

November 2006

Ten Years of Leftovers with Many Hungry Still Left Over: A Decade of Donations under the Bill Emerson Good Samaritan Food Donation Act

Jessica A. Cohen

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/sjsj>

Recommended Citation

Cohen, Jessica A. (2006) "Ten Years of Leftovers with Many Hungry Still Left Over: A Decade of Donations under the Bill Emerson Good Samaritan Food Donation Act," *Seattle Journal for Social Justice*: Vol. 5: Iss. 1, Article 23.

Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol5/iss1/23>

This Article is brought to you for free and open access by the Student Publications and Programs at Seattle University School of Law Digital Commons. It has been accepted for inclusion in Seattle Journal for Social Justice by an authorized editor of Seattle University School of Law Digital Commons.

Ten Years of Leftovers with Many Hungry Still Left Over: A Decade of Donations Under the Bill Emerson Good Samaritan Food Donation Act

Jessica A. Cohen¹

*I can't tell you how shocking it is that there are 31 million food insecure people in the richest, most abundant nation on earth—in a nation that next year will export \$51.5 billion in farm products—in a nation that throws out over a quarter of its food.*²

Despite the United States' great wealth, our country has one of the highest rates of poverty and hunger among industrialized nations.³ In the past decade, statistics show that the number of Americans threatened by hunger has increased to nearly thirty-eight million.⁴ Yet, the hungry (or those who are "food insecure") in the United States are not so because our nation lacks food—an average of one-fifth of food produced in America goes to waste.⁵

Food "waste" signifies the organic residues generated by the handling, storage, sale, preparation, cooking, and serving of foods.⁶ Food waste frequently means there is an abundance of food that is not consumed, including food that is thrown away by farmers in the field, farmer's markets, corporations, restaurants, commercial kitchens, and individual citizens.⁷ In the late 1990s, the United States Department of Agriculture (USDA) estimated that about ninety-six billion pounds of food, which comprises 27 percent of the 356 billion pounds of the edible food available for human consumption in the United States, were lost to human use by retailers, the foodservice industry, and consumers.⁸ Despite this large

amount of edible food that is thrown away, there are still large segments of the American population that are hungry. Individuals who are food insecure have been defined as having “limited or uncertain availability of nutritionally adequate foods, including involuntarily cutting back on meals, food portions or not knowing the source of the next meal.”⁹ Surprisingly, nearly 4 percent of all U.S. households were food insecure *with hunger*, meaning they were food insecure to the point that at least one household member was hungry.¹⁰

One way that individuals who are food insecure with hunger can access free or reduced price food is through emergency food facilities. These food facilities—food banks, soup kitchens, and community kitchens—receive most of their food from donations by businesses, including grocery stores, family-owned businesses, nonprofit agencies, and large corporations. While many corporations effortlessly donate their safe “leftover” food, many other corporations cite as an obstacle to food donation their fear of liability if their donation injured its recipients.¹¹

With the goal of increasing corporate donations by bringing down the barriers between willing donors and those in need, President Bill Clinton signed the Bill Emerson Good Samaritan Food Donation Act (the Good Samaritan Act) into law on October 1, 1996.¹² The Good Samaritan Act limits liability to those who donate apparently safe food or grocery products, except for acts of gross negligence or intentional misconduct.¹³ However, in enacting the Good Samaritan Act, the government has placed an inordinate emphasis on corporate liability and the private sector’s role in donating “leftovers” to decrease hunger. It is unclear what effect the Good Samaritan Act has had on increasing donations or decreasing the number of hungry Americans, if any.

What is clear is that the government, in enacting this law, has shifted the responsibility of providing food to hungry citizens to the private and non-governmental sectors instead of truly tackling the problem with substantive and effective hunger reduction programs, as well as other programs that do

not relate directly to food insecurity but affect an individual's resources and, in turn, the amount of money they have to spend on food. As a result, food insecure individuals must rely on non-governmental assistance, such as emergency food donation centers. Luckily for those seeking emergency food, there are places to turn to when hungry.¹⁴ However, these facilities should be viewed as temporary solutions. The private and non-governmental programs have, perhaps inadvertently, accepted the responsibility feeding the nation's hungry; this burden should shift back to the federal government.

This article argues that while the Good Samaritan Act may be psychologically reassuring to the federal government and the public at large, it has not been legally potent in decreasing hunger, and only marginally responsible for increasing food donations. The Good Samaritan Act misguidedly shifts the responsibility of feeding America's poor to the private sector and non-governmental organizations (NGOs). As a result, this Act is a feel-good law as opposed to legislation that appropriately places the responsibility of decreasing food insecurity with the government rather than private donors. Instead, the government should invest more time, energy, and money into bolstering both its food and non-food programs for low-income individuals. These programs could include increasing the minimum wage, offering cheaper public assistance housing, and improving health care. Although these programs are non-food federal policies, they allow individuals in need to allocate more of their assets to food—individuals may then make their own food choices and rely less on private and non-governmental emergency food programs.

Section I of this article describes the problem of hunger in America including relevant statistics, governmental programs intended to address the dilemma, and the NGOs that have attempted to fill the gap. Section II discusses the context of the Good Samaritan Act and its legislative history. Section III explores the impact the Good Samaritan Act has had, or has not had, on increasing food donations and decreasing hunger. Section IV

concludes that the Good Samaritan Act does not provide its intended outcome of increasing donations and decreasing hunger, but rather, it provides an inefficient, bandage fix. This article ultimately argues that the government should expand and improve federal food and non-food assistance programs, such as a higher minimum wage and adequate health care, to increase needy individuals' ability to attain their own food. These solutions would prove more effective than providing a weak incentive for corporations to donate their leftover food and grocery items.

I. THE PROBLEM OF FOOD INSECURITY

*The United States is the largest and most efficient food producer in the world. Yet, each year nearly 35 million Americans are threatened by hunger, including 13 million children.*¹⁵

In America, the problem of widespread hunger¹⁶ has increased in severity in the last two decades.¹⁷ In this article, as well as in literature generally, "hunger in America" refers to the "recurrent and involuntary lack of access to sufficient food due to poverty or constrained resources"¹⁸ and is distinguished from hunger in some developing nations where "famine is widespread, [and] hunger manifests itself as a severe and very visible clinical malnutrition."¹⁹ Hunger in America, while still a significant problem, is less severe than hunger in many other countries.²⁰ To reflect the problem of America's widespread hunger phenomenon, new terminology measured by the USDA has been developed to describe and account for an individual's access to food—whether they are food secure, food insecure, or food insecure with hunger.²¹

The statistics compiled by the USDA's Economic Research Service from 2004 indicate that 88 percent of Americans were food secure, which means that at all times they had access to enough food for an active and healthy lifestyle.²² The remaining 11.9 percent of Americans were food insecure during some part of 2004.²³ Slightly over one-half of the food insecure households participated in at least one of three federal food assistance

programs—the Food Stamp Program, The National School Lunch Program, or the Special Supplemental Nutritional Program for Woman, Infants, and Children (WIC)—and 20 percent of food insecure households had to rely on emergency food at soup kitchens, emergency feeding programs, and food pantries.²⁴ For comparison, in 1998, 8.1 percent of all U.S. households were food insecure and 3.7 percent were food insecure with hunger.²⁵ Between the years 1999 and 2000, the percentage of food insecure and food insecure with hunger households dropped to 7.1 percent and 3.0 percent, respectively.²⁶ Since 2000, however, the percentage of U.S. households who are food insecure with and without hunger has increased.²⁷ In 2004, households with children experienced food insecurity at a rate nearly double to those households without children.²⁸ Similarly, households with only one parent showed higher rates of food insecurity than married-couple families.²⁹

Although these studies may be criticized as inaccurate because it is difficult to quantify hunger, and to what degree people are hungry, the evidence that many people are hungry also comes from emergency food kitchens and food pantries that have reported an increased number of people seeking food.³⁰

A. Food Insecurity on the Rise

A twenty-four city survey conducted by the United States Conference of Mayors³¹ and Sodexo USA³² (U.S. Mayors/Sodexo report), a private food and facilities management company, found that in 2005³³ requests for emergency food assistance increased by 12 percent during the year, with 76 percent of the cities surveyed noting the increase.³⁴ Despite a 7 percent increase in reporting cities' level of resources available to emergency food assistance facilities, 18 percent of the emergency food requests went unmet during 2005.³⁵ For example, 43 percent of the cities surveyed reported that emergency food assistance facilities turned away individuals in need because the facility lacked resources to meet their needs.³⁶ Only 48 percent

of the cities reported that they could provide an adequate amount of food, while 83 percent of cities reported that their emergency food assistance facilities had to decrease the amount of food provided to each individual and/or reduce the number of times people can receive food.³⁷ Of those individuals requesting emergency assistance, 54 percent were families and 40 percent of adults requesting food assistance were employed.³⁸

In 2005, according to the U.S. Mayors/Sodexo report, the surveyed cities reported the following reasons why individuals were hungry, in order of frequency: unemployment (and unemployment-related problems); high housing costs; poverty and lack of income; medical and health care costs; mental health problems; substance abuse; transportation costs; high childcare costs; and lack of education, among others.³⁹

The U.S. Mayors/Sodexo report aligns with the experience of the nation's largest food bank, America's Second Harvest (Second Harvest), which is comprised of approximately four hundred regional food banks in all fifty states, as well as Puerto Rico.⁴⁰ As was noted in the U.S. Mayors/Sodexo report, Second Harvest experienced that more people needed emergency food and that many of the food-rescue organizations lacked sufficient food and funds to serve those individuals.⁴¹ Second Harvest itself conducted a study during 2005 based on in-person interviews with some 52,800 clients served by its national network and on questionnaires from some 31,300 Second Harvest agencies.⁴² The study found that nationwide, in any given week, approximately 4.5 million people receive emergency food from Second Harvest's network.⁴³ Additionally, of those individuals who use Second Harvest's emergency food programs, 70 percent are thought to be food insecure, with and without hunger.⁴⁴

In 1995, the year prior to the enactment of the Good Samaritan Act, hunger was as prevalent as it is today. The federal government's data from that year shows that despite some fluctuations, the figures for the year 1995 were similar to the year 2004, and between 1995 and 2000 food insecurity and hunger declined, similar to the years 1999-2000.⁴⁵ In 1995, 12 percent

of U.S. households were food insecure, and of those, 4 percent were food insecure with hunger.⁴⁶ Additionally, a 1995 study by Food Research and Action Center, a nonprofit organization working to eradicate hunger in America by influencing public policies,⁴⁷ estimated that 29 percent of all children in America below the age of twelve years were either hungry or at risk of being hungry.⁴⁸ Illustrating the significance of the problem, Second Harvest's former CEO Christine Vladimiroff stated that twenty-six million Americans requested emergency food through the Second Harvest food bank network in 1995.⁴⁹ Similarly, the U.S. Mayors/Sodexo report found that for most of the major cities surveyed during 1995, demand for emergency food and shelter grew, on average, by 9 percent.⁵⁰ Unfortunately, amidst the increase in demand, the New York City Coalition Against Hunger reported that in 1995 food banks and soup kitchens had to turn away fifty thousand people because of lack of food at their facilities.⁵¹

An obvious factor related to food insecurity is poverty. Even though poverty rates improved in the mid 1990s, the government decreased its emergency food programs at disproportional levels. For example, between 1995 and 2000, as the poverty rate in New York City dropped by 25 percent and many people moved into the workforce, the government moved people off of food stamp programs.⁵² In other words, while the economic boom combined with welfare reform moved many people out of poverty and into the workforce, literally hundreds of thousands of people were removed from food stamp programs and/or public assistance, leaving many to fall deeper into poverty. Many of these employed people were forced to turn to soup kitchens and food pantries for the first time.⁵³

At the same time, there was a sharp decrease in appropriations for The Emergency Food Assistance Program (TEFAP).⁵⁴ TEFAP is a federally funded program that provides states with USDA commodities.⁵⁵ After states apply and are accepted to the program, the states distribute the food through local emergency food providers.⁵⁶ In fiscal year 1991, some five years before the Good Samaritan Act became law, the appropriations for

TEFAP were \$120 million in food purchases while in fiscal year 1995, these appropriations dropped to less than \$25 million.⁵⁷

B. The Consequences of Food Insecurity

Those who are food insecure and suffer from hunger face nutritional voids, health problems, and have difficulty achieving fundamental health and well-being.⁵⁸ The effect of food insecurity goes beyond one's health and nutrition. "If unaddressed, food insecurity may lead to hunger, malnutrition, disordered eating patterns, and social health consequences, such as disrupted household dynamics, impaired learning and reduced productivity among adults, poor behavioral and academic performance in children, increased health costs and increased obesity risks."⁵⁹ Regarding general health, food insecurity is particularly troubling for infants and children. Malnourished and impoverished babies and toddlers get sick more frequently and are more susceptible to infections than are food secure children.⁶⁰

Additionally, many who seek emergency food assistance experience "escalating rates of obesity, diabetes, hypertension and related cardiovascular illnesses."⁶¹ It may seem counterintuitive, but an obese household does not necessarily equate to a food secure household. "[F]ood insecure families often adapt using such strategies as relying on less expensive, less nutritious, high-calorie foods to stave off the sensation of hunger."⁶² In fact, recent studies have found that food stamp participation is positively related to obesity.⁶³ Likewise, the studies found that food insecurity is positively related to the likelihood of being obese.⁶⁴ Former USDA Secretary Dan Glickman noted the connection between low-income people and obesity at the National Conference of America's Second Harvest in 2000 when he said that "for millions of families, when they don't have enough money to buy food, they go hungry. But, when they have only a little money, they tend to buy low-cost foods which may or may not have all the nutrients they need."⁶⁵

Unfortunately, nutritional inadequacy is a problem for food stamp participants who purchase their own food, as well as for individuals who receive food at emergency food facilities and soup kitchens. Food banks, and those who eat food from food banks, do not choose the food that is donated and then served. Rather, the donations “reflect what is being produced in the United States [T]o the considerable extent that the emergency food system is supply driven, rather than need driven, it will continue to distribute more sweets and snacks and less canned fish and fresh vegetables than nutritionists recommend.”⁶⁶ As a result, those who are food insecure receive and eat lower quality food and empty calorie food simply because they lack the resources to choose healthy food.⁶⁷

C. The Federal Government, NGOs, and Food Insecurity

Three major federal food assistance programs are administered by the USDA Food and Nutrition Service: the Food Stamp Program, which provides low-income households with electronic or coupon benefits to purchase food from eligible retailers; the National School Lunch Program, which provides free or reduced price lunches to low-income students in public and private schools; and WIC, which provides nutrition-based grants to states to support food distribution, health care referrals, nutritional education, and food vouchers.⁶⁸ The federal government also provides resources by way of food donations to community food assistance providers, which are the main and direct providers of emergency food assistance to individuals in need.⁶⁹ Through TEFAP, the USDA provides commodities to food pantries and community and emergency kitchens.⁷⁰ In 2004, TEFAP provided community emergency food providers with 520 million pounds of commodities.⁷¹

Notwithstanding these food assistance programs, the federal government does not provide sufficient services to our nation’s citizens who are food insecure with hunger. It is worth noting that in other industrialized nations charitable handouts have not been the most effective way to reduce

hunger.⁷² Interestingly, many of these nations instead offer public benefits for low-income families that are much more generous than those offered in America.⁷³ Again, it is difficult to comprehend how a nation as wealthy as the United States does not formally recognize an individual's right to be free from food insecurity.⁷⁴

Fortunately, in the United States, NGOs have stepped in to fill the gap and complement the existing federal hunger-relief and nutritional programs. Since the early 1980s, over one hundred food banks have formed due to an increase of private charitable food programs.⁷⁵ Today, Second Harvest is the nation's largest food bank, with some 400 smaller, regional food banks in all fifty states.⁷⁶ This is a significant increase from the 185 food banks affiliated with Second Harvest in 1993.⁷⁷ Second Harvest serves those individuals who have no or limited access to federal assistance programs.⁷⁸ In 1995, over 90 percent of the food donated to Second Harvest (over 900 million pounds) was from the private sector, which enabled the organization to feed one out of ten Americans.⁷⁹ And in that same year, Second Harvest witnessed a 10 percent increase in donations from the previous year and documented the highest number of donations in the organization's history.⁸⁰

D.C. Central Kitchen, another example of a major NGO emergency food facility, began operations in 1988 in Washington D.C. and is one of the largest emergency food recovery and meal distribution organizations in the nation.⁸¹ Yet, even it is struggling to keep up with the growing numbers of hungry individuals in the nation's capital. President and CEO Robert Egger acknowledges his organization cannot survive without government support, plainly stating that "we cannot continue to serve for free thousands of meals a day."⁸² Egger wants the city government to increase its contributions to the anti-hunger programs he and others have worked so hard to create.⁸³

Using food handling and food sanitization techniques, D.C. Central Kitchen and other similar programs "rescue" or recover safe leftover food from institutions and events with health code approved trucks.⁸⁴ In 2005, D.C. Central Kitchen recovered approximately 1.4 million pounds of food

from local restaurants, caterers, hotels, wholesale distributors, and other foodservice businesses.⁸⁵ Through a trainee and volunteer program, D.C. Central Kitchen re-prepares this recycled food into some four thousand meals a day that it, in turn, donates to partner organizations to feed individuals in need.⁸⁶ D.C. Central Kitchen estimates that it recovers between one to two tons of food per day.⁸⁷ Businesses and organizations that donate food to D.C. Central Kitchen include the following: Costco; the National Press Club; the World Bank; the International Monetary Fund; and various law firms, caterers, and hospitals.⁸⁸

Interestingly, food recovery and recycling programs are not limited to the nation's large metropolitan areas—there are even food recovery programs in some rural elementary schools.⁸⁹ At Big Walnut Elementary School in central Ohio, for example, first-grade teacher Megan Forman started the Good Food Box program which enables children to donate packaged snacks or fruit during lunchtime.⁹⁰ The teacher then takes the donated snacks to the local food pantry, which serves an estimated eighty-five to ninety-five families per month.⁹¹

Because federal programs are not sufficient, as evidenced by the steady number of American citizens suffering from food insecurity and food insecurity with hunger, NGOs are stepping in to donate. If the government was committed to the idea that citizens have the right to be free from food insecurity, it is possible that there would be fewer NGOs scrambling to provide food and fill the gaps. Sociologist Janet Poppendieck argues that private emergency food programs and the increase of charity “legitimizes personal generosity as a response to major social and economic dislocation.”⁹² Essentially, emergency food programs and charity donations and organizations take responsibility away from the government and place it onto the private sector's shoulders. Emergency food programs have taken over governmental programs and “make private programs appear cheaper and more cost effective than their public counterparts, thus reinforcing an ideology of voluntarism that obscures the fundamental destruction of

rights.”⁹³ With an already strong foundation of private emergency food programs it may seem as if hungry individuals are being taken care of, giving the government a reduced incentive to provide assistance.

In 2000, the most recent year for which national statistics on NGO food programs are available, there were approximately 32,737 active food banks in America, which distributed, on average, about 239 million pounds of food per month.⁹⁴ That year, approximately 474,000 meals were served nationwide from nearly 5,262 emergency kitchens.⁹⁵ Unfortunately, according to some, what Second Harvest and others do is only a “drop in the bucket. [There is] no way in the world that charity in general can make up for the gap [between the numbers of families without food and the donations].”⁹⁶ The work that Second Harvest and other charity organizations do is important, “but charities themselves are not the answer. [They were] supposed to be a temporary measure in the 1980s and now they are permanent.”⁹⁷

D. The Perpetuating Problem and U.S. Inaction

A tension exists between the desires of NGOs and citizens to end food insecurity and the U.S. government’s current actions. On an international level, the Bush administration has reduced the United States’ contribution to global food aid programs.⁹⁸ The United States joined the pledge proposed at the Rome Declaration on World Food Security in 1996,⁹⁹ in which nations vowed to eradicate hunger and to reduce the number of undernourished people to half the current level by 2015.¹⁰⁰ However, the current administration states that it does not believe that the right to food exists in conventional or customary international law; instead the right to be free from hunger “is a goal or aspiration to be realized progressively that does not give rise to any international obligations nor diminish the responsibilities of national governments toward their citizens.”¹⁰¹

Nonetheless, at the national level, as part of the Healthy People 2010 initiative,¹⁰² the United States committed itself to reducing food insecurity

abroad and at home; it had an objective of reducing food insecure households to 6 percent, half of its 1995 level, by 2010.¹⁰³ Despite the commitments in the Healthy People 2010 initiative to improve the health of individuals, food insecurity has not yet been reduced, and if the food assistance programs continue to decrease, it is unlikely that the United States will actually realize its goal of promoting healthier living to its citizens.¹⁰⁴ Surely, reducing food insecurity in the nation falls under this objective.

There is evidence that although the federal government has not yet embraced an individual's right to food, American citizens view eradicating hunger—inside and outside U.S. borders—an important objective.¹⁰⁵ In fact, several prominent non-governmental, anti-hunger organizations formed the National Anti-Hunger Organizations (NAHO),¹⁰⁶ and in 2003, they created the Millennium Declaration to End Hunger in America (Millennium Declaration).¹⁰⁷ The Millennium Declaration summarizes some of the causes and effects of hunger and recommends solutions to end hunger through strengthening and improving federal food and nutrition programs.¹⁰⁸ Furthermore, the Millennium Declaration calls upon the “President, Congress, and other elected leaders in states and cities [to] provide decisive leadership to end hunger in America.”¹⁰⁹ One year later, in June 2004, the NAHO created “A Blueprint to End Hunger,” which is a longer, twenty-four page document that elaborates on the methods to end hunger outlined in the Millennium Declaration.¹¹⁰

Prior to the creation of the Blueprint to End Hunger, in December 1991, Tufts University School of Nutrition's Center on Hunger, Poverty and Nutrition Policy drafted the Medford Declaration to End Hunger, which attempts to raise consciousness and promote efforts to alleviate hunger.¹¹¹ The Medford Declaration asserts two steps to abolish hunger: first, in the short-term, it is necessary to “use existing channels to see that food is available to the hungry on an adequate and consistent basis;” and the second step is to “increase the purchasing power of American households, and to

fulfill the desire for independence and self-reliance which so characterizes our people.”¹¹² An estimated two thousand national, state, and local leaders and one thousand organizations have shown their support for this endeavor, calling on the government to assist in the fight against hunger.¹¹³

Domestic hunger exists not because the United States or the world at large does not have enough food.¹¹⁴ In fact, “abundance, not scarcity, best describes the supply of food in the world today. Increases of food production during the past thirty-five years have outstripped the world’s unprecedented population growth by about 16 percent.”¹¹⁵ We live with hunger because of the “mal-distribution of food itself [and also] because of highly skewed income distribution which precludes the purchase of adequate amounts of food.”¹¹⁶

It would seem, then, that the idea of a national policy that encourages the redistribution of food would be a beneficial tool in reallocating surplus food to those who are in need; indeed, the Good Samaritan Act sought to do just that.

II. THE GOOD SAMARITAN ACT

A. Food Waste and Attempts to Capture the Loss: What Prompted the Good Samaritan Act?

A shocking amount of food in America is wasted. Statistics indicate that anywhere from 20 percent¹¹⁷ to 27 percent¹¹⁸ of all food produced in America is thrown away. All of the waste—including farm, transport, processor, wholesaler, supermarket, industrial, and plate waste—totaled ninety-six billion pounds in 1995.¹¹⁹ In 1996, the USDA reported that by recovering the lost food through gleaning or food recovery programs, forty-nine million people could be fed.¹²⁰ The problem of wasted food is not limited to restaurants or hotels, but is also evidenced in the farming fields.¹²¹ For example, according to a district director with the Farm

Service Agency, about one-quarter of the food *grown* in the United States is wasted—either in the field or weeks later in a refrigerator or restaurant.¹²²

The idea to transfer wasted food to the hungry is not new:

Accumulation of large supplies of food in public hands . . . has repeatedly resulted in the creation of public programs to distribute the surplus to the hungry. And in the private sphere as well, a great deal of the food that supplies today's soup kitchens and food pantries is food that would otherwise end up as waste: corporate overproduction or labeling errors donated to the food bank, farm and orchard extras gleaned by volunteers after the commercial harvest, and the vast quantities of leftovers generated by hospital, school, government and corporate cafeterias, and caterers and restaurants.¹²³

Decades ago, the federal government created programs to donate food surpluses to those in need. For example, President Herbert Hoover created the Federal Farm Board, whose duties included distributing wheat surpluses to the unemployed through the Red Cross, while an outcome of President Franklin D. Roosevelt's New Deal was federal surplus commodity distribution.¹²⁴ The Federal Farm Board has since been abolished.¹²⁵ Nonetheless, comparable programs exist today in the form of TEFAP, which supplies food bought from the USDA to states.¹²⁶

The Good Samaritan Act appears to be yet another government attempt to capture the loss of wasted food.

B. Barriers to Donation: Potential Liability for Donors

Prior to the Good Samaritan Act, companies and individuals faced a considerable barrier to donating food—the threat of liability.¹²⁷ A corporation, such as a hotel, caterer, or university cafeteria, that donated apparently safe leftover food could be subject to civil or criminal liability in federal court if a recipient was injured from tainted or spoiled food.¹²⁸ Although states had their own Good Samaritan laws protecting companies from injuries resulting from donations, the laws differed in their language,

level of protection, and liability threshold.¹²⁹ Accordingly, companies that operated in more than one state would face disparate state laws—determining protection was difficult and federal legislators viewed it as an impediment to donations.¹³⁰ One factor that pushed the Act through Congress, for example, was Wal-Mart’s failure to donate due to fear of liability.¹³¹

In December 1995, at a roundtable discussion with USDA Secretary Glickman and several national food companies, Glickman stated that “companies were sympathetic to the idea of food rescue, but expressed deep concerns about liability. In effect, they sought one law that would cover all of their establishments from coast to coast.”¹³² In response to this concern, under the federal Good Samaritan Act, those who donate or recover food or groceries that are “apparently fit” are exempt from criminal or civil liability arising from the donation.¹³³ The Good Samaritan Act defines “apparently fit grocery product” as one that “meets all quality and labeling standards imposed by Federal, State, and local laws and regulations, even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.”¹³⁴ The law does not, however, exempt donors from gross negligence or intentional misconduct.¹³⁵ Thus, the intention behind the Good Samaritan Act was to facilitate donation of food and grocery items to individuals in need by protecting donors from civil lawsuits or criminal sanctions, except in cases of gross negligence.

When he signed the bill, President Clinton stated that “through food recovery and donation, Americans can share with the hungry a portion of our country’s immense food resources that would otherwise be wasted.”¹³⁶ President Clinton also pointed out that liability has been an impediment for many food donors and food recovery centers.¹³⁷ The definitions in the Act are national in scope and are meant to create uniformity among state laws.¹³⁸

C. Legislative History of the Good Samaritan Act

Prior to the 1970s, good samaritan food donation laws did not exist in America.¹³⁹ California was the first state to enact a protective food donation law in 1977,¹⁴⁰ and over the next two decades the remaining forty-nine states enacted their own good samaritan food donation laws.¹⁴¹ By 1990, Congress passed the Model Good Samaritan Food Donation Act¹⁴² (Model Act), which was Section 402 of the National and Community Service Act of 1990 (NCSA).¹⁴³ Though the Model Act had no force or effect in law, it encouraged each state to adopt standards that would uniformly protect food donors against civil and criminal liability resulting from a donation.¹⁴⁴ Like its progeny the Good Samaritan Act, the Model Act provided that individuals and business entities that donated “apparently fit”¹⁴⁵ and “wholesome”¹⁴⁶ food or grocery products would not be held liable if their donations resulted in injury unless the donor acted with gross negligence or intentional misconduct.¹⁴⁷ Despite the best intentions of the Model Act’s goal to encourage adoption of its language at a state level,¹⁴⁸ only one state modeled its language after the Model Act.¹⁴⁹

Ultimately, Congress enacted the Good Samaritan Act in 1996 hoping that the law would solidify consistency among the states’ food donation laws.¹⁵⁰ Because many corporations that donate conduct business across state borders, standardizing liability protection made sense.¹⁵¹ The Good Samaritan Act repealed Sections 401 and 403 of the NCSA and the word “Model” was stricken.¹⁵²

The Good Samaritan Act, as we know it today, was sponsored by lawmakers who were committed to confronting the problem of food insecurity and who responded to concerns from their constituents. Representative Pat Danner (D-MO) introduced the Act as H.R. 2428 in the summer of 1995, which was co-sponsored by Representative Bill Emerson (R-MO).¹⁵³ Representative Danner developed the legislation in response to one of her constituents, Harold Martin, who complained that a national corporation had withdrawn its support from his local food bank.¹⁵⁴

Representative Emerson was a longtime champion of fighting hunger and a strong ally of the anti-hunger movement and emergency food facilities.¹⁵⁵ Prior to working on the Good Samaritan Act, Representative Emerson held leadership positions on the House Agricultural Committee, the House Select Committee on Hunger, and the Congressional Hunger Center; Representative Emerson was also a lead sponsor of the Temporary Emergency Food Assistance Act of 1983, the McKinney Homeless Assistance Act of 1987, and the Hunger Prevention Act of 1988, among others.¹⁵⁶ After it was signed into law, the Good Samaritan Act was renamed in honor of Representative Emerson, who died of cancer one month after the bill's hearing.¹⁵⁷

Because Representative Danner was a junior member of the House of Representatives' minority party and did not exercise tremendous influence, Representative Emerson's support on the bill was crucial. On May 31, 1996, the Subcommittee on Postsecondary Education, Training and Life-Long Learning—a sub-committee of the Committee on Economic and Educational Opportunities—held a hearing on H.R. 2428.¹⁵⁸ At the hearing, Representative Emerson testified that private companies faced liability hurdles when donating food because of the different state laws that govern food donations.¹⁵⁹ Representative Emerson testified that the Good Samaritan Act responded to this concern by purportedly removing barriers between willing donors and individuals in need.¹⁶⁰

Echoing this sentiment, Representative Danner testified with an example of a major corporate donor to the Missouri-Kansas Regional Food Bank who withdrew its donations citing the “patchwork of laws governing food donation throughout the United States as a reason for discontinuing [their] food donation policy.”¹⁶¹ In her testimony, Representative Danner noted that retailers had to spend their resources understanding and meeting the requirements of different laws in different states when donating food.¹⁶² She also testified that the Good Samaritan Act would “dramatically aid in

the national effort to coordinate public and private efforts to properly utilize the abundant excess of food that goes unused in this country.”¹⁶³

Additionally, emergency food facilities and NGOs testified in strong support of the bill at the hearing. Christina Martin, the former Executive Director of FoodChain, testified that donors’ concern about liability was the biggest obstacle food-rescue programs faced.¹⁶⁴ Martin believed that the Good Samaritan Act would “make a dramatic difference in the number of donors to food-rescue programs.”¹⁶⁵ Likewise, Christine Vladimiroff, the then-CEO of Second Harvest, noted that the government’s programs attempting to tackle hunger were deficient—a reason why Second Harvest and other food-rescue programs and food banks operate.¹⁶⁶ Unfortunately, the government’s programs are not enough, and Second Harvest steps in to serve low-income individuals who cannot subsist on what is given to them through domestic feeding programs.¹⁶⁷ Vladimiroff stated that “our experience is clear. There are companies that want to donate food and grocery products, but are fearful of contributing because of the varying state laws regarding their liability for what would otherwise be a generous act of donation.”¹⁶⁸

Although each state already had some type of Good Samaritan legislation (still in effect today) when the federal bill was signed into law, there were, and still are, differences in the level of protection provided by these state laws. For example, many state laws had different liability floors.¹⁶⁹ The food donation laws in all fifty states generally held individuals who distributed defective food or products to be strictly liable.¹⁷⁰ All states had exceptions to the rule limiting the liability of donors, but state laws varied significantly in their level of protection and coverage to donors.¹⁷¹ For example, in California, donors were liable only for gross negligence or intentional acts.¹⁷² Interestingly, in Pennsylvania, donors were liable for negligence but exempt from suits based on strict liability.¹⁷³ The Good Samaritan Act was meant to set a liability floor for all states, not a ceiling.¹⁷⁴ Another difference among states that posed difficulty before the

Good Samaritan Act was the definition of “donated goods.” For example, Missouri’s statute¹⁷⁵ only mentioned “canned or perishable food” while New York’s statute listed “game or while game.”¹⁷⁶ Because the Good Samaritan Act is national, it eliminates any inconsistencies and discrepancies between state laws through the supremacy clause of the U.S. Constitution.¹⁷⁷

Beyond strengthening public-private partnerships, the passage of the Good Samaritan Act removed the “legally cumbersome or restrictive” obstacles to food donation that the individual state laws presented.¹⁷⁸ However, the impact of the Good Samaritan Act would not be realized for some time.

III. IMPACT OF THE GOOD SAMARITAN ACT

The federal Good Samaritan Act was intended to encourage donation of food and grocery products by easing donor’s fears about liability and potential lawsuits, thereby increasing donations to food rescue programs and, in turn, providing individuals in need with food.¹⁷⁹ While the intention of the Good Samaritan Act is certainly significant, its end result has not yet proven to be very potent.

A. *Analyzing the Good Samaritan Act*

First, the Good Samaritan Act appears to have been initiated in response to the *fear* of potential lawsuits, as opposed to the actual existence of lawsuits filed.¹⁸⁰ Interestingly, there have been no documented lawsuits against a food donor either before or after the Good Samaritan Act was passed.¹⁸¹ As there have been no known lawsuits, the Good Samaritan Act has not yet been given the chance to flex its muscles.

Because it is difficult to determine whether the Good Samaritan Act really deterred any lawsuits—since none were reported before or after the law’s enactment—it may be more insightful to examine how donors reacted to the Good Samaritan Act and, thus, determine whether the Act met its

goal of encouraging donations of food and grocery products. However, Second Harvest has noticed that the Act has eased some corporations' anxieties about possible litigation. If this means that corporations would donate more, the Act shows strong potential to be beneficial.¹⁸²

After the Act was passed, some people in the food and restaurant industry felt there was no longer an excuse for *not* donating.¹⁸³ 7-Eleven, which operated as Southland Corporation when the Good Samaritan Act was passed, significantly increased its donations after the Act passed in 1996.¹⁸⁴ Likewise, many other corporations have made significant contributions of their safe excess food since the Act's passage. Second Harvest's website currently lists approximately sixty major corporate donors, including Campbell Soup, Coca-Cola, CVS Pharmacy, General Mills, Nestle, Sara Lee, Target, Uncle Ben's, and Wal-Mart.¹⁸⁵ Beyond corporations that have partnered with Second Harvest, many restaurants, including fast-food chains, have joined with the Food Donation Connection, a national NGO, to donate their safe, unsold food.¹⁸⁶ Some of the larger donors who have partnered with the Food Donation Connection include Pizza Hut—which has donated over thirty million pounds of food over recent years—KFC, Taco Bell, and Red Lobster.¹⁸⁷ Additionally, some companies have started their own donation projects. For example, in May 2005, Red Lobster started a program called "Harvest Food Donation" to donate its excess food to hungry Americans.¹⁸⁸

Increases in donations, however, may be attributable to other factors, indicating companies may have donated regardless of whether the Good Samaritan Act was passed. For example, some companies donate to Second Harvest when they have more products available due to unforeseen industry conditions.¹⁸⁹ Despite the perceived ease the Good Samaritan Act intended to bring, Second Harvest still is not persuaded that the Act has truly encouraged companies to donate.¹⁹⁰ Rather, companies are concerned about the bottom line, and "if they can make money from selling a product to discount stores, they sell."¹⁹¹ Thus, Second Harvest often receives

donations when the market is inundated with like items companies are unable to sell, so they donate them.¹⁹²

Food Lifeline is another example of a food recovery organization that has seen a large increase in food donations; however, the organization does not attribute this growth directly to the Good Samaritan Act. Since 1996, Food Lifeline, the western Washington affiliate of Second Harvest,¹⁹³ has grown significantly. In 1996 it gathered and distributed approximately ten million pounds of food; by the end of 2004 it distributed 21.2 million pounds of food.¹⁹⁴ In addition to the increase in quantity of food, Food Lifeline has also seen a change in the quality of food donated. While in 1996 most of the donated food was nonperishable boxed and canned goods, recently the food industry has tended to donate more perishable food, which is the fastest growing proportion of food that Food Lifeline donates.¹⁹⁵ These perishable items include dairy products, fresh produce, perishable juices, and frozen foods. Linda Nageotte, President and CEO of Food Lifeline, notes that “because of the perishability of these products, donors have more concern and higher perceived (and real) liability in donat[ing] them.”¹⁹⁶ Ms. Nageotte noted that while it is difficult to attribute the increase of donations to Food Lifeline directly to the Good Samaritan Act, she believes it is still greatly beneficial to the emergency food community because it addresses donors’ liability concerns.¹⁹⁷

Interestingly, despite the Good Samaritan Act’s goal to encourage donations, some companies still appear to be nervous about donating their food and grocery products. As part of the bottom line, some corporations fear a blow to their name and reputation if their donation ultimately causes harm.¹⁹⁸ Second Harvest noted that once a company begins to donate, the company often works with Second Harvest for a long time—sometimes years—to “gain [that company’s] trust and their product donations. Several companies require that we [Second Harvest] strip their products of their logo and re-label the items.”¹⁹⁹ If companies truly trusted the Good Samaritan Act they should have no reason to fear donating. It is possible,

however, that these companies do not view the Good Samaritan Act as a sufficient shield to negative publicity.

Illustrative of this fear, Ms. Nageotte says the Act “hasn’t quieted [the donors’] concerns about bad press. These days we find donors are concerned about what would happen if they donated a product that made someone ill, and they fear getting ‘bad press’ about those situation[s].”²⁰⁰ In response to donors’ fear of lawsuits and bad reputation, Food Lifeline has developed extensive practices regarding safe food-handling, transport, and storage protocols to address the donors’ concerns.²⁰¹ One reason why Food Lifeline has not been sued or held liable for food they served to needy individuals may be because they use stringent food-handling policies.

Food Lifeline is not alone in developing and practicing safe food-handling policies and procedures. D.C. Central Kitchen, which operates foodservice training for low-income and unemployed individuals, has a twelve-week intensive food training program.²⁰² The program’s successful participants receive a food handler’s certificate, which allows foodservice workers to handle food in the restaurant industry.²⁰³ Second Harvest—a member of Food Lifeline—has worked with the Food and Drug Administration and the USDA to develop adequate food-handling policies.²⁰⁴ These government agencies regularly monitor and inspect food banks and emergency food facilities such as Food Lifeline,²⁰⁵ and the policies and procedures they develop may encourage safe and healthy donating by ensuring donors they will not receive bad press when food is safely handled.

Because a number of factors influence how and when donations are given, it is impossible to conclude that the Good Samaritan Act has had a significant impact on decreasing food insecurity through increasing food and grocery donations. These factors include the overall health of the economy, governmental changes to social welfare programs such as food stamps, and inflation, among others.²⁰⁶ Some hunger and poverty experts believe that while the Good Samaritan Act may have accomplished nothing

legally, substantively it has done a good deal by increasing the amounts of donated food to the hungry.²⁰⁷ Because, as Second Harvest notes, so many companies are still very concerned about being sued even after the Good Samaritan Act was passed, it does not seem that the Act made a significant impact on increasing donations.²⁰⁸

B. The Good Samaritan Act is Not the Solution: The Federal Government Passes the Buck on Food Insecurity

The Good Samaritan Act has had an insignificant impact on decreasing hunger in America and perhaps only a marginal influence on increasing the amount of food and grocery product donations. The Act simply eases what should be the federal government's responsibility to alleviate the nation's hunger by passing on that duty to NGOs and the private sector. While the government appears to be concerned about providing emergency food to those in need through such legislation as the Good Samaritan Act and various social service programs, its actions show otherwise.

In 1996, as Congress was passing The Good Samaritan Act, it also cut nearly \$28 billion from the Food Stamp Program as part of the welfare bill of 1996.²⁰⁹ Even in light of the estimated \$1 billion worth of food that passed through Second Harvest's doors during 1998, there is no way that "the charitable food network, already stretched thin, [would] be able to miraculously stretch again to cover this abyss, and the leaders of the emergency food movement have been saying so, loud and clear."²¹⁰

Federal budget cuts to non-food programs for low-income individuals also have a negative impact on needy individuals' ability to obtain adequate food. For example, budget cuts to the Medicaid program is a decrease to an important program that assists low-income individuals and families with health care costs; by decreasing the Medicaid budget and thereby redistributing health care costs back to low-income individuals and families, these individuals often have less money to spend on food.²¹¹ Beyond expanding non-food programs for low-income individuals, the NAHOs

agree that the federal government needs to invest more money in improving the public's understanding of health consequences.²¹² Essentially, the government should invest in outreach projects, hunger awareness, and programs aimed at improving nutrition for health, learning, and productivity.²¹³

Rather than expanding non-food programs for low-income individuals, the federal government seems to be doing just the opposite. On November 18, 2005, in the early morning hours, the U.S. House of Representatives voted to cut \$50 billion from Medicaid, food stamps, student loans, and other programs.²¹⁴ Budget cuts to the Food Stamp Program would mean that between 220,000 and 250,000 low-income Americans would be denied food stamps. Joel Berg,²¹⁵ Executive Director of the New York City Coalition Against Hunger, found it distressing that the government would vote "to literally take food out of the mouths of low-income seniors, children, and working families" just before the Thanksgiving holiday.²¹⁶

As the government's programs and services continue to wane, the number of NGOs stepping up to feed hungry Americans has been on the rise. At the public hearing held for The Good Samaritan Act in 1996, Christine Vladimiroff reported that since 1936 there had been a 46 percent growth in new non-government food programs.²¹⁷ Illustrative of this increase is the fact that in 1981 New York City had thirty-five soup kitchens, and in 1996 there were 800.²¹⁸ Although the number of these types of programs is increasing, the number of hungry Americans remains virtually unchanged and, at the same time, the federal government's assistance is dwindling.

As individuals and families in need struggle to purchase adequate food because of federal cutbacks in both food and non-food assistance programs, they also face obstacles as a result of the Good Samaritan Act's concept of limited liability for corporate donors. If the government limits individuals' ability to sue for injuries sustained by food accepted from donors, it only further weakens the foundations on which poor individuals stand. Given

the absence of documented lawsuits against food donors before the Act was passed, there is little evidence that the government really needs to provide donors with the extra incentive of a liability shield and deny individuals in need of their ability to recover from wrongs. Moreover, if, as Second Harvest has noted, the Good Samaritan Act has not prompted companies to donate excess food, the Act should be reevaluated to determine if companies should even receive the protection of the liability shield. If a liability shield does not motivate companies to donate, the poor, a group with weak political capital, should not be denied the ability to sue under common law negligence and tort claims to receive damages. The government's hands-off approach to corporate donors further illustrates how it seems to be passing the buck regarding protection of its weakest citizens.

Furthermore, while the Good Samaritan Act purports to protect companies from legal action, it is not clear whether that message is being received by donor companies. For example, as this article was being written, Wal-Mart decided to stop donating its nearly expired or expired perishable food to local charity and food emergency programs.²¹⁹ This new national policy will apply to over 2,000 Wal-Mart stores and Supercenters and over 500 Sam's Club stores.²²⁰ Spokesman Olan James said that the company's retraction of their donation policy was an attempt to protect the corporation from liability.²²¹ Yet James even admitted that he is unaware of anyone filing suit against Wal-Mart after becoming ill from donated food.²²² It appears that Wal-Mart does not realize the Good Samaritan Act would protect it in the event someone was harmed from a good faith donation of spoiled food. It also implies that Wal-Mart distrusts whether the federal law will sincerely protect it from liability. Furthermore, it weakens the effect of the Act if large corporations do not even know about it and/or rely on it. Wal-Mart's donation withdrawal and its fear of relying on the protections of the Good Samaritan Act sets a bad precedent for other corporations, both large and small, that currently donate food and grocery items. If Wal-Mart,

the nation's largest food retailer,²²³ doubts the Good Samaritan Act will protect the company's interests when they donate perishable food items, it is hard to imagine that other smaller and less profitable companies would be reassured by the Act.

Though the Good Samaritan Act may be a feel-good law, it has not had a significant impact on decreasing food insecurity. Instead, it has resulted in the federal government simply passing the responsibility of providing hungry citizens with food onto NGOs and the private sector. Ultimately, companies have no incentive to donate, nor do they face any penalty if they do not donate. The Good Samaritan Act had high aspirations, but in the end it has failed to implement meaningful legislation—instead, the Act passes the buck on who will care for and feed low-income American citizens.

C. A Temporary Fix, But Not the Solution

Give a man a fish; you have fed him for today. Teach a man to fish; and you have fed him for a lifetime.

Chinese Proverb

Food banks and other emergency food facilities have served as a bandage to the food insecurity problem in this nation.²²⁴ But, this bandage method is not a permanent solution—it only meets the emergency need. As the evidence indicates, the Good Samaritan Act has not had any noticeable legal effect—no donor has used it as a liability shield from a lawsuit, and there have been no documented cases of individuals trying to sue companies for harm caused by tainted donated food.

Instead of using the Good Samaritan Act to reduce food insecurity in America, the federal government should improve the federal food assistance programs and increase needy individuals' ability to attain their own food for a more long term solution. For example, a higher minimum wage, adequate

health care, and reduced rent translates into families having more money to spend on other basic needs, such as food.²²⁵

The government, not the private sector and NGOs, should be responsible for feeding the nation's hungry through sound public assistance programs. If the government increased the minimum wage, provided national health insurance for all, created more affordable low-income housing, and/or expanded the current food stamp program, then low-income Americans would have more money to spend on food.²²⁶ Congress' energy would be better spent improving social programs than creating legislation such as the Good Samaritan Act that provides ineffective incentives to donate food. In 2000, at the National Conference of America's Second Harvest, the then Secretary of Agriculture Dan Glickman stated:

There are millions in poverty working hard to make ends meet, striving to achieve the American dream yet struggling to put food on the table. Many of them would benefit from an increase in the minimum wage. And many seniors would benefit from having meaningful prescription drug coverage so they wouldn't have to choose between food and medicine. They are all part of the American family, and it is incumbent upon government to help the less fortunate members of our family.²²⁷

Although the Good Samaritan Act may have been a worthwhile effort, according to Joel Berg of the New York City Coalition Against Hunger, it should serve a greater function than merely acting as a façade that the government is solving the hunger problem—it should have a significant legal, as well as a psychological, impact in society.²²⁸ Such legislation fools citizens into believing that the issues surrounding hunger are under control, as the Act reasons that extra food is being recycled to those who are hungry rather than being thrown away. Essentially, the government has mistakenly relieved our fears by presenting to us that the companies and industries we think of as guilty for wasting food are progressively doing something to solve the hunger problem.

Likewise, good samaritan laws may misleadingly increase our nation's romantic vision of charity. In his law review article, Thomas Kelley noted:

Our culture has developed a vibrant charitable tradition, and in our contemporary culture, charity is a compassionate net of aiding the poor, of distributing alms to the needy, and of spooning soup to the hungry. At the same time, it is a tool for social engineering, for efficiently producing socially beneficial results that will lighten the burdens of our government.²²⁹

IV. CONCLUSION

Hunger stems from larger, systemic problems that NGOs and the private sector cannot fix alone. Without help from the federal government in the form of increased minimum wage, cheaper public housing, improved health care, among other support programs, it is inevitable that the problem of hunger will persist in this nation. When low-income citizens must spend much of their money on shelter, transportation, and health care, there is consequently less income that remains for the purchase of food. If these individuals know they can stand in line at their local food bank to alleviate hunger, yet cannot receive affordable housing or transportation, it makes sense for them to rely on the private emergency food facilities, such as Second Harvest and its affiliates. For instance, the high cost of heating sends many low-income Americans to emergency food facilities, creating a heat or eat dilemma.²³⁰ If these individuals could have their utilities subsidized (or further subsidized in some cases), then perhaps they would have a greater chance of affording food.

The Good Samaritan Act should not reinforce the notion that hunger can simply be alleviated through a single piece of legislation. On the contrary, the public must be aware that hunger is the result of larger social crises that the government must play a role in shaping. All of the listed social problems stem from a lack of government involvement. According to the 2005 U.S. Conference of Mayors/Sodexo Survey on Hunger and Homelessness, hunger in America does not exist due to lack of food; it

exists because low-income people must allocate their limited resources to satisfy basic needs, such as health care, transportation, housing, and other everyday expenses.²³¹

Although private emergency food assistance programs are not meant to replace government programs, often the work of the private sector leads to the public perception that their noble work can substitute for responsibility that belongs to the government. As NGOs like Second Harvest, Food Lifeline, and D.C. Central Kitchen grow and multiply, the public may believe that the government has less of a role to play in feeding the nation's hungry. This belief and reinforcement thereof could spiral into a disastrous cycle where NGOs cannot keep up with feeding those waiting in line due to lack of funds and insufficient support. Yet, if NGOs cease operating, those waiting in line for food will have no where else to go. Organizations such as Second Harvest may view themselves as only supplemental to the public emergency food assistance programs; however,

when it is time to raise funds . . . [they] tend to compare themselves with public programs in ways that reinforce the ideology of privatization The same fund-raising appeals that reassure the public that no one will starve, even if public assistance is destroyed, convince many that substitution of charitable food programs for public entitlements might be a good idea.²³²

While the emergency food facilities' work is admirable, the federal government, not NGOs and the private sector, should ensure that its own citizens are not food insecure. In fact, the United States is the only nation of the industrialized countries that "still tolerates widespread hunger within its borders."²³³ The Good Samaritan Act has not reached its goal of decreasing hunger by increasing food donations. Sadly, the limited liability aspect of the Act may benefit businesses at the expense of poor individuals. The ability to donate safe, leftover food may be a useful business strategy—an appropriate response to over-production in the market, as well as a public relations strategy by promoting company good will. Furthermore, it is even

possible that through the commodification of hunger,²³⁴ corporations can use hunger as a useful tool to promote corporate interests. In the end, the impact of the Good Samaritan Act could easily hurt poor individuals who have no significant legal recourse if they are made ill from spoiled food they consume.

Food insecure individuals' current reliance on private food emergency programs is not the solution to the problem of hunger in America. The Good Samaritan Act's attempt to increase food donations to these non-governmental organizations may have been a worthy goal, but it is not the answer to such a large problem as hunger. The federal government needs to make food security a priority in our society—the government should bear the burden of providing food insecure individuals with the means and ability to receive the food and assistance they need to become healthy individuals.

¹ J.D. candidate, Seattle University School of Law. The author would like to thank Angela Macey-Cushman, Erin Shea, Sara Springer, and Erin Crisman-Glass for their helpful comments and contributions, their boundless energy, and their warm friendship.

² Dan Glickman, Sec'y of Agric., U.S. Dep't of Agric., National Conference of America's Second Harvest, Tucson, Ariz., Release No. 0303.00, Sept. 8, 2000, available at <http://www.usda.gov/news/releases/2000/09/0303.htm> [hereinafter USDA Release].

³ Mary Robinson, *Shaping Globalization: The Role of Human Rights*, 97 AM. SOC'Y INT'L L. PROC. 1, 7 (2003); Donald B. Tobin, *Investing in Our Children: A Not So Radical Proposal*, 73 U. CIN. L. REV. 451, n.1 (2004).

⁴ MARK NORD ET AL., ECON. RES. SERV., U.S. DEP'T OF AGRIC., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES (2004), available at <http://www.ers.usda.gov/publications/err11/>; America's Second Harvest, Master Fact Sheet, http://www.secondharvest.org/who_we_help/hunger_facts.html (last visited Feb. 11, 2006); *Hunger in USA Rises by 43 percent over last 5 years*, MEDICAL NEWS TODAY, Oct. 29, 2005, available at <http://www.medicalnewstoday.com/medicalnews.php?newsid=32800>. See also *New Study: More than 38 Million Americans are Food Insecure as Congress Considers Food Stamp Program Reductions*, U.S. NEWswire, Oct. 28, 2005, available at <http://releases.usnewswire.com/GetRelease.asp?id=55825>.

⁵ U.S. DEP'T OF AGRIC., A CITIZEN'S GUIDE TO FOOD RECOVERY (1996) [hereinafter A CITIZEN'S GUIDE], available at <http://www.usda.gov/news/pubs/gleaning/content.htm>.

⁶ FedCenter.gov, Food Waste <http://www.fedcenter.gov/assistance/facilitytour/solid/food/index.cfm> (last visited Nov. 2, 2006).

⁷ See generally Linda Scott Kantor et al, *Estimating and Addressing America's Food Losses*, FOOD REVIEW, Jan.–Apr.1997, available at <http://www.ers.usda.gov/publications/FoodReview/Jan1997/jan97a.pdf> (last visited Dec. 18, 2006).

⁸ *Id.* at 3-4.

⁹ Julie Brewer et al., *A Blueprint to End Hunger* 8 (National Anti-Hunger Organizations, Working Document, June 3, 2004) [hereinafter *Blueprint*], available at <http://www.hungercenter.org/NAHO%20Blueprint.pdf>. By the end of 2005, the USDA reported that 38 million Americans, including 14 million children, were on the brink of hunger. *U.S. Conference of Mayors Report Shows Increased Demands for Food Assistance*, U.S. NEWSWIRE, Dec. 20, 2005 [hereinafter *Mayors Report Increased Demands*].

¹⁰ NORD ET AL., *supra* note 4, at 5.

¹¹ David L. Morenoff, *Lost Food and Liability: The Good Samaritan Food Donation Law Story*, 57 Food & Drug L.J. 107 (2002); *Model Good Samaritan Food Donation Act: Hearing on H.R. 2428 Before the House Comm. on Econ. And Educ. Opportunities Subcomm. on Postsecondary Educ., Training and Life-Long Learning*, 104th Cong. (1996) (statement of Christina Martin, former Director of FoodChain: The Network of Prepared and Perishable Food Rescue Programs) [hereinafter *Hearings*]; E-mail from Tyra Hilliard, Assoc. Professor, Dep't of Tourism & Convention Admin., College of Hotel Admin., Univ. of Nev. Las Vegas, (Nov. 22, 2005, 09:54 PST) (on file with author) (noting that businesses have cited fear of liability as the reason not to donate their left-over food). E-mail from Maura Daly, America's Second Harvest (Nov. 14, 2005, 16:05 PST) (on file with author) (noting that corporations have expressed anxiety about possible litigation from donating their food to the Second Harvest emergency food donation network).

¹² Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C. § 1791 (1996).

¹³ *Id.*

¹⁴ In the state of Washington alone, there are some 153 emergency food donation centers and thirty soup kitchens. See America's Second Harvest Website, Food Bank Locator, http://www.secondharvest.org/zip_code.jsp?zipcode=98112 (last visited Nov. 2, 2006).

¹⁵ *Blueprint*, *supra* note 9, at 3. By the end of 2005, the USDA reported that 38 million Americans, including 14 million children, were on the brink of hunger. *Mayors Report Increased Demands*, *supra* note 9.

¹⁶ The Food Research and Action Center (FRAC) is a non-profit organization whose mission is to eradicate hunger in the United States and describes hunger as "the uneasy or painful sensation caused by lack of food." FOOD RESEARCH AND ACTION CENTER, HUNGER AND FOOD INSECURITY IN THE UNITED STATES, http://www.frac.org/html/hunger_in_the_us/hunger_index.html (last visited Oct. 6, 2006) [hereinafter HUNGER AND FOOD].

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*; See generally NORD ET AL., *supra* note 4. See also Stephanie L. Bernell, Bruce A. Weber, & Mark Evan Edwards, *Restricted Opportunities, Personal Choices, Ineffective Policies: What Explains Food Insecurity in Oregon?*, 31 J. OF AGRIC. & RESOURCE ECON. 2 (Aug. 1, 2006).

²² NORD ET AL., *supra* note 4, at 4.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 5.

²⁸ *Id.* at 6.

²⁹ *Id.* at 8.

³⁰ HUNGER AND FOOD, *supra* note 16.

³¹ The U.S. Conference of Mayors Website, <http://www.usmayors.org/uscm/home.asp> (last visited Oct. 24, 2006).

³² Sodexo USA is a giant food and facilities management company that provides food services to corporations, the government, defense markets, health-care facilities, and university campuses. Sodexo USA Homepage, <http://www.sodexhousa.com/index.asp> (last visited Oct. 24, 2006).

³³ It is interesting to note that the survey cities reported that, “Hurricanes Katrina and Rita have not had a significant strain on their resources, but [the survey cities] are concerned that a lack of federal commitment to the evacuees, many of whom continue to reside in their communities, may eventually reduce resources devoted to the hungry and homelessness.” U.S. CONFERENCE OF MAYORS & SODEXHO, SURVEY ON HUNGER AND HOMELESSNESS: A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA’S CITIES: A 24-CITY SURVEY, 5 (Dec. 2005) [*hereinafter* U.S. MAYORS SURVEY ON HUNGER], *available at*: <http://www.usmayors.org/uscm/hungersurvey/2005/HH2005FINAL.pdf>.

³⁴ *Id.* at 4. See also, *Mayors Report Increased Demands*, *supra* note 9.

³⁵ U.S. MAYORS SURVEY ON HUNGER, *supra* note 33, at 4.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 15.

⁴⁰ In 2000, FoodChain, the nation’s largest food-rescue organization, merged with Second Harvest to form the largest hunger relief organization in the United States. SECOND HARVEST, FOOD BANKING: A RESPONSE TO HUNGER, http://www.secondharvest.org/export/sites/harvest/learn_about_hunger/issue_briefs/issue_FoodBankingResponse.pdf (last visited Oct. 24, 2006).

⁴¹ *Mayors Report Increased Demands*, *supra* note 9.

⁴² SECOND HARVEST, HUNGER STUDY 2006: KEY FINDINGS, http://www.hungerinamerica.org/key_findings (last visited Oct. 6, 2006).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Mayors Report Increased Demands*, *supra* note 9.

⁴⁶ MARK NORD & MARGARET ANDREWS, REDUCING FOOD INSECURITY IN THE UNITED STATES: ASSESSING PROGRESS TOWARD A NATIONAL OBJECTIVE, FOOD ASSIST. & NUTRITION RES. REP. NO. 26-2,1 (May 2002), *available at* <http://www.ers.usda.gov/publications/fanrr26/fanrr26-2/fanrr26.2.pdf> [hereinafter NORD & ANDREWS].

⁴⁷ See Food Research and Action Center Homepage, <http://www.frac.org/index.html> (last visited Oct. 23, 2006).

⁴⁸ *Hearings*, *supra* note 11 (statement of Christina Martin, former Director of FoodChain: The Network of Prepared and Perishable Food Rescue Programs).

⁴⁹ *Id.* (statement of Christine Vladimiroff, former CEO of Second Harvest).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² New York City Coalition Against Hunger, *Hunger in New York*, <http://www.nyccah.org/hungerinnyc.html> (last visited Oct. 24, 2006).

⁵³ *Id.*

⁵⁴ USDA, Food & Nutrition Service, TEFAP Homepage, <http://www.fns.usda.gov/fdd/programs/tefap/> (last visited Oct. 24, 2006).

⁵⁵ *Id.* See also FRAC, Federal Food Programs, The Emergency Food Assistance Program, http://www.frac.org/html/federal_food_programs/programs/tefap.html (last visited Oct. 6, 2006).

⁵⁶ Food and Nutrition Service, TEFAP Food Distribution Programs, <http://www.fns.usda.gov/fdd/programs/tefap/about-tefap.htm> (Oct. 24, 2006) [hereinafter TEFAP Food Distribution].

⁵⁷ *Hearings*, *supra* note 11 (statement of Christine Vladimiroff, former CEO of Second Harvest).

⁵⁸ HUNGER AND FOOD, *supra* note 16.

⁵⁹ Jenna Anding, Lacye Osborn & Mary Anne Gorman, *Study Finds Food Insecurity in Households Receiving WIC Benefits*, 98 J. FAM. & CONSUMER SCI. (ISSUE 2), Apr. 1, 2006, at 33.

⁶⁰ John T. Cook & Deborah A. Frank, *P-I Focus: Hunger Filled With Dire Consequences*, SEATTLE POST-INTELLIGENCER, March 21, 2004, at F1.

⁶¹ Guadalupe T. Luna, *The New Deal and Food Insecurity in the "Midst of Plenty"*, 9 DRAKE J. AGRIC. L. 213, 215-16 (2004); Desiree Cooper, *Don't Let the Hungry Down*, DETROIT FREE PRESS, Nov. 17, 2005, at 1.

⁶² *Blueprint*, *supra* note 9, at 6.

⁶³ Because of the restrictions on eligible food items, 20 percent of food stamp participants have distorted food consumption choices. Zhou Chen et al., *Effects of Food Stamp Participation on Body Weight and Obesity*, 87 AM. J. AGRIC. ECON. NO. 5, 1167, 1167-73 (2005).

⁶⁴ *Id.*

⁶⁵ USDA Release, *supra* note 2. On the other hand, the U.S. Conference of Mayors Sodexo Survey on Hunger and Homelessness from 2005 reported that 83 percent of the survey cities stated that the food at emergency food assistance facilities was nutritionally balanced. U.S. MAYORS SURVEY ON HUNGER, *supra* note 33, at 4.

⁶⁶ JANET POPPENDIECK, SWEET CHARITY: EMERGENCY FOOD AND THE END OF ENTITLEMENT 216 (Penguin Books 1999) (1998).

⁶⁷ At the California Senate Agriculture and Water Resources Committee hearing on April 19, 1977, for the California Good Samaritan Bill (S.B. 199), former California Senator Walter Stiern posed a similar question, asking why the poor should eat lower quality food. Morenoff, *supra* note 11, at 108.

⁶⁸ The Food Stamp Program provided benefits to an average of 23.9 million people in the United States in an average month of fiscal year 2004. The National School Lunch Program provided lunches to an average of some twenty-nine million children each school day during 2004. Of those, 59 percent were free or reduced-price. WIC provided benefits to an average of 7.9 million participants per month in fiscal year 2004. NORD ET AL., *supra* note 4, at 3. For more information on these three major programs, see USDA, Food & Nutrition Service, Food Stamp Program Homepage, <http://www.fns.usda.gov/fsp/> (last visited Oct. 6, 2006); National School Lunch Program, <http://www.fns.usda.gov/cnd/lunch/> (last visited Oct. 6, 2006); and WIC, <http://www.fns.usda.gov/wic/> (last visited Oct. 6, 2006). While these are the three predominant programs, other federal food programs include the following: School Breakfast Program; Summer Food Service Program for Children; Child and Adult Care Food Program; The Emergency Food Assistance Program; and Community Food and Nutrition Program. For a summary of these programs, see Food Research & Action Center, Federal Food Programs, http://www.frac.org/html/federal_food_programs/federal_index.html (last visited Oct. 23, 2006).

⁶⁹ NORD ET AL., *supra* note 4, at 3.

⁷⁰ See U.S. MAYORS SURVEY ON HUNGER, *supra* note 33.

⁷¹ NORD ET AL., *supra* note 4, at 3.

⁷² E-mail from Dr. J. Larry Brown, Director, Center on Hunger and Poverty at Brandeis University (Nov. 11, 2005, 09:56 PST) (on file with author).

⁷³ Tobin, *supra* note 3, at 512.

⁷⁴ Indeed, at the international level, the right to food is recognized by the United Nations in Article 25 of the Universal Declaration of Human Rights of 1948. Universal Declaration of Human Rights, G.A. Res. 217A, art. 25, U.N. GAOR, 3d Sess. 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948), available at <http://www.un.org/Overview/rights.html>. Likewise the International Covenant on Economic, Social, and Cultural Rights (ESCR Covenant) announces the right to adequate food and the right to be free from hunger. ESCR Covenant, G.A. Res. 2200A (XXI), art. 11, U.N. Doc. A/6316 (Dec. 16, 1966), available at http://www.unhchr.ch/html/menu3/b/a_cescr.htm. The ESCR Covenant codifies the norm established by the Universal Declaration of Human Rights; it is more specific than most international norms and was largely designed by the Food and Agricultural Organization of the United Nations. Philip Alston, *International Law and the Right to Food*, in FOOD AS A HUMAN RIGHT 162, 165 (Asbjørn Eide et al., eds., 1984).

⁷⁵ POPPENDIECK, SWEET CHARITY, *supra* note 66, at 2-3. Before the 1980s, “emergency food” was not a common-known term; it refers to a time-limited and urgent need for help.

⁷⁶ America’s Second Harvest is the nation’s largest food bank, which is comprised of approximately 400 regional food banks in all fifty states, as well as Puerto Rico. Second Harvest, <http://www.secondharvest.org> (last visited Feb. 20, 2005).

⁷⁷ POPPENDIECK, SWEET CHARITY, *supra* note 66, at 8.

⁷⁸ *Hearings*, *supra* note 11 (statement of Christine Vladimiroff, former CEO of Second Harvest).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ D.C. Central Kitchen, <http://www.dccentralkitchen.org/programoverview.php> (last visited Oct. 6, 2006).

⁸² Susan Levine, *A Growing Hunger for Help; Leading D.C. Kitchen Seeks City Funding to Keep Up with Wide-Ranging Needs*, THE WASHINGTON POST, Sept. 15, 2005, at T1.

⁸³ *Id.*

⁸⁴ D.C. Central Kitchen, Food Recovery, <http://www.dccentralkitchen.org/program.php?id=1> (last visited Mar. 11, 2006) [hereinafter Kitchen, Food Recovery].

⁸⁵ D.C. CENTRAL KITCHEN, 2005 ANNUAL REPORT 5 (2005), <http://www.dccentralkitchen.org/files/2005ar.pdf> (last visited Oct. 6, 2006).

⁸⁶ *Id.* at 3.

⁸⁷ Kitchen, Food Recovery, *supra* note 84 (last visited Mar. 14, 2006).

⁸⁸ TEFAP Homepage, *supra* note 54; FRAC information on TEFAP, *supra* note 55.

⁸⁹ Second Harvest, *How We Work: Food Banking*, http://www.secondharvest.org/how_we_work/food_banking.html (last visited Feb. 20, 2005).

⁹⁰ Jane Hawes, *Kids Fight Hunger by Feeding Box; LunchtimeLeftovers Find Way to Local Food Pantry*, COLUMBUS DISPATCH, Oct. 2, 2004 at 1B.

⁹¹ *Id.*

⁹² POPPENDIECK, SWEET CHARITY, *supra* note 66, at 5.

⁹³ *Id.* at 6.

⁹⁴ NORD ET AL., *supra* note 4, at 3.

⁹⁵ *Id.*

⁹⁶ Telephone Interview with Joel Berg, Executive Director, New York City Coalition Against Hunger (Nov. 18, 2005).

⁹⁷ *Id.*

⁹⁸ Elizabeth Becker, *U.S. Cutting Food Aid that is Aimed at Self-Sufficiency*, N. Y. TIMES, Dec. 22, 2004, at A3.

⁹⁹ The Food and Agriculture Organization of the United Nations hosted the World Food Summit in 1996.

¹⁰⁰ World Food Summit, Nov. 13-17, 1996, *Rome Declaration on World Food Security and World Food Summit Plan of Action*, http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/003/w3613e/w3613e00.htm (last visited Dec. 16, 2006).

¹⁰¹ FAS Online, World Food Summit: Interpretive Statements, <http://www.fas.usda.gov/icd/summit/interpre.html> (last visited Nov. 23, 2005). The Food and Agriculture Organization's Committee on World Food Security met in late October 2006, marking ten years after the first World Food Summit. At this meeting, over 120 countries met in Rome to assess how far the world has come towards meeting the 2015 goal of reducing by half the number of hungry people in the world. The United States is a member of the Committee on World Food Security. FAO COMMITTEE ON WORLD FOOD SECURITY, WILL WE MEET THE HUNGER GOAL?, <http://www.fao.org/newsroom/en/news/2006/10000428/index.html> (last visited Nov. 2, 2006). Interestingly, in the 2006 FAO committee meeting report, a comprehensive nineteen page document, the United States is

not mentioned even once. FAO COMMITTEE ON WORLD FOOD SECURITY, MID-TERM REVIEW OF ACHIEVING THE WORLD FOOD SUMMIT TARGET, 32nd Sess., Rome, Oct. 30 – Nov. 4, 2006, <ftp://ftp.fao.org/docrep/fao/meeting/011/j8303e.pdf> (last visited Dec. 16, 2006).

¹⁰² Healthy People 2010, <http://www.healthypeople.gov/> (last visited Feb. 12, 2006).

¹⁰³ NORD & ANDREWS, *supra* note 46.

¹⁰⁴ Healthy People 2010, Introduction of Understanding and Improving Health, http://www.healthypeople.gov/Document/html/uih/uih_1.htm (last visited Oct. 6, 2006).

¹⁰⁵ See, e.g., Spencer S. Hsu, *Advocates Call for Renewed Effort to Feed Hungry*, THE WASHINGTON POST, Dec. 5, 2000, at B3.

¹⁰⁶ The following groups are all members of the National Anti-Hunger Organization (NAHO), which created and endorsed the Millennium Declaration: America's Second Harvest; Bread for the World; Center on Hunger and Poverty; Congressional Hunger Center; End Hunger Network; Food Research Action Center; Interfaith Hunger Coordinators; MAZON: A Jewish Response to Hunger; Results; and Share Our Strength. See Bread for the World, National Anti-Hunger Organizations, <http://www.bread.org/learn/us-hunger-issues/national-anti-hunger.html> (last visited Mar. 14, 2006).

¹⁰⁷ Alliance to End Hunger Website, The Millennium Declaration to End Hunger in America, http://www.alliancetoendhunger.org/pdfs/millennium_declaration.pdf (last visited Dec. 17, 2006)

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See generally *Blueprint*, *supra* note 9.

¹¹¹ The Medford Declaration to End Hunger in the United States, Tufts University, <http://nutrition.tufts.edu/consumer/hunger/meddec.html> (last visited Dec. 16, 2006).

¹¹² *Id.*

¹¹³ Kansas State University, Foods and Nutrition Digest, Medford Declaration to End Hunger, http://www.oznet.ksu.edu/humannutrition/_fndigest/1993/janfeb93.htm#t3 (last visited Feb. 19, 2006).

¹¹⁴ See generally FRANCES MOORE LAPPE, *WORLD HUNGER: TWELVE MYTHS*, (1998).

¹¹⁵ *Id.* at 8.

¹¹⁶ SUSAN GEORGE, *ILL FARES THE LAND: ESSAYS ON FOOD, HUNGER, AND POWER*, 47 (1984).

¹¹⁷ See *supra* note 4.

¹¹⁸ U.S. DEP'T OF AGRIC. & ENVTL. PROT. AGENCY, *WASTE NOT, WANT NOT* (1998), <http://www.epa.gov/epaoswer/non-hw/reduce/wastenot.htm> (last visited Nov. 20, 2005). See also Cynthia L. Green, *Food Residuals Management Issue Paper*, 2001 JTR RECYCLING MARKET DEVELOPMENT ROUNDTABLE, May 31, 2001, <http://www.epa.gov/epaoswer/non-hw/recycle/jtr/docs/food.pdf> (last visited Feb. 19, 2006).

¹¹⁹ Janet Poppendieck, *Want Amid Plenty: From Hunger to Inequality*, MONTHLY REVIEW, July 17, 1998, at 125.

¹²⁰ A CITIZEN'S GUIDE, *supra* note 5, at sec. II.

¹²¹ Mike Lee, *Gleaning Fields, Groves is Urged to Stem Waste*, SEATTLE POST-INTELLIGENCER, Oct. 12, 1998, at B4.

¹²² *Id.*

¹²³ Poppendieck, *supra* note 119.

¹²⁴ *Id.*

¹²⁵ See FEDERAL FARM BOARD, ANNUAL REPORTS, <http://www.wooster.edu/library/gov/serialset/agency/F/FedFarmAnnual.htm> (last visited Dec. 16, 2006).

¹²⁶ TEFAP FOOD DISTRIBUTION, *supra* note 55.

¹²⁷ Morenoff, *supra* note 11, at 107; *Hearings*, *supra* note 11 (statement of Christine Vladimiroff, former CEO of Second Harvest).

¹²⁸ Morenoff, *supra* note 11.

¹²⁹ Morenoff, *supra* note 11, at 116, 117.

¹³⁰ Morenoff, *supra* note 11, at 117-18.

¹³¹ Berg, *supra* note 96.

¹³² *Hearings*, *supra* note 11 (statement of Christina Martin, former Director of FoodChain).

¹³³ 42 U.S.C. § 1791(c)(1) and (2). See also America's Second Harvest Website, Protecting Our Food Partners, http://www.secondharvest.org/how_to_help/donate_food/liability_protection.html (last visited Dec. 18, 2006).

¹³⁴ 42 U.S.C. § 1791(b)(1).

¹³⁵ *Id.* at § 1791(c)(3).

¹³⁶ Statement on Signing the Bill Emerson Good Samaritan Food Donation Act, 32 WEEKLY COMP. PRES. DOC. 1943 (Oct. 1, 1996).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Morenoff, *supra* note 11, at 108.

¹⁴⁰ *Id.*

¹⁴¹ For example, the State of Washington approved its own Good Samaritan food donation law in 1979. Wash. Rev. Code § 69.80.031 (2005). See also USDA Website, Citizen's Guide to Food Recovery, Appendix D: Citations for State Good Samaritan Laws, <http://www.usda.gov/news/pubs/gleaning/appd.htm> (last visited Feb. 20, 2006).

¹⁴² National and Community Service Act of 1990, Pub. L. No. 101-610, 104 Stat. 3127 (codified as 42 U.S.C. §§ 12671-12673 (1996)).

¹⁴³ The model law did not assume full force and effect until President Clinton signed it into law on October 1, 1996; it was codified as 42 U.S.C. § 1791.

¹⁴⁴ Morenoff, *supra* note 11, at 119-20.

¹⁴⁵ See *supra* note 132 and accompanying text.

¹⁴⁶ In the Act, "apparently wholesome food" is defined as "food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions." 42 U.S.C. § 1791(b)(2).

¹⁴⁷ Morenoff, *supra* note 11, at 117.

¹⁴⁸ Morenoff, *supra* note 11, at 120.

¹⁴⁹ *Id.*

¹⁵⁰ *Hearings*, *supra* note 11 (statement of Congressman Bill Emerson).

¹⁵¹ Morenoff, *supra* note 11, at 120.

¹⁵² Morenoff, *supra* note 11.

¹⁵³ *Id.* at 120-122.

¹⁵⁴ *Hearings, supra* note 11 (statement of Representative Danner).

¹⁵⁵ The Congressional Hunger Center Website, Mickey Leland and Bill Emerson, <http://www.hungercenter.org/chc/mickeynbill.htm> (last visited Feb. 21, 2006).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 123.

¹⁵⁸ *Hearings, supra* note 11 (statement of Congressman Bill Emerson).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Hearings, supra* note 11 (statement of Congresswoman Pat Danner).

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Hearings, supra* note 11 (statement of Christina Martin, Executive Director of FoodChain).

¹⁶⁵ *Id.*

¹⁶⁶ *Hearings, supra* note 11 (statement of Christine Vladimiroff, former CEO of Second Harvest).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Morenoff, *supra* note 11, at 108.

¹⁷⁰ H.R. REP. NO. 104-661 (1996), available at http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp104&sid=cp104gVLyy&refer=&r_n=hr661.104&item=&sel=TOC_349&.

¹⁷¹ *Hearings, supra* note 11 (statement of Henry Cohen, Legislative Attorney).

¹⁷² CAL. FOOD & AGRIC. § 58505 (2006); *Hearings, supra* note 11 (statement of Henry Cohen, Legislative Attorney).

¹⁷³ 10 PA. CONST. STAT. §§ 351-58 (1999); see also *Hearings, supra* note 11 (statement of Henry Cohen, Legislative Attorney).

¹⁷⁴ The Department of Justice, in advising the USDA, concluded that “the law only partially pre-empted state laws and that states could, therefore, choose a liability floor higher than that of the Emerson Act.” Morenoff, *supra* note 11, at 127; Memorandum from the Office of Legal Counsel, U.S. Dep’t of Just., to James S. Gilliland, General Counsel, USDA 1 (Mar. 10, 1997), available at <http://www.usdoj.gov/olc/bressman.htm>.

¹⁷⁵ MO. REV. STAT. § 537.115 (1995).

¹⁷⁶ N.Y. AGRIC. & MKTS. §§ 71-y, 71-z (1995).

¹⁷⁷ U.S. CONST. art. VI, cl. 2.

¹⁷⁸ *Hearings, supra* note 11 (statement of Christine Vladimiroff, former CEO of Second Harvest).

¹⁷⁹ For an example of how to encourage businesses to donate through the Good Samaritan Food Donation Act, see Tyra W. Hilliard, *Clause and Effect: Food Donations*, RELIGIOUS CONFERENCE MANAGER, Dec. 1, 2005, at 12.

¹⁸⁰ E-mail from David L. Morenoff, author of *Lost Food and Liability: The Good Samaritan Food Donation Law Story* (Nov. 5, 2005, 09:57 PST) (on file with author). Indeed, the Las Vegas chapter of the National Association of Catering Executives all cited fear of liability as the reason not to donate their left-over food. However, none of these businesses in the meeting and tourism industry had ever been sued for donating bad food. Hilliard, *supra* note 11.

¹⁸¹ Christina Martin, former director of FoodChain testified that in the history of FoodChain and other organizations involved in food-rescue, “there has not been a single documented case of food-borne illness.” *Hearings, supra* note 11 (statement of Christina Martin, former Director of FoodChain). Likewise, Joel Berg, Executive Director of New York City Coalition Against Hunger, says there have been no successful law suits against donors. Berg, *supra* note 96. Morenoff, *supra* note 11, at 131. Also, employers at Second Harvest do not know of any company who has been sued for donating food or grocery items, and Second Harvest itself has never been sued. E-mail from Diane Letson, Director, Food Sourcing Team, America’s Second Harvest (Nov. 21, 2005, 14:46 PST) (on file with author).

¹⁸² Daly, *supra* note 11.

¹⁸³ Howard A. Davis, *Feeding the Hungry. . . Legally: Good Samaritan Food Donation Act*, 3 RESTAURANT HOSPITALITY, Mar. 1997, at 122.

¹⁸⁴ *Id.* In 1997, 7-Eleven expected to increase its donations to 4 million pounds. Not long after the Good Samaritan Act took effect, the chain 7-Eleven allowed the company to increase its food donations up to 150 percent over two years. Morenoff, *supra* note 11, at 131, n.189.

¹⁸⁵ SECOND HARVEST, WHO HELPS US: FOOD PARTNERS, http://www.secondharvest.org/who_helps_us/food_donors.html (last visited Nov. 23, 2005).

¹⁸⁶ Sarah Bradshaw, *Program Puts Eateries’ Food on Plates of Needy, Hungry*, POUGHKEEPSIE JOURNAL, Aug. 7, 2005, at 1D; *see also* Food Donation Connection, <http://www.foodtodonate.com> (last visited Feb. 20, 2006).

¹⁸⁷ Food Donation Connection Website, Links, <http://www.foodtodonate.com/links.htm> (last visited Feb. 20, 2006).

¹⁸⁸ Press Release, Red Lobster, Red Lobster to ‘Harvest’ Food for Charitable Organization (June 2, 2005), *available at* <http://www.redlobster.com/company/press.asp?prid=112>.

¹⁸⁹ Daly, *supra* note 11.

¹⁹⁰ *Id.*

¹⁹¹ Letson, *supra* note 181.

¹⁹² *Id.*

¹⁹³ Food Lifeline, <http://www.foodlifeline.org/> (last visited Feb. 20, 2006).

¹⁹⁴ E-mail from Linda Nageotte, President & CEO, Food Lifeline (Oct. 31, 2005, 15:04 PST) (on file with author).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* (noting that some corporate donors are concerned about getting “bad press” if one of their products causes someone to get sick.)

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² D.C. CENTRAL KITCHEN, 2004 ANNUAL REPORT 4-5 (2004), <http://www.dccentralkitchen.org/files/2004ar.pdf> (last visited Mar. 14, 2006).

²⁰³ *Id.*

²⁰⁴ U.S. FOOD & DRUG ADMIN., FOOD SAFETY: A TEAM APPROACH, Sept. 24, 1998, <http://www.cfsan.fda.gov/~lrd/foodteam.html> (last visited Feb. 20, 2006).

²⁰⁵ Nageotte, *supra* note 194.

²⁰⁶ Another factor could be weather disasters, such as Hurricane Katrina, which displaced thousands of people from New Orleans, leaving them homeless. According to a study by Second Harvest, the nation-wide food bank network stated that demands for emergency food assistance in the Gulf Coast states tripled immediately following Hurricane Katrina. AMERICA'S SECOND HARVEST, KATRINA & RITA AFTERMATH: THE IMPACT ON EMERGENCY FOOD DISTRIBUTION AND CLIENTS, http://www.secondharvest.org/learn_about_hunger/katrina_rita_study.html (last visited Oct. 6, 2006).

²⁰⁷ Berg, *supra* note 96.

²⁰⁸ Letson, *supra* note 181.

²⁰⁹ DAVID BECKMAN & ARTHUR SIMON, GRACE AT THE TABLE: ENDING HUNGER IN GOD'S WORLD 150 (1999).

²¹⁰ POPPENDIECK, SWEET CHARITY, *supra* note 66, at 298.

²¹¹ See, e.g., *Federal Program Cuts Still Worry State*, STATESMAN JOURNAL, Jan. 1, 2006, at 1C.

²¹² *Blueprint*, *supra* note 9, at 13.

²¹³ *Blueprint*, *supra* note 9, at 15.

²¹⁴ Zachary Coile, *House OKs Budget Bill Cutting \$50 Billion in Aid; Medicaid, Food Stamps, Student Loans Take a Hit*, SAN FRANCISCO CHRONICLE, Nov. 19, 2005, at A3; see also Press Release, New York City Coalition Against Hunger, House Vote Would Increase Hunger Right Before Thanksgiving (Nov. 18, 2005) (on file with author). [hereinafter: Press Release NYC].

²¹⁵ Prior to heading up the New York City Coalition Against Hunger, Joel Berg served in senior executive service positions in the USDA, including the Coordinator of Community Food Security and Coordinator of Food Recovery and Gleaning. New York City Coalition Against Hunger, Joel Berg, <http://www.nyccah.org/about/joelberg.html> (last visited Feb. 20, 2006).

²¹⁶ Press Release NYC, *supra* note 214.

²¹⁷ *Hearings*, *supra* note 11 (statement of Christine Vladimiroff, former CEO of Second Harvest).

²¹⁸ *Id.*

²¹⁹ Todd Milbourn, *Wal-Mart Ends Food Donations to Charity*, SACRAMENTO BEE, Jan. 6, 2006, at A1.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ See Melanie Warner, *Its Wish, Their Command; When Wal-Mart Shops for Groceries, It Gets Whatever It Wants*, N.Y. TIMES, Mar. 3, 2006, at C2; Wal-Mart Fact Sheets, <http://www.walmartfacts.com/newsdesk/wal-mart-fact-sheets.aspx> (last visited Mar. 14, 2006).

²²⁴ POPPENDIECK, SWEET CHARITY, *supra* note 66, at 256-87.

²²⁵ *Blueprint*, *supra* note 9, at 13.

²²⁶ In the author's interview with Joel Berg, Executive Director of New York City Coalition Against Hunger, Mr. Berg said he believes the Good Samaritan Act is not nearly as important as providing the poor with food stamps or increasing the minimum wage. Berg, *supra* note 96.

²²⁷ USDA Release, *supra* note 2.

²²⁸ Telephone Interview with Joel Berg, Executive Director, New York City Coalition Against Hunger (Nov. 18, 2005).

²²⁹ Thomas Kelley, *Rediscovering Vulgar Charity: A Historical Analysis of America's Tangled Nonprofit Law*, 73 FORDHAM L. REV. 2437, 2439 (2005).

²³⁰ *Heat or Eat? Millions of Americans Forced to Make the Choice This Winter; Energy Costs and Food Insecurity Reach Record Highs*, U.S. NEWswire, Dec. 12, 2005, available at <http://releases.usnewswire.com/GetRelease.asp?id=77137> (last visited Dec. 18, 2006).

²³¹ *U.S. Mayors Survey on Hunger*, *supra* note 34 at 15.

²³² Poppendieck, *supra* note 119.

²³³ *Blueprint*, *supra* note 9, at 3.

²³⁴ Poppendieck, *supra* note 119.