three months in a 36-month period, unless certain work requirements are met. Through several key provisions, Congress has provided states with the flexibility to waive or exempt individuals from this able-bodied adults time limit based on local conditions. The Rule, currently scheduled to take effect April 1, 2020, makes it more difficult for states to waive the able-bodied adults time limit.

In enacting the 2018 Farm Bill, however, Congress considered and rejected the very restrictions to be imposed by this Rule. Following robust debate, Congress achieved a bipartisan compromise, rejecting the proposed tightening of work requirements and effectively ratifying the means and methods by which SNAP has long been administered. Moreover, the Rule specifically constrains the discretion historically reserved for the states with respect to the SNAP work requirements. By doing so, the Rule effects an end-run around the 2018 Farm Bill. This unlawful action by USDA will cause irreparable harm to those beneficiaries SNAP is intended to

support, with the Rule projected to eliminate critical benefits for approximately 700,000 of the most vulnerable Americans. This Court should not countenance a rule that is so contrary to established law and punishes low-income Americans, causing irreparable injury.

ARGUMENT

I. THE NEW RULE IS CONTRARY TO THE PURPOSE OF SNAP AND THE 2018 FARM BILL, WHICH EFFECTIVELY RATIFIED LONGSTANDING AGENCY PRACTICE IN ADMINISTERING THE PROGRAM

The historical purpose of the Food Stamp Program—renamed SNAP in 2008—has been to provide crucial nutritional assistance to low-income Americans. Congress advanced that purpose again in the 2018 Farm Bill by rejecting provisions that would have restricted the discretion Congress and USDA have long afforded the states in administering SNAP. In doing so, Congress reinforced the principle embodied in the law and USDA's prior longstanding approach that the states are best positioned to implement SNAP at the local level as Congress designed.

USDA's recent attempt to circumvent the 2018 Farm Bill by removing discretion from the states and disregarding Congress's ratification of agency practice is thus contrary to law. The Rule reflects a flagrant and misguided effort by USDA to undertake action not authorized by and, in fact, unequivocally rejected by Congress in passing the 2018 Farm Bill. To accomplish this improper goal, the Administration seeks to do what courts have widely and unambiguously rejected—enact an agenda by regulatory fiat that a bipartisan, bicameral Congress already has refused in legislation.

A. The Rule is Contrary to the Purpose of SNAP

As the Supreme Court has recognized, "[f]rom its founding the Nation's basic commitment has been to foster the dignity and well-being of all persons within its borders." *Goldberg v. Kelly*, 397 U.S. 254, 264-65 (1970). In the spirit of this founding commitment, there

is "an extensive history of using policy and programmatic approaches to ensure individuals and families in most need have access to nutritious and safe foods and beverages."[5] SNAP has been an integral part of those efforts as the "nation's largest program in the domestic food security and nutrition safety net" for more than four decades.[6] The Rule would upend this important legacy.

The USDA traces the history of the Food Stamp Program as far back as 1939, when the nutritional needs of low-income people drove the Federal Government to experiment with ways to provide support to families struggling to obtain sufficient food and nutrition. "The program operated by permitting people on relief to buy orange stamps equal to their normal food expenditures. For every $1 worth of orange stamps purchased, 50 cents worth of blue stamps were received. Orange stamps could be used to buy any food. Blue stamps could only be used to buy food determined by the Department to be surplus."[7] That program ended in 1943, followed by pilot programs in the 1960s, and finally, in 1964, the Food Stamp Act.[8]

Congress formally created the Food Stamp Program in 1964, to address the nutritional needs of low-income Americans. As articulated in the Declaration of Policy, the Food Stamp Act intended "to promote the general welfare, that the Nation's abundance of food should be utilized cooperatively by the States, the Federal Government, and local governmental units to the maximum extent practicable to safeguard the health and well-being of the Nation's population

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[5] Sheila Fleischhacker et al., *Legislative and Executive Branch Developments Affecting the United States Department of Agriculture Supplemental Nutrition Assistance Program*, 15 J. Food L. & Pol'y 131, 131-32 (2019) (citing FNS website pages, "A Short History of SNAP" and "FNS Strategic Priorities" (website addresses omitted)).

[6] *Id*. at 133.

[7] *See* Food and Nutrition Service, *A Short History of SNAP*, USDA (Sept. 11, 2018), https://www.fns.usda.gov/snap/short-history-snap.

[8] *Id.*

and raise levels of nutrition among low-income households." The Food Stamp Act of 1964, Pub. L. No. 88-525, § 2, 78 Stat. 703, 703 (1964). Congress defines the goals of the program without material difference to this day. *See* 7 U.S.C. § 2011 (Congressional Declaration of Policy) ("to promote the general welfare, [and] to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households").

Underscoring the purpose of SNAP to provide nutrition for those in need, the Food and Agriculture Act of 1977 struck the requirement that recipients purchase their food stamps. Pub. L. No. 95-113, 91 Stat. 913 (1977) (the 1977 Food Stamp Act); *see* 1977 Cong. Q. Almanac 457. "Proponents of free food stamps [had] argued that the purchase requirement had been the single biggest barrier to participation by those most in need because the very poor could not scrape together the money needed to buy in." *Id.* And Congress responded. As a chief staffer for the Secretary of Agriculture at the time recalls, "[t]he measure that became law [in 1977] was the product of a bipartisan effort between the Administration and Congress, and between both parties on Capitol Hill, reflecting the broad bipartisan support that food stamps has had for much of its history."[9]

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the Reconciliation Act), Pub. L. No. 104-193, § 824, 110 Stat. 2105, 2323-24 (1996), added subsection (o) to the statute, changing the SNAP eligibility requirements such that certain unemployed adults (those between ages 18 to 49, with no disability and without dependent children, who did not fulfill certain work requirements) were limited to three months of benefits in a 36-month period. 7 U.S.C. § 2015(o). In the Reconciliation Act, however, Congress also

[9] Robert Greenstein, *Commentary: SNAP's Bipartisan Legacy Can Serve as a Model* 1, Center on Budget and Policy Priorities (Sept. 26, 2017), https://www.cbpp.org/sites/default/files/atoms/files/9-26-17fa-commentary.pdf.

provided for accompanying waivers at the state level related to unemployment levels and insufficient numbers of jobs. *See id.* § 2015(o)(4)(A).

Congress recognized that states, through their attention to and investment in local conditions, were essential partners in ensuring that the purpose of SNAP was realized.[10] The following year, Congress re-affirmed and expanded the important role of states in administering food stamps by providing exemptions through the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997), giving states additional flexibility to determine when and how to extend food stamp eligibility to their residents.

With the 2018 Farm Bill, Congress yet again reaffirmed the purpose of SNAP to provide nutrition for those most in need, largely maintaining the program without significant changes to the work-related requirements, waivers, or exemptions. On June 21, 2018, the House passed H.R. 2, the Agriculture and Nutrition Act of 2018, by a slim margin of 213 to 211, and, on June 28, 2018, the Senate passed its own version by a vote of 86 to 11.

The House and Senate versions differed significantly regarding the work-related requirements. While both bills reauthorized SNAP for five years, and included measures to support error and fraud detection, the House version "include[d] major changes to work

[10] *See, e.g.*, President Clinton Reconciliation Act Signing Statement (Aug. 22, 1996), https://www.govinfo.gov/content/pkg/WCPD-1996-08-26/pdf/WCPD-1996-08-26-Pg1487.pdf ("This Act gives States the responsibility that they have sought to reform the welfare system. This is a profound responsibility, and States must face it squarely."); *see also* USDA, Guidance for States Seeking Waivers for Food Stamp Limits 1 (Dec. 3, 1996), https://fns-prod.azureedge.net/sites/default/files/media/file/HistoricalPolicyDocument_GuidanceforStatesSeekingWaiversforFoodStampLimits_December1996.pdf [hereinafter 1996 USDA Guidance] (noting that USDA "will allow States broad discretion to decide if a waiver request is appropriate for a particular locale or situation").

requirements, while the Senate bill would make changes that are minor by comparison."[11] In assessing the proposed changes, the Congressional Budget Office estimated that, under the House Bill, by FY2028, 1.2 million SNAP recipients in an average month would no longer be eligible.[12]

Not surprisingly, the House version of H.R. 2 faced strenuous objections and unfavorable comparisons to the starkly different bipartisan Senate bill, with the latter's provisions more faithfully echoing the historical purpose of SNAP. For example, prominent non-profit organizations pointed out that the House bill would mean significant cuts to SNAP, owing to more stringent work requirements, which would endanger food security for millions of people.

The Senate bill, by contrast, "maintain[ed] SNAP's current benefit levels while reducing barriers to enrollment, strengthening employment opportunities for beneficiaries, and improving quality and integrity in the program's operation."[13] Concerns were raised that, while millions of people under the House bill would be losing their benefits, "[m]uch of this money would be used to pay for a new SNAP bureaucracy to enforce work requirements."[14] Noting that the Farm Bill

[11] Mark A. McMinimy et al., Cong. Research Serv., R45275, *The House and Senate 2018 Farm Bills (H.R. 2): A Side-by-Side Comparison with Current Law* (Summary) (July 27, 2018), https://fas.org/sgp/crs/misc/R45275.pdf; *see also id*. at 113-14.

[12] *See id.* at 19.

[13] Children's Defense Fund, *A Comparison of the SNAP Provisions in the 2018 House and Senate Farm Bills* 1 (July 2018), https://www.childrensdefense.org/wp-content/uploads/2018/08/2018-farm-bill-comparison.pdf.

[14] *Bread for the World Statement on the 2018 Farm Bill* (June 22, 2018), https://www.bread.org/news/bread-world-statement-2018-house-farm-bill-0.

was "[t]raditionally . . . a bipartisan bill[,]" nonprofits urged that the bipartisan Senate bill—without the restrictive SNAP amendments—prevail.[15]

Amidst much debate, the Conference Committee ultimately rejected the House's most stringent modifications and generally retained the SNAP work-related provisions.[16] Congress then enacted the 2018 Farm Bill on a bipartisan basis. *See, e.g.*, 164 Cong. Rec. H10116 (daily ed. Dec. 12, 2018) (statement of Rep. Jim McGovern) (acknowledging that the 2018 Farm Bill was a "good, bipartisan product" and that House Agricultural Chairman Michael Conaway "recognized the importance of getting a farm bill over the finish line this year").

The 2018 Farm Bill reauthorized SNAP through 2023, incorporating various changes, including provisions to address error and fraud in SNAP, limit the fees charged by electronic transfer benefit processors, and require online acceptance of SNAP benefits across the country.[17] All of these changes are consistent with previous iterations of the program. So, too, are the 2018 Farm Bill's changes to the work requirements in SNAP, which include an expansion of the employment and training programs states can provide.[18] Thus, Congress reaffirmed its

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[15] *Id.*; *see also* Brian Roewe, *Catholics Criticize House Farm Bill That Includes Benefit Cuts, Work Requirements: Senate Version Leaves SNAP Largely Intact*, National Catholic Reporter (June 22, 2018), https://www.ncronline.org/news/people/catholics-criticize-house-farm-bill-includes-benefit-cuts-work-requirements.

[16] H. Rept. No. 115-1072 (2018) (Conf. Rept.); Pub. L. No. 115-334, 132 Stat. 4490 (2018); *see also* Mark A. McMinimy et al., Cong. Research Serv., R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*, 157-59 (Feb. 22, 2019), https://fas.org/sgp/crs/misc/R45525.pdf (table comparing the prior law/policy, the House bill (H.R. 2), the Senate bill (H.R. 2), and the 2018 Farm Bill, as enacted).

[17] *See* Mark A. McMinimy et al., Cong. Research Serv., Pub. No. R45525, *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison* (Summary) (Feb. 22, 2019), https://fas.org/sgp/crs/misc/R45525.pdf.

[18] *Id.* at Summary & 157-60.

commitment to SNAP and made improvements to the program that Congress decided were necessary.

Despite Congress's historical commitment to ensuring nutrition for those most in need, and the longstanding shared responsibility the Federal Government and states have maintained in administering food stamps, USDA quickly introduced a proposed rule unambiguously hostile to the purpose of SNAP and "intended to move more able-bodied recipients of [SNAP] benefits to self-sufficiency through the dignity of work."[19] The proposal sought to accomplish this goal by curtailing states' discretion over waivers of the able-bodied adults time limit.

Although USDA received more than 100,000 comments on the Proposed Rule, most in opposition, *see* 84 Fed. Reg. at 66,783-84, the Department nevertheless adopted it on December 5, 2019.

As the State Plaintiffs have highlighted, the Rule would:

- "Eliminat[e] States' Discretion to determine the geographic scope of the areas for which they request waivers by restricting waivers to areas designated as LMAs [Labor Market Areas] by DOL [Department of Labor] and effectively eliminat[e] statewide waivers, 84 Fed. Reg. at 66793-98;"

- "Curtail[] the types of data on which States can rely for their waiver requests by requiring States to rely exclusively on unemployment data absent extraordinary circumstances, 84 Fed. Reg. at 66790-91;"

- "Set[] an unemployment rate floor for States that seek waivers even where an area's unemployment rate is 20 percent or more above the national average, 84 Fed. Reg. at 66784-89;"

[19] Press Release No. 0277.18, USDA, USDA to Restore Original Intent of SNAP: A Second Chance, Not a Way of Life (Dec. 20, 2018), https://www.fns.usda.gov/news-item/usda-restore-original-intent-snap-second-chance-not-way-life; Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, Notice of Proposed Rulemaking, 84 Fed. Reg. 980 (Feb. 1, 2019) (to be codified at 7 C.F.R. pt. 273) ("Proposed Rule").

- "Eliminat[e] the ability of a State to qualify for a waiver if it is designated as a Labor Surplus Area by DOL, 84 Fed. Reg. at 66799-[00][;]"
- "[E]liminate[] States' Ability to carry exemptions over from year to year. 84 Fed. Reg. at 66802-07[;]"
- "[E]liminate[] use of extended unemployment benefits to show entitlement to a waiver[; and]"
- "[P]rohibit[] States from seeking waivers for substate areas that are not LMAs."

Compl. at 20, *District of Columbia, et al. v. USDA, et al*. (filed Jan. 16, 2020).

Individually and collectively, these Rule provisions severely undermine the purpose of SNAP and ignore that many people affected by the Rule will struggle to feed themselves absent the critical support the program provides. Contrary to SNAP's purpose to raise levels of nutrition, the Rule will result in an expected 688,000 people *losing* their eligibility for SNAP, *see* 84 Fed. Reg. at 66,807, with no expectation that these individuals will otherwise be able to provide for their own nutritional needs. Equally troubling, the Rule would hamstring SNAP in times of economic downturn. The Rule strikes a severe blow to the program, handcuffing states and their ability to get assistance to those most in need.

The Rule relies on Executive Order 13,828, signed by President Trump on April 10, 2018.[20] According to the Rule, the Executive Order drove USDA to conduct a review of regulations and policies regarding able-bodied adults. 84 Fed. Reg. at 66,783. Notably, however, the Executive Order does *not* direct USDA to undermine the fundamental purpose of SNAP, which has consistently and very recently been reaffirmed by Congress. The Rule's

[20] *See* Exec. Order 13,828, Reducing Poverty in America by Promoting Opportunity and Economic Mobility, 83 Fed. Reg. 15,941 (Apr. 10, 2018), https://www.whitehouse.gov/presidential-actions/executive-order-reducing-poverty-america-promoting-opportunity-economic-mobility/.

elimination of states' discretion to respond to the nutritional needs of low-income people within their jurisdiction, of course, does just that. By no longer permitting states to respond to their residents' basic needs based on local conditions, the Rule turns the nation's back on its "basic commitment . . . to foster the dignity and well-being" of its people. *Goldberg*, 397 U.S. at 264-65.

B. The New Rule Improperly Constrains Historical State Discretion

The Rule drastically curtails the flexibility historically reserved for the states with respect to implementation of SNAP work requirements. Beginning with the Reconciliation Act more than two decades ago, Congress authorized and then has repeatedly re-authorized work requirements in 7 U.S.C. § 2015(o) that balance the desire to encourage additional personal responsibility and self-sufficiency with the needs of the country's most vulnerable citizens.[21] USDA itself acknowledged that "[t]he time limit and work requirement for [able-bodied adults] enacted by [the Reconciliation Act] has been maintained by Congress through several reauthorizations of the Federal law governing SNAP." 84 Fed. Reg. at 66,783. To achieve the balance envisioned for the statute, Congress contemporaneously authorized states to assume a key role in identifying where and when the needs of their residents are greatest. Congress appreciated that states are uniquely positioned to understand the nuances of local labor markets and assess the realities for residents in their communities. Indeed, the Reconciliation Act was premised on the understanding that the "best welfare solutions come from those closest to the problems—not from bureaucrats in Washington." H. Rept. No. 104-725, at 262 (1996) (Conf.

[21] *See* Reconciliation Act; Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (2002); Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651 (2008); Agricultural Act of 2014, Pub. L. No. 113-79, 128 Stat. 649 (2014); Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (2018).

Rept.). Accordingly, Congress designed Section 2015(o) to combine the able-bodied adult time limit with a package of waivers and exemptions for states to leverage when local economic conditions warrant critical food assistance. As explained below, the Rule's new requirements destroy these carve outs and the discretion they provide to states. *Amalgamated Transit Union v. Skinner*, 894 F.2d 1362, 1366 (D.C. Cir. 1990) (rejecting as invalid strict regulations imposed by federal regulator on state recipients because the statute "provided increased flexibility enabling state and local officials to devise their own . . . programs to meet their unique, local needs.").

In the Reconciliation Act, Congress paired the able-bodied adults time limit with discretionary waivers to enable states to respond to needs driven by local economic conditions. As then-Congressman John Kasich, co-author of the able-bodied adults time limit, made clear, "[i]t is only if you are able-bodied, if you are childless, and if you live in an area where you are getting food stamps and *there are jobs available*, then [the time limit] applies." 142 Cong. Rec. 17,782 (1996) (emphasis added). Congress defined the circumstances described by Congressman Kasich in part through waivers to be administered by the states. Specifically, waivers are available for "any group of individuals in the State" if the "area" they reside in meets one of two criteria: (1) the area has an unemployment rate above ten percent, or (2) the area "does not have a sufficient number of jobs to provide employment for the individuals." 7 U.S.C. § 2015(o)(4)(A). This language provides states with substantial flexibility in determining where the need is greatest.

The following year, Congress provided states with even more flexibility to determine when and how to extend SNAP eligibility to their residents. The Balanced Budget Act allowed states to exempt fifteen percent of the able-bodied adults otherwise subject to the statute's restrictions. Pub. L. No. 105-33, § 1001(2), (3), 111 Stat. at 251-52 (adding par. (6) to 7 U.S.C.

§ 2015(o)). Without this exemption, states were prevented from providing benefits to able-bodied adults who needed them, but did not live in waived areas. *See* 7 U.S.C. § 2015(o)(6)(A)(ii). Enhancing states' flexibility even more, Congress also allowed states to accrue unused exemptions and carry them over from one year to the next. *See id.* § 2015(o)(6)(G). Such flexibility has allowed states to prepare for and respond to times of economic downturn or disruptions in local labor markets as they see fit.

Despite this history, USDA's avowed purpose in promulgating the Rule is to curtail the ability of states to make determinations based on local conditions; to that end, the Department mischaracterizes the flexibility written into the law as "weaknesses" that states "have taken advantage of." *See* 84 Fed. Reg. at 66,783; *see also id.* at 66,794 ("[T]he Department's operational experience has shown that current regulations provide States with too much flexibility."). The Rule's provisions achieve this end, eliminating much of the discretion Congress and USDA had carefully maintained for the states over the last two decades.

First, the Rule establishes strict geographic boundaries that contravene the discretion Congress reserved for the states to determine where nutrition assistance is needed. Under current law, states can apply for a waiver for "any group of individuals." Congress did not place geographic limits on the groups eligible, and, under prior regulations, USDA allowed states to "define areas to be covered by waivers" and "encourage[d] State agencies to submit data and analyses that correspond to the defined area." 7 C.F.R. § 273.24(f)(6).

Under the Rule, however, an area does not qualify for a waiver unless it is "considered a Labor Market Area." 84 Fed. Reg. at 66,793-98 (to be codified at 7 C.F.R. § 273.24(f)(4)). As a result, substate areas now may not be grouped, despite a state's understanding of a region's integrated labor markets or economic ties. *Id.* at 66,793-95 (restricting the grouping of substate

areas); 66,796-97 (restricting the definition of waiver area); 66,797 (restricting statewide waivers). USDA acknowledged that the purpose of this change is to constrain state discretion: "[T]his flexibility allow[ed] States to strategically group substate areas to maximize the geographic coverage of waived areas . . . . [T]he need to address this problem outweighs the arguments received in support of States' need to maintain current flexibility." *Id.* at 66,794. Defining the states' flexibility as a "problem" that the Rule needed to fix conflicts with the statute and its purpose, structure, and history described above.

In fact, this restrictive definition of "area" was previously considered and rejected by Congress. USDA claims that "Congress has been silent on the specific issue of combining data to group substate areas." *Id*. In 2018, however, Congress explicitly considered "grouped" areas or "grouping"—terms that, as USDA itself explains, refer to "combining unemployment data from individual substate areas to calculate an unemployment rate for the combined area." *Id.* at 66,793. Specifically, through a proposed subparagraph titled "Limit on combining jurisdictions," the House version of the 2018 Farm Bill would have proscribed the grouping of substate areas unless formerly designated as Labor Market Areas. H.R. 2, 115th Cong. § 4015 (2018). This change was rejected. H. Rept. No. 115-1072, at 615 (2018) (Conf. Rept.). In preserving the status quo, Congress stated that it "intend[ed] to maintain the practice that bestows authority on the State agency responsible for administering SNAP to determine when and how waiver requests for able-bodied adults are submitted." *Id.* at 616.

The Rule's geographic restriction is based on an implausible—and incorrect—understanding of the discretion Congress has historically provided to the states. In interpreting the 2018 Conference Report's statement that Congress "intend[ed] to maintain the practice that bestows authority on the State agency responsible for administering SNAP to determine when

and how waiver requests for able-bodied adults are submitted," USDA states in the Rule that "the Conference Report . . . is referring broadly to maintaining the States' ability to choose which areas it wishes to request when submitting a request to the Department, not referring to maintaining the discretion of States to combine data from substate areas to form an economic region." 84 Fed. Reg. at 66,794. Later, in response to a comment related to state flexibility, the Department notes that "States still maintain the ability to choose which areas to request." *Id.* at 66,795. This USDA discussion fundamentally misconstrues the nature of the discretion Congress reserved for the states.

As described above, Congress provided states with flexibility—and the responsibility—to manage SNAP benefits to meet the particular needs of their residents, including by defining the geographic area in which residents would be eligible for relief. Nothing in the text of the statute or the legislative history implies, let alone provides, that the only discretion afforded the states is the mere decision of whether to in fact request a waiver. Congress's consideration and ultimate rejection of a provision that would have restricted waivers to Labor Market Areas is evidence to the contrary.

Second, the Rule rewrites the waiver criteria established by Congress. Since 1996, when Section 2105(o) was first added, waiver was appropriate for any area that: (1) "has an unemployment rate of over 10 percent" or (2) "does not have a sufficient number of jobs to provide employment for the individuals." 7 U.S.C. § 2015(o)(4)(A). Historically, USDA has understood the flexibility provided through the combination of these two criteria.[22] But now,

[22] *See* 7 C.F.R. § 273.24(f)(2) (providing "[a] non-exhaustive list of the kinds of data" a state could submit to support a request); *see also* 1996 USDA Guidance at 3 (explaining that list of examples of data that could be used to show lack of sufficient jobs is not exhaustive "[b]ecause there are no standard data or methods to make the determination of the sufficiency of jobs").

under the Rule, if the area does not demonstrate that the unemployment rate is above ten percent and thus the first criterion is not satisfied, an area must have "a 24-month average unemployment rate 20 percent or more above the national rate for a recent 24-month period, but in no case may the 24-month average unemployment rate of the requested area be less than 6 percent." 84 Fed. Reg. at 66,811 (to be codified at 7 C.F.R § 273.24(f)(2)(ii)). As a result, states are no longer free to consider local employment conditions and needs beyond the general employment rate, and the second criterion set forth by Congress is effectively erased.[23]

Importantly, Congress considered nearly identical restrictions in 2018. In fact, the House bill proposed limiting requests for waivers to areas with a 24-month average unemployment rate 20 percent higher than the national average—with a seven percent floor. H.R. 2, 115th Cong. § 4015. In the end, the Conference Committee rejected such a change. The Rule, by imposing even more stringent criteria,[24] improperly contracts the scope of SNAP benefits as Congress defined it.[25]

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[23] Other data will suffice only "if the request demonstrates an exceptional circumstance in an area" that has "caused a lack of sufficient jobs," or if "standard BLS data or data from a BLS-cooperating agency is limited or unavailable." 84 Fed. Reg. at 66,811 (to be codified at 7 C.F.R. § 273.24(f)(3), (6)).

[24] H.R. 2 proposed a seven percent floor, H.R. 2, 115th Cong. § 4015, whereas the Rule imposes a six percent floor, 84 Fed. Reg. at 66,811 (to be codified at 7 C.F.R. § 273.24(f)(2)(ii)). H.R. 2 also would have provided for a waiver if an area "is in a State . . . that is in an extended benefit period (within the meaning of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970); or . . . in which temporary or emergency unemployment compensation is being provided under any Federal law." H.R. 2, 115th Cong. § 4015.

[25] *See* U.S. Gen. Accounting Office, GAO/RCED-00-5, Food Stamp Program: How States Are Using Federal Waivers of the Work Requirement, Report to the Chairman, Committee on the Budget, House of Representatives 4 (1999), https://www.gao.gov/archive/2000/rc00005.pdf ("[T]he law provides for waivers based on an insufficient number of jobs because the Congress recognized that 'the unemployment rate alone is an imperfect measure of the employment prospects of individuals with little work history and diminished opportunities.'").

Third, the Rule limits exemption carry-overs contrary to the exemption program established by Congress, which explicitly provides for such accrual. 7 U.S.C. § 2015(o)(6)(G) ("During fiscal year 1999 and each subsequent fiscal year, the Secretary shall increase or decrease the number of individuals who may be granted an exemption by a State agency under this paragraph to the extent that the average monthly number of exemptions in effect in the State for the preceding fiscal year under this paragraph is lesser or greater than the average monthly number of exemptions estimated for the State agency for such preceding fiscal year under this paragraph."). As a result, states no longer can store exemptions for when they are needed the most. 84 Fed. Reg. at 66,803 (to be codified at 7 C.F.R. § 273.24(h)(2)(i)).

USDA lamented that "[s]tates have accumulated extremely high amounts of unused discretionary exemptions that well exceed the number allotted to each State for the fiscal year." *Id.* at 66,783. Yet, this flexibility is precisely the point of Section 2015(o)(6). In fact, in 2018, Congress explicitly retained states' ability to accrue exemptions, noting this practice to be "consistent with current law." H. Rept. No. 115-1072, at 616. As Congress explained: "These exemptions are meant to excuse individuals who need short-term reprieve from requirements or for those specific populations the State determines should be excluded." *Id.* The reason for retaining this discretion was clear: "[N]either the Department nor Congress can enumerate every [able-bodied adult's] situation as it relates to possible exemption from the time limit, and subsequently, the work requirement." *Id.*

Finally, in 2018, Congress not only determined that each of the Rule's restrictions described above would unduly limit the states' discretion, it also understood that the stringent limitations proposed in H.R. 2 were contrary to the law enacted in 1996. Specifically, to impose the new restrictions, H.R. 2 would have struck Section 2015(o) entirely. The Rule's

requirements—which mirror the rejected H.R. 2 proposals—similarly breach the provisions of Section 2015(o) that Congress so recently decided to retain. The Rule is thus contrary to law.

C. In 2018, A Bipartisan Congress Rejected Attempts to Include More Stringent Work Requirements in SNAP, Effectively Ratifying the Way USDA Had Long Been Administering the Program

With the 2018 Farm Bill, Congress adopted the agency's longstanding approach to administering SNAP. In the wake of the 1996 changes to the Food Stamp Program, USDA interpreted the law to require that states be given substantial discretion to request waivers of the work requirements, and USDA has worked in partnership with states in achieving the purpose of the program, providing "guidance to support state agencies in operating SNAP."[26] By expressly rejecting proposals to restrict state discretion respecting waivers, Congress 2018 affirmed the Department's interpretation.

As the 1996 USDA Guidance to states seeking waivers to limits on food stamps explains, "[USDA] will allow States broad discretion to decide if a waiver request is appropriate for a particular locale or situation." 1996 USDA Guidance at 1; *see also id*. ("USDA will give States broad discretion in defining areas that best reflect the labor market prospects of program participants and State administrative needs."). In 2016 guidance, USDA stated that the law "provides that States may request to waive the time limit for individuals in all or part of the State if the requested area demonstrates high unemployment or a lack of sufficient jobs."[27] It further explained that, to assist the states, the Department has provided policy memoranda for years in

[26] Food and Nutrition Service, *Supplemental Nutrition Assistance Program (SNAP): Program Administration*, USDA (Apr. 17, 2019), https://www.fns.usda.gov/snap/admin.

[27] USDA, Supplemental Nutrition Assistance Program - Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents (ABAWD) (Dec. 2, 2016), https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf.

addition to the federal regulations given the complexity of the information used to support requests for waiver of the time limits. *See id.*

The Rule will now upend this whole process, despite the fact that, in enacting the 2018 Farm Bill, Congress effectively ratified USDA's administration of SNAP in coordination with the states. *See NLRB v. Bell Aerospace Co. Div. of Textron, Inc.*, 416 U.S. 267, 275 (1974) ("[C]ongressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress."). It is impermissible for the Rule to change USDA's approach to administering SNAP when Congress has just ratified that very approach.[28]

USDA's attempt to circumvent the 2018 Farm Bill and the flexibility and discretion it retained for the states is not permissible and should be rejected. The Rule rewrites a core component of SNAP's structure, specifically the ability of states to obtain waivers and tailor the program to meet their local needs. That is not a decision Congress authorized USDA to make. To the contrary, as explained above, Congress expressly considered and rejected proposals similar to those that USDA now seeks to emplace. "Congress alone has the institutional competence, democratic legitimacy, and (most importantly) constitutional authority to revise statutes in light of new social problems and preferences." *Wis. Cent. Ltd. v. United States*, 138

[28] The part of the Food and Nutrition Service website that includes this 2016 guidance regarding requests for waivers highlights the approaching shift: "As a result of the final rule, *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents*, that was published on December 5, 2019, the regulatory standards referenced in this guide are only valid through March 31, 2020. In order to have a waiver as of April 1, 2020, and thereafter, states must request a waiver that meets the new standards in 7 CFR 273.24(f) and should submit that request as soon as possible to their respective FNS regional office contact(s). FNS expects to replace this guide in the future." *See* USDA Food and Nutrition Service, *SNAP Guide to Supporting Requests to Waive the Time Limit for ABAWDs* (Dec. 30, 2019), https://www.fns.usda.gov/snap/ABAWD/guide-to-support-time-limit-waive-requests.

S. Ct. 2067, 2074 (2018). Simply put, the Executive Branch cannot accomplish by regulation what the Legislative Branch has rejected by legislation.

By imposing new geographic restrictions on waiver requests, rewriting the waiver criteria, and severely restricting the carry-over of critical exemptions, *see supra* Section I.B., the Rule impermissibly conflicts with the statute governing SNAP. *See Oceana, Inc. v. Locke*, 670 F.3d 1238, 1243 (D.C. Cir. 2011) ("When a statute commands an agency without qualification to carry out a particular program in a particular way, the agency's duty is clear; if it believes the statute untoward in some respect, then 'it should take its concerns to Congress,' for '[i]n the meantime it must obey [the statute] as written.'" (alterations in original) (citation omitted)); *see also Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 328 (2014) ("reaffirm[ing] the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate").

Indeed, as the Speaker of the House recently observed, the Rule is in "direct opposition to the bipartisan, bicameral will of the Congress, which has repeatedly rejected similar attacks on working Americans and instead passed a strong Farm Bill that bolsters rural communities and critical nutrition initiatives."[29] Adopted contrary to law, the Rule should be rejected.

II. IN DIVERGING FROM SNAP'S PURPOSE, STRUCTURE, AND ADMINISTRATION, THE RULE WILL CAUSE IRREPARABLE HARM

The changes effected by the Rule—changes rejected by Congress's bipartisan passage of the 2018 Farm Bill—will cause irreparable harm.

The cuts in benefits to an estimated 688,000 recipients will spur hunger, compounding food insecurity, dangers to public health, and risks to many families. The changes target people

[29] Press Release, Pelosi Statement on Trump Administration Rule to Slash SNAP Benefits (Dec. 4, 2019), https://www.speaker.gov/newsroom/12419-0.

and households already beset by poverty, denying SNAP benefits to the most vulnerable. Those adversely affected encompass the homeless and other at-risk populations, including those with transportation, housing, or substance abuse problems. For some, SNAP is the only benefit available, but with much-needed flexibility now removed from the program, states no longer can effectively assist them. With the changes imposed by the Rule, nutrition assistance will be automatically denied for those adults failing to meet the work requirements, regardless of their efforts to find employment or challenges beyond their control preventing them from finding work opportunities. Plainly put, unless a preliminary injunction is issued to block implementation of the Rule, hundreds of thousands of Americans may be deprived of food.

In reviewing the actual circumstances of able-bodied adults participating in SNAP, the reality is that the large majority in fact are in the labor force.[30] But, for these individuals, steady employment remains an elusive objective.[31] The Rule's changes ignore that in many regions of the country, under-employment is a very real hurdle—with the prospect of finding full-time, permanent employment a continual, daunting challenge.

Indeed, one study found that up to one-third of able-bodied SNAP participants struggled with at least one impediment significant enough to affect their ability to work, including mental disabilities, physical injuries, learning disabilities, depression, or post-traumatic stress disorder, but not so severe as to qualify these individuals for federal disability benefits.[32] The Rule strikes

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[30] *Examining the Proposed ABAWD Rule and Its Impact on Hunger and Hardship: Hearing Before the Subcomm. on Nutrition, Oversight, and Dep't Operations of the H. Comm. on Agric.*, 116th Cong. 55-108 (2019) (statement of Dr. Jay C. Shambaugh, Director, The Hamilton Project).

[31] *Id*.

[32] Ohio Association of Foodbanks, Franklin County Ohio Work Experience Program, Comprehensive Report: Able-Bodied Adults Without Dependents (2014-2015), http://ohiofoodbanks.org/wep/WEP-2013-2015-report.pdf.

necessary allowances for these individuals, instead promoting the loss of food, and fails to account for the damage that deprivation will wreak on these vulnerable households.

Food insecurity is at the forefront of perils for able-bodied adults, whom the Rule now seeks to exclude from SNAP benefits. Research has demonstrated that this exposure stretches across an individual's lifespan, increasing risk to nutritional deficiencies and general poor health.[33] Households participating in SNAP, however, are better positioned to manage their lives, being spared the choice between purchasing food or tending to other critical needs, including medical care.[34] Conversely, the greater the food insecurity, the greater the adverse effects on chronic disease and health care costs.[35]

Food insecure individuals have been found to require more than twice the costs in medical care than those with food security.[36] For example, one study of hunger and health found that hospital admissions for hypoglycemia in the last week of the month spike in comparison to the first week, reflecting the lack of end-of-month funds for low-income households. [37] And when comparing low-income households with and without SNAP support, low-income adults

[33] *Past, Present, and Future of SNAP: Breaking the Cycle: Hearing Before the Subcomm. on Nutrition of the H. Comm. on Agric.*, pt. 3, 114 Cong. 411-16 (2015) (statement of Dr. Eduardo Ochoa, Jr., M.D., F.A.A.P., Children's Healthwatch).

[34] *Id*.

[35] *Past, Present, and Future of SNAP: Addressing Special Populations: Hearing Before the Subcomm. on Nutrition of the H. Comm. on Agric.*, pt. 4, 114 Cong. 568-74 (2016) (statement of Eric J. Schneidewind, J.D., AARP).

[36] *Id*.

[37] *Id*.

participating in SNAP were found to require nearly 25 percent less in annual medical care costs than low-income non-participants.[38]

Moreover, in imposing the new SNAP restrictions, the Rule aggravates the adverse impact on health and nutrition for able-bodied adults by imperiling the capacity for families and communities around the country to thrive. Those living in rural communities, often with limited access to alternative food sources and permanent, full-time employment opportunities, will be among those most gravely affected.

And, for those most vulnerable, other non-government services are themselves increasingly compromised in their efforts to fill the ever-widening gap between at-risk able-bodied adults and available resources. Plaintiff Bread for the City, for example, will be forced by the Rule to divert resources from other critical priorities, including programs dedicated to other urgent matters such as housing, medical, and legal concerns, in order to account for the imminent harm from the Rule. *See* Mot. for Prelim. Inj. at 40-41, *Bread for the City et al. v. USDA et al.*, No. 20-cv-00127-BAH (D.D.C. filed Jan. 16, 2020), consolidated with *District of Columbia et al. v. USDA et al*., No. 20-cv-00119-BAH. Emergency networks and charity support for vulnerable households are stretched thin, increasingly unable to contend with rising levels of hunger and need in their communities.[39]

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[38] *Program Integrity for the Supplemental Nutrition Assistance Program: Joint Hearing Before the Subcomm. On Healthcare, Benefits, and Administrative Rules, and the Subcomm. on Intergovernmental Affairs of the Comm. on Oversight and Government Reform*, 115 Cong. 68-92 (2018) (statement of Stacy Dean, Vice President for Food Assistance Policy, Center on Budget and Policy Priorities). The study found the difference in annual costs between low-income SNAP participants and non-participants to be even greater with regard to hypertension and coronary heart disease. *Id*.

[39] *See* Margarette Purvis, *Food Bank for New York City, The SNAP Rule Will Cause More Hunger Than We Can Handle*, N.Y. Times (Dec. 12, 2019), https://www.nytimes.com/2019/12/12/opinion/trump-snap-food-stamps.html.

This Court has recognized that this loss of food or other necessities—an inevitable result of the Administration's new Rule—causes irreparable harm. *See Garnett v. Zeilinger*, 313 F. Supp. 3d 147, 157-58 (D.D.C. 2018); *Int'l Long Term Care, Inc. v. Shalala*, 947 F. Supp. 15, 19 (D.D.C. 1996) (finding termination of Medicare participation to be irreparable harm). Such harms may take the form of able-bodied adults being forced to choose between obtaining food or paying for other necessary expenses like rent or utility bills, perversely skipping meals to survive. *Garnett*, 313 F. Supp. 3d at 157-58. Other courts agree that the denial of public benefits, as contemplated by the Rule, constitutes irreparable harm.[40]

Given that "the denial of a preliminary injunction may deprive many low-income households of their sole source of food," this Court should conclude that "the irreparable harm requirement is easily satisfied here." *Booth v. McManaman*, 830 F. Supp. 2d 1037, 1044 (D. Haw. 2011).

CONCLUSION

For the reasons stated above, the House submits this brief in support of Plaintiffs.

Respectfully submitted,

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[40] *See, e.g.*, *Kildare v. Saenz*, 325 F.3d 1078, 1083 (9th Cir. 2003) (holding that economic hardship is irreparable harm because back payments cannot "erase either the experience or the entire effect of several months without food, shelter or other necessities" (citation omitted)); *Johnson v. Shalala*, 2 F.3d 918, 922 (9th Cir. 1993) (holding that reduced social security benefits while awaiting administrative review is irreparable injury); *Paxton v. Sec'y of Health & Human Servs.*, 856 F.2d 1352, 1354 (9th Cir. 1988) (noting that for those at subsistence level, any benefit reduction can impact survival). Likewise, here, the withdrawal of SNAP benefits is a recipe for "lingering, if not irreversible, hardships upon recipients." *Haskins v. Stanton*, 794 F.2d 1273, 1276-77 (7th Cir. 1986) (citation omitted) (affirming preliminary injunction brought by food stamp applicants against administrators of food stamp program).

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