

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

DISTRICT OF COLUMBIA, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF AGRICULTURE,  
*et al.*,

Defendants.

Civil Action No. 20-cv-119 (BAH)

Chief Judge Beryl A. Howell

BREAD FOR THE CITY, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF AGRICULTURE,  
*et al.*,

Defendants.

**BRIEF OF IMPACT FUND, WESTERN CENTER ON LAW & POVERTY, AND 27  
ADDITIONAL CALIFORNIA LEGAL AND ADVOCACY ORGANIZATIONS  
AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS**

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California Association of Food Banks

California Food Policy Advocates

Children's Defense Fund-California

Coalition of California Welfare Rights  
Organizations

Community Legal Aid SoCal

East Bay Community Law Center

Family Violence Appellate Project

Food Bank of Contra Costa and Solano

FreeFrom

Homeless Action Center

The Insight Center

Larkin Street Youth Services

Law Foundation of Silicon Valley

Lawyers' Committee for Civil Rights of  
the San Francisco Bay Area

Legal Aid Foundation of Los Angeles

Legal Aid Society of San Mateo County

Legal Services for Prisoners with Children

Mazon: A Jewish Response to Hunger

Mental Health Advocacy Services

The Public Interest Law Project

Public Law Center

Root & Rebound

Rubicon Programs

San Diego Hunger Coalition

Watsonville Law Center

Young Invincibles

**DISCLOSURE STATEMENT**

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**

	Page
TABLE OF CONTENTS.....	iii
Table of Authorities .....	iv
INTEREST OF AMICI CURIAE.....	1
INTRODUCTION .....	1
ARGUMENT .....	3
I. CONGRESS REAUTHORIZED THE CONTINUATION AND CARRYOVER OF DISCRETIONARY EXEMPTIONS AS UTILIZED BY USDA AND THE STATES IN THE 2018 FARM BILL.....	3
A. Congress Created Discretionary Exemptions and Permitted Their Carryover to Provide Necessary Flexibility to States Combating Hunger.....	3
B. The 2018 Bipartisan Compromise Retained the States’ Ability to Carry Over Unused Discretionary Exemptions “Consistent with Current Law”.....	6
C. USDA’s Rule Is Intended to Override the Considered Actions of Congress .....	9
II. USDA’S RULE IGNORES THE STATUTORY LANGUAGE AND CONGRESSIONAL INTENT .....	11
A. The Rule Eliminating Carryover of Discretionary Exemptions Is Contrary to the Statutory Text.....	13
B. Congress’s Detailed Review and Affirmative Preservation of the Discretionary Exemption Carryover Provisions Demonstrate Its Intent .....	16
III. EFFECTIVE MANAGEMENT OF DISCRETIONARY EXEMPTIONS IS CRITICAL TO CALIFORNIA’S FIGHT AGAINST HUNGER.....	19
A. California Should Not Be Penalized for Its Measured Use of Discretionary Exemptions .....	19
B. Discretionary Exemptions Will Serve an Important Role Preventing Hunger in the Current Economic Disaster .....	22
CONCLUSION.....	25
APPENDIX.....	APP-1

**TABLE OF AUTHORITIES**

	Page(s)
<u>Cases</u>	
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## INTEREST OF AMICI CURIAE<sup>1</sup>

Amici curiae Impact Fund, Western Center for Law and Poverty, and twenty-seven additional legal and advocacy organizations serve low-income people in California that depend on the Supplemental Nutrition Assistance Program (SNAP) for critical food and nutritional assistance.<sup>2</sup> As such, Amici share an interest in the final Rule implemented by the United States Department of Agriculture in December 2019, titled “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) (Rule). Amici agree with Plaintiffs that the entire rule is unlawful, but write separately to address its changes to statutory provisions on discretionary exemptions, which are of particular concern in California.

## INTRODUCTION

Formerly known as the Food Stamp Program, SNAP is the country’s largest anti-hunger program, providing critical non-cash nutritional support to qualifying low-income households. SNAP is one of the most successful, efficient, and cost-effective federal programs; it currently prevents tens of millions of Americans<sup>3</sup> from experiencing the long and short-term harm of hunger. Until recently, the Executive Branch expressed great satisfaction with the program. In May 2017, Secretary Perdue described SNAP as “a very important, effective program,” and stated that “as far as I am concerned, we have no proposed changes” because “[y]ou don’t try to

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<sup>1</sup> All parties have consented to the filing of this brief. No party’s counsel authored this brief in whole or in part. No party, party counsel, or person other than the amici curiae or their counsel contributed money that was intended to fund this brief’s preparation or submission.

<sup>2</sup> Additional information about each Amicus is set forth in the Appendix.

<sup>3</sup> See U.S. Dep’t of Agric., Supplemental Nutrition Assistance Program (June 12, 2020), <https://fns-prod.azureedge.net/sites/default/files/resource-files/34SNAPmonthly-6.pdf>.

fix things that aren't broken.”<sup>4</sup>

Yet Secretary Perdue soon reversed course, and USDA issued the Rule implementing significant changes to SNAP that Congress had refused to adopt. Starting in early 2018, the Executive Branch publicly endorsed—but failed to convince Congress to enact—amendments to the Food and Nutrition Act in the Agricultural Improvement Act of 2018 (also known as the Farm Bill), which governs SNAP. These amendments sought to curtail statutory provisions protecting adults subject to SNAP's work requirement from losing food assistance if they fail to comply with the work requirement because of external circumstances. After Congress rejected the amendments, President Trump announced that the U.S. Department of Agriculture would unilaterally implement them.

One of the changes Congress rejected in the 2018 Farm Bill affected “discretionary exemptions,” individual one-month extensions of the three-month benefit time limit imposed on those classified as Able-Bodied Adults Without Dependents (ABAWDs). Enacted in 1997 at 7 U.S.C. § 2015(o)(6) and subsequently reauthorized, discretionary exemptions play a vital role in mitigating the unintended consequences of SNAP's work requirement. They permit states to give those SNAP recipients with extenuating circumstances additional time to find jobs or qualify for statutory exemptions. Discretionary exemptions serve a particularly critical role in times of crisis, like the current COVID-19 pandemic, preventing hunger among vulnerable communities while boosting a state's economic recovery. The House version of the 2018 Farm Bill sought to eliminate the longstanding ability of states to “carryover” unused discretionary exemptions to later fiscal years, but the Senate version kept it intact. The Joint Conference

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<sup>4</sup> *State of the Rural Economy: Secretary of Agriculture Sonny Perdue: Hearing Before the H. Comm. Agric.*, 115th Cong. 26 (2017) (statement of Secretary Perdue), [https://republicans-agriculture.house.gov/uploadedfiles/115-06\\_-\\_25545.pdf](https://republicans-agriculture.house.gov/uploadedfiles/115-06_-_25545.pdf).

Committee that convened to reconcile the versions subsequently agreed to maintain the current carryover provision so that states can “continue to accrue exemptions and retain any carryover exemptions from previous years.”

USDA’s new Rule purports to end the unlimited carryover of exemptions and eliminate states’ existing banks of exemptions. In doing so, the Rule curtails the discretion that Congress gave to states to manage their exemptions in a long-term manner that best serves the individuals who most need them. The Rule is bafflingly shortsighted. Its “use it or lose it” mentality incentivizes states to exhaust their annual allotment of exemptions each year, rather than conserving exemptions to help protect their most vulnerable citizens in a crisis. The agency ignored the plain language of the statute, Congress’s assent to the provisions through its continual reauthorization of the relevant language, and the effect of the change on states’ ability to respond to future crises. The Rule is contrary to law and congressional intent.

Amici are aware that the Court ruled previously that the States were unlikely to succeed on the merits with regard to their challenge to USDA’s interpretation of 7 U.S.C. § 2015(o)(6). However, Amici aim to provide a more complete understanding of this issue, which is crucial to preserving SNAP as a necessary lifeline for vulnerable communities.

## **ARGUMENT**

### **I. CONGRESS REAUTHORIZED THE CONTINUATION AND CARRYOVER OF DISCRETIONARY EXEMPTIONS AS UTILIZED BY USDA AND THE STATES IN THE 2018 FARM BILL**

#### **A. Congress Created Discretionary Exemptions and Permitted Their Carryover to Provide Necessary Flexibility to States Combating Hunger**

In 1996, Congress amended the Food and Nutrition Act and imposed a strict work requirement on SNAP recipients deemed to be ABAWDs. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 824, 110 Stat. 2105, 2323

(1996) (codified as amended at 7 U.S.C. § 2015(o)); *see also* 7 C.F.R. § 273.24 (“Time limit for able-bodied adults”). To be eligible for more than three months of benefits in a three-year period, those classified as ABAWDs must work at least twenty hours per week on average or participate in a qualifying state employment and training or workfare program for at least twenty hours per week on average. 7 U.S.C. § 2015(o)(2). Recognizing that the ABAWD time limit should not be used to punish people for not working when few jobs are available, the 1996 law gave states the authority to seek waivers of the time limit for areas with an unemployment rate over 10 percent or lacking a sufficient number of jobs to provide employment. § 824(a), 110 Stat. at 2323 (codified as amended at 7 U.S.C. § 2015(o)(4)).

Area waivers cannot, however, address individual cases or sudden crises in areas subject to the ABAWD time limit, where the three-month limit on benefits may unduly punish individual recipients. To help ensure that the ABAWD time limit does not stop assistance for those who are unable to work, one year later, Congress created discretionary exemptions in the Balanced Budget Act of 1997. Pub. L. No. 105-33, § 1001, 111 Stat. 251, 251-52 (1997) (codified as amended at 7 U.S.C. § 2015(o)(6)). Specifically, Congress permitted states to “provide an exemption from the requirements . . . for covered individuals.” 7 U.S.C. § 2015(o)(6)(B). A “covered individual” is defined as any individual eligible for or receiving SNAP benefits who would otherwise be required to satisfy the work requirement and exceeded the statutory three-month time limit. *Id.* § 2015(o)(6)(A)(ii). Congress did not impose any additional qualifying conditions for states to certify before issuing discretionary exemptions to covered individuals. *See id.*

Congress originally allowed states to provide discretionary exemptions up to 15 percent of the state’s SNAP population subject to the ABAWD time limit. 7 U.S.C. § 2015(o)(6)(D)

(1997), amended by 7 U.S.C. § 2015(o)(6)(D) (2018) (lowering the allotment to 12 percent of the state's SNAP population subject to the ABAWD time limit from fiscal year 2020 onward). The Food and Nutrition Act provides that, if a state does not use all of its allotted discretionary exemptions by the end of the fiscal year, the Secretary must permit the state to carry over the balance to the following year; if a state uses more than its allotment, the difference is deducted from the subsequent year's allotment. *See* 7 U.S.C. § 2015(o)(6)(G).

USDA first issued guidelines explaining the calculation and use of discretionary exemptions adopted by Congress in a September 3, 1999 interim rule. Food Stamp Program: Food Stamp Provisions of the Balanced Budget Act of 1997, 64 Fed. Reg. 48,246 (Sept. 3. 1999) (“interim rule”). In the interim rule, USDA recognized that “[t]he law does not prescribe how the State agencies shall use the exemption authority,” and “[s]tate agencies may apply the exemptions as they deem appropriate.” *Id.* at 48,248. The agency further recognized that the statute did not contain any expiration for the exemptions; “[t]herefore, if this level of exemptions is not used by the end of the fiscal year, the State may carry over the balance.” *Id.* at 48,249. USDA's conclusion was consistent with the statutory text and with Congress's intent to give states maximum flexibility to use exemptions, as the states are best placed to evaluate food needs in their communities.

USDA did not receive any comments in opposition to the 1999 interim rule provisions regarding discretionary exemptions, and they were adopted with minor changes on June 19, 2002. Food Stamp Program: Work Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and Food Stamp Provisions of the Balanced Budget Act of 1997, 67 Fed. Reg. 41,589, 41,602-03 (June 19, 2002) (enacted at 7 C.F.R. § 273.24(g)). Congress reauthorized SNAP without altering the discretionary exemption

provisions in 2002 (while the interim rule was in place), 2008, and 2014.<sup>5</sup> During this time, many states used their discretionary exemptions judiciously and preserved unused exemptions for later use. These accruals strengthened states' ability to respond quickly to an increased need for SNAP because of a sudden, widespread crisis, such as the unexpected hardships triggered by the 2008 Great Recession.<sup>6</sup>

**B. The 2018 Bipartisan Compromise Retained the States' Ability to Carry Over Unused Discretionary Exemptions "Consistent with Current Law"**

The Food and Nutrition Act, 7 U.S.C. § 2011 et seq., has been reauthorized approximately every five years through the enactment of Farm Bills since the early 1970s. The "Nutrition" title of the Farm Bill accounts for approximately three-quarters of the bill's total spending, so it is perhaps unsurprising that SNAP has frequently been a focus of Congressional debate.<sup>7</sup> The Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (the "2018 Farm Bill") was no exception.

On April 12, 2018, the 2018 Farm Bill was introduced in the House of Representatives as H.R. 2. H.R. 2 proposed far-reaching changes to the ABAWD time limit provisions of SNAP that President Trump enthusiastically endorsed,<sup>8</sup> but which proved to be among the most hotly debated issues and the primary impediment to congressional agreement on the Farm Bill. One

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<sup>5</sup> See generally Workforce Innovation and Opportunity Act of 2014, Pub. L. No. 113-128, 128 Stat. 1425 (2014); Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, 122 Stat. 923 (2008); Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (2002).

<sup>6</sup> See *Economic Linkages*, U.S. Dep't of Agric. (Aug. 20, 2019), <https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/economic-linkages/> (calling SNAP "one of the Nation's primary counter-cyclical government assistance programs" that "serv[es] as an automatic stabilizer to the economy.").

<sup>7</sup> Brief of U.S. House of Representatives as *Amicus Curiae* in Support of Plaintiffs at 2, *District of Columbia v. U.S. Dep't of Agric.*, No. 20-cv-00119-BAH (D.D.C. Jan. 28, 2020), ECF No. 16.

<sup>8</sup> See, e.g., Donald J. Trump (@realDonaldTrump), Twitter (May 17, 2018, 3:14 PM), <https://twitter.com/realdonaldtrump/status/997238932311068674> ("Tomorrow, the House will vote on a strong Farm Bill, which includes work requirements. We must support our Nation's great farmers!").



proposal sought to altogether eliminate states' ability to carry over unused discretionary exemptions from year to year, striking the relevant provision in its entirety. *See* H.R. 2, 115th Cong. § 4015(a)(1)(G) (2018). Another proposal sought to lower the number of discretionary exemptions from 15 percent to 12 percent of a state's ABAWD population, starting in fiscal year 2026. *Id.* The engrossed House bill included both proposals. On June 21, 2018, after the House passed H.R. 2 by a slim 213-211 margin, President Trump celebrated its passage, tweeting: "Farm Bill just passed in the House. So happy to see work requirements included. Big win for the farmers!"<sup>9</sup>

The Senate bill, S. 3042, was introduced on June 11, 2018. In contrast to H.R. 2, S. 3042 did not include any amendments to the discretionary exemption provisions, leaving the relevant provisions unchanged. *See* S. 3042, 115th Cong. § 4103 (2018). The Senate passed its version on June 28, 2018, by a vote of 86 to 11.

Congress convened a bipartisan, bicameral Joint Conference Committee to reconcile the substantial differences between the two bills and reach a compromise agreement.<sup>10</sup> While the Conference Committee deliberated, President Trump continued to advocate adoption of the House-proposed changes to the SNAP work requirements.<sup>11</sup> After three months of debate, the

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<sup>9</sup> Donald J. Trump, @realDonaldTrump, Twitter (Jun. 21, 2018 1:46 PM), <https://twitter.com/realDonaldTrump/status/1009900306694656002>.

<sup>10</sup> The party leadership of both Houses appointed the Conference Committee, which included five Republican Senators (including Majority Leader Mitch McConnell), four Democratic Senators, twenty-nine Republican House Members, and eighteen Democratic House Members, most with Agriculture Committee experience. *See Senate and House Ag Committee Leaders: Farm Bill Conference Public Meeting Sept. 5*, U.S. Senate Comm. on Agric., Nutrition & Forestry (Aug. 22, 2018), <https://www.agriculture.senate.gov/newsroom/rep/press/release/senate-and-house-ag-committee-leaders-farm-bill-conference-public-meeting-sept-5>.

<sup>11</sup> For example, on August 2, 2018, President Trump tweeted: "When the House and Senate meet on the very important Farm Bill ... hopefully they will be able to leave the WORK REQUIREMENTS FOR FOOD STAMPS PROVISION that the House approved. Senate should go to 51 votes!" Donald J. Trump, @realDonaldTrump, Twitter (Aug. 2, 2018, 11:57 AM), <https://twitter.com/realdonaldtrump/status/1025093306664009728>.

Conference Committee reached agreement and issued its Report on December 10, 2018, explaining the terms of its compromise agreement. Agriculture Improvement Act of 2018, H.R. Rep. No. 115-1072 (2018) (Conf. Rep.). Regarding discretionary exemptions, the Conference Committee enacted H.R. 2's reduction in the number of discretionary exemptions from 15 percent to 12 percent of each state's ABAWD population. *Id.* at 146. The Committee declined to adopt H.R. 2's more dramatic change, eliminating paragraph 7 U.S.C. § 2015(o)(6)(G), which provides for the indefinite carryover of unused discretionary exemptions. *See id.* at 145-46 (not adopting the House revision striking former subparagraph (F), titled "Exemption Adjustments," but redesignating it as subparagraph (G) to accommodate the new amendment reducing the number of exemptions). In doing so, the Committee recognized (*id.* at 616 (emphasis added)):

[N]either the Department nor Congress can enumerate every ABAWD's situation as it relates to possible exemption from the time limit, and subsequently, the work requirement. States will maintain the ability to exempt up to 12% of their SNAP population subject to the ABAWD work requirements, down from 15%, *and continue to accrue exemptions and retain any carryover exemptions from previous years, consistent with current law.* 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.

The Conference Report's bipartisan compromise garnered 369 votes in the House (with 47 votes opposed) and 87 in the Senate (with 13 votes opposed), more "aye" votes than any other Farm Bill in history. Congress passed the bill on December 12, 2018, as Public Law 115-334.

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As the Conference Committee convened for the first time on September 5, 2018, President Trump tweeted: "The Trump Economy is booming with help of House and Senate GOP. #FarmBill with SNAP work requirements will bolster farmers and get America back to work. Pass the Farm Bill with SNAP work requirements!" Donald J. Trump, @realDonaldTrump, Twitter (Sept. 5, 2018, 6:21 AM), <https://twitter.com/realdonaldtrump/status/1037329782671859712>.

On September 13, President Trump tweeted: "Senator Debbie Stabenow and the Democrats are totally against approving the Farm Bill. They are fighting tooth and nail to not allow our Great Farmers to get what they so richly deserve. Work requirements are imperative and the Dems are a NO. Not good!" Donald J. Trump, @realDonaldTrump, Twitter (Sept. 13, 2018, 10:56 AM), <https://twitter.com/realdonaldtrump/status/1040298233359200258>.

### C. USDA’s Rule Is Intended to Override the Considered Actions of Congress

President Trump signed the 2018 Farm Bill into law on December 20, 2018, praising the “bipartisan success” of the bill’s passage, saying, “I want to thank all of the people here, including the many Democrats who have really worked hard on this bill. They really have.”<sup>12</sup> But, despite this praise and having just signed the bill, President Trump immediately said that he had no intention of honoring the bargain Congress had struck. At the signing ceremony, he announced, “I have directed Secretary Perdue to use his authority under the law to close work requirement loopholes in the food stamp program,” asserting that “Sonny [Perdue] is able, under this bill, to implement them through regulation.” *Id.* The bill the President had just signed, however, provided no such authority to the Secretary.

The very same day that the President signed the 2018 Farm Bill, USDA announced that, at the President’s direction, it was issuing a proposed rule to “restore the [SNAP] system to what it was meant to be: assistance through difficult times, not lifelong dependency.”<sup>13</sup> USDA distributed the proposed rule and submitted it to the Federal Register for official publication. On December 20, 2018, Secretary Perdue also published an op-ed in *USA Today*, in which he described the 2018 Farm Bill as “a missed opportunity to improve work engagement for ABAWDs.”<sup>14</sup> He wrote that the President signed the bill only because he “knew that at the [USDA], which administers the SNAP program, we could fix the loopholes in the current waiver

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<sup>12</sup> President Donald Trump, Remarks by President Trump at Signing of H.R. 2, the Agriculture Improvement Act of 2018, *White House* (Dec. 20, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-h-r-2-agriculture-improvement-act-2018/>.

<sup>13</sup> Press Release No. 0277.18, U.S. Dep’t of Agric., USDA to Restore Original Intent of SNAP: A Second Chance, Not A Way of Life (Dec. 20, 2018), <https://www.usda.gov/media/press-releases/2018/12/20/usda-restore-original-intent-snap-second-chance-not-way-life>.

<sup>14</sup> Sonny Perdue, *New SNAP rules encourage productivity instead of poverty*, *USA Today* (Dec. 20, 2018), <https://www.usatoday.com/story/opinion/2018/12/20/usda-secretary-sonny-perdue-snap-benefit-reform-workers-welfare-column/2343066002/>.

process using the federal rule-making process.” *Id.* According to Secretary Perdue, “the rule addresses the behavior of some states to ‘bank’ exemptions to the waiver restrictions.” *Id.* Noting that the new rule would eliminate “large surpluses of exemptions, each one available for use to grant one ABAWD an additional month of benefits,” Secretary Perdue singled out California: “California, for example, has stockpiled some 800,000 exemptions over time, meaning it can exempt ABAWDs far into the future.” *Id.*

The Notice of Proposed Rulemaking appeared in the Federal Register on February 1, 2019. Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, 84 Fed. Reg. 980 (proposed Feb. 1, 2019) (to be codified at 7 C.F.R. pt. 273). According to USDA, the Proposed Rule would, among other things, “end the unlimited carryover and accumulation of ABAWD percentage exemptions.” *Id.* at 987. The Proposed Rule generated over 100,000 comments, nearly all of them critical. Commenters included states, scientists, public health officials, anti-hunger advocates, food banks, labor unions, and others. With regard to discretionary exemptions, the Center on Budget and Policy Priorities commented:

[T]he [Proposed Rule] proposes to eliminate the accrual of unused individual exemptions for more than one fiscal year. As a result, some individuals who might otherwise be exempted from the time limit would lose SNAP benefits and the program’s integrity would be undermined as states would be less able to judiciously exempt particularly vulnerable individuals.<sup>15</sup>

The Proposed Rule also received harsh criticism from Congress. In a February 2019 hearing, Senate Agriculture Committee Ranking Member Debbie Stabenow, a member of the Joint Conference Committee that drafted the final 2018 Farm Bill, addressed Secretary Perdue regarding the Proposed Rule:

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<sup>15</sup> Ctr. on Budget and Policy Priorities, Comment Letter on Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, RIN 0584-AE57 (Apr. 1, 2019), at 153.

Mr. Secretary, in the Farm Bill that the President signed into law, Congress decided not to make harmful changes to nutrition assistance. Unfortunately, this administration has proposed a partisan rule that makes changes to SNAP that were rejected by Congress and would take food assistance away from Americans struggling to find steady work. This proposal is an end-run around the law that would leave families hungry while doing nothing to connect people to long-term employment that we focused on in the Farm Bill.<sup>16</sup>

On March 28, 2019, during the comment period, a bipartisan group of forty-seven Senators sent a letter to Secretary Perdue.<sup>17</sup> Their letter raised “serious concerns” that “the proposed changes [to SNAP] would take food assistance away from Americans struggling to find stable employment while doing nothing to help them actually become permanently employed,” and urged him to “immediately withdraw this proposed rule.” *Id.* at 1, 4. The letter stated that the Proposed Rule “is contrary to Congressional intent, as evidenced by the passage of the Agriculture Improvement Act of 2018 (P.L. 115-334), which rejected similar harmful changes to SNAP and passed Congress by a historic [margin].” *Id.* at 1. The Senators declared that “this rule also directly contradicts Congressional direction related to . . . carry-over exemptions included in the 2018 Farm Bill Report . . . [that] explicitly directs the Department not to make the changes made in this rule.” *Id.* at 3. The letter made clear that “[t]he proposed rule’s elimination of unlimited carry-over exemptions blatantly disregards” congressional intent. *Id.*

## **II. USDA’S RULE IGNORES THE STATUTORY LANGUAGE AND CONGRESSIONAL INTENT**

Despite strong opposition, USDA published the final Rule on December 5, 2019. 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). Effective

<sup>16</sup> *Implementing the Agriculture Improvement Act of 2018: Hearing Before the S. Comm. on Agric., Nutrition & Forestry*, 116th Cong. (Feb. 28, 2019), <https://www.agriculture.senate.gov/hearings/implementing-the-agriculture-improvement-act-of-2018> (starting at 34:37).

<sup>17</sup> Letter from Sens. Stabenow et al. to the Hon. Sonny Perdue, Secretary of Agric. (March 28, 2019), <https://www.agriculture.senate.gov/imo/media/doc/19%20003%2028%20Letter%20to%20Perdue%20re%20ABAWD%20Rule.pdf>.

October 1, 2020, the final Rule (1) significantly limits the ability of states to carry over unused discretionary exemptions to future years; and (2) requires states that have used more than their previously allotted exemptions in the previous fiscal year to offset the negative balance by reducing new exemptions estimated in the subsequent fiscal year. *Compare* 7 C.F.R. § 273.24(h) (current rule) *with* 84 Fed. Reg. at 66,811-12 (revising 7 C.F.R. § 273.24(h)). As a result, on October 1, states will lose all discretionary exemptions carried over from years before the last fiscal year. *Id.*

In “Background on this Rulemaking,” USDA claims that the Rule “is setting a reasonable limit on the carryover of unused discretionary exemptions,” where Congress neither set a limit nor assigned the authority to establish one to the Secretary. 84 Fed. Reg. at 66,783. In contrast to the statute and USDA’s previous interpretation of it, the Rule obligates the Food and Nutrition Service to “adjust the number of exemptions available to a State agency based on the number of exemptions in effect in the State for the preceding fiscal year.” *Id.* at 66,811 (to be codified at 7 C.F.R. § 273.24(h)(2)). The agency will no longer make this adjustment based on the *total number* of exemptions available to the State for the previous fiscal year under 7 U.S.C. § 2015(o)(6)(G). Instead, the Rule states that if a State “did not use all of its exemption balance for the preceding fiscal year,” FNS will add to the State’s exemption balance for the current year only “*a portion of the unused exemptions not to exceed 12 percent of the covered individuals in the State estimated by FNS for the preceding fiscal year.*” *Id.* at 66,811-12 (to be codified at 7 C.F.R. § 273.24(h)(2)). As applied, this means that any unused discretionary exemptions can only be carried over for one year and eliminates any carryover balances that states may currently have accrued, because USDA will now ignore any available balance above the twelve percent threshold for the previous year when calculating the current year’s estimated discretionary

exemption balance. *See id.* at 66,803 (explaining that FNS “will limit or cap the amount that could be carried over to 12 percent of the covered individuals in the State for the preceding fiscal year,” and “states will no longer be able to “retain their existing accumulated discretionary exemptions past the end of FY2020.”) This is contrary to the statutory text.

**A. The Rule Eliminating Carryover of Discretionary Exemptions Is Contrary to the Statutory Text**

Although the Court earlier concluded that section 2015(o)(6)(G) of the Food and Nutrition Act could bear either the States’ or USDA’s revised interpretation of its discretionary exemption provisions, that is not the case. The statutory language is dense, but only the States’ interpretation of the text gives meaning to the complete paragraph governing discretionary exemptions, 7 U.S.C. § 2015(o)(6), which was enacted in 1997. The text of subparagraph (G) has not been amended since, despite being reauthorized multiple times, including by the 2018 Farm Bill. USDA’s 1999 interim rule, later promulgated in its 2001 rule, was the sole interpretation of this provision until USDA suddenly changed course in 2019.

Now, USDA argues that the term “such preceding fiscal year” refers *solely* to exemptions granted and used in the prior fiscal year. But the text of the statute, read in the context of the entire section, as it must be, indicates otherwise. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-33 (2000) (“The meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.”).

As the States have pointed out, the Food and Nutrition Act places no cap on the amount of carryover permitted to states, nor does the Act establish any expiration date for exemptions.<sup>18</sup> But in addition to the absence of these elements, the affirmative language of the statute can only

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<sup>18</sup> *See* State Plaintiffs’ Motion for Summary Judgment at 18, *District of Columbia v. U.S. Dep’t of Agric.*, No. 20-cv-00119-BAH (D.D.C. June 24, 2020), ECF No. 65.

be coherently read to mean that each state’s annual allotment of discretionary exemptions is a running tally, updated each fiscal year to reflect adjustments based on the difference between the State’s usage of exemptions in the previous fiscal year and the total number it had available in the previous fiscal year. This process necessarily reflects historical debits or credits from all previous years.

**Subparagraph (A)** (“Definitions”) refers to the discretionary exemptions provision (section 2015(o)(6)) as a single “paragraph.” 7 U.S.C. § 2015(o)(6)(A).

**Subparagraph (B)** makes the states’ use of exemptions generally “[s]ubject to subparagraphs (C)-(H),” which collectively prescribe how to calculate each state’s annual allotment of available exemptions.<sup>19</sup> *Id.* § 2015(o)(6)(B).

**Subparagraphs (C), (D), and (E)** each prescribe the baseline calculation of states’ allotments of exemptions for different fiscal years, “subject to” the provisions of other specifically identified subparagraphs. For example, subparagraph (E)—added by the 2018 Farm Bill—applies to fiscal years 2020 forward and is “[s]ubject to subparagraphs (F) through (H)”:

(E) SUBSEQUENT FISCAL YEARS. — *Subject to subparagraphs (F) through (H), for fiscal year 2020 and each subsequent fiscal year, a State agency may provide a number of exemptions such that the average monthly number of exemptions in effect during the fiscal year does not exceed 12 percent of the number of covered individuals in the State, as estimated by the Secretary under subparagraph (C), adjusted by the Secretary to reflect changes in the State’s caseload and the Secretary’s estimate of changes in the proportion of members of households that receive supplemental nutrition assistance program benefits covered by waivers granted under paragraph (4). Id. § 2015(o)(6)(E) (emphasis added).*

**Subparagraph (F)** requires the Secretary to adjust the annual allotments created by subparagraphs (C)-(E), based on a state’s actual caseload:

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<sup>19</sup> Subparagraph 7 U.S.C. § 2015(o)(6)(H) establishes reporting requirements for states and is not at issue here.



(F) CASELOAD ADJUSTMENTS.—The Secretary shall adjust the number of individuals estimated for a State under subparagraph (C), (D), or (E) during a fiscal year if the number of members of households that receive supplemental nutrition assistance program benefits in the State varies from the State’s caseload by more than 10 percent, as determined by the Secretary. *Id.* § 2015(o)(6)(F).

**Subparagraph (G)**, the provision at issue, then provides:

(G) EXEMPTION ADJUSTMENTS.—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*. *Id.* § 2015(o)(6)(G) (emphasis added).

Subparagraph (G) does not mirror subparagraph (F)’s specific reference to the baseline annual calculation made under “subparagraph (C), (D), or (E).” Instead, it refers to the number of exemptions “estimated for the State agency for such preceding fiscal year *under this paragraph*,” i.e., paragraph 2015(o)(6) in its entirety. *Id.* (emphasis added). This number must include any adjustments made in the previous year pursuant to subparagraph (G), which in turn reflects adjustments made in prior years in the cumulative total allocation. In other words, when subparagraph (G) is read in context of the whole paragraph (consistent with subparagraph (B)), it can *only* refer to the *total* number of exemptions *available* to a state in the prior year.

By imposing a cap on the number of exemptions that can be carried over to the next year, the Rule is structured as though subparagraph (G) mirrors subparagraph (F) to create a “blank slate” each year—i.e., as if subparagraph (G) relies on the baseline calculation made under “subparagraph (C), (D), or (E)” for the previous fiscal year. But it does not. Subparagraph (G) requires that USDA “shall” make the adjustment based on the number of exemptions estimated for the State for “preceding fiscal year under this paragraph”—*all of them*. Compare 84 Fed. Reg. at 66,811-12 (to be codified at 7 C.F.R. § 273.24(h)(2)(i)), *with* 7 U.S.C. § 2015(o)(6)(G). The Rule’s imposition of a cap has no statutory basis and directly contradicts the statute’s plain

terms, which *require* USDA to make adjustments based on actual usage (“the number of exemptions in effect”) subtracted from the state’s *running balance* of exemptions (as “estimated for the State agency for such preceding fiscal year under this paragraph”).

**B. Congress’s Detailed Review and Affirmative Preservation of the Discretionary Exemption Carryover Provisions Demonstrate Its Intent**

Even if a statute as initially drafted could have been interpreted in any other way, Congress has long since ratified USDA’s original interpretation of the text through its repeated reauthorization of the Act. “Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.” *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239-40 (2009) (quoting *Lorillard v. Pons*, 434 U.S. 575, 580 (1978)); *Nat’l Lead Co. v. United States*, 252 U.S. 140, 147 (1920) (“Congress is presumed to have legislated with knowledge of such an established usage of an executive department of the government.”); *see also United States v. Wilson*, 290 F.3d 347, 357 (D.C. Cir. 2002) (“[T]he Executive Branch’s interpretation of the law through its implementation colors the background against which Congress was legislating. Congress is presumed to be aware of established practices and authoritative interpretations of the coordinate branches.”). Congress was indeed aware of USDA’s interpretation and application of the carryover provision when it reauthorized the text without change in 2002, 2008, 2014, and 2018. Leaving the statute as written “effectively ratified” USDA’s “long-held position” regarding the interpretation of the statute to permit unlimited carryover of exemptions. *See Brown & Williamson*, 529 U.S. at 144.

Further, the legislative history of the 2018 Farm Bill offers specific evidence that, as part of a bipartisan compromise, Congress agreed to maintain the status quo on discretionary exemptions. The Conference Committee not only rejected the House proposal to delete the clause permitting unlimited carry over of exemptions, but expressly affirmed that “current law,”

i.e., consistent with USDA's longstanding interpretation of the statute, would be left in place: "States will ... continue to accrue exemptions and retain any carryover exemptions from previous years, *consistent with current law*." H.R. Rep. No. 115-1072, at 616 (emphasis added). Because the specific text at issue (subparagraph 2015(o)(6)(G)) was before Congress for reauthorization in 2018, this is not "postenactment legislative history" or a comment on the meaning of an earlier statute. While not a substitute for the statutory text, the Conference Committee Report reliably affirms congressional intent and agreement on the meaning of the statute. *See generally Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'") (citation omitted). Indeed, Conference Committee Reports are particularly helpful because they come at the end of the legislative process and report directly on the text of the final compromise bill and the terms of the bargain struck by Congress. *See, e.g., Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 835 (9th Cir. 1996) ("[A] congressional conference report is recognized as the most reliable evidence of congressional intent because it represents the final statement of the terms agreed to by both houses.") (quotation omitted); *see also In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 977 (9th Cir. 1999) ("When examining the legislative history, we first look to the conference report because, apart from the statute itself, it is the most reliable evidence of congressional intent."). As Justice Sotomayor recently opined in a concurring opinion:

Committee reports . . . are a particularly reliable source to which we can look to ensure our fidelity to Congress' intended meaning. Bills presented to Congress for consideration are generally accompanied by a committee report. Such reports are typically circulated at least two days before a bill is to be considered on the floor and provide Members of Congress and their staffs with information about "a bill's context, purposes, policy implications, and details," along with information

on its supporters and opponents. . . . Legislative history can be particularly helpful when a statute is ambiguous or deals with especially complex matters. But even when . . . a statute’s meaning can clearly be discerned from its text, consulting reliable legislative history can still be useful, as it enables us to corroborate and fortify our understanding of the text. Moreover, confirming our construction of a statute by considering reliable legislative history shows respect for and promotes comity with a coequal branch of Government.

For these reasons, I do not think it wise for judges to close their eyes to reliable legislative history—and the realities of how Members of Congress create and enact laws—when it is available.

*Digital Realty Tr., Inc. v. Somers*, 138 S. Ct. 767, 782-83 (2018) (Sotomayor, J., concurring) (internal citations omitted).

Here, the Conference Committee on the 2018 Farm Bill deliberated over hotly debated changes to the ABAWD work requirement, including the proposed changes to the calculation and use of discretionary exemptions. In the end, there was a bipartisan, bicameral agreement to leave subparagraph 2015(o)(6)(G) in place unchanged. In doing so, the Committee expressly invoked USDA’s then-current interpretation of the statute as the correct one. *See* H.R. Rep. No. 115-1072, at 616 (“States will . . . continue to accrue exemptions and retain any carryover exemptions from previous years, *consistent with current law*” (emphasis added)). The Conference Report together with the plain language of the statute are strong evidence that Congress intended and agreed to preserve the status quo. *See Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 200 (1974) (holding that where the conference committee has expressly declined to adopt proposed statutory language, its action “strongly militates against a judgment that Congress intended a result that it expressly declined to enact”).

The Conference Committee Report reflects the carefully considered, final terms of a bipartisan bargain. Congress’s reauthorization of the text as interpreted under then “current law” should be given significant weight, particularly given USDA’s blatant attempt to implement through rulemaking what Congress explicitly declined to enact.

### **III. EFFECTIVE MANAGEMENT OF DISCRETIONARY EXEMPTIONS IS CRITICAL TO CALIFORNIA’S FIGHT AGAINST HUNGER**

Discretionary exemptions play a crucial role in mitigating the risk of hunger in California. Alexis Carmen Fernández, Acting Chief of the CalFresh & Nutrition Branch of the California Department of Social Services, stated in January 2020 that “these discretionary exemptions ha[ve] been instrumental in providing food benefits in the six counties currently implementing the time limit, as many food insecure residents of these counties have been unable to secure the requisite number of hours of work per week, despite an economy that is improving overall.”<sup>20</sup> Discretionary exemptions will continue to play a critical role in California’s recovery from its current economic crisis sparked by the COVID-19 public health emergency.

Currently, the Rule requires that all unused discretionary exemptions (except for those allotted last year) expire on September 30, 2020, the end of this federal fiscal year. The loss of these exemptions will deprive California of a crucial tool for providing critical services to its ABAWD population—one that it relied on when it accrued, rather than expended, its discretionary exemptions. When the time comes, instead of having over 850,000 exemptions available to help its most vulnerable residents fend off hunger, California will have zero.<sup>21</sup>

#### **A. California Should Not Be Penalized for Its Measured Use of Discretionary Exemptions**

California limited its use of discretionary exemptions for years to reserve them in case of a future economic downturn or other significant event. There is ample evidence that Congress

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<sup>20</sup> Declaration of Alexis Fernández in Support of Plaintiffs’ Motion for Preliminary Injunction (“Fernández Decl. I”) ¶ 22, *District of Columbia v. U.S. Dep’t of Agric.*, No. 20-cv-00119-BAH (D.D.C. Jan. 16, 2020), ECF No. 3-5.

<sup>21</sup> *See* Declaration of Alexis Carmen Fernández in Support of Plaintiffs’ Motion for Summary Judgment (“Fernández Decl. II”) ¶ 13, *District of Columbia v. U.S. Dep’t of Agric.*, No. 1:20-cv-00119 (D.D.C. June 24, 2020), ECF No. 65 (“When California’s economy begins to recover and the ABAWD time limit is implemented in certain counties, there will be no discretionary exemptions to help those households that are slower to recover.”).

intended to provide states with complete freedom to manage and provide exemptions. During the initial enactment the discretionary exemptions provision in the Food and Nutrition Act, the House wrote, “If a state chooses to provide exemptions under this new rule, *it can do so in any way*, including defining categories of applicants and recipients who will be exempted, so long as it adheres to the 15% limit.” H.R. Rep. No. 105-149 (1997), at 499 (accompanying the Balanced Budget Act of 1997) (emphasis added).<sup>22</sup> The Conference Report accompanying the 2018 Farm Bill reiterated Congress’s intended flexibility for states to issue discretionary exemptions. H.R. Rep. No. 115-1072, at 616. Also, the 1998 interim rule accorded with congressional intent. The rule made clear that state agencies retained the sole authority to make decisions related to its exemptions allotments, and that “FNS has no discretion in implementing” them. Interim Rule, 64 Fed. Reg. at 48,248. It continued, “FNS recognizes that there are many ways a State agency may want to use the exemption authority” and “will allow State agencies maximum flexibility[.]” *Id.*; see also 67 Fed. Reg. at 41602 (final rule) (“All commenters agreed with allowing maximum flexibility in using the exemption.”).

Entering federal fiscal year 2020, California had accrued 866,894 discretionary exemptions.<sup>23</sup> The California Department of Social Services annually allocates a pro-rata share of discretionary exemptions to each county that is not covered by an area waiver of the ABAWD time limit. Before the Rule’s new area waiver provisions went into effect on April 1, 2020, six California counties applied the ABAWD time limit and administered the ABAWD work

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<sup>22</sup> The Conference Report accompanying the final bill offered no substantive changes or explanations to the discretionary exemptions provision. See H.R. Rep. No. 105-217 (1997) (Conf. Rep.) at 559-561, *reprinted in* 1997 U.S.C.C.A.N. 176, 179-81.

<sup>23</sup> Letter from Arpan Dasgupta, Food & Nutrition Serv., U.S. Dep’t of Agric., Supplemental Nutrition Assistance Program—Able Bodied Adults Without Dependents Percentage Exemption Totals for Fiscal Year 2020, tbl.1 (May 11, 2020), <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAP-ABAWDDiscretionaryExemptions-TotalsforFY2020.pdf#page=3>. Note that this total does not account for any exemptions used in fiscal year 2020. *Id.* at 1.

requirement; the remaining fifty-two counties did not because they qualified for area waivers.<sup>24</sup> Under the Rule's new area waiver provisions (effective April 1, 2020), California sought area waivers for only eighteen counties, leaving forty California counties to apply the ABAWD time limit and administer the ABAWD work requirement. These non-waived counties rely on discretionary exemptions to continue food assistance through SNAP (known in California as CalFresh) for people classified as ABAWDs who are unable to secure twenty hours of work or participation in an employment and training program due to extenuating circumstances.<sup>25</sup>

California Department of Social Services provides guidance to counties to develop their own eligibility criteria for exemptions and to determine the number of months of CalFresh eligibility that may be covered by discretionary exemptions.<sup>26</sup> The 2019 CalFresh Able-Bodied Adults Without Dependents (ABAWD) Time Limit Handbook recommends limiting the distribution of exemptions to “three per individual ABAWD per 36-month period” “[t]o prevent overutilization.” *Id.* at 29. It goes on to recommend that counties prioritize people classified as ABAWDs who received overissuances or erroneous benefit allotments, those who “make a special make an effort to satisfy the work requirement, but fall short on the number of required hours,” and those experiencing “special circumstances,” such as individuals re-entering their communities from prison or completing probation, with a criminal record, or who are exonerated; seasonal workers; participating families with children turning eighteen who were

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<sup>24</sup> The six California counties applying the ABAWD time limit before April 1, 2020, were Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara. One additional county, Napa, had a pending waiver request before USDA.

<sup>25</sup> California provides meaningful employment and training programs to approximately 85,000 SNAP recipients in thirty-seven of fifty-eight counties, Fernández Decl. I ¶ 8, yet this is not enough to serve all individuals who otherwise must satisfy the work requirement.

<sup>26</sup> Cal. Dep't of Soc. Servs., All County Letter No. 19-93, CalFresh Able-Bodied Adults Without Dependents Time Limit Handbook Version 2.0 (2019), [https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2019/19-93\\_ES.pdf](https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2019/19-93_ES.pdf), at 27-31.

previously considered dependents; and young people who are aging out of foster care or participating in a family reunification program. *Id.* at 29-30. The Department reiterated that its guidance was intended “to maximize utilization” of discretionary exemptions in accordance with the “broad discretion” provided to states. *Id.* at 31.

**B. Discretionary Exemptions Will Serve an Important Role Preventing Hunger in the Current Economic Disaster**

Discretionary exemptions will continue to be instrumental in California’s recovery from the current economic crisis caused by COVID-19. As a result of rapidly increasing unemployment rates—currently estimated at 16.3 percent in May—and the U.S. Department of Labor’s determination that California qualifies for Extended Unemployment Benefits, California applied for a statewide area waiver on June 2, 2020.<sup>27</sup> The request is currently pending. If California’s request is approved, it will not require its bank of discretionary exemptions for at least the next year and the entire reserve will expire in the first year of the most significant economic crisis since the Great Depression. These exemptions will allow the state to provide targeted nutritional support to its most vulnerable residents, aiding their economic recovery.

SNAP recipients have a dramatically higher rate of unemployment than the general public. In 2012, following the Great Recession, fifty-two percent of non-disabled adults<sup>28</sup>

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<sup>27</sup> Fernández Decl. II ¶ 9; *see* Press Release, Cal. Emp. Dev. Dep’t, California unemployment rate lowers slightly to 16.3 percent in May (June 19, 2020), <https://edd.ca.gov/newsroom/unemployment-june-2020.htm>.

<sup>28</sup> The study’s authors use the term “non-disabled adults” to refer to those who do not meet the strict criteria to receive disability benefits. These individuals may still have health impairments that limit their ability to work. Brynne Keith-Jennings & Raheem Chaudhry, Ctr. on Budget & Policy Priorities, *Most Working-Age SNAP Participants Work, But Often in Unstable Jobs* (2018), <https://www.cbpp.org/sites/default/files/atoms/files/3-15-18fa.pdf>, at 4 n.1



participating in SNAP were working in a typical month, meaning forty-eight percent were not working.<sup>29</sup> In contrast, the national U.S. jobless rate was about eight percent that same year.<sup>30</sup>

The heightened rate of unemployment among SNAP recipients is explained in part by the fact that, for many, SNAP provides food assistance during gaps in employment. Between fall 2009 and mid-2013, the largest proportion of non-disabled adult SNAP recipients participated in the program for less than twelve months, with nearly two-thirds participating in the program for less than twenty-four months.<sup>31</sup> During the same time period, the median length of non-disabled childless adult SNAP recipients was around eight months.<sup>32</sup>

In addition, many people classified as ABAWDs who are not working face challenges to full-time long-term employment, including unstable living situations, mental or physical limitations that limit their ability to work but are not sufficient to qualify for disability benefits, lack of access to reliable transportation, prior conviction histories, and caregiving responsibilities for parents, non-custodial children, or others.<sup>33</sup> Numerous comments submitted to USDA on the

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<sup>29</sup> *Id.* at 8 fig.3; see also Dorothy Rosenbaum & Ed Bolen, Ctr. on Budget & Policy Priorities, *SNAP Reports Present Misleading Findings on Impact of Three-Month Time Limit* 12 n.15 (2016) <https://www.cbpp.org/research/food-assistance/snap-reports-present-misleading-findings-on-impact-of-three-month-time> (“[U]npublished tabulations generated by CBPP from the Census Bureau’s 2004 Panel of the Survey of Income and Program Participation (SIPP) show employment rates for SNAP households with non-disabled childless adults as high as 50 percent in a typical month between 2004 and 2007.”).

<sup>30</sup> News Release, Bureau of Labor Statistics, U.S. Dep’t of Labor, Regional and State Unemployment: 2012 Annual Averages (Mar. 1, 2013, reissued Apr. 3, 2013) [https://www.bls.gov/news.release/archives/srgune\\_03012013.pdf](https://www.bls.gov/news.release/archives/srgune_03012013.pdf).

<sup>31</sup> Keith-Jennings & Chaudhry, *supra* note 28, at 12 fig.6.

<sup>32</sup> *Supplemental Nutrition Assistance Program: Hearings Before the Subcomm. on Nutrition of the H. Comm. on Agric.*, 114th Cong. (2015) 118-19, 119 fig. 3 (statement of Stephen J. Tordella, President, Decision Demographics) (evaluating SNAP recipients who entered the program between 2008-2012).

<sup>33</sup> Rosenbaum & Bolen, *supra* note 29, at 13-14.

Rule illustrated the heightened difficulties that many vulnerable social groups face in finding employment.<sup>34</sup>

When overall unemployment rates begin to decline, counties will begin to lose eligibility for area waivers and will be required to implement the ABAWD time limit. When they do, however, SNAP recipients will continue to face unemployment at much higher rates than the overall adult population. The program will be a lifeline for those who remain unemployed or struggling to maintain employment for an average of at least twenty hours per week. These are precisely the people that discretionary exemptions are designed to assist. The loss of discretionary exemptions will also hinder California's economic recovery at a critical juncture.<sup>35</sup>

The Rule illegally restricts the ability of the states like California to manage their use of discretionary exemptions by eliminating the carryover of unused discretionary exemptions for use in later fiscal years and by requiring that unused discretionary exemptions expire within two years. By USDA's own estimate, the overall Rule threatens the food security of hundreds of

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<sup>34</sup> See, e.g., Ctr. for Am. Progress, Comment Letter on Proposed Rule: Supplemental Nutrition Assistance Program (SNAP): Requirements for Able-Bodied Adults without Dependents RIN 0584-AE57 (Apr. 9, 2019), 5-8 (noting that the Rule would "disproportionately affect certain vulnerable communities" including "Rural communities . . . Black and Latinx Americans . . . People with Disabilities . . . People with Criminal Records . . . LGBTQ People . . . [and] Women"); Nat'l Network to End Domestic Violence, Comment Letter on Proposed Rule: Supplemental Nutrition Assistance Program (SNAP): Requirements for Able-Bodied Adults without Dependents RIN 0584-AE57 (Apr. 1, 2019), 3-4 (declaring that working domestic and sexual violence victims face difficulties meeting the work requirement because of "insufficient hours [in low wage positions], variable schedules, trauma and ongoing disruptions from an abusive partner"); see also, e.g., Am. Psych. Ass'n, Comment Letter on Advanced Notice of Proposed Rulemaking: Supplemental Nutrition Assistance Program (SNAP): Requirements and Services for Able-Bodied Adults Without Dependents, RIN: 0584-AE57 (Apr. 9, 2018), 2-3 (observing that many individuals with disabilities do not qualify for the statutory exemption, incarcerated individuals reentering the community and those who have been formerly incarcerated, non-custodial parents, youth aging out of foster care, and same-sex couples are more likely to face higher barriers to employment).

<sup>35</sup> According to USDA estimates, an increase of \$1 billion in SNAP benefits increases the gross domestic product by \$1.54 billion, generating an additional 13,560 jobs. Patrick Canning & Brian Stacy, U.S. Dep't of Agric., *The Supplemental Nutrition Assistance Program (SNAP) and the Economy: New Estimates of the SNAP Multiplier* (2019), <https://www.ers.usda.gov/webdocs/publications/93529/err-265.pdf?v=1321.3>, at iii.

thousands of people deemed to be ABAWDs because they live in areas that are no longer eligible for area waivers and can no longer access discretionary exemptions. 84 Fed. Reg. at 66,809. There is no logical, nonpunitive explanation for USDA's sudden change in position. The Rule is contrary to the plain language of the Food and Nutrition Act and congressional intent and is arbitrary and capricious, and must be set aside.

### CONCLUSION

For all of the foregoing reasons, Amici Impact Fund, Western Center on Law & Poverty, et al. request that the Court grant summary judgment in favor of Plaintiffs.

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Respectfully submitted,

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## APPENDIX

### List of Amici Curiae

The **Impact Fund** is a nonprofit legal foundation that provides strategic leadership and support for impact litigation to achieve economic, environmental, racial, and social justice. The Impact Fund provides funding, offers innovative training and support, and serves as counsel for impact litigation across the country. The Impact Fund has served as party or amicus counsel in a number of major civil rights cases before the U.S. Supreme Court and numerous Courts of Appeals, including cases challenging employment and housing discrimination, unequal treatment of women, people of color, people with disabilities, and LGBTQ people, and limitations on access to justice. Through its work, the Impact Fund seeks to use and support impact litigation to achieve social justice for all communities.

Founded in 1967, **Western Center on Law & Poverty** (“Western Center”) is the oldest and largest statewide support center for legal services advocates in California. Western Center represents California’s poorest residents in litigation to advance access to housing, health, public benefits, jobs and justice.

**Bay Area Legal Aid** (“BayLegal”) formed in 2000 when three Bay Area legal services organizations merged. Through its predecessor organizations, BayLegal has been serving low-income residents of the San Francisco Bay Area since 1966. BayLegal is the largest regional law firm serving the poor in its region, representing clients in over 10,000 cases a year. BayLegal provides free advice and representation in civil legal matters including public benefits, health care, immigration, domestic violence prevention, housing, and consumer protection. Through its representation of clients, Bay Area Legal Aid sees the ways in which poverty and food insecurity threaten the livelihood of the more than 1.2 million low-income residents of the San Francisco Bay Area.

The **California Association of Food Banks** (“CAFB”) is a leading statewide anti-hunger organization representing 42 member food banks, that in turn work with 6,000 local partners serving all 58 counties. CAFB is grounded in the value that food is a fundamental human right. We engage in state and federal administrative, budgetary, and legislative advocacy to advance our mission, which is to end hunger in California.

**California Food Policy Advocates** (“CFPA”) is a statewide policy and advocacy organization dedicated to improving the health and well-being of low-income Californians by increasing their access to nutritious, affordable food. For over twenty-five years, we have advocated for improvements in the operation of federal nutrition programs, including CalFresh, the state’s largest food assistance program, known federally as the Supplemental Nutrition Assistance Program (SNAP). Our organization pays very close attention to SNAP because the program plays a critical role in addressing hunger and food insecurity in California, and is the first line of defense against hunger for the majority of our low-income residents.

The Children Defense Fund’s Leave No Child Behind® mission is to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start and a Moral Start in life, and a successful passage to adulthood with the help of caring families and communities. As the state office of the national child advocacy organization, The **Children’s Defense Fund-California** (“CDF-CA”) champions policies and programs that ensure children have access to quality health and mental health care, lift children out of poverty, ensure an equitable education, and works to transform the youth justice system to focus on youth development and healing. For over twenty years, CDF-CA has advocated for the most vulnerable children and families in California who have been burdened with food security.

The **Coalition of California Welfare Rights Organizations** (“CCWRO”) is a statewide support center for California legal services organizations. CCWRO provides legislative, administrative and litigation assistance in the public benefits arena. For over thirty years, CCWRO’s focus has been on public benefits programs including CalFresh (SNAP) and the General Assistance/General Relief Programs.

The mission of **Community Legal Aid SoCal** is to provide civil legal services to low-income individuals and to promote equal access to the justice system through advocacy, legal counseling, innovative self-help services, in-depth legal representation, economic development and community education.

The **East Bay Community Law Center** (“EBCLC”) is a clinic of U.C. Berkeley School of Law, and the largest provider of free legal services in Alameda County, California. EBCLC’s Health & Welfare Practice, in particular, provides legal assistance to low-income individuals who receive public benefits, including CalFresh benefits. EBCLC seeks to ensure its clients have an opportunity to defend themselves as they strive to be more secure, productive, healthy, and hopeful.

**Family Violence Appellate Project** (“FVAP”) was founded in 2012 to ensure the safety and well-being of domestic violence survivors and their children by helping them to obtain effective appellate representation. FVAP is the only organization in California dedicated to appealing cases on behalf of low-and moderate-income domestic violence survivors and their children. Domestic violence often impacts survivors ability to seek and maintain employment, and flexibility within programs which allow them to stay safely separated from their abusers is necessary to prevent further abuse. For these reasons, domestic violence survivors need and benefit from discretionary exemptions.

The **Food Bank of Contra Costa and Solano** works to end hunger and increase access to nutritious food for low-income individuals and families through a comprehensive group of programs that combat hunger and its causes, serving approximately 1 in 8 people within Contra Costa and Solano Counties. The Food Bank also assists people experiencing food insecurity in evaluating their SNAP eligibility and applying for benefits, and through its advocacy work, the Food Bank educates the public and policymakers on long-term strategies to ensure universal access to affordable, nutritious foods. Public policy, including the proposed rule change, has an enormous impact on the amount of assistance needed in the community and the amount of resources that the Food Bank can distribute.

**FreeFrom** is a national non-profit based in L.A. creating pathways to financial security and long-term safety for survivors of domestic violence. Many survivors rely on SNAP to support themselves and their families as they begin to heal and recover after fleeing from abuse. As a result of economic abuse (which is present in 99% of domestic violence cases), survivors face unique challenges in securing employment. States' discretionary exemptions are therefore of critical importance to FreeFrom's client base.

The **Homeless Action Center** ("HAC") provides no-cost, barrier-free, culturally sensitive legal representation that makes it possible for homeless men and women to access the maze of social safety net programs that provide a pathway out of homelessness. Through HAC's legal assistance, clients obtain public benefits, health care, housing, a sustainable income and restored dignity.

**The Insight Center** is a national research and economic justice organization working to ensure that all people become and remain economically secure. For over 50 years, Insight has worked to shift inequitable power structures to ensure that all people can fully participate in the

economy regardless of their zip code, race, or gender. Through policy and data research, advocacy, and analysis, Insight addresses narratives and practices that have led to disproportionately high levels of incarceration, joblessness, and poverty for people of color, women, and Black Americans. Throughout the Bay Area, the State of California, and nationwide, Insight's policy and research advocates identify and implement solutions to address the intentional disinvestment, dehumanization, and exclusion of people of color from economic policy and opportunity.

**Larkin Street Youth Services** is San Francisco's largest nonprofit provider meeting the unique needs of youth experiencing homelessness. For more than 35 years, Larkin Street has built a continuum of services designed to help young people move beyond the street by making homelessness rare, brief, and one-time. Our continuum of care includes emergency, short- and long-term housing, education and employment services, and primary and behavioral healthcare. Our service model requires that young people first have their most basic needs met, so they can move beyond crisis and toward a sustainable future. Ensuring food security—like a safe place to sleep every night—is essential to achieving our mission.

The **Law Foundation of Silicon Valley** advances the rights of under-represented individuals and families throughout Santa Clara County and beyond via legal services, strategic advocacy, and educational outreach. The Law Foundation's clients include young adults aging out of foster care, people transitioning from jail, and adults with chronic health conditions. Our clients are disproportionately LGBT, African Americans, and other people of color who face additional barriers to employment due to discrimination and systemic racism. When Santa Clara County lost its ABAWD blanket waiver, it conducted extensive outreach to individuals impacted by the ABAWD rule by sending work reminder letters before the change and during each



countable month. Most beneficiaries qualified for exemptions. The county granted discretionary exemptions to everyone who did not respond before the end of their three countable months. Presumably, these individuals did not receive the mailings due to housing instability, did not understand the mailings, or faced other barriers to communicating with the county about their possible eligibility for an exemption such as lack of access to a phone or transportation. The fifteen percent waivers have been vital to ensure that the hardest to reach, and often most vulnerable members of our community, maintain access to food.

The **Lawyers' Committee for Civil Rights of the San Francisco Bay Area** ("LCCR") works to advance, protect and promote the legal rights of communities of color, and low-income persons, immigrants, and refugees. Assisted by pro bono attorneys, LCCR provides free legal assistance and representation to individuals on civil legal matters through direct services, impact litigation and policy advocacy. A substantial portion of our racial and economic justice work focuses on protecting the rights and wealth of unhoused, low-income, and communities of color who often rely on public benefits.

For 90 years, **Legal Aid Foundation of Los Angeles** ("LAFLA") has been the frontline law firm for low-income people in Los Angeles. Every year, LAFLA provides free, high-quality legal services to more than 100,000 people living in poverty across Greater Los Angeles. LAFLA is committed to promoting access to justice, strengthening communities, fighting poverty, and effecting systemic change through representation, advocacy, and community education. LAFLA's government benefits staff assists clients to access and maintain basic subsistence benefits and services they need to secure food, medical care, and housing.

**Legal Aid Society of San Mateo County** ("Legal Aid") has been the primary legal service provider for low-income and vulnerable residents in San Mateo County for over sixty

years. Legal Aid regularly assists residents who seek CalFresh benefits, California's version of SNAP benefits, some of whom are single adults without dependent children. Many of these single adults are classified as "able-bodied adults" even though they have a disability or other barrier that makes it difficult for them to compete successfully for available jobs.

**Legal Services for Prisoners with Children** ("LSPC") advocates for the civil rights and welfare of the currently and formerly incarcerated. Formerly incarcerated individuals are at a particular disadvantage when it comes to employment opportunities, both from social stigma as well as regulation. Expanded work requirements to qualify for benefits such as SNAP are likely to hit the formerly incarcerated community especially hard, rendering an already extremely impoverished and vulnerable population even more disadvantaged.

**MAZON: A Jewish Response to Hunger** is a national nonprofit organization based in Los Angeles, CA working to end hunger among people of all faiths and backgrounds in the U.S. For over 35 years, MAZON has been a national leader in identifying and assisting underserved and vulnerable populations who struggle with food insecurity, and has established itself as a leader in addressing food insecurity among veterans in America, a significant percentage of whom are Able-Bodied Adults without Dependents. MAZON's works in partnership with the Veteran's Administration and leading non-profit organizations serving veterans, such as Psych Armor, and the Council on Foundation's Veteran's Philanthropy Exchange to advance changes in policy and practice that will provide greater food security to veterans. MAZON's leadership has provided testimony to testified before Congress as an expert witness on the impact of new regulatory changes on to work requirements for those receiving SNAP and their impact on veterans. MAZON has a strong interest in ensuring that federal regulations governing federal nutrition assistance are lawful and effective.

**Mental Health Advocacy Services, Inc.** (“MHAS”) is a non-profit law firm dedicated to serving the legal needs of those with mental health disabilities. MHAS’ mission is to protect and advance the legal rights of children and adults with mental health disabilities to maximize autonomy, promote equality, and secure the resources these people need to thrive in the community. MHAS serves thousands of low-income individuals and families every year, many of whom rely on food stamp benefits.

The **Public Interest Law Project** (“PILP”) advances justice for low income people and communities by building the capacity of legal services organizations through impact litigation, trainings, and publications, and by advocating for low income community groups and individuals. Since 1996, PILP has provided crucial litigation and advocacy support to local legal services and public interest law programs throughout California. PILP envisions a world where all people have the housing, income, supportive services, food security, and health care that they need to live with dignity.

**Public Law Center** (“PLC”) is a 501(c)(3) legal services organization that has provided free civil legal services to low-income individuals and families across Orange County since 1981. PLC services encompass a range of substantive areas of law, including consumer, elder justice, family, immigration, housing, veterans, benefits, disability rights, and health law. Additionally, PLC provides legal assistance to local non-profits serving low-income individuals and low-income entrepreneurs. PLC’s staff and volunteers offer counseling, individual representation, community education, and strategic litigation and advocacy to challenge societal injustices.

**Root & Rebound** is a national nonprofit whose mission is to restore power and resources to the families and communities most harmed by mass incarceration through legal advocacy,

public education, policy reform, and litigation. Root & Rebound provides free legal and social services to people with conviction histories and those returning to the community from incarceration in California and South Carolina, and support and advocacy for justice-system impacted people and reentry services providers nationally. Due to immense barriers to employment, housing, family reunification, education, and financial wellness, many individuals with conviction histories rely on the social safety net to survive. By increasing barriers to food access, the government is placing the health and wellness of justice-system impacted families, disproportionately Black, Indigenous, Latinx, and other people of color, at great risk.

**Rubicon Programs** is a nonprofit organization serving Contra Costa and Alameda counties. The mission of Rubicon Programs is “to transform East Bay communities by equipping people to break the cycle of poverty,” primarily by helping individuals who are seeking to enter or re-enter the workforce, many of whom are formerly incarcerated people, with the ultimate goal of earning wages that permit self-sufficiency. As part of its work, Rubicon staff regularly assists eligible clients in enrolling in the SNAP program, and Rubicon is an accredited CalFresh Employment and Training provider. The proposed rule change will frustrate Rubicon’s mission by reducing the number of clients that it can help to successfully break the cycle of poverty and will eliminate crucial flexibility in the state’s ability to grant discretionary exemptions, which are essential to ensuring food security.

**San Diego Hunger Coalition** (“SDHC”) leads coordinated action to end hunger in San Diego County supported by research, education, and advocacy. A nonprofit, SDHC brings organizations across San Diego County together in the fight against hunger. According to our analysis, more than 500,000 residents do not have enough food for an active, healthy life. Each year, SDHC helps connect thousands of children, students, disabled persons, military

households, veterans, senior citizens and families facing temporary hardship to vital food assistance.

**Watsonville Law Center** (“WLC”) serves California’s rural Central Coast, serving primarily immigrant, limited-English proficient, women, Latinx, and rural clients who would be harmed by loss of their state’s right to carryover of discretionary exemptions. This community demands protection of its particular needs from its federal legislators, and would be especially harmed by the Executive’s intrusion into the legislative compromise negotiated in Congress.

**Young Invincibles** is a non-profit, non-partisan organization devoted to amplifying the voices of young adults in the political process and expanding economic opportunity for our generation. Young Invincibles’ most central belief is that all young adults should be afforded the same access to economic security, health and wellbeing, and equitable higher education. We are interested in this matter because for over a decade, Young Invincibles, locally in California and nationally in Washington, DC, has advocated for low-income young adults, specifically college students, who have been burdened with food insecurity.