

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

DISTRICT OF COLUMBIA, *et al.*,  
*Plaintiffs*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, *et al.*,  
*Defendants.*

Case No. 1:20-cv-119-BAH

BREAD FOR THE CITY, *et al.*,  
*Plaintiffs*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, *et al.*,  
*Defendants.*

Case No. 1:20-cv-127-BAH

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF THE COUNTY OF LOS ANGELES, CALIFORNIA AND 15 ADDITIONAL COUNTIES AND CITIES, AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES, AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT**

Mary C. Wickham\*  
*County Counsel*  
Scott Kuhn\*  
*Assistant County Counsel*  
Jennifer Lehman\*  
*Assistant County Counsel*  
Cesar Del Peral\*  
*Senior Deputy County Counsel*  
Shawn Luna\*  
*Deputy County Counsel*  
Katherine G. McKeon\*  
*Deputy County Counsel*  
LOS ANGELES COUNTY OFFICE OF THE  
COUNTY COUNSEL  
500 West Temple Street  
Los Angeles, California 90012-2713  
Telephone: (213) 974-1840  
Fax: (213) 613-4751  
\* Practicing pursuant to LCvR 83.2(c)(1)

Meaghan VerGow  
D.C. Bar No. 977165  
O'MELVENY AND MYERS LLP  
1625 Eye Street, NW  
Washington, DC 20006  
Telephone: (202) 383-5504  
Fax: (202) 383-5414

Pursuant to Local Civil Rule 7(o) of the Local Civil Rules of the United States District Court for the District of Columbia, a coalition of county and city governments, along with the California State Association of Counties, respectfully move the Court for leave to file a brief as *amici curiae* in support of Plaintiffs' Motions for Summary Judgment. The parties consent to the filing of this brief.

Amici represent the following local governments or organizations:

- County of Alameda, California
- County of King, Washington
- County of Los Angeles, California
- County of Monterey, California
- County of Travis, Texas
- City of Albuquerque, New Mexico
- City of Austin, Texas
- City of Baltimore, Maryland
- City of Detroit, Michigan
- City of Gary, Indiana
- City of Los Angeles, California
- City of Oakland, California
- City of Saint Paul, Minnesota
- City and County of San Francisco, California
- City of Seattle, Washington
- City of South Bend, Indiana

Amici also includes the California State Association of Counties (“CSAC”), a non-profit corporation, the membership of which consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels’ Association of California and is overseen by the Association’s Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all California counties.

This Court has “broad discretion” to allow contributions by amici, and routinely permits leave to file amicus briefs when the Court “may benefit from their input.” *District of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 237 (D.D.C. 2011); *see also Nat’l Ass’n of Home Builders v. U.S. Army Corps of Eng’rs*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007).

Here, amici are able to provide the Court with their unique perspective concerning the likely harm to local jurisdictions and their residents that would result if the USDA’s final rule relating to the Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents (“Final Rule”) is allowed to go into effect. While the challenges facing amici’s jurisdictions differ based on region and size, all are committed to improving the well-being of their communities, and the Supplemental Nutrition Assistance Program is the first line of defense against hunger in amici’s most vulnerable populations.

In their proposed brief, amici explore the harm that will befall them and other local jurisdictions, their residents, and non-profit organizations operating within their jurisdictions if the Final Rule is allowed to go into effect. Amici provide information to this Court concerning costs local jurisdictions will incur, harms to local economies, and populations affected by the Final Rule, including particular harms that will be exacerbated as a result of the COVID-19

pandemic. These are issues unique to local jurisdictions and important to the health of their populations and economies.

Accordingly, amici have both a “a familiarity and knowledge of the issues raised” and a “special interest in this litigation,” *see Ellsworth Assocs.v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996), and this Court should grant this Motion and accept the filing of the attached amici brief.

Dated: July 8, 2020

Respectfully submitted,

/s/ Meaghan VerGow

Meaghan VerGow  
D.C. Bar No. 977165  
O’MELVENY AND MYERS LLP  
1625 Eye Street, NW  
Washington, DC 20006  
Telephone: (202) 383-5504  
Fax: (202) 383-5414

Mary C. Wickham  
*County Counsel*  
Scott Kuhn  
*Assistant County Counsel*  
Jennifer Lehman  
*Assistant County Counsel*  
Cesar Del Peral  
*Senior Deputy County Counsel*  
Shawn Luna  
*Deputy County Counsel*  
Katherine G. McKeon  
*Deputy County Counsel*  
LOS ANGELES COUNTY OFFICE OF THE COUNTY  
COUNSEL  
500 West Temple Street  
Los Angeles, California 90012-2713  
  
*Counsel for Amicus Curiae County of Los Angeles,  
California*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

DISTRICT OF COLUMBIA, *et al.*,  
*Plaintiffs*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, *et al.*,  
*Defendants.*

Case No. 1:20-cv-119-BAH

BREAD FOR THE CITY, *et al.*,  
*Plaintiffs*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, *et al.*,  
*Defendants.*

Case No. 1:20-cv-127-BAH

**BRIEF OF AMICI CURIAE 16 COUNTIES AND CITIES, AND THE CALIFORNIA  
STATE ASSOCIATION OF COUNTIES, IN SUPPORT OF PLAINTIFFS' MOTIONS  
FOR SUMMARY JUDGMENT**

Mary C. Wickham\*  
*County Counsel*  
Scott Kuhn\*  
*Assistant County Counsel*  
Jennifer Lehman\*  
*Assistant County Counsel*  
Cesar Del Peral\*  
*Senior Deputy County Counsel*  
Shawn Luna\*  
*Deputy County Counsel*  
Katherine G. McKeon\*  
*Deputy County Counsel*  
LOS ANGELES COUNTY OFFICE OF THE  
COUNTY COUNSEL  
500 West Temple Street  
Los Angeles, California 90012-2713  
Telephone: (213) 974-1840  
Fax: (213) 613-4751  
\* Practicing pursuant to LCvR 83.2(c)(1)

Meaghan VerGow  
D.C. Bar No. 977165  
O'MELVENY AND MYERS LLP  
1625 Eye Street, NW  
Washington, DC 20006  
Telephone: (202) 383-5504  
Fax: (202) 383-5414

*(Additional counsel listed after signature block)*

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Local Civil Rule 7(o)(5) of the Local Civil Rules of the United States District Court for the District of Columbia and Federal Rule of Appellate Procedure 26.1, no party to this filing has a parent corporation. No publicly held corporation owns 10% or more of the stock of any of the parties to this filing.

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b><u>TABLE OF AUTHORITIES</u></b> .....	iv
<b><u>STATEMENT OF INTEREST AND SUMMARY OF ARGUMENT</u></b> .....	1
<b><u>ARGUMENT</u></b> .....	3
I. The Final Rule will cause considerable economic harm to amici. ....	3
A. The Final Rule will affect nearly 700,000 ABAWDs in the United States. ....	4
B. The Final Rule will increase amici’s training, administrative, and healthcare costs. ....	5
1. The Final Rule will force local jurisdictions to greatly increase the size of their employment and training services.....	5
2. The Final Rule has already increased local jurisdictions’ administrative costs.....	6
3. The Final Rule will increase the need for healthcare services.....	7
C. The Final Rule will also shrink local economies by increasing poverty and decreasing consumer spending. ....	8
1. SNAP reduces poverty.....	8
2. The Final Rule will cause a loss in benefits, shrinking spending within local jurisdictions and hurting businesses.....	9
II. The Final Rule will inflict irreparable, possibly irreversible harm upon tens of thousands of individuals. ....	10
A. Food insecurity affects millions of Americans. ....	10
B. SNAP not only increases food security, but also reduces poverty and improves health. ....	11
C. Losing SNAP benefits would lead to catastrophic consequences for some of the most vulnerable beneficiaries. ....	13
1. The Final Rule will adversely affect adults formerly in foster care. ....	14
2. The Final Rule will disproportionately cut benefits from racial minorities, women, and other employment discrimination victims.....	14
3. The Final Rule will harm homeless individuals. ....	15

4.	The Final Rule will affect formerly incarcerated individuals.....	16
D.	Child support will decrease.....	17
E.	The COVID-19 pandemic compounds the Final Rule’s effects on vulnerable populations.....	17
III.	Non-Profits serving local residents will also feel the Final Rule’s effects.....	18
IV.	The Final Rule is arbitrary and capricious.....	20
	<b><u>CONCLUSION</u></b> .....	21
	<b><u>LIST OF AMICI CURIAE</u></b> .....	23
	<b><u>ADDITIONAL COUNSEL FOR AMICI CURIAE</u></b> .....	24



**TABLE OF AUTHORITIES**

**CASES**

*Anna M. v. Jeffrey E.*, 7 Cal.App.5th 439 (2017) ..... 17

*Bus. Roundtable v. S.E.C.*, 647 F.3d 1144 (D.C. Cir. 2011)..... 20

*Dep’t of Homeland Security v. Regents of the Univ. of Calif.*, 591 U.S. \_\_\_\_ (slip op.) (2020).. 20

*Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117 (2016) ..... 20

*F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009)..... 20

**STATUTES**

7 U.S.C. § 2015(o)(2) ..... 2, 4

7 U.S.C. § 2025(a) ..... 3

The Food Stamp Act of 1964, Pub. L. No. 88-525 ..... 11

**OTHER AUTHORITIES**

Bureau of Labor Statistics, The Employment Situation – May 2020,  
<https://www.bls.gov/news.release/pdf/empsit.pdf> (last visited Jun. 30, 2020)..... 4

C. Joy Stewart et al., *Former Foster Youth: Employment Outcomes up to Age 30*, CHILDREN AND YOUTH SERVICES REV. 220 (2014) ..... 14

CAL. ASS’N OF NONPROFITS, CAUSES COUNT: THE ECONOMIC POWER OF CALIFORNIA’S NONPROFIT SECTOR, <https://calnonprofits.org/images/CausesCount2/causes-count-2014.pdf> (last visited Jun. 26, 2020) ..... 18

CAL. DEP’T OF FAIR EMPLOYMENT AND HOUSING, ANNUAL REPORT (2018)  
<https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/01/DFEH-AnnualReport-2018.pdf> (last visited May 29, 2020) ..... 15

CAL. FOOD POLICY ADVOCATES, STRUGGLING TO MAKE ENDS MEET: FOOD INSECURITY IN CA, <https://cfpa.net/GeneralNutrition/CFPAPublications/FoodInsecurity-Factsheet-2019.pdf> (last visited Jun. 25, 2020) ..... 10, 11

CAROLINE RATCLIFFE & SIGNE-MARY MCKERNAN, THE URBAN INSTITUTE, HOW MUCH DOES SNAP REDUCE FOOD INSECURITY? (Apr. 2010)..... 11

CHRISTIAN A. GREGORY & ALISHA COLEMAN-JENSEN, U.S. DEP’T OF AGRICULTURE, ECONOMIC RESEARCH SERVICE, FOOD INSECURITY, CHRONIC DISEASE, AND HEALTH AMONG WORKING-AGE ADULTS, ERR-235 (July 2017) ..... 11, 12, 13

Craig Gundersen and James P. Ziliak, *Food Insecurity and Health Outcomes*, 34 HEALTH AFFAIRS (November 2015) ..... 11, 12

CTRS. FOR DISEASE CONTROL AND PREVENTION, *People of Any Age with Underlying Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited Jun. 29, 2020) ..... 12, 13

Daniel J. Arenas, Ph.D. et al., *A Systematic Review and Meta-Analysis of Depression, Anxiety, and Sleep Disorders in US Adults with Food Insecurity*, 34 J. Gen. Intern. Med. 2874 ..... 12

Economic Linkages: Supplemental Nutrition Assistance Program (SNAP) Linkages with the General Economy, USDA Economic Research Service, at <https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/economic-linkages/> (last visited Jun. 30, 2020) ..... 10

ED BOLEN & STACY DEAN, CENTER ON BUDGET AND POLICY PRIORITIES, WAIVERS ADD KEY STATE FLEXIBILITY TO SNAP’S THREE-MONTH TIME LIMIT, <https://www.cbpp.org/research/food-assistance/waivers-add-key-state-flexibility-to-snaps-three-month-time-limit> (last visited Jun. 25, 2020) ..... 5, 13, 15, 16

Facts About SNAP, USDA Food and Nutrition Service, at <https://www.fns.usda.gov/snap/facts> (last visited Jun. 30, 2020) ..... 4

FOOD ON FOOT, RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX (2018), [https://www.foodonfoot.org/wp-content/uploads/2019/06/990\\_2018.pdf](https://www.foodonfoot.org/wp-content/uploads/2019/06/990_2018.pdf) (last visited Jun. 8, 2020) ..... 19

LAURA WHEATON & VICTORIA TRAN, THE URBAN INSTITUTE, THE ANTIPOVERTY EFFECTS OF THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (Feb. 2018), [https://www.urban.org/research/publication/antipoverty-effects-supplemental-nutrition-assistance-program/view/full\\_report](https://www.urban.org/research/publication/antipoverty-effects-supplemental-nutrition-assistance-program/view/full_report) (last visited Jun. 4, 2020) ..... 8, 9

LIANA FOX, U.S. CENSUS BUREAU, THE SUPPLEMENTAL POVERTY MEASURE: 2018 1 (Oct. 2019), <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-268.pdf>, (last visited May 27, 2020) ..... 9

LOS ANGELES HOMELESS SERVICES AGENCY, 2020 GREATER LOS ANGELES HOMELESS COUNT RESULTS, <https://www.lahsa.org/news?article=726-2020-greater-los-angeles-homeless-count-results> (last visited Jun. 26, 2020)..... 16

LOS ANGELES HOMELESS SERVICES AGENCY, SERVICE PLANNING AREA (SPA) DATA SUMMARIES, <https://www.lahsa.org/news?article=726-2020-greater-los-angeles-homeless-count-results> (last visited Jun. 19, 2020) ..... 16

LOS ANGELES REGIONAL FOOD BANK, ANNUAL REPORT (2018), [https://www.lafoodbank.org/wp-content/uploads/J7786\\_Annual-Report\\_web\\_spreads.pdf](https://www.lafoodbank.org/wp-content/uploads/J7786_Annual-Report_web_spreads.pdf) (last visited Jun. 8, 2020) ..... 19

LOS ANGELES REGIONAL FOOD BANK, ANNUAL REPORT (2017), [https://www.lafoodbank.org/wp-content/uploads/Annual-Report\\_2017\\_FINAL.pdf](https://www.lafoodbank.org/wp-content/uploads/Annual-Report_2017_FINAL.pdf) (last visited Jun. 8, 2020)..... 18

LOS ANGELES REGIONAL FOOD BANK, RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX (2018), <https://www.lafoodbank.org/wp-content/uploads/2018-Form-990-Public-Inspection-Copy.pdf> (last visited Jun. 8, 2020) ..... 18

NAT’L ALLIANCE TO END HOMELESSNESS, CHRONICALLY HOMELESS, <https://endhomelessness.org/homelessness-in-america/who-experiences-homelessness/chronically-homeless/> (last visited May 28, 2020) ..... 16

Opkych & Courtney, *Does education pay for a youth formerly in foster care? Comparison of employment outcomes with a national sample*, 43 CHILDREN AND YOUTH SERVICES REV. 23-24, 25 (2014)..... 14

Phil McCausland, *They’re Treating Uninsured Americans. But as Coronavirus Ramps Up, Money Is Running Out*, NBC NEWS (Mar. 14, 2020), <https://www.nbcnews.com/news/us-news/they-re-treating-uninsured-americans-coronavirus-ramps-money-running-out-n1157496> (last visited Jun. 26, 2020) ..... 18

S. A. Berkowitz et al., *State-Level and County-Level Estimates of Health Care Costs Associated with Food Insecurity*, PREVENTING CHRONIC DISEASE (Jul. 11, 2019)16:180549, [https://www.cdc.gov/pcd/issues/2019/18\\_0549.htm](https://www.cdc.gov/pcd/issues/2019/18_0549.htm) (last visited Jun. 25, 2020)..... 8, 13, 14

S. A. Berkowitz et al., *Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures among Low-Income Adults*, JAMA INTERNAL MEDICINE, 177(11) (2017)..... 8

Till Von Wachter et al., California Policy Lab, *Employment and Earnings Among LA County Residents Experiencing Homelessness* (Feb. 2020) ..... 16

U.S. CENSUS BUREAU, QUICKFACTS, LOS ANGELES COUNTY, CALIFORNIA, <https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia,CA/PST045219> (last visited Jun. 25, 2020) ..... 3

U.S. DEP’T OF AGRICULTURE, SNAP ADMINISTRATIVE COSTS, AUDIT REPORT No. 27601-0003-22 (Sep. 2016)..... 3, 6

U.S. DEP’T OF HEALTH & HUMAN SERVICES, 2020 POVERTY GUIDELINES, <https://aspe.hhs.gov/2020-poverty-guidelines> (last visited Jun. 26, 2020)..... 13

**RULES**

Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults Without Dependents, 83 Fed. Reg. 8013 (Feb. 23, 2018) ..... 3

Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, 84 Fed. Reg. 66782 (Dec. 5, 2019) ..... 1, 20

**REGULATIONS**

7 C.F.R. § 273.24(b) ..... 2, 4  
7 C.F.R. § 277.4 ..... 3

**STATEMENT OF INTEREST AND SUMMARY OF ARGUMENT**

Amici curiae are 16 local jurisdictions representing almost 21 million Americans across the country, from Los Angeles County, California, and King County, Washington, to the cities of Detroit, Michigan, and Austin, Texas, along with the California State Association of Counties, which represents the interests of Counties containing all 39 million Californians and has determined that this case is a matter affecting all California counties.<sup>1</sup> While the challenges facing amici’s jurisdictions differ based on region and size, all are committed to improving the well-being of their communities. Amici play a vital part in providing essential services to their most vulnerable populations, and the Supplemental Nutrition Assistance Program (“SNAP”) is the first line of defense against hunger in amici’s most vulnerable populations.

Amici submit this brief to inform the Court of the likely harm to local jurisdictions and their residents that would result if the USDA’s final rule relating to the Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents (“Final Rule”) is allowed to go into effect. The Final Rule, adopted by the USDA on December 5, 2019, in part, greatly narrowed the conditions under which the USDA would grant State waivers of time limit requirements for certain claimants.<sup>2</sup> In doing so, the Final Rule jeopardized the food security of nearly 700,000 Americans, putting at risk low income Americans’ health in the middle of a global pandemic.<sup>3</sup>

---

<sup>1</sup> Pursuant to Local Civil Rule 7(o)(5), this brief was authored in full by amici and their counsel, no party or counsel for a party authored or contributed monetarily to this brief in any respect, and no other person or entity—other than amici and their counsel—contributed monetarily to this brief’s preparation or submission.

<sup>2</sup> Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, 84 Fed. Reg. 66782 (Dec. 5, 2019).

<sup>3</sup> Memo. Opinion, Dkt. No. 51, p. 2.

Per federal law, SNAP benefits are time-limited for unemployed, non-disabled individuals aged 18 to 49 and without children—Able-Bodied Adults Without Dependents (“ABAWDs”) unless these individuals meet certain work or training requirements.<sup>4</sup> However, States can request waivers for specific local jurisdictions (or in some cases, statewide), permitting ABAWDs within those jurisdictions to receive SNAP benefits beyond the time limit.<sup>5</sup> This helps reduce food insecurity in areas where meeting the work or training requirements would be difficult, if not impossible.

In adopting the Final Rule, the USDA unreasonably failed to consider the Final Rule’s effect on local jurisdictions benefitting from such waivers. As a result, the USDA did not consider the significant harm to amici and their residents as a result of the Final Rule. Specifically, the USDA did not consider the financial harm to local jurisdictions, the harm to the health of local jurisdictions’ most vulnerable residents, including women, minorities, homeless people, the formerly incarcerated, and adults formerly in foster care, or the risk to the safety net provided by non-profits that would occur if the Final Rule were implemented. And because the Final Rule unquestionably presents a significant threat of harm to amici and their residents, and to other similarly situated local governments, factors that were not considered in its promulgation, its adoption was arbitrary and capricious, violating the Administrative Procedure Act.

Recognizing these harms, and for the reasons set forth below, amici assert that Plaintiffs’ Motions for Summary Judgment should be granted.

---

<sup>4</sup> 7 U.S.C. § 2015(o)(2); Time Limit for Able-Bodied Adults, 7 C.F.R. § 273.24(b) (2020).

<sup>5</sup> Memo. Opinion, Dkt. No. 51, pp. 5-6.

## ARGUMENT

### **I. The Final Rule will cause considerable economic harm to amici.**

Food insecurity remains a major threat to the health and well-being of millions of low-income households throughout the United States.<sup>6</sup> This threat is partially ameliorated by the federal SNAP program, which not only helps feed vulnerable residents, but also helps local economies by creating added financial stability amongst their residents, resulting in more robust spending within the jurisdiction.

In return, states and local jurisdictions share equally with the federal government in the large administrative costs of the SNAP program.<sup>7</sup> In California, for example, the local share is paid 70% by the state and 30% by the counties.<sup>8</sup> In the County of Los Angeles, which is the largest county in the United States and home to over 10 million people,<sup>9</sup> the administrative costs of the SNAP program (implemented as CalFresh) exceed \$83 million.<sup>10</sup>

As set forth in the First Amended Complaint, many states were under a statewide waiver of the time limit during the Great Recession.<sup>11</sup> Many states still retain wide partial waivers covering a large percentage of their counties.<sup>12</sup>

---

<sup>6</sup> See *id.* at p. 4 (citing Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults Without Dependents, 83 Fed. Reg. 8013, 8013 (Feb. 23, 2018)).

<sup>7</sup> See 7 U.S.C. § 2025(a); Funding, 7 C.F.R. § 277.4.

<sup>8</sup> See U.S. DEP'T OF AGRICULTURE, SNAP ADMINISTRATIVE COSTS, AUDIT REPORT NO. 27601-0003-22 (Sep. 2016), p. 7.

<sup>9</sup> See U.S. CENSUS BUREAU, QUICKFACTS, LOS ANGELES COUNTY, CALIFORNIA, <https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia,CA/PST045219> (last visited Jun. 25, 2020).

<sup>10</sup> Declaration of Lashonda Diggs in Support of Brief of Amici Curiae 16 Counties and Cities, and the California State Association of Counties, in Support of Plaintiffs' Motions for Summary Judgment ("Diggs Decl."), filed concurrently herewith, at ¶ 14.

<sup>11</sup> First Amended Complaint, Dkt. No. 19, ¶¶ 214, 274.

<sup>12</sup> *Id.*, at ¶¶ 217, 275.

With the Final Rule, however, it is anticipated that when ABAWDs lose their benefits, local jurisdiction costs will actually *increase*, while economic activity will be stymied. This will cause local jurisdictions serious financial harm.

**A. The Final Rule will affect nearly 700,000 ABAWDs in the United States.<sup>13</sup>**

Local government agencies that provide safety net services to the most vulnerable populations often encounter individuals unable to provide for themselves and their families. Millions of Americans rely on SNAP benefits to meet their basic needs. SNAP benefits provide these residents with access to fresh fruits, vegetables, and other healthy food.

To meet the work requirement, ABAWDs are required to work, or to participate in a work or training program, for 20 hours per week.<sup>14</sup> SNAP participants who are employed, however, tend to hold low-paying jobs, often on a part-time basis.<sup>15</sup> In these positions, ABAWDs are often not guaranteed 20 hours of work per week on a regular basis.<sup>16</sup> Consequently, members of the population facing termination of their SNAP benefits unless they can find work are uniquely at risk of being unable to obtain necessary employment, especially where the COVID-19 pandemic has driven unemployment to levels not seen since the Great Depression.<sup>17</sup>

In the County of Los Angeles, for example, CalFresh is administered through the Department of Public Social Services (“DPSS”). There are approximately 389,335 ABAWDs

---

<sup>13</sup> The data presented in this section is current as of June 16, 2020.

<sup>14</sup> 7 U.S.C. § 2015(o)(2); Time Limit for Able-Bodied Adults, 7 C.F.R. § 273.24(b) (2020).

<sup>15</sup> See Facts About SNAP, USDA Food and Nutrition Service, at <https://www.fns.usda.gov/snap/facts> (last visited Jun. 30, 2020).

<sup>16</sup> Diggs Decl., *supra* note 10, at ¶ 8.

<sup>17</sup> Bureau of Labor Statistics, The Employment Situation – May 2020, <https://www.bls.gov/news.release/pdf/empisit.pdf> (last visited Jun. 30, 2020).



living in the County.<sup>18</sup> Of those, DPSS estimates that approximately 149,044 are currently unemployed or employed less than 20 hours a week, and thus potentially subject to termination of CalFresh benefits.<sup>19</sup> DPSS estimates that 149,341 ABAWDs will no longer be exempt from the CalFresh work requirements, and that implementation of the Final Rule will result in the loss of CalFresh benefits for approximately 127,000 ABAWD participants.<sup>20</sup>

As set forth in Section II below, implementation of the Final Rule would disproportionately affect, among others, racial and ethnic minorities, women, homeless individuals, and the formerly incarcerated. These groups face discrimination that contributes to a higher rate of unemployment, even after accounting for education or criminal history.<sup>21</sup> Moreover, ABAWDs at risk of losing their SNAP benefits are at an acute risk of homelessness. Of the ABAWDs anticipated to lose SNAP benefits in Los Angeles County alone, 61,534 are currently identified as chronically homeless.<sup>22</sup>

**B. The Final Rule will increase amici’s training, administrative, and healthcare costs.**

**1. The Final Rule will force local jurisdictions to greatly increase the size of their employment and training services.**

Local jurisdictions frequently offer employment and training services to ABAWDs. For example, in Los Angeles County, the General Relief Opportunities for Work (“GROW”) program provides employment training and financial assistance to indigent adults ineligible for

---

<sup>18</sup> Diggs Decl., *supra* note 10, at ¶ 5.

<sup>19</sup> Diggs Decl., *supra* note 10, at ¶ 8.

<sup>20</sup> Diggs Decl., *supra* note 10, at ¶ 9.

<sup>21</sup> ED BOLEN & STACY DEAN, CENTER ON BUDGET AND POLICY PRIORITIES, WAIVERS ADD KEY STATE FLEXIBILITY TO SNAP’S THREE-MONTH TIME LIMIT, <https://www.cbpp.org/research/food-assistance/waivers-add-key-state-flexibility-to-snaps-three-month-time-limit> (last visited Jun. 25, 2020).

<sup>22</sup> Diggs Decl., *supra* note 10, at ¶ 11.

federal and state programs. GROW currently serves approximately 40,000 people. As the County estimates that 149,341 additional ABAWD residents will no longer be exempt from the work requirements, GROW would need to more than quadruple in size, from 40,000 to 189,341 participants, to handle the increased demand for services.<sup>23</sup>

An expansion of this magnitude requires not only dramatically increased local financial support—an issue exacerbated by the drop in local government funding precipitated by the COVID-19 pandemic—but also a redesign of training programs to scale up to meet the drastic increase in residents needing employment and training services. It is doubtful that existing training providers could handle the additional demand precipitated by the Final Rule. As a result, amici would need to secure and vet additional organizations capable of providing employment and training services to a wider range of people.

**2. The Final Rule has already increased local jurisdictions' administrative costs.**

The cost of SNAP is shared evenly between state and local governments, on the one hand, and the federal government, on the other. States assign a portion of SNAP administrative costs to local governments—for example, in California, the state pays 35% of the administrative costs and counties pay the remaining 15%.<sup>24</sup> Thus, any increase in the cost to administer SNAP directly increases costs borne by the local jurisdictions.

Implementation of the Final Rule will generate costs associated with planning activities, training for eligibility workers, technical assistance related to computer automation and policy guidance, and communications with affected participants.

---

<sup>23</sup> Diggs Decl., *supra* note 10, at ¶ 13.

<sup>24</sup> See U.S. DEP'T OF AGRICULTURE, SNAP ADMINISTRATIVE COSTS, AUDIT REPORT NO. 27601-0003-22 (Sep. 2016), p.7.

Amici are already seeing cost increases because of the Final Rule. Amici expended time (and money) identifying which of their hundreds of thousands of ABAWDs would be impacted by the Final Rule. Moreover, if the Final Rule goes into effect, mailing informational notices to those affected will cost Los Angeles County alone approximately \$82,137.55.<sup>25</sup>

Moreover, amici will need to allocate funds to screen and track participants as they lose eligibility and potentially reapply later. Amici will also incur costs associated with training eligibility workers on how to apply the ABAWD time limit. As noted in the Complaint, the State of California provided policy guidance and training to the six counties currently implementing the time limit over the course of one year.<sup>26</sup> Here, the accelerated implementation schedule and consequent time pressure to develop complex implementation procedures will increase the overall cost to local jurisdictions.

Amici may also need to develop an ABAWD Time Limit Readiness Plan to submit to the relevant state agency for review. Given the timeframe to implement the Final Rule, developing the detailed plans needed will require local jurisdictions to divert resources from other critical projects.

### **3. The Final Rule will increase the need for healthcare services.**

In addition, the Final Rule ignores the increased healthcare costs associated with the loss of SNAP eligibility. As set forth in Section II.B below, food insecurity is associated with a variety of “chronic health conditions, including diabetes mellitus, hypertension, coronary heart

---

<sup>25</sup> Diggs Decl., *supra* note 10, at ¶ 15.

<sup>26</sup> Fernandez Decl., Dkt. No. 3-5, ¶ 50.

disease, chronic kidney disease and depression.”<sup>27</sup> A recent national study revealed that adults lacking food security “had annual health care expenditures that were \$1,834 higher than adults who were food secure.”<sup>28</sup> Unsurprisingly, research has shown that access to SNAP benefits drives healthcare costs down. Low-income adults receiving SNAP benefits have lower health care costs (approximately \$1,409 per year) than low-income adults without SNAP.<sup>29</sup> By eliminating SNAP benefits from a significant portion of the ABAWD population, the Final Rule will drive up local healthcare costs, including emergency healthcare services, largely paid through Medicaid. Los Angeles County estimates that its annual healthcare costs for the 127,000 affected ABAWDs will increase by approximately \$178,943,000.<sup>30</sup>

**C. The Final Rule will also shrink local economies by increasing poverty and decreasing consumer spending.**

**1. SNAP reduces poverty.**

In addition to reducing food insecurity, by freeing up resources a household would spend on food for other essential expenses, SNAP reduces participants’ poverty levels. The U.S. Census Bureau produces annual estimates of the effect of SNAP and other programs on poverty using the comprehensive Supplemental Poverty Measure (“SPM”).<sup>31</sup> The SPM extends the

---

<sup>27</sup> S. A. Berkowitz et al., *State-Level and County-Level Estimates of Health Care Costs Associated with Food Insecurity*, PREVENTING CHRONIC DISEASE (Jul. 11, 2019)16:180549, [https://www.cdc.gov/pcd/issues/2019/18\\_0549.htm](https://www.cdc.gov/pcd/issues/2019/18_0549.htm) (last visited Jun. 25, 2020).

<sup>28</sup> *Id.*

<sup>29</sup> S. A. Berkowitz et al., *Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures among Low-Income Adults*, JAMA INTERNAL MEDICINE, 177(11) (2017) at 1642-1649.

<sup>30</sup> Diggs Decl., *supra* note 10, at ¶ 16.

<sup>31</sup> LAURA WHEATON & VICTORIA TRAN, THE URBAN INSTITUTE, THE ANTIPOVERTY EFFECTS OF THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM 4 (Feb. 2018), [https://www.urban.org/research/publication/antipoverty-effects-supplemental-nutrition-assistance-program/view/full\\_report](https://www.urban.org/research/publication/antipoverty-effects-supplemental-nutrition-assistance-program/view/full_report) (last visited Jun. 4, 2020).

official poverty measure by accounting for government programs not included in the official measure.<sup>32</sup> In 2015, SNAP removed an estimated 8.4 million people from poverty, thus reducing poverty as measured by the SPM from 15.4 percent to 12.8 percent, or a reduction of 17 percent in the SPM poverty rate.<sup>33</sup> Further, SNAP reduced deep poverty, the share of the population with resources below half of the SPM poverty level, from 16.8 million to 12.1 million, for a 28 percent reduction.<sup>34</sup>

**2. The Final Rule will cause a loss in benefits, shrinking spending within local jurisdictions and hurting businesses.**

The Final Rule will deeply impact local economies. In Los Angeles County alone, the implementation of the Final Rule will result in over 127,000 ABAWDs losing their SNAP benefits, decreasing local spending by \$295,656,000 annually.<sup>35</sup> Not only is the loss of benefits harmful to each individual, but in the aggregate over \$295 million annually will be eliminated from the County's economy.

This will come primarily from decreases in spending at food retailers, which rely on participants spending their benefits to stay in business. Thus, to the extent that removing SNAP participants from the program reduces the amount of money they spend on food, the Final Rule will harm food retailers. In a ripple effect, these food retailers will spend less, hire fewer

---

<sup>32</sup> LIANA FOX, U.S. CENSUS BUREAU, THE SUPPLEMENTAL POVERTY MEASURE: 2018 1 (Oct. 2019), <https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-268.pdf>, (last visited May 27, 2020).

<sup>33</sup> WHEATON & TRAN, *supra* note 31, at 9.

<sup>34</sup> *Id.* at 12.

<sup>35</sup> Diggs Decl., *supra* note 10, at ¶ 10.

employees, and further impact local economies, by up to 1.54 times the decrease in SNAP benefits.<sup>36</sup>

**II. The Final Rule will inflict irreparable, possibly irreversible harm upon tens of thousands of individuals.**

In addition to causing economic harm to local jurisdictions, the Final Rule will decimate the finances of ABAWDs who will lose their benefits. The Final Rule compounds the difficulties of ABAWDs who cannot find work for societal reasons beyond their control, making them especially vulnerable to food insecurity. These vulnerable adults include homeless persons, formerly incarcerated persons, former foster youth, and victims of employment discrimination.

SNAP is proven to reduce food insecurity, poverty, and the probability of suffering chronic disease. The Final Rule will strip these positive effects, taking food from the mouths of hundreds of thousands of these especially vulnerable residents. The Final Rule will cause an increase in homelessness, illness, food insecurity, and poverty.

**A. Food insecurity affects millions of Americans.**

Food insecurity means having limited, uncertain, or inconsistent access to the quality and quantity of food necessary to live a healthy life.<sup>37</sup> In a household, food insecurity falls within a spectrum defined generally by five conditions caused by a lack of money to buy food: (1) where the food bought did not last and the household could not buy more, (2) where members could not afford to eat balanced meals, (3) where members either cut the size of their meals or skipped

---

<sup>36</sup> Economic Linkages: Supplemental Nutrition Assistance Program (SNAP) Linkages with the General Economy, USDA Economic Research Service, at <https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/economic-linkages/> (last visited Jun. 30, 2020) (estimating a multiplier of SNAP benefits on Gross Domestic Product (“GDP”) of 1.54).

<sup>37</sup> CAL. FOOD POLICY ADVOCATES, STRUGGLING TO MAKE ENDS MEET: FOOD INSECURITY IN CA, <https://cfpa.net/GeneralNutrition/CFPAPublications/FoodInsecurity-Factsheet-2019.pdf> (last visited Jun. 25, 2020).

meals, (4) where members ate less than they felt they should, and (5) where members did not eat for a whole day.<sup>38</sup> The frequency with which each condition occurred over a particular period of time places the household along the spectrum, ranging from food secure to very food insecure.<sup>39</sup>

Households headed by younger persons, minorities, or persons with limited education are more likely to be food insecure.<sup>40</sup> So are those headed by one adult,<sup>41</sup> and those including a disabled person.<sup>42</sup> In California alone, as of 2019, an estimated 4.7 million adults and 2 million children lived in low-income households afflicted by food insecurity.<sup>43</sup> Given the economic crisis caused by the COVID-19 pandemic, this number has very likely grown.

**B. SNAP not only increases food security, but also reduces poverty and improves health.**

Congress created SNAP to address food insecurity in America.<sup>44</sup> Not surprisingly, SNAP reduces the likelihood of being food insecure by roughly 30 percent, and the likelihood of being very food insecure by about 20 percent.<sup>45</sup> In addition, as explained above, SNAP reduces participants' poverty levels.

---

<sup>38</sup> See CAROLINE RATCLIFFE & SIGNE-MARY MCKERNAN, THE URBAN INSTITUTE, HOW MUCH DOES SNAP REDUCE FOOD INSECURITY? 12 (Apr. 2010); and Craig Gundersen and James P. Ziliak, *Food Insecurity and Health Outcomes*, 34 HEALTH AFFAIRS, 1831 (November 2015). See also CHRISTIAN A. GREGORY & ALISHA COLEMAN-JENSEN, U.S. DEP'T OF AGRICULTURE, ECONOMIC RESEARCH SERVICE, FOOD INSECURITY, CHRONIC DISEASE, AND HEALTH AMONG WORKING-AGE ADULTS, ERR-235 at 6 (July 2017).

<sup>39</sup> RATCLIFFE & MCKERNAN, *supra*, at 12.

<sup>40</sup> *Id.* at 16.

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

<sup>42</sup> *Id.*

<sup>43</sup> CAL. FOOD POLICY ADVOCATES, *supra* note 37.

<sup>44</sup> The Food Stamp Act of 1964, Pub. L. No. 88-525 (1964).

<sup>45</sup> RATCLIFFE & MCKERNAN, *supra* note 38, at 15, 17, 18.

Further, beyond alleviating poverty and achieving its goal of reducing food insecurity, SNAP also improves participants' health. Because food insecurity afflicts millions of Americans, it presents a leading health issue as well.<sup>46</sup> People suffering food insecurity have higher risks of depression, anxiety, sleep disorders, cardiovascular disease, diabetes, high blood pressure, and high cholesterol.<sup>47</sup> In fact, a USDA study found a significant link between food insecurity and ten chronic diseases: (1) high blood pressure, (2) coronary heart disease, (3) hepatitis, (4) stroke, (5) cancer, (6) asthma, (7) diabetes, (8) arthritis, (9) chronic obstructive pulmonary disease ("COPD"), and (10) kidney disease.<sup>48</sup> Making matters worse, asthma and high blood pressure might increase the risk of severe illness from COVID-19, while diabetes, COPD, coronary heart disease, and kidney disease have been confirmed to elevate the risk of severe illness from COVID-19.<sup>49</sup>

Chronic disease impacts people economically as well as physically. About 86 percent of healthcare spending in 2010 was for adults with one or more chronic conditions.<sup>50</sup> And healthcare expenses are 2.5 times higher for people with one chronic condition than for people with no such conditions.<sup>51</sup> Highlighting the link between food insecurity, health, and poverty, in

---

<sup>46</sup> Gundersen and Ziliak, *supra* note 38, at 1830.

<sup>47</sup> Daniel J. Arenas, Ph.D. et al., *A Systematic Review and Meta-Analysis of Depression, Anxiety, and Sleep Disorders in US Adults with Food Insecurity*, 34 J. Gen. Intern. Med. 2874, 2880; Gundersen and Ziliak, *supra* note 38, at 1833.

<sup>48</sup> GREGORY & COLEMAN-JENSEN, *supra* note 38, at 20.

<sup>49</sup> CTRS. FOR DISEASE CONTROL AND PREVENTION, *People of Any Age with Underlying Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited Jun. 29, 2020).

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

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



2012-2013, Los Angeles County spent an estimated \$2.3 billion in health-care costs related to food insecurity.<sup>52</sup> Moreover, 7 of the top 10 causes of death in 2014 were chronic diseases.<sup>53</sup>

Beyond the economic effects of chronic illnesses, a USDA study emphasizes that “[c]hronic diseases have short- and long-term effects on both quality of life and morbidity.”<sup>54</sup> For example, among other effects, chronic disease can contribute to attendance problems and lower productivity at work, making it harder to keep a job. The USDA’s study found the magnitude of the increased probabilities for all ten chronic illnesses associated with food insecurity “striking.”<sup>55</sup> By reducing food insecurity, SNAP helps improve participants’ health and, consequently, their quality of life, beyond the ability to eat nutritiously and predictably.

**C. Losing SNAP benefits would lead to catastrophic consequences for some of the most vulnerable beneficiaries.**

Ending a SNAP participant’s benefits drives them deeper into poverty. As of 2017, childless adults who participated in SNAP earned on average just 32% of the poverty line—or just over \$4,000.<sup>56</sup> The average SNAP benefit for ABAWDs is nearly half that, about \$1,920 per year.<sup>57</sup>

The burden and effect of the Final Rule falls disproportionately on historically vulnerable populations. For example, food-insecure adults, including SNAP participants, are more likely

---

<sup>52</sup> S.A. Berkowitz, *supra* note 27.

<sup>53</sup> CTRS. FOR DISEASE CONTROL AND PREVENTION, *supra* note 49, at 4.

<sup>54</sup> GREGORY & COLEMAN-JENSEN, *supra* note 38, at 20.

<sup>55</sup> *Id.*

<sup>56</sup> U.S. DEP’T OF HEALTH & HUMAN SERVICES, 2020 POVERTY GUIDELINES, <https://aspe.hhs.gov/2020-poverty-guidelines> (last visited Jun. 26, 2020); BOLEN & DEAN, *supra* note 21, at 2.

<sup>57</sup> *See* Memo. Opinion, Dkt. No. 51, at 4.

than food-secure adults to be racial and/or ethnic minorities, have lower income, and lack health insurance.<sup>58</sup>

**1. The Final Rule will adversely affect adults formerly in foster care.**

Adults who age out of the foster care system enter adulthood without the emotional and financial support of a family.<sup>59</sup> They suffer higher unemployment rates than their peers.<sup>60</sup> They earn less than their peers, with average earnings below the poverty line.<sup>61</sup> They face unstable employment situations in that, on average, they experience shorter and more sporadic employment periods, precisely the situation the Final Rule penalizes.<sup>62</sup> Thus, the Final Rule will disproportionately harm former foster youth. In Los Angeles County alone, approximately 17,000 individuals who will be directly impacted by the Final Rule are former foster youth and/or homeless adults ages 18-24.<sup>63</sup>

**2. The Final Rule will disproportionately cut benefits from racial minorities, women, and other employment discrimination victims.**

The Final Rule will also disproportionately harm minorities, women, and other individuals who have been victims of employment discrimination. For example, African Americans experience higher unemployment rates; in 2017, the unemployment rate for African American men over 16 was 7.5 percent, compared to 4.4 percent overall for men over 16.

---

<sup>58</sup> S.A. Berkowitz, *supra* note 27, at 3.

<sup>59</sup> C. Joy Stewart et al., *Former Foster Youth: Employment Outcomes up to Age 30*, 36 CHILDREN AND YOUTH SERVICES REV. 220 (2014).

<sup>60</sup> *Id.* at 221, 225-226; Opkych & Courtney, *Does education pay for a youth formerly in foster care? Comparison of employment outcomes with a national sample*, 43 CHILDREN AND YOUTH SERVICES REV. 23-24, 25 (2014).

<sup>61</sup> Stewart et al., *supra* note 59, at 226-227; Opkych & Courtney, *supra* note 60, at 23-24, 25.

<sup>62</sup> Stewart et al., *supra* note 59, at 227-228.

<sup>63</sup> Diggs Decl., *supra* note 10, at ¶ 7.

Discrimination likely plays a role in this disparity; studies have found that even holding equal qualifications, white job applicants are much more likely to receive callbacks after applications or interviews than African American applicants.<sup>64</sup>

Amici and their residents are not immune to the effects of discrimination. The California Department of Fair Employment and Housing (“DFEH”) received 20,822 charges of discrimination in 2018, 28.8% of which originated in Los Angeles County.<sup>65</sup> Of the 4,216 employment-discrimination charges the DFEH investigated, 15% included sex-based-discrimination allegations, including pregnancy-, childbirth-, and breastfeeding-related allegations, and 12% included race-based-discrimination allegations.<sup>66</sup> Of the 14,772 employment-discrimination charges for which the DFEH issued right-to-sue letters without investigating, 21% included sex-based-discrimination allegations, including sexual harassment allegations, and 8% included race-based-discrimination allegations.<sup>67</sup>

The Final Rule would require people unable to work due to employment discrimination, including racial and ethnic minorities and women, to overcome this societal problem or lose their SNAP benefits. This outcome is manifestly unfair.

### **3. The Final Rule will harm homeless individuals.**

The Final Rule will also disproportionately burden homeless individuals. While homeless persons are frequently willing and able to work, homelessness can contribute to the inability to find work. In the County of Los Angeles, 74% of homeless individuals had been employed

---

<sup>64</sup> BOLEN & DEAN, *supra* note 21, at 9.

<sup>65</sup> CAL. DEP’T OF FAIR EMPLOYMENT AND HOUSING, ANNUAL REPORT 13 (2018) <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/01/DFEH-AnnualReport-2018.pdf> (last visited May 29, 2020).

<sup>66</sup> *Id.* at 9-10.

<sup>67</sup> *Id.*

before they first received homeless services, for an average of six years; yet two years after first enrolling in homeless services, only 23% of individuals were employed.<sup>68</sup>

Lacking a steady address or phone number to make job inquiries and receive communications from potential employers can complicate a job search. Even asking for job applications in person can be harder when a person does not have access to a shower, proper grooming supplies, or clean clothes. Homeless persons are among those for whom it is hardest to find employment and, at the same time, who benefit most from SNAP. In Los Angeles County alone, an estimated 66,433 people were homeless as of January 2020,<sup>69</sup> including 51,221 adults without dependents.<sup>70</sup>

#### **4. The Final Rule will affect formerly incarcerated individuals.**

The Final Rule will also punish formerly incarcerated people, who already served their time and are trying to rejoin society. People with criminal records face challenges finding work, due to reluctance by employers to hire them, low education levels, and, most poignantly, poor work histories.<sup>71</sup> Tens of thousands of people in amici's jurisdictions were formerly incarcerated, and are at a disadvantage in the workplace. Stripping them of their benefits due to their inability to find jobs that meet the ABAWD requirements will result in greater food insecurity.

---

<sup>68</sup> Till Von Wachter et al., California Policy Lab, *Employment and Earnings Among LA County Residents Experiencing Homelessness* 8 (Feb. 2020).

<sup>69</sup> LOS ANGELES HOMELESS SERVICES AGENCY, 2020 GREATER LOS ANGELES HOMELESS COUNT RESULTS, <https://www.lahsa.org/news?article=726-2020-greater-los-angeles-homeless-count-results> (last visited Jun. 26, 2020).

<sup>70</sup> LOS ANGELES HOMELESS SERVICES AGENCY, SERVICE PLANNING AREA (SPA) DATA SUMMARIES, <https://www.lahsa.org/news?article=726-2020-greater-los-angeles-homeless-count-results> (last visited Jun. 19, 2020); *see* NAT'L ALLIANCE TO END HOMELESSNESS, CHRONICALLY HOMELESS, <https://endhomelessness.org/homelessness-in-america/who-experiences-homelessness/chronically-homeless/> (last visited May 28, 2020) (defining "chronic homelessness").

<sup>71</sup> BOLEN & DEAN, *supra* note 21, at 8.

**D. Child support will decrease.**

Finally, although the Final Rule pertains to ABAWDs, it will inevitably affect the most innocent: ABAWDs' children not in their custody. In California, certain principles guide child support determinations, including, *inter alia*, that parents are obligated to support children “according to the parent’s circumstances and station in life”; that each parent should pay “according to his or her ability”; and that children should share in parents’ standard of living. *Anna M. v. Jeffrey E.*, 7 Cal.App.5th 439, 446 (2017) (quoting Cal. Fam. Code § 4053). Although ABAWDs do not share their household with dependents, cutting off their SNAP benefits would worsen their circumstances and hamper their ability, and obligation, to pay child support. Thus, the Final Rule’s effects reach beyond ABAWDs, possibly pushing other households into food insecurity as well.

**E. The COVID-19 pandemic compounds the Final Rule’s effects on vulnerable populations.**

The COVID-19 pandemic has intensified the potential damage caused by the Final Rule on vulnerable populations, and, consequently, on local jurisdictions, on two accounts. First, COVID-19 creates an additional health risk for food insecure populations that, as explained above, are already at higher risk of a number of chronic health conditions. With decreased resident health owing to food insecurity, COVID-19 healthcare costs for testing and monitoring of COVID-related symptoms are higher.

Second, the pandemic has created the largest economic crisis since the Great Depression. Unemployment has reached levels not seen in nearly a century. Local governments are predicting large budget deficits. For example, Los Angeles County currently projects a deficit of nearly one billion dollars for its upcoming fiscal year. Cutting SNAP benefits can only worsen the financial conditions of local governments and recipients alike. In short, the health and economic effects of

the COVID-19 pandemic crystallize the Final Rule's prejudicial effects on local jurisdictions and their most vulnerable populations.

### III. Non-Profits serving local residents will also feel the Final Rule's effects.

In addition to the harm described above to local jurisdictions and their individual residents, the Final Rule would also adversely affect non-profit organizations. Amici's jurisdictions are home to thousands of non-profit organizations, many of which provide direct-to-consumer food, healthcare, and homeless services.<sup>72</sup>

These organizations, large and small, operate under stretched-thin budgets in the best of times.<sup>73</sup> For example, in 2017, the Los Angeles Regional Food Bank distributed 68.4 million pounds of food, serving, through partner agencies and through its own programs, 300,000 people per month.<sup>74</sup> That year, the Regional Food Bank raised about \$90 million from, *inter alia*, donated food and other in-kind contributions, private contributions, and government grants, and dedicated 97% of those contributions directly to its programs.<sup>75</sup> It still lost over \$2.3 million.<sup>76</sup>

---

<sup>72</sup> CAL. ASS'N OF NONPROFITS, CAUSES COUNT: THE ECONOMIC POWER OF CALIFORNIA'S NONPROFIT SECTOR, <https://calnonprofits.org/images/CausesCount2/causes-count-2014.pdf> (last visited Jun. 26, 2020).

<sup>73</sup> See e.g. Phil McCausland, *They're Treating Uninsured Americans. But as Coronavirus Ramps Up, Money Is Running Out*, NBC NEWS (Mar. 14, 2020), <https://www.nbcnews.com/news/us-news/they-re-treating-uninsured-americans-coronavirus-ramps-money-running-out-n1157496> (last visited Jun. 26, 2020).

<sup>74</sup> LOS ANGELES REGIONAL FOOD BANK, ANNUAL REPORT 2 (2017), [https://www.lafoodbank.org/wp-content/uploads/Annual-Report\\_2017\\_FINAL.pdf](https://www.lafoodbank.org/wp-content/uploads/Annual-Report_2017_FINAL.pdf) (last visited Jun. 8, 2020).

<sup>75</sup> *Id.* at 12.

<sup>76</sup> LOS ANGELES REGIONAL FOOD BANK, RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX (2018), <https://www.lafoodbank.org/wp-content/uploads/2018-Form-990-Public-Inspection-Copy.pdf> (last visited Jun. 8, 2020).

In 2018, its 45<sup>th</sup> anniversary year, the Regional Food Bank recovered, raising about \$115.7 million against about \$113.5 million in expenses while still devoting 98% of its revenue to mobilize resources to fight hunger in Los Angeles County.<sup>77</sup> In the end, the Regional Food Bank distributed the equivalent of 56 million meals to residents in need.<sup>78</sup> For all its amazing work, the Regional Food Bank relies on donations, which tend to dry up during difficult economic times. Given the pandemic-driven economic crisis, the Regional Food Bank will likely operate at a loss, most likely a larger loss than in 2017.

Smaller non-profit organizations will suffer even more deeply. For example, Food on Foot, which provides nutritional meals and assistance to homeless and needy men, women, and children, similarly spent 97.2% of their 2018 revenue providing services to residents of Los Angeles County.<sup>79</sup> Food on Foot delivers services on a much smaller scale than the Regional Food Bank. For example, on a weekly basis, Food on Foot distributed 150 meals to homeless and low-income County residents.<sup>80</sup> Its 2018 revenues were about \$1.575 million and its expenses were about \$1.533 million.<sup>81</sup> Still, the Regional Food Bank and Food on Foot have the same problem. Their budgets do not have the flexibility to respond to a surge in need, particularly in light of the already burdensome impact of COVID-19.

---

<sup>77</sup> LOS ANGELES REGIONAL FOOD BANK, ANNUAL REPORT 14 (2018), [https://www.lafoodbank.org/wp-content/uploads/J7786\\_Annual-Report\\_web\\_spreads.pdf](https://www.lafoodbank.org/wp-content/uploads/J7786_Annual-Report_web_spreads.pdf) (last visited Jun. 8, 2020).

<sup>78</sup> *Id.* at 2.

<sup>79</sup> FOOD ON FOOT, RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX (2018), [https://www.foodonfoot.org/wp-content/uploads/2019/06/990\\_2018.pdf](https://www.foodonfoot.org/wp-content/uploads/2019/06/990_2018.pdf) (last visited Jun. 8, 2020).

<sup>80</sup> *Id.*

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

Under the Final Rule, if County residents lose SNAP benefits and experience a greater need for services, they will turn to these non-profits for help. But with little room in their budgets to provide additional services, these organizations will struggle to meet the increased demand. As a result, the non-profits will either have to cut services, or turn needy people away. Neither is a satisfactory option.

#### **IV. The Final Rule is arbitrary and capricious.**

In enacting the Final Rule, the USDA entirely failed to consider important aspects of the problem addressed—food insecurity across the country. By eliminating waivers and cancelling accumulated discretionary exemptions, the USDA shifted a huge expense from the SNAP program to local jurisdictions. In doing so, it improperly failed to consider the burden that the Final Rule would have on local government budgets and county-level economies, in violation of the requirement that take into account “serious reliance interests” that have engendered due to “longstanding policies.” *Dep’t of Homeland Security v. Regents of the Univ. of Calif.*, 591 U.S. \_\_\_\_ (slip op., at 23-24) (2020) (quoting *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) and *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)); *see also Bus. Roundtable v. S.E.C.*, 647 F.3d 1144, at 1148-49 (D.C. Cir. 2011) (rules may be set aside when the issuing agency fails to undertake an appropriate cost-benefit analysis). Similarly, it improperly failed to consider the effect that its policies would have on non-profit safety net organizations.

Moreover, as set forth above, ABAWDs face greater barriers to employment than the general population.<sup>82</sup> The USDA summarily brushed aside research relating ABAWDs’ barriers

---

<sup>82</sup> *See also* Memo. Opinion, Dkt. No. 51, pp. 29-30 (citing 84 Fed. Reg. 66782 (Dec. 5, 2019)).



to employment. Rather than consider this important factor, the USDA simply referred to its “operational experience,” concluding that the Final Rule was appropriate. It undertook no analysis of these factors, because if it had, it would have come to a different decision. By ignoring the plain evidence that the Final Rule would disproportionately affect these vulnerable populations, the USDA violated the Administrative Procedure Act.

### **CONCLUSION**

The Final Rule imposes tremendous harm on amici and other local jurisdictions, their residents, and safety net service providers. The failure to consider these important facts violated the Administrative Procedure Act. For these reasons, amici respectfully request that this Court grant Plaintiffs’ Motions for Summary Judgment.

Dated: July 8, 2020

Respectfully submitted,

/s/ Meaghan VerGow

Meaghan VerGow  
D.C. Bar No. 977165  
O'MELVENY AND MYERS LLP  
1625 Eye Street, NW  
Washington, DC 20006  
Telephone: (202) 383-5504  
Fax: (202) 383-5414

Mary C. Wickham

*County Counsel*

Scott Kuhn

*Assistant County Counsel*

Jennifer Lehman

*Assistant County Counsel*

Cesar del Peral

*Senior Deputy County Counsel*

Shawn Luna

*Deputy County Counsel*

Katherine G. McKeon

*Deputy County Counsel*

LOS ANGELES COUNTY OFFICE OF THE COUNTY  
COUNSEL

500 West Temple Street

Los Angeles, California 90012-2713

*Counsel for Amicus Curiae County of Los Angeles,  
California*

**LIST OF AMICI CURIAE**

County of Alameda, California	City of Gary, Indiana
County of King, Washington	City of Los Angeles, California
County of Los Angeles, California	City of Oakland, California
County of Monterey, California	City of Saint Paul, Minnesota
County of Travis, Texas	City and County of San Francisco, California
City of Albuquerque, New Mexico	City of Seattle, Washington
City of Austin, Texas	City of South Bend, Indiana
City of Baltimore, Maryland	California State Association of Counties
City of Detroit, Michigan	

**ADDITIONAL COUNSEL FOR AMICI CURIAE**

DONNA R. ZIEGLER  
County Counsel in and for the  
County of Alameda, California  
1221 Oak Street, Suite 450  
Oakland, CA 94612  
*Attorney for the County of Alameda,  
California*

DANA P. MOORE  
Acting City Solicitor, Baltimore City Law  
Department  
100 N. Holliday Street, Suite 101  
Baltimore, MD 21146  
*Attorney for Mayor and City Council of  
Baltimore*

HOWARD PHILLIP SCHNEIDERMAN  
Senior Deputy Prosecuting Attorney  
King County Prosecuting Attorney's Office  
516 – 3rd Avenue, W400  
Seattle, WA 98104-2388  
*Attorney for the County of King, Washington*

LAWRENCE GARCIA  
ELI SAVIT  
2 Woodward Avenue  
Detroit, MI 48226  
*Attorneys for the City of Detroit, Michigan*

LESLIE J. GIRARD  
County Counsel  
SUSAN K. BLITCH  
Assistant County Counsel  
WILLIAM LITT  
Deputy County Counsel  
168 West Alisal Street, 3rd Floor  
Salinas, CA 93901  
*Attorneys for the County of Monterey,  
California*

RODNEY POL, JR.  
City Attorney  
City of Gary, IN  
401 Broadway, Suite 104  
Gary, IN 46402  
*Attorney for the City of Gary, Indiana*

DAVID A. ESCAMILLA  
Travis County Attorney  
P. O. Box 1748  
Austin, Texas 78767  
*Attorney for the County of Travis, Texas*

MICHAEL N. FEUER  
City Attorney  
City of Los Angeles  
200 N. Main Street, Suite 800  
Los Angeles, CA 90012  
*Attorney for City of Los Angeles, California*

ESTEBAN A. AGUILAR, JR.  
Albuquerque City Attorney  
One Civic Plaza NW  
4th Floor, Room 4072  
Albuquerque, NM 87102  
*Attorney for the City of Albuquerque, New  
Mexico*

BARBARA J. PARKER  
City Attorney for the City of Oakland  
One Frank H. Ogawa Plaza, 6th Floor  
Oakland, CA 94612  
*Attorney for the City of Oakland, California*

ANNE L. MORGAN  
City Attorney  
P.O. Box 1546  
Austin, Texas 78701-1546  
*Attorney for the City of Austin, Texas*

LYNDSEY M. OLSON  
City Attorney, City of Saint Paul  
400 City Hall and Court House  
15 West Kellogg Boulevard  
Saint Paul, Minnesota 55102  
*Attorney for the City of Saint Paul, Minnesota*

DENNIS J. HERRERA  
City Attorney  
City Hall Room 234  
One Dr. Carlton B. Goodlett Pl.  
San Francisco, CA 94102  
*Attorney for the City and County of San Francisco*

STEPHANIE STEELE  
Corporation Counsel  
City of South Bend  
227 W. Jefferson Blvd. Suite 1200S  
South Bend, IN 46601  
*Attorney for the City of South Bend, Indiana*

PETER S. HOLMES  
Seattle City Attorney  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7097  
*Attorney for the City of Seattle, Washington*

JENNIFER B. HENNING  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814-3941  
*Attorney for the California State Association of Counties*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

DISTRICT OF COLUMBIA, *et al.*,  
*Plaintiffs*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, *et al.*,  
*Defendants.*

Case No. 1:20-cv-119-BAH

BREAD FOR THE CITY, *et al.*,  
*Plaintiffs*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, *et al.*,  
*Defendants.*

Case No. 1:20-cv-127-BAH

**DECLARATION OF LASHONDA DIGGS IN SUPPORT OF BRIEF OF AMICI  
CURIAE 16 COUNTIES AND CITIES, AND THE CALIFORNIA STATE  
ASSOCIATION OF COUNTIES, IN SUPPORT OF PLAINTIFFS' MOTIONS FOR  
SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, LaShonda Diggs, declare as follows:

1. I am over the age of eighteen (18) years. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I am the Division Chief of the CalFresh and General Relief Divisions for the Los Angeles County Department of Public Social Services ("DPSS"). I have held this position since January, 2011. Prior to this position, I served as the Director of DPSS' General Relief Program.

3. As Division Chief of the CalFresh and General Relief Divisions, I am responsible for overseeing policy development, maintenance and implementation of the CalFresh, General

Relief, Cash Assistance Program for Immigrants, and General Relief Opportunities to Work Programs in accordance with applicable local and federal law. Therefore, I have reviewed and am familiar with the applicable local and federal law pertaining to the Supplemental Nutrition Assistance Program ("SNAP"), known in California as CalFresh.

4. I am aware that in December, 2019, the federal government issued a final rule "Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents" 84 Fed. Reg. 66,782 (Dec. 5, 2019) (the "Final Rule"). I have reviewed the Final Rule and am aware of its direct implications on the administration SNAP/CalFresh. I understand that this lawsuit challenges the Final Rule.

5. Food insecurity remains a major threat to the health and wellbeing of millions of low-income households. The Final Rule will have a significant impact in Los Angeles County, where the Able-Bodied Adults Without Dependents ("ABAWD") population is approximately 389,335.

6. Los Angeles County estimates that 130,000 ABAWDs fall into the following groups: racial and ethnic minorities, women, homeless individuals, and formerly-incarcerated individuals.

7. Los Angeles County estimates that 17,000 ABAWDs are former foster youth or homeless youth (ages 18-24).

8. CalFresh participants who are employed tend to hold low-paying jobs, often on a part-time basis with irregular schedules and no guarantee of 20 hours of work per week. Los Angeles County estimates that 149,044 ABAWDs are currently unemployed, or employed less than 20 hours per week.

9. Los Angeles County estimates that 149,341 ABAWDs will no longer be exempt from the CalFresh work requirements. Los Angeles County estimates that implementation of the Final Rule will result in 127,000 ABAWD participants being at risk of losing their CalFresh benefits.

10. Los Angeles County estimates that the loss of CalFresh benefits by these 127,000 ABAWDs will result in an aggregate loss of approximately \$24,638,000 in monthly CalFresh benefits for the County.

11. Los Angeles County estimates that 61,534 ABAWDs anticipated to lose CalFresh benefits are identified as chronically homeless.

12. Los Angeles County provides employment and training services through the General Relief Opportunities for Work ("GROW") program. GROW currently serves approximately 40,000 people.

13. To accommodate the estimated 149,341 ABAWDs that will no longer be exempt from the CalFresh work requirements, the GROW program would need to more than quadruple in size, from 40,000 to 189,341 participants, to handle the increased demand for services.

14. State and local jurisdictions share equally with the federal government in the large administrative costs of the SNAP program. In California, the local share is paid 70% by the state and 30% by the counties. In Los Angeles, the administrative costs of the SNAP program for 2019-20 exceed \$83 million.

15. Los Angeles County will need to spend additional funds on informing potentially impacted beneficiaries of the policy change, screening and tracking beneficiaries as they move on and off CalFresh benefits. Los Angeles County will need to train staff and increase administrative capacity in the form of personnel and data systems to collect information required

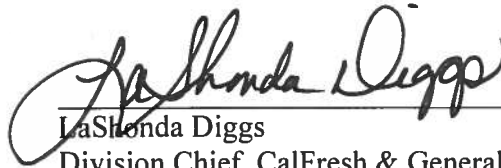


by the federal government. California has required individual counties to mail informational notices to all impacted customers; to date, Los Angeles County anticipates spending \$82,137.55 simply to provide this notice. In addition, Los Angeles County has spent approximately \$70,000 in connection with pre-deployment costs to train all affected staff on implementation of the Final Rule. The full cost for training is unknown at this time given logistical uncertainties surrounding the amount and duration of training sessions, and the number of available trainers.

16. Los Angeles County estimates that its annual healthcare costs for the 127,000 ABAWDs anticipated to lose CalFresh benefits would increase by approximately \$178,943,000.

I declare under penalty of perjury that the foregoing is true and correct and of my own personal knowledge.

Executed on July 7, 2020, at Industry, CA.



LaShonda Diggs

Division Chief, CalFresh & General Relief

Los Angeles County Department of Public  
Social Services

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, *et al.*,  
*Plaintiffs*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, *et al.*,  
*Defendants.*

Case No. 1:20-cv-119-BAH

BREAD FOR THE CITY, *et al.*,  
*Plaintiffs*

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, *et al.*,  
*Defendants.*

Case No. 1:20-cv-127-BAH

**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION OF THE COUNTY OF LOS ANGELES, CALIFORNIA AND 15 ADDITIONAL COUNTIES AND CITIES, AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES, TO FILE *AMICI* BRIEF**

Upon consideration of the unopposed motion to file an *amici* brief and the record as a whole, this Court confirms that the County of Los Angeles, California and 15 additional counties and cities, and the California State Association of Counties, may file an *amici* brief and hereby GRANTS the motion.

SO ORDERED this \_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
HON. BERYL A. HOWELL  
Chief Judge