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## Realizing the Right to Food in Maine: Insights from International Law

Smita Narula

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# REALIZING THE RIGHT TO FOOD IN MAINE: INSIGHTS FROM INTERNATIONAL LAW

Smita Narula

ABSTRACT

INTRODUCTION

I. SITUATING THE RIGHT TO FOOD AMENDMENT

*A. Connecting Food Justice and Social Justice*

*B. An Emergent Right to Food Movement in the United States*

*C. Food Sovereignty Movements and Food Freedom Laws*

II. THE RIGHT TO FOOD UNDER INTERNATIONAL HUMAN RIGHTS LAW

*A. The Value of Framing Food as a Human Right*

*B. The Normative Content of the Right to Food*

*C. States' Obligations to Uphold the Right to Food*

III. LEGISLATIVE AND POLICY TOOLS TO IMPLEMENT THE RIGHT TO FOOD

*A. Adopting a Statewide Right to Food Strategy*

*B. Challenges to Implementing the Right to Food Amendment*

CONCLUSION

## REALIZING THE RIGHT TO FOOD IN MAINE: INSIGHTS FROM INTERNATIONAL LAW

Smita Narula\*

### ABSTRACT

In November 2021, Maine made history as the first U.S. state to constitutionally recognize the right to food. Maine's right to food amendment—which sought to address widespread food insecurity and corporate control of the food supply—proclaims food as a “natural, inherent and unalienable right,” and empowers Mainers to grow and consume food of their own choosing, affirming their right to food sovereignty. This Article makes three key contributions to scholarly examinations of this historic amendment. First, it situates the amendment within the broader landscape of domestic and global struggles for the right to food and food sovereignty. Second, the Article considers how the right to food framework under international human rights law can help define the normative content of Maine's newly affirmed constitutional right, and the state's corresponding obligations to uphold that right. Third, the Article proposes legislative and policy reforms to help realize the right to food in Maine, while also considering potential challenges. The Article concludes that despite these challenges, the right to food amendment carries the potential to ensure lasting food security in Maine, while shifting the balance of power in the food system.

### INTRODUCTION

In November 2021, voters in Maine approved a historic constitutional amendment that formally enshrined their right to food. This first-of-its-kind state constitutional amendment proclaims:

All individuals have a natural, inherent and unalienable right to food, including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food.<sup>1</sup>

Proponents of the amendment, which was approved by sixty percent of voters, hoped that it would help address two major challenges faced by Mainers—hunger and corporate control of the food supply.<sup>2</sup> The drafters of the amendment—State

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\* Haub Distinguished Professor of International Law, Elisabeth Haub School of Law at Pace University. The Author thanks with appreciation Laurie Beyranevand, Alison Cohen, and Margot Pollans for their thoughtful feedback on drafts of the Article; Rita Flanagan, Fiona Herzig, and Natalie Lara for their invaluable research assistance; and the editorial team at the *Maine Law Review* for all their efforts throughout the editorial process.

1. ME. CONST. art. I, § 25.

2. Taylor Telford, *Maine Just Voted to Become the Nation's First 'Right to Food' State. What Does That Mean?*, WASH. POST (Nov. 3, 2021, 4:52 PM), <https://www.washingtonpost.com/business/2021/11/03/maine-right-to-food/>.

Senator Craig Hickman and farmer and food sovereignty advocate Heather Retberg—see the right as having three components. The first is a *right to food* component (“[a]ll individuals have a natural, inherent and unalienable right to food”). The second is a *right to food sovereignty* component (“including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being”). And the third component is language that limits the scope of the aforementioned rights (“as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food”).<sup>3</sup>

The first component seeks to address widespread food insecurity in Maine.<sup>4</sup> The state ranks thirty-fifth in the nation for food security and has the second highest rate of food insecurity in New England.<sup>5</sup> According to the Maine Department of Agriculture’s report, *Everyone at the Table: Maine’s Roadmap to End Hunger by 2030*, “food insecurity in Maine is more common, more severe, and happens at higher incomes than elsewhere in New England and the U.S.”<sup>6</sup> 11.4% of Maine households (approximately 153,000 people) experienced food insecurity in 2021,<sup>7</sup> a figure that has soared as high as 16.4% in years prior.<sup>8</sup> Certain communities and demographics are particularly affected. For example, 51.6% of African immigrant households are food insecure, as are forty-two percent of single-parent households, thirty-nine percent of people with a disability that prevents them from working, 28.3% of all people of color, and 18.1% of children.<sup>9</sup> Significant occupational differences also exist; food insecurity “is predictably high among low-wage workers.”<sup>10</sup>

The amendment’s second clause “sought to respond to the fact that the right to food movement in Maine arose primarily as a response to government regulations that disenfranchised small-scale farmers.”<sup>11</sup> Maine’s agriculture sector comprises

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3. R. D. Córdova Montes, *Using International Human Rights Law to Address Hunger in the U.S.*, 6 BUS. ENTREPRENEURSHIP & TAX L. REV. 1, 13–14 (2022). The limiting language was added to quell criticisms of the amendment, and “ensure that individuals cannot use their right to food to the detriment of their neighbors or in a way that damages state property.” MAINE CITIZEN’S GUIDE TO THE REFERENDUM ELECTION 22 (Nov. 2021) [hereinafter MAINE CITIZEN’S GUIDE], <https://www.maine.gov/sos/cec/elec/upcoming/pdf/11-21citizensguide.pdf>.

4. Córdova Montes, *supra* note 3, at 14.

5. *Maine Food System: 2022*, UNIV. OF ME. COOP. EXTENSION, <https://extension.umaine.edu/about/annual-report/maine-food-system/> [<https://perma.cc/BLK6-P6JY>] (last visited May 10, 2024).

6. ME. DEP’T OF AGRIC., CONSERVATION, & FORESTRY, *EVERYONE AT THE TABLE: MAINE’S ROADMAP TO END HUNGER BY 2030* 13 (2019) [hereinafter *EVERYONE AT THE TABLE*], <https://www.maine.gov/future/sites/maine.gov.future/files/2023-06/maines-roadmap-to-end-hunger.pdf>. Throughout this Article, “*Roadmap to End Hunger*” and “the roadmap” are used interchangeably to refer to this report.

7. *Id.* at 12.

8. *Id.* at 13.

9. *Id.* at 12.

10. *Id.* at 18 (noting, for instance, that food insecurity affects “one in three home health aides and around one in five grocery store and restaurant workers”).

11. Córdova Montes, *supra* note 3, at 14.

approximately 7,600 farms spanning 1.3 million acres.<sup>12</sup> More than ninety percent of farms in Maine are family-owned and twenty-seven percent of farms sell their products direct to consumer.<sup>13</sup> Small-scale farmers and homesteaders want to produce their own food to sell and eat without fear of prohibitive government regulation.<sup>14</sup> Corporate-owned industrial agriculture controls the food production sector nationally, and proponents believe that the right to food amendment will help protect Maine from those interests, as well as federal laws and policies serving those interests.<sup>15</sup>

In promoting the amendment, proponents also asserted the need for the state to become more food self-sufficient.<sup>16</sup> The state imports ninety percent of its food supply, making it nearly completely dependent on outside food sources<sup>17</sup> and “leaving access to food vulnerable to disruptions in the supply chain.”<sup>18</sup> The second clause of the right to food amendment, then, is as much about food system resiliency as it is about confronting corporate control of food, and asserting local agency and individual autonomy.<sup>19</sup> The amendment, it is hoped, will build resilience and relationships within communities wanting to grow and raise their own food without government overreach.<sup>20</sup>

As described above, the right to food amendment reflects Maine’s dual motivation to address widespread food insecurity while wresting control of their

12. NANCY MCBRADY, ME. DEP’T AGRIC., CONSERVATION, & FORESTRY, MAINE AGRICULTURE OVERVIEW (2023).

13. *Id.* Maine’s farms range from small to large in terms of size and sales. *See id.* As of 2017, 5,112 farms accrued less than \$10,000 in annual sales and, of those farms, 3,122 earned less than \$2,500. *See id.* On the opposite end of the spectrum, Maine is home to 135 farms earning over \$1 million in sales. *See id.* Notably, “10% of the farms produce 90% of the market value of farm products.” *Id.*

14. *See* Samantha Burns, *Maine’s Local Food Movement*, RUNAMUK ACRES CONSERVATION FARM (April 15, 2015), <https://runamukacres.com/maines-local-food-movement/> [<https://perma.cc/3YYR-E58W>].

15. Legis. Rec. H-200 (1st Spec. Sess. 2021). As State Senator Craig Hickman asserted, “[I’m] sorry to say, but having served on the committee that oversees our food supplies for six years and having chaired the committee on the house side for two terms, I can tell you unequivocally, the Department of Agriculture Conservation and Forestry exists to protect corporate interests.” Alison Cohen, *Why Mainers Should Vote YES to Right to Food*, GLOB. SOLIDARITY ALL. FOR FOOD, HEALTH & SOC. JUST. (Aug. 21, 2021), <https://rightsnotcharity.org/2021/08/why-mainers-should-vote-yes-to-right-to-food/> [<https://perma.cc/VRF3-DZ56>].

16. Colleen B. Schmidt, *Maine Voters Pass “Right to Food” Amendment to State Constitution*, HUNTER COLL. N.Y.C. FOOD POL’Y CTR. (Dec. 10, 2021), <https://www.nycfoodpolicy.org/maine-voters-pass-right-to-food-amendment-to-state-constitution/> [<https://perma.cc/9QFC-4ZZV>].

17. *Id.*

18. Tara Sad & Dylan McDowell, *Maine Passes “Right to Food” Constitutional Amendment*, CSG E. (Dec. 16, 2021), <https://csg-erc.org/maine-right-to-food/> [<https://perma.cc/V2SV-SX7E>]; *see also* *Ballot Question #3: Advocating for a Constitutional Amendment in the State of Maine to Include an Unalienable Right to Food*, WORDPRESS.COM, <https://righttofoodformaine.wordpress.com/> [<https://perma.cc/C49C-D9NY>] (last visited May 10, 2024) (highlighting that “[s]torms, flooding, and disease can result in breaks along the food chain to Maine”).

19. *See* Cohen, *supra* note 15.

20. *Proposing an Amendment to the Constitution of Maine to Establish a Right to Food: Hearing on L.D. 95 Before the J. Standing Comm. on Agric., Conservation & Forestry*, 130th Legis. 1 (2021) [hereinafter *Hearing on L.D. 95*] (testimony of Heather Retberg).

food systems away from corporate and federal actors.<sup>21</sup> These components are distinct but also related. As articulated by Representative Billy Bob Faulkingham, who introduced the 2021 right to food resolution:<sup>22</sup>

People are hungry in Maine because they do not have sufficient income or stable employment. And with more than 90% of what Mainers eat coming from out of the state, our food systems are vulnerable to weaknesses in the national economy and infrastructure. The Right to Food will protect our ability to build resilient communities and strong local economies . . . . By securing the right to food in our constitution, the capacity to grow and raise food will be protected in the most fundamental form of law.<sup>23</sup>

Although the amendment enjoyed broad-based support,<sup>24</sup> these views are not unanimously held. In a floor proceeding and debate regarding the right to food resolution, Representative MaryAnne Kinney opposed the resolution arguing that it “could very well cause additional food insecurity rather than [achieve] the intention to provide food security for the people of Maine.”<sup>25</sup> Otherwise, representatives and senators did not point to food insecurity as a reason to support or oppose the right to food resolution in the nine proceedings and debates that took place in 2021.<sup>26</sup> However, numerous representatives and senators on both sides of the issue did reference the food sovereignty movement in Maine.<sup>27</sup>

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21. According to Retberg, grassroots organizing to pass food sovereignty ordinances was designed to “counterbalance . . . the industrial lobbyists, the grocery lobbies, the dairy lobbies, all of those better funded groups that because of their funding had more access to legislators and then also more access to law.” Cohen, *supra* note 15.

22. L.D. 95 (130th Legis. 2021). Efforts to secure a right to food amendment began as early as 2015 when then-Representative Craig Hickman introduced the first right to food resolution. See Wendy Heipt, *The Right to Food Comes to America*, 17 J. FOOD L. & POL’Y 111, 120 (2021); H.P. 532, 127th Leg., 2d Reg. Sess. (Me 2015). While initial attempts to secure an amendment were unsuccessful, the campaign garnered notable support from within and outside the state. Heipt *supra* note 22, at 120. The language of the proposed amendment also went through several iterations over multiple legislative sessions until it finally passed both houses of the Maine legislature in the summer of 2021. *Id.* at 124.

23. MAINE CITIZEN’S GUIDE, *supra* note 3, at 20.

24. See Christina Wong & Wendy Heipt, *The Right to Food Movement: Fighting Hunger is About Justice, Not Charity*, SEATTLE TIMES (Nov. 7, 2021, 12:01 PM), <https://www.seattletimes.com/opinion/the-right-to-food-movement-fighting-hunger-should-be-about-justice-not-charity/> (noting support from hunters wanting protection from hunting bans; from farmers who want to promote self-sufficiency and sell directly to consumers; from the Maine Green Independent Party which supports decentralization; and from Republican legislators who believe strongly in individuals rights and saw the right to food amendment as the “second amendment for food”).

25. Legis. Rec. H-271 (1st Spec. Sess. 2021). Representatives speaking against the resolution stated that it had merits but the wrong execution. *Id.* Common arguments against the resolution included that its language was too broad, that Maine already had sufficient laws in place, and that the appropriate avenue would be legislation, not a constitutional amendment. *Id.* H-271 to -273; see also Córdova Montes, *supra* note 3, at 14 (noting other sources of opposition, including the fact that it would be left to judges to interpret the amendment, that the seeds provision goes against federal law, and that the amendment would negatively affect commercial activity).

26. Legis. Rec. H-271 (1st Spec. Sess. 2021) (notably absent is mention of food insecurity as a reason to support or oppose the right to food amendment).

27. Legis. Rec. S-145 (1st Spec. Sess. 2021); Legis. Rec. H-270 to -271 (1st Spec. Sess. 2021). See *infra* Section I.C for more on Maine’s food sovereignty movement.

At the state level, attempts to ensure food security and food sovereignty also seem to operate on sometimes convergent but, ultimately, different tracks. The state considers food insecurity to be a product of poverty rather than a lack of food.<sup>28</sup> Neither the state Legislature's 2022 Act to Implement Maine's Roadmap to End Hunger by 2030,<sup>29</sup> nor the roadmap itself mention the right to food amendment,<sup>30</sup> which passed in 2021. For right to food advocates and international legal scholars, however, the right to food amendment presents an unprecedented opportunity to constitutionally advance social and economic rights in a country with great inequality. As noted by two right to food advocates, "as the first state to adopt this human right[,] Maine is our shared national experiment."<sup>31</sup> This experiment raises many pertinent questions: What is the normative content of the right to food? What are Maine's obligations to implement and uphold this right? Are these obligations both negative and positive in nature? Must the right be realized immediately or progressively? And what are the challenges inherent in bringing these rights to fruition for all Mainers?

This Article seeks to answer these questions, among others. In so doing, it makes three specific contributions to scholarly examinations of Maine's historic right to food amendment. Part I situates the amendment in the context of contemporary and historic struggles for the right to food and food sovereignty, both domestically and globally. I argue that the amendment fulfills an original but less well-known demand of the U.S. civil rights movement, whose calls for racial and economic justice included a demand for access to adequate food. I further argue that the amendment stands as a rebuke to the United States' longstanding failure to acknowledge and uphold social and economic rights on both the domestic and international stage.

Part II considers how the right to food framework under international human rights law can help define the normative content of Maine's newly minted right. I argue that in line with this framework, Maine should ensure that food is *accessible* (economically and physically), *adequate* (safe, nutritious, and culturally acceptable), *available* (to purchase or to produce) and *sustainably produced*, and that it should do so in a transparent, participatory, and non-discriminatory manner.

Part III proposes legislative and policy reforms to help implement the right to food. I argue that Maine should adopt a coherent, statewide right to food strategy, which should be designed using a participatory, rights-based approach. In order to address the root causes of food insecurity and a lack of food self-sufficiency in Maine, such a strategy should include legislative measures to ensure a living wage, strengthen social protection laws, facilitate land access, ensure the right to save and exchange seeds, and promote sustainable agricultural practices. Part III also

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28. EVERYONE AT THE TABLE, *supra* note 6, at 6 ("[F]ood security in Maine has little to do with food. Or, more accurately, the causes of food insecurity have little to do with a scarcity of food. Food insecurity is most often a function of economic insecurity; hunger is a symptom of poverty.").

29. L.D. 174 (130th Legis. 2021).

30. See generally EVERYONE AT THE TABLE, *supra* note 6.

31. Wong & Heipt, *supra* note 24. The advocates, who are hoping for a similar amendment in Washington state, went on to add, "[w]hile we believe this right will provide practical application in challenging laws that hinder a person's right to grow their own food, among other things, we also need it to change the conversation about hunger from one about charity to one about justice." *Id.*

considers potential challenges of pursuing these legislative reforms, especially in a state like Maine, where libertarian impulses often go against the grain of government interventions. The Article concludes that even with these challenges, the right to food amendment carries the potential to ensure lasting food security and to shift the balance of power in the food system in Maine.

## I. SITUATING THE RIGHT TO FOOD AMENDMENT

Food and agriculture have long been sites of violence and control, and conversely of people's struggles and resistance.<sup>32</sup> This Part situates the right to food amendment in the context of domestic and global struggles for the right to food and food sovereignty, both contemporary and historic. It begins by examining how struggles for food sovereignty and access to adequate food are deeply intertwined with various civil rights and social justice movements in the United States. It then situates Maine's amendment within a growing movement to advance legal recognition of the right to food in U.S. states and municipalities. This Part concludes with an exploration of how the right to food amendment relates to concepts like food sovereignty and to "food freedom" laws aimed at expanding rights for small-scale food producers. It also examines how these concepts both differ and borrow from global food sovereignty struggles.

### A. Connecting Food Justice and Social Justice

Maine's efforts to ensure the right to food and food sovereignty intersect with struggles for racial and social justice. The struggle for Indigenous sovereignty, for example, has long included a demand for food sovereignty. When the United States was formed, the government forcibly removed Native American tribes from their lands, outlawed tribal hunting and fishing, destroyed buffalo herds and other game on which tribes relied, and destroyed Indigenous food systems.<sup>33</sup> The impact of this history persists today as Native American tribes experience disproportionately high rates of food insecurity and diet-related diseases.<sup>34</sup> In

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32. A rich body of scholarly work situates present-day issues surrounding food and agriculture in the political economy of colonial and corporate food regimes. See, e.g., Harriet Friedmann, *The Political Economy of Food: A Global Crisis*, 197 *NEW LEFT REV.* 29, 30 (1993) (analyzing "the rise of a [postwar] food regime and the emergence of contradictory and conflictual relations within it."); Philip McMichael, *A Food Regime Genealogy*, 36 *J. PEASANT STUD.* 139, 139–64 (2009) ("[A] coherent political economy and political-ecology of food is of utmost importance . . . to situate the world food system and its crisis within a broader historical understanding of geopolitical and ecological conditions."); MONICA M. WHITE, *FREEDOM FARMERS: AGRICULTURAL RESISTANCE AND THE BLACK FREEDOM MOVEMENT* (2018) (revealing agriculture as "a site of resistance" and providing "a historical foundation that adds meaning and context to current conversations around the resurgence of food justice/sovereignty movements" in urban spaces in the United States).

33. Mark Ford & Eric Meredith, *The Need to Support Native American Food Sovereignty*, FEEDING AM. (Nov. 17, 2021), <https://www.feedingamerica.org/hunger-blog/native-american-food-sovereignty> [<https://perma.cc/6DD9-DMHX>]; SARA USHA MAILLACHERUVU, *THE HISTORICAL DETERMINANTS OF FOOD INSECURITY IN NATIVE COMMUNITIES I* (2022).

34. Jennifer Sowerwine et al., *Reframing Food Security by and for Native American Communities: A Case Study Among Tribes in the Klamath River Basin of Oregon and California*, 11 *FOOD SEC.* 579, 580 (2019).



response, Indigenous communities are fighting for food sovereignty and for a reclamation of traditional food pathways.<sup>35</sup>

Food has also been central to struggles for racial justice. In her book *Farming While Black*, farmer and food sovereignty activist Leah Penniman chronicles how a long history of anti-Black racism, starting from the transatlantic slave trade, has culminated in the profound land loss, income and wealth gaps, and food access issues experienced by African-American communities today.<sup>36</sup> As noted by the National Black Food and Justice Alliance, “Black communities [also] have a long history of resilience, self-determination, and deep historical roots in Black food security, production and culture—from farming, to developing systems of distribution, cooperatives, to shaping the culinary traditions of foodways nationwide, to production and a wide array of food businesses.”<sup>37</sup>

A demand for economic and social rights was also central to the civil rights struggle in the mid-twentieth century. Although we tend to focus on the ending of de jure segregation and the passage of the Voting Rights Act as hallmarks of the civil rights struggle, it is important to recall that the movement and its aspirations extended to seeking an end to economic injustice, to addressing poverty, and to realizing the full spectrum of human rights, including the right to food. Dr. Martin Luther King, Jr., understood that economic and social justice go hand in hand. In April 1968, just months before his assassination, King “spearheaded nationwide efforts to launch a multiracial Poor People’s Campaign. ‘We are coming to Washington,’ he said. ‘We are coming to demand that the government address itself to the problem of poverty.’”<sup>38</sup> A month after King’s assassination, thousands of people occupied the National Mall in Washington, D.C., demanding fair wages, quality healthcare and education, decent housing, and access to adequate food.<sup>39</sup>

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35. Charlotte Coté, “Indigenizing” *Food Sovereignty: Revitalizing Indigenous Food Practices and Ecological Knowledges in Canada and the United States*, 5 HUMANITIES 57, 58 (2016). The Native American Food Sovereignty Alliance, for example, was formed “to bring grassroots practitioners, communities (rural, remote and urban), and organizations together along with Tribal governments to share, promote and support best practices and policies that enhance dynamic Native food systems.” *About Us*, NATIVE AM. FOOD SOVEREIGNTY ALL., <https://nativefoodalliance.org/our-work-2/about-us/> [<https://perma.cc/28KK-GXZP>] (last visited May 10, 2024).

36. LEAH PENNIMAN, *FARMING WHILE BLACK* 263–73 (2018).

37. *About Us*, NAT’L BLACK FOOD & JUST. ALL., <https://blackfoodjustice.org/about-us-1> [<https://perma.cc/FJ25-UBTS>] (last visited May 10, 2024); see also PENNIMAN, *supra* note 36, at 3 (describing how “‘organic farming’ was an African-indigenous system developed over millennia and first revived in the United States by a Black farmer, Dr. George Washington Carver,” and adding that community supported agriculture and community land trusts are rooted in the work of Black scholars and farmers).

38. Smita Narula & Rev. Jesse Jackson, *A Dream Deferred: The Right to Food in America*, HUFFPOST (Dec. 30, 2013), [https://www.huffpost.com/entry/hunger-in-america\\_b\\_4176060](https://www.huffpost.com/entry/hunger-in-america_b_4176060).

39. *Id.* For more on King’s planning of the Poor People’s March on Washington, see THOMAS E. JACKSON, *FROM CIVIL RIGHTS TO HUMAN RIGHTS: MARTIN LUTHER KING, JR., AND THE STRUGGLE FOR ECONOMIC JUSTICE* 329–58 (2007). See also Reuel Schiller, *Mourning King: The Civil Rights Movement and the Fight for Economic Justice*, 27 NEW LAB. F. 12, 12 (2018) (stating that the goal of the Poor People’s Movement was “a dramatic refashioning of the welfare state: a guaranteed minimum income, a statutory commitment to full employment, a massive federal jobs program, and the elimination of urban slums through the building of half a million units of low-income housing per

The Black Panther Party's (BPP) Free Breakfast for School Children Program can similarly be seen as part of a longstanding assertion of the right to food. Starting in 1969 and through the early 1970s, the BPP's breakfast program fed thousands of children, ultimately contributing to "the existence of federal free breakfast programs today."<sup>40</sup> Marie Senescall comments that the breakfast program was "a vigorous critique of the American food system that failed to feed its hungry poor and created a blueprint for current food justice movements."<sup>41</sup> Husain Lateef and David Androff add that the Free Breakfast Program, along with other "Service to the People Programs," was part of a broader BPP political agenda that "emphasized the place of government in the lives of people as ensuring that every member of its society has a fair share in that society."<sup>42</sup>

More recently, myriad food-related movements have emerged in response to rising levels of food insecurity, increased corporate control of the food system, and the growing environmental and public health impacts of that system. These movements and initiatives operate under different banners, such as food security, food justice, food sovereignty, and the right to food. Some seek the amelioration of hunger through charitable efforts, while others, such as human rights advocates, insist that governments be held accountable for undermining the right to food.<sup>43</sup> Still others focus on promoting ethical consumer choices,<sup>44</sup> or facilitating community-level efforts aimed at advancing food sovereignty<sup>45</sup> and "food

year"). For more on the relationship between food and the American civil rights movement, see Bobby J. Smith II, *Food and the Mississippi Civil Rights Movement: Re-reading the 1962-1963 Greenwood Food Blockade*, 23 *FOOD, CULTURE & SOC'Y* 382, 382 (2020) (examining the Greenwood Food Blockade in order to "illuminate[] the centrality of food to movement politics"; "enlarge our understanding of food as a weapon, tool, tactic, and everyday preoccupation in the civil rights era"; and show how poor rural Black communities "engaged in everyday food politics central to our understanding of food justice and food sovereignty today").

40. Erin Blakemore, *How the Black Panthers' Breakfast Program Both Inspired and Threatened the Government*, *HISTORY* (Jan. 29, 2021), <https://www.history.com/news/free-school-breakfast-black-panther-party> [<https://perma.cc/HNB9-H7VC>].

41. Marie Senescall, *Feeding Our Young: How the Black Panthers Brought School Breakfast to America*, *GLOB. CTR. FOR CLIMATE JUST.* (Mar. 22, 2022), <https://www.climatejusticecenter.org/news/letter/feeding-our-young-how-the-black-panthers-brought-school-breakfast-to-america> [<https://perma.cc/AYA2-P9NR>]. Other Black Panther Party programs included "transportation assistance, education, free healthcare clinics, tuberculosis and sickle-cell anemia testing, legal aid, and free shoes for the homeless in low-income and Black communities." *Id.*

42. Husain Lateef & David Androff, "Children Can't Learn on an Empty Stomach": *The Black Panther Party's Free Breakfast Program*, 44 *J. SOCIO. & SOC. WELFARE* 3, 10–11 (2017).

43. See *infra* Section I.B.

44. See, e.g., Michael Pollan, *Voting With Your Fork*, *N.Y. TIMES* (May 7, 2006), <https://archive.nytimes.com/pollan.blogs.nytimes.com/2006/05/07/voting-with-your-fork/> ("You can simply stop participating in a system that abuses animals or poisons the water . . . . You can vote with your fork, in other words, and you can do it three times a day."); Kyle Ching, *Changing the Framework from Consumerism to Activism*, *UNIV. OF CAL. BERKELEY FOOD SYS. PROJECTS* (Dec. 16, 2016), <https://nature.berkeley.edu/food-systems-projects/from-consumerism-to-activism/> [<https://perma.cc/8QZD-3TMZ>] (offering a counterbalance to Pollan's approach and noting that "[t]he consumerist, 'vote with your fork' approach is individualistic, exclusionary, and ineffective").

45. Established in 2010, the U.S. Food Sovereignty Alliance is a collective of national, state, and tribal organizations championing the human right to food and supporting community-level food sovereignty and justice movements. See *Our History: A Background of the U.S. Food Sovereignty*

freedom” for food producers and consumers.<sup>46</sup> Food justice activists, who often hail from marginalized communities, seek to confront structural racism in the food system by addressing the exploitation of farmworkers or the lack of access to healthful food in low-income neighborhoods.<sup>47</sup>

As noted by Eric Holt-Giménez in discussing food movements globally, “[s]ome efforts are highly institutionalized, others are community-based, while still others build broad-based movements aimed at transforming our global food system.”<sup>48</sup> More recently, mutual aid networks have also re-emerged to respond to the devastating impacts of the COVID-19 pandemic, “provid[ing] short-term food security while engaging with community members to create a more equitable and sustainable food system.”<sup>49</sup>

### *B. An Emergent Right to Food Movement in the United States*

Maine’s right to food amendment also emerges amidst a nascent but growing movement to advance legal recognition of the right to food in the United States. The National Right to Food Community of Practice (CoP) was formed in 2021 with the goal of supporting local advocates in securing state constitutional amendments codifying the right to food.<sup>50</sup> The CoP has close to one hundred members from twenty-five states.<sup>51</sup> The right to food movement draws inspiration from social movements worldwide and from the longstanding recognition of the right to adequate food under international human rights law and the laws of many nations. The world over, freedom from hunger and access to sufficient, nutritious food are

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*Alliance*, U.S. FOOD SOVEREIGNTY ALL., <https://usfoodsovereigntyalliance.org/resources-2/our-history-a-background-of-the-u-s-food-sovereignty-alliance/> [<https://perma.cc/ZSB6-XYNR>] (last visited May 10, 2024).

46. See *infra* Section I.C for a discussion of food freedom laws.

47. See generally ROBERT GOTTLIEB & ANUPAMA JOSHI, FOOD JUSTICE 13–14, 40 (2013) (recounting the history of food injustices and current efforts to change the food system).

48. Eric Holt-Giménez, *Food Security, Food Justice, or Food Sovereignty?*, 16 FOOD FIRST BACKGROUNDER 1, 2 (2010). See generally Nancy Romer, *The Radical Potential of the Food Justice Movement*, 98 RADICAL TCHR. 5 (2014) (mapping various food justice related movements in the United States).

49. Saria Lofton et al., *Mutual Aid Organisations and Their Role in Reducing Food Insecurity in Chicago’s Urban Communities During COVID-19*, 25 PUB. HEALTH NUTRITION 119, 119 (2021) (contrasting mutual aid organizations in Chicago to traditional emergency food providers during the COVID-19 pandemic); see also Romy Felsen-Parsons, “Solidarity, Not Charity”: Mutual Aid Has Been Around for a Long Time, WHYHUNGER (Feb. 18, 2021), <https://whyhunger.org/solidarity-not-charity-mutual-aid-has-been-around-for-a-long-time/blog/> [<https://perma.cc/WDL7-ACRQ>] (noting that the concept of mutual aid has been in practice for centuries, especially among marginalized communities who are often excluded from government social services).

50. *National Right to Food Community of Practice*, RIGHT TO FOOD, <https://www.righttofoodus.org/> [<https://perma.cc/EZ26-GSTJ>] (last visited May 10, 2024) (“The National Right to Food Community of Practice . . . weave[s] together the various streams of right to food work across the U.S., providing dedicated technical support and capacity building for the development of informed and coordinated food and farm policy and advocacy.”).

51. Email from Alison Cohen to Smita Narula (Apr. 4, 2024) (on file with Author). Members include individuals and organizations.

recognized as human rights.<sup>52</sup> These ideas are not foreign to the United States. Rather, they were inspired by the U.S. government's commitment to ensuring "freedom from want" in the wake of the Great Depression.<sup>53</sup> But the United States has famously refused to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR), the principal human rights treaty embodying the right to food.<sup>54</sup> The United States' resistance to ratification is rooted in a broader ideological resistance to recognizing social and economic rights, choosing instead to prioritize civil and political rights, as reflected in the U.S. Constitution's Bill of Rights<sup>55</sup> and the International Covenant on Civil and Political Rights, which the United States has ratified.<sup>56</sup>

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52. See U.N. Off. of the High Comm'r on Hum. Rts., *Fact Sheet No. 34: The Right to Adequate Food*, at 3 (Apr. 1, 2010) [hereinafter *Fact Sheet No. 34*]. At the time of this writing, 172 of the 193 U.N. member states were parties to the International Covenant on Economic, Social and Cultural Rights, which explicitly embeds the right to adequate food into its Article 11 right to an adequate standard of living. G.A. Res. 2200A (XXI), International Covenant on Economic, Social, and Cultural Rights, art. 11 (Dec. 16, 1966) [hereinafter ICESCR]. Twenty-nine U.N. Food and Agriculture Organization member states explicitly provide a constitutional right to food; seventeen member states implicitly recognize the right to food by acknowledging, without directly naming, broad social and economic rights; and twenty-eight member states regard the right to food via national policy. *The Right to Food Around the Globe*, FOOD AND AGRIC. ORG. OF THE U.N., <https://www.fao.org/right-to-food-around-the-globe/constitutional-level-of-recognition/en/> [<https://perma.cc/G76W-FWB5>] (last visited May 10, 2024) (providing an interactive search tool to identify the constitutional level of recognition in different countries).

53. U.N. Off. of the High Comm'r on Hum. Rts., *The Universal Declaration of Human Rights at 70: Still Working to Ensure Freedom, Equality and Dignity for All* (Nov. 14, 2018), <https://www.standup4humanrights.org/layout/files/30on30/UDHR70-30on30-article25-eng.pdf>. In 1944, U.S. President Franklin D. Roosevelt proposed the Economic Bill of Rights which included the following "four freedoms": freedom of speech, freedom of worship, freedom from want, and freedom from fear. See Hope Lewis, "New" Human Rights: U.S. Ambivalence Toward the International Economic and Social Rights Framework, in 1 BRINGING HUMAN RIGHTS HOME 103, 108–09 (Cynthia Soohoo et al. eds., 2007) ("Roosevelt's list extended beyond a traditional American concern with civil and political rights to address the poverty, unemployment, and lack of access to basic needs that his administration had sought to address in New Deal legislation."). Roosevelt's Second Bill of Rights, rejected by Congress, included "the right to earn enough to provide adequate food." 90 CONG. REC. A4391 (1944). Nevertheless, it greatly influenced the drafting of the Universal Declaration of Human Rights, in which former First Lady Eleanor Roosevelt played a leading role. See Lewis, *supra* note 53, at 110.

54. See CAROL ANDERSON, *EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS 1944–55* (2003) (describing how "the onset of the Cold War . . . allowed powerful southerners to cast [social and economic] rights as Soviet-inspired and a threat to the American 'ways of life'" resulting in the NAACP's "retreat to a narrow civil rights agenda that was easier to maintain politically" than a broader human rights agenda that included social and economic rights). See generally Lewis, *supra* note 53, at 115–21 (explaining that United States' non-ratification was a result of Cold War politics as well as racial conditions in the United States, including the "perceived threat of rising internal expectations among African Americans and other racially subordinated groups"). The United States has also actively opposed social and economic rights on the international stage. Tess Brennan, *Maine Becomes the First US State to Recognize a Right to Food in a Constitutional Amendment*, UNIVERSAL RTS. GRP. (Jan. 19, 2022), <https://www.universal-rights.org/maine-becomes-the-first-us-state-to-recognise-the-right-to-food-in-a-constitutional-amendment/> [<https://perma.cc/X9S9-3P4F>] (citing instances where the United States voted against U.N. Human Rights Council resolutions on the right to food).

55. See Ann M. Piccard, *The United States' Failure to Ratify the International Covenant on Economic, Social and Cultural Rights: Must the Poor Be Always with Us?*, 13 SAINT MARY'S L. REV.

To date, no other U.S. state has adopted a constitutional right to food,<sup>57</sup> though efforts are underway in other states.<sup>58</sup> In West Virginia, for example, a 2021 House Joint Resolution proposed submitting to voters the question of ratification or rejection of a constitutional amendment to add a new section to their Bill of Rights entitled “Right to Food, Food Sovereignty and Freedom from Hunger.”<sup>59</sup> The resolution was reintroduced during the 2023 legislative session.<sup>60</sup> At this writing, the bill was still in the West Virginia House.<sup>61</sup> In April 2024, a resolution was

ON MINORITY ISSUES 231, 238–39 (2011) (noting that the U.S. Constitution is “generally viewed as an instrument of negative rather than positive rights,” and adding that positive rights are generally not seen as justiciable).

56. The International Covenant on Civil and Political Rights (ICCPR) principally embodies two sets of rights: those pertaining to the physical integrity of the person (such as the right not to be tortured, executed, or enslaved) and those pertaining to legal proceedings, legal status, and the right to hold and profess one’s beliefs (such as the right to counsel, freedom of speech, and freedom of religion). International Covenant on Civil and Political Rights art. 7, 8, 14, 18, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]. The United States ratified the ICCPR in 1992. *Id.* at 1, 3.

57. Randa Larsen, *Food for Thought: The Emergence of Right-To-Food Legislation in the United States*, MINN. L. REV. DE NOVO (Feb. 13, 2023), <https://minnesotalawreview.org/2023/02/13/food-for-thought-the-emergence-of-right-to-food-legislation-in-the-united-states/> [<https://perma.cc/U5WR-N9WV>].

58. In Iowa in 2023, for example, a joint resolution was proposed to amend the Iowa Constitution to recognize the right to food, but the resolution failed on its first attempt. S.J.R. 11, 2023 Leg., Reg. Sess. (Iowa 2023); *see also* Córdova Montes, *supra* note 3, at 3 (noting that “[a]dvocates and legislators from additional states, including Connecticut, Hawaii, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, Tennessee, and Washington are actively discussing efforts to advance the right to food in law in their jurisdictions”). Women Advancing Nutrition, Dietetics and Agriculture (WANDA)—a Washington, D.C.-based Black women-led organization—has written a Food Bill of Rights and is advocating for its passage at the national level. *Get Involved*, WANDA, <https://www.iamwanda.org/foodbillofrights> [<https://perma.cc/BM92-CJ3X>] (last visited May 10, 2024); *Support the Food Bill of Rights*, FOOD BILL OF RTS., <https://www.foodbillofrights.org/> [<https://perma.cc/R83B-CT49>] (last visited May 10, 2024).

59. Right to Food, Food Sovereignty and Freedom from Hunger, H.J. Res. 30, 85th Leg., 1st Reg. Sess. (W. Va. 2021). The text of the amendment reads similarly to Maine’s amendment:

All people have a natural, inherent and unalienable right to food, including the right to acquire, produce, process, prepare, preserve and consume the food of their own choosing by hunting, gathering, foraging, farming, fishing, gardening and saving and exchanging seeds or by barter, trade or purchase from sources of their own choosing, for their nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the acquisition of food; furthermore, all people have a fundamental right to be free from hunger, malnutrition, starvation and the endangerment of life from the scarcity of or lack of access to nourishing food.

*Id.*

60. H.J. Res. 12, 86th Leg., 1st Reg. Sess. (W. Va. 2023). Notably, the West Virginia resolution currently retains the clause “all people have a fundamental right to be free from hunger”—language that was originally included in, but later struck from, the right to food resolution in Maine. *See infra* notes 162–63 and accompanying text.

61. W. Va. H.J. Res. 12. At the municipal level, and just weeks after Maine’s amendment passed, the city council of Morgantown, West Virginia, adopted a resolution recognizing its residents’ right to food. The resolution reads, in part:

the City of Morgantown strives to realize the right to food of all its residents . . . supports physical and economic access to healthy and affordable food, which shall include consideration of, but not be limited to, full-service grocery stores, incorporation of educational components into efforts to expand food access, nonprofit and coop models

introduced in California proposing a right to food amendment to the state's constitution.<sup>62</sup> At this writing, the bill had been introduced to the California Senate and was pending referral.<sup>63</sup> The 2024 resolution was preceded by the 2021 passage of the Human Right to Food Act in California, which declared as an "established policy of the state that every human being has the right to access sufficient, affordable and healthy food," and required relevant state agencies to "consider this . . . policy when revising, adopting, or establishing policies, regulations and grant criteria . . . pertinent to the distribution of sufficient affordable food."<sup>64</sup>

The Food Rights Initiative of the University of Miami School of Law Human Rights Program has also catalogued "[e]xamples of how local communities are using the law to shape the right to food narrative, and how these local efforts can pave the way for a nation that respects every person's right to produce, distribute, and access nutritious food through dignified means."<sup>65</sup> In addition to the food freedom and food sovereignty laws noted in the section below,<sup>66</sup> these initiatives include, for example, New York City's adoption of food policy legislation in 2020 "that strengthens food policy planning and works towards tackling food insecurity and food waste," and the passage in 2021 of Illinois's Vegetable Garden Protection Act which encourages "cultivation of fresh produce at all levels of production, including on residential property for personal consumption or non-commercial sharing."<sup>67</sup>

### C. Food Sovereignty Movements and Food Freedom Laws

The right to food amendment in Maine is also part of a growing assertion for food sovereignty in the state, and the country. The right to food amendment capped more than a decade of organizing and legislative efforts to ensure right to food sovereignty in Maine. This section briefly traces the history of that

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for grocery stores, and expansion of community gardens . . . supports the right of the people to sustainably grow, raise, harvest, produce, and consume food of their own choosing for their own nourishment, sustenance, bodily health, and well-being; and . . . will strive to realize the right to food of its residents through supporting the expansion of Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) enrollment efforts.

City of Morgantown, W. Va., Res. 2021–39 (2021).

62. The language of the proposed amendment reads: "The State hereby recognizes the fundamental human right to healthy food access for everyone in this state. It is the shared obligation of state and local jurisdictions to respect, protect, and fulfill this right." S. Const. Amend. 10, 2023–2024 Leg., Reg. Sess. (Cal. 2024).

63. *Status*, CAL. LEGIS. INFO., [https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill\\_id=20232024OSCA10](https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=20232024OSCA10) [<https://perma.cc/8Q9U-M63Z>] (last visited May 10, 2024).

64. CAL. WELF. & INST. § 18700(a)(1), (b) (West 2024).

65. Food Rights Initiative, *Enshrining the Right to Food in Law in the United States*, MIA. L. HUM. RTS. CLINIC, <https://miami.app.box.com/s/aaxgiw5sudcixt5b4v3qi206fssyuv0> [<https://perma.cc/ES9N-RUQR>] (last visited May 10, 2024).

66. See *infra* Section I.C.

67. Food Rights Initiative, *supra* note 65; see also N.Y.C., N.Y., CITY CHARTER § 20-i (July 11, 2020); 505 ILL. COMP. STAT. ANN. 87/5 (LexisNexis 2024). The Food Rights Initiative also lists almost a dozen U.S. cities that have signed the Milan Urban Food Policy Pact—an international agreement among cities committed to developing sustainable food systems using a human rights-based framework. Food Rights Initiative, *supra* note 65.

organizing.<sup>68</sup> It also situates Maine's food sovereignty movement in the context of "food freedom" laws in other states, and of the global food sovereignty struggle being led by agrarian movements around the world.

In 2011, the Maine Legislature passed a joint resolution expressing a non-binding commitment to food rights and stating that it "oppose[d] any federal statute, law or regulation that attempts to threaten our basic human right to save seed and grow, process, consume and exchange food and farm products within the State of Maine."<sup>69</sup> The resolution came about as a response to a grassroots movement calling upon the state to protect small-scale farmers, and people's rights to choose and access the foods they want to eat.<sup>70</sup>

That same year, municipalities began passing local food sovereignty ordinances. In 2011, Sedgwick, Maine, became the first town in the state (and in the United States) to adopt a Food Sovereignty Ordinance (FSO) exempting producers and processors from "licensure and inspection provided that the transaction is only between the producer or processor and a patron when the food is sold for home consumption."<sup>71</sup> Several towns followed suit.<sup>72</sup> Local farmers in Blue Hill, Maine, for example, worked to ensure the passage of an FSO after the state passed a law allowing small-scale farmers to butcher birds in-house (instead of at a slaughterhouse) but required the farmers to pay between \$30,000 and \$40,000 to do so.<sup>73</sup> Food sovereignty advocates quickly realized there was more work to do after the State sued a small-scale farmer from Blue Hill in 2011 for selling raw milk, challenging the FSO.<sup>74</sup>

The town-level movement ultimately grew into a larger one,<sup>75</sup> culminating in the state's 2017 Act to Recognize Local Control Regarding Food Systems,

68. For more on the process leading to the adoption of the right to food amendment, and the history of food-related advocacy in Maine, see Heipt, *supra* note 22, at 115–22 (2021).

69. H.P. 1176, Joint Resolution (125th Legis. 2011).

70. Sophia Gaulkin, *The Future of Maine's Food Sovereignty Movement*, REGUL. REV. (July 14, 2020), <https://www.theregreview.org/2020/07/14/gaulkin-future-maine-food-sovereignty-movement/> [https://perma.cc/VN7T-AV2S].

71. Sedgwick, Me., Local Food and Community Self-Governance Ordinance § 4.1(1) (2011); John Reinhardt, *Maine Town Passes Local Food and Community Self-Governance Ordinance Becomes First in US to Declare Food Sovereignty*, ORGANIC CONSUMERS ASSOC. (Mar. 16, 2011), [https://organicconsumers.org/article\\_22811/](https://organicconsumers.org/article_22811/) [https://perma.cc/WWD2-XTEA].

72. Gabriella Agostinelli, *Maine's Food Sovereignty Law*, THE FOOD L. FIRM (July 23, 2013), <https://www.foodlawfirm.com/chewed-up/maines-food-sovereignty-law/> [https://perma.cc/9X9U-YSXQ]. Some ordinances passed stated that "[i]t shall be unlawful for any law or regulation adopted by the state or federal government to interfere with the rights recognized by this Ordinance." *Id.*

73. Maria Godoy, *Farm Free or Die! Maine Towns Rebel Against Food Rules*, NPR (June 21, 2013), [https://www.npr.org/sections/thesalt/2013/05/28/186955163/farm-free-or-die-maine-towns-rebel-against-food-rules](https://www.npr.org/sections/thesalt/2013/05/28/186955163/farm-free-or-die-maine-towns-rebel-against-food-rules;); see also Nathan Bellinger & Michael Fakhri, *The Intersection Between Food Sovereignty and Law*, 28 NAT. RES. & ENV'T 45, 46 (2013) (seeing the Blue Hill ordinance "as an example of how the food sovereignty movement is attempting to take sovereignty away from the exclusive jurisdiction of the state and federal government and put it in the hands of individual communities").

74. Godoy, *supra* note 73. The court neither struck down the FSO as unconstitutional, nor took the opportunity to define it; however, the farmer lost on other grounds. *Id.*; Agostinelli, *supra* note 72.

75. As of 2021, 113 towns encompassing 294,911 Maine residents have FSOs. *Food Sovereignty Municipalities – LFCSGO Adopted*, LOCALFOODRULES.ORG, <https://www.localfoodrules.org/wp-content/uploads/2021/10/FoodSovereignCommunities.pdf> (last visited May 10, 2024).

commonly known as the Maine Food Sovereignty Act (MFSA).<sup>76</sup> The MFSA formally allowed towns to adopt FSOs that “would supersede state and federal regulations, subject to certain unburdensome requirements.”<sup>77</sup> Following pressure from the U.S. Department of Agriculture (USDA), however, the MFSA was later amended to require compliance with state and federal food safety laws and regulations with respect to meat and poultry products.<sup>78</sup>

Like Maine’s Food Sovereignty Act, several states have adopted so-called “food freedom” laws that expand the rights of small-scale producers to sell their products directly to consumers. Many states already have what are known as “cottage food laws,” which allow people to sell home-produced foods under certain regulations.<sup>79</sup> Food freedom laws go one step further by eliminating those minimal restrictions and allowing consumers direct access to unlicensed, unregulated, and uninspected homemade foods.<sup>80</sup> In 2015, Wyoming passed the first food freedom law in the United States, allowing producers to sell homemade foods other than some animal products directly to an informed end consumer.<sup>81</sup> The law was subsequently updated in 2017 and 2023, including to add more animal products.<sup>82</sup> North Dakota and Utah passed food freedom laws in 2017 and 2018, respectively, but included more restrictions than the one enacted in Wyoming.<sup>83</sup> Arkansas and Oklahoma followed suit in 2021,<sup>84</sup> and by March 2023, fifty-six food freedom bills had been introduced across the United States, including ones in Mississippi, South Carolina, and Texas.<sup>85</sup>

In these bills, freedom is conceptualized as freedom from regulatory oversight when selling directly to consumers, “exempt[ing] the producer from food safety licensing, permitting, certification, packaging, or labeling regulations.”<sup>86</sup> However,

76. P.L. 2017, ch. 215, §§ 1–2.

77. Gaulkin, *supra* note 70. The MFSA formally granted municipalities authority to regulate local food systems, which are defined as “community food system[s] within a municipality that integrate[] food production, processing, consumption, direct producer-to-consumer exchanges and other traditional foodways to enhance the environmental, economic, social and nutritional health and well-being of the municipality and its residents.” L.D. 1648 (128th Legis. 2017).

78. Doug Farquhar, *The Food Freedom Movement: Laws in Maine, North Dakota, Utah, and Wyoming*, NAT’L ENV’T HEALTH ASS’N (Aug. 17, 2020), <https://www.neha.org/food-freedom-state>; Gaulkin, *supra* note 70. Compare L.D. 1648 (128th Legis. 2017), with P.L. 2017, ch. 215.

79. JENNIFER McDONALD, FLOUR POWER: HOW COTTAGE FOOD ENTREPRENEURS ARE USING THEIR HOME KITCHENS TO BECOME THEIR OWN BOSSES 2 (2018).

80. Farquhar, *supra* note 78.

81. WYO. STAT. ANN. § 11-49-103 (2023); Alexia Kulwicz, *Food Freedom Legislation Roundup: Is Your State Moving Ahead?*, FARM-TO-CONSUMER LEGAL DEF. FUND (Aug. 12, 2021), <https://www.farmtoconsumer.org/blog/2021/08/12/food-freedom-legislation-roundup-is-your-state-moving-ahead>; Farquhar, *supra* note 78.

82. ARK. CODE ANN. § 20-57-201 (2023); OKLA. STAT. tit. 2, § 5-4.2 (2024); Kulwicz, *supra* note 81; Farquhar, *supra* note 78.

83. Compare N.D. CENT. CODE § 23-09.5-02 (2023), and UTAH CODE ANN. §§ 4-5a-104 to -105 (2023), with WYO. STAT. ANN. § 11-49-103 (2023). See also Farquhar, *supra* note 78.

84. Kulwicz, *supra* note 81.

85. *2023 State Food Safety Legislation*, NAT’L ENV’T HEALTH ASS’N (Mar. 15, 2023), <https://www.neha.org/2023-state-food-safety-legislation> [<https://perma.cc/8U82-VJWS>].

86. Farquhar, *supra* note 78. Private food sales have reportedly expanded as a result of these laws, and food safety regulators still retain the power to investigate any foodborne illness complaints. *Id.* According to the 2020 Local Food Marketing Practices (LFMP) survey distributed by the USDA, direct-



as noted by Randa Larsen, “food freedom laws and their proponents often lack some ideological and cultural bond. Unlike other countries and international bodies['] approach to food legislation, these laws generally lack this explicit idea of food as a human right—although that may be the next step.”<sup>87</sup>

Importantly, the right to food amendment goes further than state and municipal food freedom and food sovereignty laws. As Representative Faulkingham noted in his address to the Maine House of Representatives in support of the pending 2021 right to food resolution: “Food sovereignty laws deal with commercial regulation of food but what we are discussing here today is an individual right.”<sup>88</sup>

In framing control over the production and consumption of food as a right, the right to food amendment (unlike the food sovereignty ordinances and MFSA that preceded it)<sup>89</sup> aligns more closely with the demands of global agrarian movements who have long framed their struggles using the language and framework of food sovereignty as a means of reclaiming control over food and agricultural systems.<sup>90</sup> But in framing food sovereignty as an individual right, rather than a collective right, the right to food amendment departs markedly from La Via Campesina’s<sup>91</sup> conceptualization of food sovereignty.

to-consumer sales increased in Maine between 2015 and 2020. Laura Barley, *USDA Survey Shows Growth in New England’s Local Food Sector – But There’s Still Work to Do*, FARM TO INST. NEW ENG. (Oct. 4, 2022), <https://www.farmtoinstitution.org/blog/new-englands-local-food-sales-soar> [<https://perma.cc/5Q28-QHGD>]. A 2023 report from the Institute for Justice found that not a single case of foodborne illness had been linked to home-produced foods sold under California, Iowa, Montana, North Dakota, Oklahoma, Utah, or Wyoming food freedom laws. ERICA SMITH EWING & JENNIFER McDONALD, INST. FOR JUST., *NEW DATA SHOW HOMEMADE FOOD FOR SALE IS INCREDIBLY SAFE* (2023), <https://ij.org/wp-content/uploads/2023/09/Food-Safety-Results.pdf>. Nor had any foodborne illnesses been reported in Maine as of 2021. Baylen Linnekin, *Strange Bedfellows Oppose Improving Maine’s Food Sovereignty Law*, REASON (June 12, 2021), <https://reason.com/2021/06/12/strange-bedfellows-oppose-improving-maines-food-sovereignty-law> [<https://perma.cc/QE4A-YBR7>].

87. Larsen, *supra* note 57; see also Margot Pollans, *Eaters, Powerless by Design*, 120 MICH. L. REV. 643, 649 n.17 (2022) (noting that “the ‘food freedom’ movement emphasizes the consequences of food safety law for individual consumer choice” and focusing the inquiry instead on “the systemic constraints that undermine the extent to which the choices we do make can possibly be meaningful”); Alison Condra, *Food Sovereignty in the United States: Supporting Local and Regional Food Systems*, 8 J. FOOD L. & POL’Y 282, 308 (2012) (noting that while “[f]ood sovereignty envisions a role for government in ensuring food safety and in developing its own food and agriculture system,” in local food sovereignty ordinances like those found in Maine, “the goal is de- or no regulation of the food system at the level of producer direct to consumer transactions”).

88. Legis. Rec. H-270 (1st Spec. Sess. 2021).

89. See, e.g., Bellinger & Fakhri, *supra* note 73, at 48 (noting, for example, that the Blue Hill ordinance “does not address access to land or seeds for farmers, sustainable farming practices, gender inequalities, or many of the other issues that the food sovereignty movement tries to encompass”).

90. See *Declaration of Nyéléni*, NYÉLÉNI (Feb. 27, 2007), <https://nyeleni.org/IMG/pdf/DeclNyeleni-en.pdf>.

91. La Via Campesina is a transnational agrarian movement that is comprised of 182 organizations in 81 countries and purports to represent more than 200 million peasants worldwide. *Who Are We?*, LA VIA CAMPESINA, <https://viacampesina.org/en/who-are-we> [<https://perma.cc/D44S-QT4G>] (last visited May 10, 2024). La Via Campesina means “the peasant’s way.” *Id.* Their use of the word “peasant” is a deliberate reclamation of a term that has long carried derogatory connotations, indicative of “both peasants’ extreme subordination and of a ubiquitous elite practice of blaming peasants for a variety of economic and social ills.” See MARC EDELMAN, *WHAT IS A PEASANT? WHAT ARE PEASANTRIES? A BRIEFING PAPER ON ISSUES OF DEFINITION 3* (2013). Over time, however, and as articulated by Marc

La Via Campesina defines food sovereignty as “the right of *peoples* to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agricultural systems.”<sup>92</sup> As envisioned by La Via Campesina, food sovereignty is a “transformative political project that seeks to decentralize power in the food system, restore ecological balance, and put forward an alternative development paradigm.”<sup>93</sup> But food sovereignty is also not “a simple one size fits all solution.”<sup>94</sup> Rather, it is a reflection of the aspirations and needs of “those who produce, distribute and consume food.”<sup>95</sup> Although food sovereignty in Maine is framed as an individual rather than a collective right—potentially deflating the framework’s transformative potential—advocates in Maine are aligned with La Via Campesina’s opposition to corporate control of the food supply chain, as well as its call to ensure that “human beings hav[e] direct, democratic control over the most important elements of their society.”<sup>96</sup> Senator Craig Hickman, an original sponsor of the right to food bill, echoed these very sentiments, testifying in 2019 that the bill is “ultimately, about freedom of choice, access to nourishing food, food self-sufficiency, food security, freedom from hunger and malnutrition. [It] is about food sovereignty, individual responsibility and our basic fundamental right to work out our own nutrition regimen free from unnecessary interference.”<sup>97</sup>

Both movements also seek to correct the deep imbalance of power in our food systems. As Heather Retberg, a drafter of the amendment, explained in her public comment:

Why is an individual Right to Food needed in Maine? Power over our food supply is concentrated in a few individuals and corporations. Global companies dominate our food system and policy at the expense of our food self-sufficiency. This concentration of power threatens Mainers’ individual rights to grow, raise, harvest, produce, and consume the food of our choosing now and in the future. State constitutional amendments exist to protect the people and our individual rights. While our individual rights to free speech, to bear arms, and to be protected from

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Edelman, the term has become an “identity marker[] that [has] served to inspire the collective action of diverse kinds of rural movements.” *Id.* at 9.

92. *Declaration of Nyéléni*, *supra* note 90 (emphasis added).

93. Smita Narula, *Confronting State Violence: Lessons from India’s Farmer Protests*, 54 COLUM. HUM. RTS. L. REV. 89, 160 (2022).

94. LA VIA CAMPESINA, FOOD SOVEREIGNTY NOW! 27 (2018), <https://viacampesina.org/en/wp-content/uploads/sites/2/2018/02/Food-Sovereignty-A-guide-Low-Res-Vresion.pdf>.

95. *Declaration of Nyéléni*, *supra* note 90.

96. LA VIA CAMPESINA, *supra* note 94, at 3. Food for Maine’s Future—a community-driven organization that has been very active in the movement to adopt the right to food amendment—lists La Via Campesina as one of its partners. *About*, FOOD FOR ME.’S FUTURE, <https://savingseeds.wordpress.com/about> [<https://perma.cc/5P6E-RJL2>] (last visited May 10, 2024); *Partners*, FOOD FOR ME.’S FUTURE, <https://savingseeds.wordpress.com/our-partners> [<https://perma.cc/3EFU-BUCJ>] (last visited May 10, 2024).

97. *Resolution, Proposing an Amendment to the Constitution of Maine to Establish a Right to Food: Hearing on L.D. 795 Before the J. Standing Comm. on Agric., Conservation & Forestry*, 129th Legis. 2 (2019) (statement of Craig V. Hickman, Senator, Maine District 14). Although the attempt to enshrine the right to food in 2019 did not succeed, L.D. 795 (129th Legis. 2019), it helped further the right to food and food sovereignty movement in the state. For more on the history of attempts to secure a right to food amendment in Maine, see *supra* note 22.

unlawful searches and seizures are constitutionally protected in this country's Bill of Rights, our fundamental right to grow and raise food for our own nourishment, sustenance, bodily health, and well-being is not. The proposed amendment would shift the power to us and protect our individual right to food for present and future generations.<sup>98</sup>

In centering an individual's right to produce and consume food of their own choosing, the right to food amendment carries the potential to shift this balance of power in Maine.<sup>99</sup> An assertion of food sovereignty, and the corresponding implementation of the right to food, can also address food insecurity in Maine and support the creation of more sustainable food pathways. The next Part considers how guidance from international human rights law can lend support to this weighty effort.

## II. THE RIGHT TO FOOD UNDER INTERNATIONAL HUMAN RIGHTS LAW

This Part analyzes how the right to food and food sovereignty frameworks under international human rights law can help inform Maine's implementation of its right to food amendment. Although the United States has failed to ratify or accept the international instruments in which the rights to food and food sovereignty are enshrined,<sup>100</sup> Maine should look to international law to inform its interpretation and implementation of the right to food amendment for at least three reasons.

First, the language for the right to food amendment as originally proposed "was based on work done by food sovereignty advocates in the state, who had surveyed [right to food] language used internationally and also assessed food sovereignty issues nationwide in an effort to construct a proposal that reflected both human rights concerns and practical applications."<sup>101</sup>

Second, a recent decision by Maine's Law Court<sup>102</sup>—concerning the question of whether a Sunday hunting ban violated the right to food under Maine's constitution—reaffirmed that when interpreting the Maine Constitution, the court

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98. MAINE CITIZEN'S GUIDE, *supra* note 3, at 22.

99. *See Romer*, *supra* note 48, at 6 (noting that the food justice movement "has the potential to tackle cross-cutting issues of equality, environment, democracy, resilience, health, and power. It also has the potential to bring in crucial leadership of youth, people of color, women, the poor, and working class—the people most marginalized by the present food system—and unite across class, race, gender, language, and nation").

100. As explained above, the United States has famously refused to ratify the ICESCR, the key international human rights treaty enshrining the right to food. *See supra* text accompanying note 54. It did, however, sign the ICESCR on Oct. 5, 1977. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3. On a technical reading, the United States must therefore still refrain from taking action that would go against the object and purpose of this treaty. *See Vienna Convention on the Law of Treaties*, art. 18, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (entered into force on Jan. 27, 1980). *See also infra* note 154 and accompanying text, noting that the United States voted against the adoption of the declaration that enshrined the right to food sovereignty.

101. Heipt, *supra* note 22, at 120.

102. When acting in its appellate capacity, the Maine Supreme Judicial Court is referred to as the "Law Court." Leadbetter, Seitzinger & Wolff, *Uniform Maine Citations* § III(B)(1) at 37 (2022–2024 ed. 2022).

will look to the plain language of constitutional provisions and will accord them “a liberal interpretation in order to carry out their broad purpose, because they are expected to last over time and are cumbersome to amend.”<sup>103</sup> A plain and liberal interpretation of the right to food amendment, which provides that “[a]ll individuals have a natural, inherent and unalienable right to food,”<sup>104</sup> also counsels in favor of turning to international human rights law for definitional guidance in order to achieve the right to food amendment’s broad purpose.

Third, the Maine’s Office of the Attorney General has stated that in addition to the features included in the right to food amendment, namely “the right of each individual to save and exchange seeds, and the right to grow, raise, harvest, produce, and consume the food of their own choosing for their own nourishment, sustenance, bodily health, and well-being . . . the right to food may have other features not expressly described.”<sup>105</sup> Guidance from the U.N. Committee on Economic, Social and Cultural Rights (CESCR),<sup>106</sup> from U.N. Special Rapporteurs on the Right to Food,<sup>107</sup> and from the 2004 U.N. Food and Agriculture Organization (FAO) Voluntary Guidelines on the Right to Adequate Food and related documents<sup>108</sup> can shed light on these other features.

This Part summarizes key points from this guidance and from legal scholarship on the issue. It begins by examining the value of framing food as a right instead of an aspiration. It then defines the normative content of the right to food under international human rights law before turning to an examination of states’ obligations to uphold this right.

### *A. The Value of Framing Food as a Human Right*

In many respects, and as explained above, the constitutionalization of the right to food in Maine represents a full circle moment in the United States, normatively

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103. *Parker v. Dep’t of Inland Fisheries & Wildlife*, 2024 ME 22, ¶ 19, \_\_\_ A.3d \_\_\_. The court held that the poaching exception in the right to food amendment grants the Legislature the power to define the parameters of the right to hunt. *Id.* ¶ 24.

104. ME. CONST. art. 1, § 25.

105. MAINE CITIZEN’S GUIDE, *supra* note 3, at 19.

106. The CESCR is a treaty-monitoring body that monitors states’ implementation of their obligations under the ICESCR. To fulfill these obligations, the CESCR adopts General Comments to help assist States’ Parties interpret their obligations. Comm. on Econ., Soc. & Cultural Rts., *Report on the Twentieth and Twenty-First Sessions*, ¶ 49, U.N. Doc. E/C.12/1999/11 (2000). CESCR’s General Comment No. 12 specifically addressed States’ obligations in relation to implementing the right to adequate food. Comm. on Econ., Soc., and Cultural Rts., *General Comment No. 12: The Right to Adequate Food (art. 11)*, 20th Sess., ¶ 2, U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter General Comment No. 12].

107. Special Rapporteurs are independent human rights experts with mandates to advise and report on human rights from either a country-specific or thematic perspective. *Special Procedures of the Human Rights Council*, U.N. OFF. OF THE HIGH COMM’R ON HUM. RTS., <https://www.ohchr.org/en/special-procedures-human-rights-council> [<https://perma.cc/8E84-XLRB>] (last visited May 10, 2024). For more on the work of the Special Rapporteur on the Right to Food, see *Special Rapporteur on the Right to Food*, U.N. OFF. OF THE HIGH COMM’R ON HUM. RTS., <https://www.ohchr.org/en/special-procedures/sr-food> [<https://perma.cc/QL6N-P9B3>] (last visited May 10, 2024).

108. FOOD & AGRIC. ORG. OF THE U.N., VOLUNTARY GUIDELINES TO SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD SECURITY (2004) [hereinafter FAO VOLUNTARY GUIDELINES].

speaking.<sup>109</sup> Framing food as a human right is also meaningful in its own right. To begin, and as described above, it links food-related movements in Maine to a long history of people's struggles that have centered around demands for equitable access to food and food producing resources.<sup>110</sup> Second, a rights-based approach offers a much-needed counternarrative to the dominant ways in which we frame the problem of hunger. Specifically, a rights-based approach disrupts the idea that food insecurity is a problem to be solved by charity or by increasing food production. As food-insecure Mainers themselves have reported, "the emphasis on charitable food system solutions create[s] a false sense among decision-makers that the problem [is] solved," which is far from the case.<sup>111</sup>

Many food-insecure Mainers rely on a combination of federal food assistance programs and non-profit charitable food providers to meet their food-related needs.<sup>112</sup> Federal programs such as the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and child-centered programs such as the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) are powerful tools for addressing food insecurity, but they are limited in many respects.<sup>113</sup> To begin, eligibility requirements are drawn too narrowly, thereby excluding many food-insecure individuals from receiving benefits.<sup>114</sup> Eligible participants also face numerous administrative barriers to participation,<sup>115</sup> and the benefits provided may not be sufficient to meet participants' food-related needs.<sup>116</sup> As a result, food-insecure households must rely on non-profit "emergency" food providers, like food pantries, which many people now routinely turn to as a source of food.<sup>117</sup> Here, too, there are challenges. Limited service hours and transportation and personal mobility limitations can hinder physical access to food pantries, while administrative barriers present additional obstacles.<sup>118</sup> Often, there is a mismatch between the food offered and one's dietary and cultural needs.<sup>119</sup> Charitable food providers also often lack accountability and oversight.<sup>120</sup>

The right to food amendment can help shift the focus from food assistance as charity to adequate food as a human right. A rights-based approach recognizes individuals as rights holders, not simply recipients of government or private assistance. It further recognizes governments as duty-bearers that have a

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109. See *supra* text accompanying notes 54–55 (explaining the United States' reluctance to recognize social and economic rights, including the right to food).

110. See *supra* Section I.A.

111. EVERYONE AT THE TABLE, *supra* note 6, at 64.

112. *Id.* at 61.

113. *Id.*

114. *Id.* (noting that "income thresholds for nutrition programs like SNAP and WIC (185% of the federal poverty level) are too low to fully capture [household] need").

115. *Id.* "Immigration status [also] affects program eligibility for SNAP and other programs." *Id.*

116. *Id.* at 60.

117. *Id.*

118. *Id.*

119. See *id.*

120. *Id.*

responsibility to ensure individuals' right to food.<sup>121</sup> During periods of economic crisis, when governments grapple with limited resources and must navigate competing priorities, the human rights framework also "signals to governments that they must prioritize the needs of the most vulnerable and ensure that peoples' basic needs and fundamental rights are fulfilled."<sup>122</sup> Maine's own *Roadmap to End Hunger* highlights the need for narrative and systemic change, noting that "the prevailing culture focuses blame on impacted individuals—for instance, for 'not working hard enough'—rather than systemic causes."<sup>123</sup> Placing the blame on individuals, in turn, creates stigma that discourages people from seeking assistance and further stigmatizes those who do seek help.<sup>124</sup> The right to food, on the other hand, calls upon governments to empower people to obtain food in ways that respect their dignity and autonomy.

The right to food amendment can also shift the focus from increasing food production to ensuring more equitable distribution of food and food producing resources.<sup>125</sup> Another dominant way in which we frame the problem of hunger is a market-based and profit-driven productivist paradigm. This paradigm reduces the suite of issues we are facing in our food systems to a production problem and argues for increased and more efficient production of food commodities. Such a focus, however, "conveniently sidesteps key questions related to poverty, access to food and food-producing resources, and social equity and power relations in the

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121. Gawain Kripke, *The Right to Food: 10 Years On, Are We Winning or Losing the Battle?*, OXFAM (Oct. 17, 2014), <https://politicsofpoverty.oxfamamerica.org/right-food-10-years-winning-losing-battle> [<https://perma.cc/XJR6-DKF8>]; see also Ana Ayala & Benjamin M. Meier, *A Human Rights Approach to the Health Implications of Food and Nutrition Insecurity*, 38 PUB. HEALTH REV. 1, 8 (2017) (by "shifting the policy debate from political aspiration to legal obligation . . . [and] [e]mpowering individuals to seek accountability for these government obligations rather than serving as passive recipients of government benevolence, human rights law identifies individual rights-holders and their entitlements and corresponding duty-bearers and their obligations").

122. SMITA NARULA ET AL., INT'L HUM. RTS. CLINIC NYC SCH. L., NOURISHING CHANGE: FULFILLING THE RIGHT TO FOOD IN THE UNITED STATES 25–26 (2013). Mathilde Cohen, drawing in part from the work of former U.N. Special Rapporteur on the Right to Food, Olivier De Schutter, adds that a constitutional recognition "minimizes the uncertainty of judicial interpretation, especially compared to jurisdictions where the right is simply a directive principle or implied through other constitutional rights." Mathilde Cohen, *The Right to Food*, in MAX PLANCK ENCYCLOPEDIA OF COMPAR. CONST. L. 1, para. 31 (Oxford Univ. Press, 2017). A constitutional right to food also "trickle[s] down" to laws, policies, programs, and strategies, and makes the case for "lodging administrative responsibility in a distinct organization and the locus of responsibility in the state, increasing the odds that people will at least be free from hunger." *Id.* Although Cohen's analysis focused on enshrining the right to food in national constitutions, these benefits can also be realized at the state level.

123. EVERYONE AT THE TABLE, *supra* note 6, at 64. See also Pollans, *supra* note 87, at 670 (2022) (arguing that neoliberal "[r]esponsibilization . . . deemphasizes structural causes of poverty and places the blame on the poor. This ideology is unidimensional; if you are hungry, you should work harder so you can afford more food").

124. EVERYONE AT THE TABLE, *supra* note 6, at 41.

125. See Córdova Montes, *supra* note 3, at 9 (noting that "food sovereignty approaches hunger as a question of power over resources. Hunger can be addressed not just by providing food to those in need, but by breaking the systemic barriers that perpetuate hunger.").

food system.”<sup>126</sup> After all, hunger in Maine, like the rest of the United States, is not the result of a shortage of food. It is the result of poverty and of policies that fail to prioritize the fulfillment of Mainers’ basic needs.

Finally, a rights-based approach points to very different solutions. As explained below, ensuring the right to food requires a robust, systemic response, that addresses food access and food production problems at their root and recommends deep transformative action. Treating food as a human right compels an examination of the different axes of power in the food system. It also supports calls for economic and social justice, for climate consciousness, and for a reimagining of dominant industrial modes of food production to fit a more sustainable and equitable frame so that the right to food can be guaranteed now and into the future.

### *B. The Normative Content of the Right to Food*

Under international human rights law, all people have the right to an adequate standard of living for themselves and their families, including the right to adequate food. The right was first enshrined in the Universal Declaration of Human Rights (UDHR)<sup>127</sup> and later codified in the ICESCR.<sup>128</sup> The right to food, as reflected in international human rights law, has two components: the right to be free from hunger<sup>129</sup> and the right to have sustainable access to food in a quantity and quality sufficient to satisfy one’s dietary and cultural needs.<sup>130</sup> At minimum, governments

126. Smita Narula, *Achieving Zero Hunger Using a Rights-Based Approach to Food Security and Sustainable Agriculture*, in FULFILLING THE SUSTAINABLE DEVELOPMENT GOALS: ON A QUEST FOR A SUSTAINABLE WORLD 75, 85 (Narinder Kakar et al. eds., 2021) [hereinafter *Achieving Zero Hunger*].

127. See G.A. Res. 217 A Universal Declaration of Human Rights, U.N. GAOR, 3d Sess., art. 25, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR] (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food.”). Adopted by the U.N. General Assembly on December 10, 1948, the UDHR is considered the foundational document of international human rights law which set out, for the first time, fundamental human rights that must be universally protected. This milestone Declaration—and the numerous human rights treaties that have since followed—came about as a result of the international community’s collective desire to prevent the recurrence of the atrocities of World War II. Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM U.L. REV. 1, 10 (1982).

128. ICESCR, *supra* note 52, art. 11. The right to food can also be found in other international human rights treaties, including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities. G.A. Res. 44/25, Convention on the Rights of the Child, art. 24 § 2(c), (Nov. 20, 1989); G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women, art. 12 § 2, (Dec. 18, 1979); U.N. Convention on the Rights of Persons with Disabilities, art. 24 § 2(c), (Mar. 30, 2006).

129. See ICESCR, *supra* note 52, art. 11(2) (“The States Parties to the present Covenant, [recognize] the fundamental right of everyone to be free from hunger . . . .”); General Comment No. 12, *supra* note 106, ¶ 17 (noting that it is a violation of the ICESCR for a state to fail to fulfill the “minimum essential level required to be free from hunger”).

130. General Comment No. 12, *supra* note 106, ¶ 8 (“The Committee considers that the core content of the right to adequate food implies: The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.”).

must take immediate action to ensure people's right to be free from hunger.<sup>131</sup> But ensuring the right to food goes beyond ensuring that people receive a minimum number of calories or nutrients. Under the ICESCR, states are obligated to take steps to *progressively realize* the right to adequate food, to the maximum of their available resources.<sup>132</sup> This means progressively ensuring that people have physical and economic access at all times to sufficient, healthful, and culturally acceptable food that is produced and consumed sustainably, preserving access to food for future generations.<sup>133</sup>

Specifically, states must ensure in a transparent, participatory, and non-discriminatory manner that food is *accessible* to individuals, both physically and economically; that food is *available* to purchase in stores or that people have the means to produce food themselves; that food is *adequate* to satisfy an individual's dietary needs and is nutritious, safe, and culturally appropriate; and that food is produced and consumed in ways that are *sustainable*, so that we may safeguard this right for future generations.

To begin, food must be accessible to individuals both economically and physically. Economic accessibility means that individuals should be able to afford food without having to forgo other basic needs,<sup>134</sup> while physical accessibility means that food must be accessible to all people including physically vulnerable persons—such as the elderly, persons who are ill, or persons with disabilities—as well as those who live far from grocery stores and markets<sup>135</sup> in so-called “food deserts.”<sup>136</sup> The USDA defines a food desert as a low-income census tract where a substantial number of residents live far from retailers that offer affordable and healthy food. As of 2021, there were eighty-six census tracts designated as food deserts in Maine.<sup>137</sup>

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131. *See id.* ¶ 6.

132. ICESCR, *supra* note 52, art. 2(1) (“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”).

133. General Comment No. 12, *supra* note 106, ¶¶ 6–7.

134. *Id.* ¶ 13.

135. *Id.*

136. The use of the term “food desert” has been subject to much critique, including because “the methodologies behind the designation are flawed or outdated—glossing over both negatives and positives—and fail to acknowledge other hallmarks of food access and the resilience and creativity of community members in finding exactly what they want to eat.” Lela Nargi, *Critics Say It's Time to Stop Using the Term “Food Deserts”*, THE COUNTER (Sept. 16, 2021), <https://thecounter.org/critics-say-its-time-to-stop-using-the-term-food-deserts-food-insecurity/> [<https://perma.cc/82BM-YC97>]. Others argue that term is misleading because deserts are naturally occurring phenomena whereas the lack of access to healthful food is the result of economic inequality and systemic racism. According to these critics, the term “food apartheid” is more apt. *Id.*; Anna Brones, *Food Apartheid: The Root of the Problem with America's Groceries*, GUARDIAN (May 15, 2018), <https://www.theguardian.com/society/2018/may/15/food-apartheid-food-deserts-racism-inequality-america-karen-washington-interview>.

137. *CACFP Participation in Maine*, CHILDCARE AWARE OF AM., <https://storymaps.arcgis.com/stories/3a02a0e11577482f9b3f318b92e6d01f> [<https://perma.cc/NCX3-7HY9>] (last visited May 10, 2024).



The quality or adequacy of food also matters. For food to be adequate, it must satisfy an individual's dietary needs and must be nutritious, safe, and culturally appropriate.<sup>138</sup> A lack of economic access to adequate food intersects with and fuels the epidemic of diet-related diseases and other public health crises as low-income communities often must make difficult trade-offs between the quantity and quality of their food. Energy-dense, low-nutrient foods, which may contribute to diabetes, heart disease, and other illnesses, are examples of inadequate food.<sup>139</sup> Availability means that food must be available for purchase or people must have the means to produce their own food, including through secure access to land, water, and seed.<sup>140</sup> But the right to food is not just about access to food, or what we consume, or the availability of food and food producing resources; it is also about *how* our food is produced. Food systems are severely threatened by climate change and are also significant contributors to greenhouse gas emissions and other forms of environmental degradation.<sup>141</sup> It is now widely understood that food systems need to shift to agroecological methods of production to remain sustainable.<sup>142</sup>

Seen in the above light, the right to food is not simply the right to a minimum number of calories or the right to food assistance; rather, it is the right to an agricultural and economic system wherein people are empowered to provide for themselves in a dignified and sustainable way, and it is the right to have a meaningful say in one's food systems. Food sovereignty struggles have long influenced the right to food, including by ensuring that the framework reflects distributive justice and sustainability concerns. A right to food sovereignty is reflected in various national constitutions and regional initiatives,<sup>143</sup> but a standalone right to food sovereignty was only recently enshrined in international law. As such, its normative content is not as clearly articulated as that of the right to food.

In 2018, the U.N. General Assembly adopted the U.N. Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).<sup>144</sup> Although the Declaration holds the legal status of "soft law,"<sup>145</sup> its adoption reflects

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138. See General Comment No. 12, *supra* note 106, ¶¶ 9, 11.

139. *Fact Sheet No. 34*, *supra* note 52, at 3.

140. See General Comment No. 12, *supra* note 106, ¶ 12.

141. *Achieving Zero Hunger*, *supra* note 126, at 77–78.

142. See Olivier De Schutter (Special Rapporteur on the Right to Food), *Final Report: The Transformative Potential of the Right to Food*, ¶¶ 16, 17, U.N. Doc. A/HRC/25/57 (Jan. 24, 2014) [hereinafter De Schutter 2014] (noting that agroecology—which “refers to a range of agronomic techniques . . . that reduce the use of external inputs and maximize resource efficiency”—“is now supported by an increasingly broad part of the scientific community”).

143. See Christophe Golay, *The Rights to Food and Food Sovereignty in the UNDROP*, in THE UNITED NATIONS' DECLARATION ON PEASANTS' RIGHTS 141–42 (2022).

144. G.A. Res. 73/165, United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (Dec. 17, 2018) [hereinafter UNDROP].

145. “Although the UNDROP is not a legally binding instrument, the principles and rights enumerated therein are based on human rights standards enshrined in international instruments that are legally binding, such as the [ICESCR], [ICCPR], [CEDAW], as well as several International Labour Organization Conventions.” Smita Narula, *Peasants' Rights and Food Systems Governance*, in THE UNITED NATIONS DECLARATION ON PEASANTS' RIGHTS 157–58 (2022).

growing recognition of the human rights abuses endured by rural communities worldwide.<sup>146</sup> UNDROP's adoption fills critical gaps in rights protection under international human rights law, including by affirming peasants' rights to land, seeds, and natural resources, as well as their right to food sovereignty.<sup>147</sup> Article 15.4 of the Declaration affirms that

[p]easants and other people working in rural areas have the right to determine their own food and agriculture systems, recognized by many States and regions as the right to food sovereignty. This includes the right to participate in decision-making processes on food and agriculture policy and the right to healthy and adequate food produced through ecologically sound and sustainable methods that respect their cultures.<sup>148</sup>

UNDROP's recognition of the right to land is also noteworthy. Article 17 affirms peasants' right to land and recognizes that secure and stable access to land is essential to the realization of a range of human rights, including the right to an adequate standard of living.<sup>149</sup> UNDROP also calls on states to ensure a more equitable distribution of land,<sup>150</sup> to promote the conservation and sustainable use of land, and to support practices that are resilient and regenerative, such as agroecological methods.<sup>151</sup>

The right to seeds under UNDROP is also relevant. UNDROP affirms the right to "save, use, exchange and sell . . . farm-saved seed or propagating material" and to "maintain, control, protect and develop . . . seeds and traditional knowledge."<sup>152</sup> Pursuant to UNDROP, states must ensure that seed policies and intellectual property laws take these rights into account.<sup>153</sup> Maine's right to food amendment likewise incorporates the right to save and exchange seeds, recognizing this key aspect of UNDROP.

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146. *Id.* at 151–52 (UNDROP's "landmark adoption must be viewed in light of the political economy of our industrial food system—a system that generates hunger and malnutrition, impoverishes farmers, displaces rural communities and Indigenous peoples, and wreaks havoc on the environment").

147. *Id.* at 156.

148. UNDROP, *supra* note 144, art. 15.4.

149. Article 17 of UNDROP states:

Peasants and other people living in rural areas have the right to land, individually and/or collectively . . . including the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures.

*Id.* art. 17.1.

150. *Id.* art. 17.6.

151. *Id.* art. 17.7. For more on the right to land, see also CHRISTOPHE GOLAY, THE RIGHT TO LAND AND THE UNDROP: HOW CAN WE USE THE UNITED NATIONS DECLARATION ON THE RIGHTS OF PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS TO PROTECT THE RIGHT TO LAND? (Int'l Land Coal. et al., 2020).

152. UNDROP, *supra* note 144, art. 19.

153. *Id.*

Although the United States voted against the adoption of UNDROP,<sup>154</sup> by explicitly incorporating food sovereignty and the right to save and exchange seeds as elements of its right to food amendment, Maine has given these rights constitutional status. The next Section turns to states' obligations to uphold the right to food under international law.

### *C. States' Obligations to Uphold the Right to Food*

By ratifying and becoming parties to international human rights treaties, states commit to putting in place domestic measures and legislation to respect, protect, and fulfill human rights.<sup>155</sup> The obligation to *respect* is essentially a duty not to interfere with existing rights.<sup>156</sup> The obligation to *protect* means that states should protect individuals and groups from human rights abuses committed by third party actors (such as individuals or private enterprises) including by creating an adequate regulatory framework.<sup>157</sup> And the obligation to *fulfill* the right to food means that states must take proactive steps to facilitate the enjoyment of the right.<sup>158</sup> The obligation to fulfill the right to food is a positive obligation that the CESCR has interpreted to include the duty to *facilitate* and the duty to *provide*.

The duty to facilitate means that “the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security.”<sup>159</sup> And the duty to provide means that in situations where individuals are unable to enjoy the right to adequate food using means at their disposal, the state must provide the right directly.<sup>160</sup> To be clear, the right to food is not the right to be fed. As noted above it is the right to feed oneself and one’s family with dignity.<sup>161</sup> But in situations where individuals or groups are unable to provide for themselves, for reasons beyond their control, the government does have the obligation to provide that right

154. Press Release, General Assembly, General Assembly Endorses Landmark Global Compact on Refugees, Adopting 53 Third Comm. Res., 6 Decisions Covering Range of Human Rights, U.N. Press Release GA/12107 (Dec. 17, 2018).

155. This three-level typology of states’ duties—which was originally developed by Asbjørn Eide in his study on the right to adequate food as a human right—is now a widely used framework for analyzing states’ human rights obligations generally. Asbjørn Eide (Special Rapporteur on the Right to Food), U.N. Econ. & Soc. Council, Sub-Comm’n on Prevention of Discrimination and Prot. of Minorities, *The New International Economic Order and the Promotion of Human Rights: Report on the Right to Adequate Food as a Human Right*, at paras. 112–14, U.N. Doc. E/CN.4/Sub.2/1987/23 (July 7, 1978).

156. Olivier De Schutter (Special Rapporteur on the Right to Food), *Interim Report of the Special Rapporteur on the Right to Food*, ¶ 11, U.N. Doc. A/68/288 (Aug. 7, 2013); General Comment No. 12, *supra* note 106, ¶ 15 (“The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access.”).

157. General Comment No. 12, *supra* note 106, ¶ 15 (“The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.”); De Schutter 2014, *supra* note 142, ¶ 13.

158. General Comment No. 12, *supra* note 106, ¶ 15.

159. *Id.*

160. *Id.*

161. See FAO VOLUNTARY GUIDELINES, *supra* note 108, at 9; see also Wong & Heipt, *supra* note 24 (a right to food amendment “isn’t all about increased charity or more food banks. It’s about protecting what we all should want – the ability to provide for ourselves, by growing or buying enough sustenance to maintain a dignified life.”).

directly. Maine's 2019 right to food resolution included language stating that "all people have a fundamental right to be free from hunger, malnutrition, starvation and the endangerment of life from the scarcity of or lack of access to nourishing food."<sup>162</sup> However, this language was omitted from the 2021 version of the resolution in response to concerns that the language "would require the Maine government to literally provide food to each Maine resident."<sup>163</sup> But as explained above, international human rights law does not impose upon states an obligation to directly provide food for all.

International human rights law does counsel that states' decision-making and implementation processes should be guided by a human rights-based approach. For Maine, this means that its efforts to implement and uphold the right to food amendment should comply with the principles of participation, accountability, non-discrimination, transparency, human dignity, empowerment, and the rule of law.<sup>164</sup> Meaningful participation in civic affairs is a human right in and of itself that enables individuals "to share meaningfully in decisions that affect their livelihood and their capacity to feed themselves."<sup>165</sup> In turn, participation in food and agricultural policymaking "promotes transparency and accountability in decision-making" processes,<sup>166</sup> and helps uphold the right to food sovereignty. The accountability principle emphasizes that government and its officials are accountable to the constituents they serve, and that individuals should have the ability to question both the process and the content of decisions that impact their well-being and livelihood.<sup>167</sup> Maine must also ensure the right to food in a non-discriminatory manner,<sup>168</sup> and should take special care to ensure the rights of vulnerable groups, including those most vulnerable to violations of the right.<sup>169</sup>

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162. See L.D. 795 (129th Legis. 2019); Heipt, *supra* note 22, at 124.

163. Heipt, *supra* note 22, at 124–25.

164. Collectively, these principles are known as the PANTHER framework as the first letter of each principle forms the acronym. *The Right to Food*, FOOD & AGRIC. ORG. OF THE U.N., <https://www.fao.org/right-to-food/areas-of-work/en/> [<https://perma.cc/7JPA-CGCM>] (last visited May 10, 2024).

165. DUBRAVKA BOJIC BULTRINI, GUIDE ON LEGISLATING FOR THE RIGHT TO FOOD 29 (2009). As suggested by UNDROP, Maine should work with farmers and other people working in rural areas to formulate policies at the municipal and state level to "advance and protect the right to adequate food, food security and food sovereignty and sustainable and equitable food systems" including by "establish[ing] mechanisms to ensure the coherence of their agricultural, economic, social, cultural and development policies with the realization of the rights contained in the Declaration." UNDROP, *supra* note 144, art. 15.5. The need to ensure policy coherence is echoed in FAO's guidance which calls for the review of relevant sectoral legislation to ensure its compatibility with the right to food. BULTRINI, *supra* note 165, at 60.

166. BULTRINI, *supra* note 165, at 29.

167. *Id.*

168. See, e.g., ICESCR, *supra* note 52, at art. 2(2) ("The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."). The obligation to ensure rights in a non-discriminatory manner is reinforced by the United States' obligations under the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), both treaties that the United States has ratified. See ICCPR, *supra* note 56, at art. 2(1) ("Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or

The principle of transparency “is closely related to the right to freedom of information.”<sup>170</sup> Maine should make sure that information on its right to food activities, policies, laws, and budgets is easily accessible to those who need it.<sup>171</sup> The principle of human dignity, which undergirds all of human rights law,<sup>172</sup> mandates that public authorities take measures to ensure the right to food in a manner that upholds individuals’ inherent dignity.<sup>173</sup> Empowerment means enabling people to “influence and exert control over decisions affecting their livelihood.”<sup>174</sup> Finally, respect for the rule of law means that “no person or body can breach the law with impunity.”<sup>175</sup> Where rights have been violated, Maine must ensure an effective remedy and must guarantee due process in all legal proceedings.<sup>176</sup> The next section proposes legislative and policy measures to help implement the right to food amendment in line with the human rights framework outlined above.

### III. LEGISLATIVE AND POLICY TOOLS TO IMPLEMENT THE RIGHT TO FOOD

As described above, Maine’s predominant response to addressing food insecurity is a series of federal nutrition assistance programs, which together with assistance from charitable food providers, are an essential but incomplete response to the issue, as evidenced by the persistence of the problem in the state.<sup>177</sup> Although these strategies help fulfill the state’s duty to *provide* food in situations where individuals are unable to provide for themselves,<sup>178</sup> they fall far short of what is required under international human rights law. Similarly, Maine’s predominant response to addressing food sovereignty concerns (at the state level) has involved the passage of the Maine Food Sovereignty Act, which formally allows towns to adopt food sovereignty ordinances that would supersede state and

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other status.”); International Convention on the Elimination of All Forms of Racial Discrimination, art. 2(2), 5(e), Dec. 21, 1965, 5 I.L.M. 352, 660 U.N.T.S. 195 (“States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms . . . . States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . [e]conomic, social and cultural rights . . .”).

169. See FAO VOLUNTARY GUIDELINES, *supra* note 108, at 25 (Guideline 13, Support for vulnerable groups).

170. BULTRINI, *supra* note 165, at 29.

171. *Id.*

172. UDHR, *supra* note 127, at Preamble, art. 1 (“[R]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world . . . All human beings are born free and equal in dignity and rights.”).

173. BULTRINI, *supra* note 165, at 29.

174. *Id.*

175. *Id.* at 83.

176. *Id.*

177. See *supra* text accompanying notes 112–21, explaining how food insecure Mainers rely on federal and charitable food assistance programs to meet their food-related needs, and the limitations of these programs.

178. See *supra* text accompanying note 160.

federal regulations, except for meat and poultry products.<sup>179</sup> But the rights to food and food sovereignty, as reflected in the right to food amendment and under international human rights law, go much further. This Part recommends that Maine adopt a statewide right to food strategy to help ensure the right to food for all Mainers. This Part also identifies and addresses some of the challenges in bringing this legislative proposal to fruition.

### *A. Adopting a Statewide Right to Food Strategy*

To help ensure the right to food, Maine should adopt a coherent statewide right to food strategy that connects the dots between its food, agricultural, trade, environmental, social welfare, and public health policies. The strategy itself should be movement-driven and should be implemented using a rights-based approach. Previous efforts to adopt a statewide food policy were cut short. In 2006, the Legislature created a Maine Food Policy Council,<sup>180</sup> which was tasked with developing a “food policy for the State that recognizes that it is in the best interest of the State to ensure the availability of an adequate supply of safe, wholesome and nutritious food to its citizens.”<sup>181</sup> The Council was also charged with developing a strategic plan for implementation of that policy.<sup>182</sup> In 2011, however, the legislation establishing the Council was repealed, terminating the Council and its work.<sup>183</sup> With the passage of the right to food amendment in 2021, efforts to adopt a statewide food policy can be revitalized, this time ensuring that it is grounded in a human rights framework.

As an initial step, the CESCR recommends the adoption of a framework law as a key instrument in the implementation of a holistic strategy concerning the right to food.<sup>184</sup> A framework law is a legislative tool that contains general principles and

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179. See *supra* text accompanying notes 76–78.

180. P.L. 2005, ch. 614, § 4.

181. *Id.* Specifically, the Council aimed to develop a statewide food strategy in support of a food system that: “1. Ensures Maine residents have a safe and stable food supply free of interruption by natural or human events; 2. Enhances the access, availability, affordability and quality of food for all its citizens; 3. Maintains a safety net to ensure security from hunger for the State’s most vulnerable citizens; 4. Recognizes that the regular consumption of a balanced diet of nutritious foods can improve health and reduce health care costs; 5. Is economically and environmentally sustainable; 6. Reflects that Maine is a unique place with land, soil, a climate and fisheries conducive to the production of a wide array of food products; 7. Promotes a fair return to all participants, provides entrepreneurial freedom and allows access to opportunity to participate in the food supply system; 8. Increases food self-reliance through increasing production of food in Maine and increasing the consumption of Maine-produced fish and farm products; 9. Is recognized as a vital sector of the Maine economy, enhances rural economic development and contributes positively to Maine’s rural quality of life; 10. Is supported by an adequate supply of farmland and access to working waterfronts to sustain Maine’s food and fisheries industries and provide for their future growth; 11. Is accompanied by public and consumer information on the value of a proper diet and healthy lifestyle and the benefits of Maine-produced agricultural and fish products; and 12. Is supported by stable and consistent state policies and programs.” P.L. 2005, ch. 614, § 7.

182. *Id.* § 8.

183. 7 M.R.S. § 216 (2010), *repealed* by P.L. 2011, ch. 344, § 16 (effective Sept. 28, 2011).

184. General Comment No. 12, *supra* note 106, ¶ 29. The FAO recommends three complementary levels of legislative action for implementing the right to food: (i) incorporating the right into the national, or in this case state, constitution (which Maine has already done); (ii) adopting a framework

obligations, leaving it “to implementing legislation and competent authorities to determine specific measures to be taken to realize such obligations, possibly within a given time limit.”<sup>185</sup> A framework law “can give a precise definition of the scope and content” of the right to food, “set out obligations for state authorities and private actors, establish necessary institutional mechanisms and give the legal basis for subsidiary legislation and other necessary measures to be taken by the competent state authorities.”<sup>186</sup> The FAO has developed detailed guidance on the procedural aspects and substantive components of such a law to help ensure that it is designed in a manner that complies with the principles of participation, accountability, non-discrimination, transparency, human dignity, empowerment, and the rule of law described above.<sup>187</sup>

Framework laws and national food policies have emerged across the globe, including in South and Central America,<sup>188</sup> Africa,<sup>189</sup> Europe, and North

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law relating to the right to food; and (iii) reviewing relevant sectoral laws affecting the enjoyment of the right to food. BULTRINI, *supra* note 165, at 3.

185. BULTRINI, *supra* note 165, at 4.

186. *Id.* The passage of such a law can also help quell concerns that the judiciary will be left to interpret the amendment. See Córdova Montes, *supra* note 3, at 14 (noting that opponents of the amendment were concerned that it would be left to judges to interpret and adding that amendment supporters countered this critique “by arguing that the legislature, through its police powers, can further define the language of the amendment”).

187. See *supra* Section II.C. The framework law should, for example: provide a more detailed definition of the right to food and corresponding state obligations; prohibit discrimination in the enjoyment of food based on various grounds; promote education and dissemination of information on the right to food and encourage public participation in decision-making processes related to food policies and programs; establish mechanisms for accountability, such as monitoring and reporting, to ensure the effective implementation of the right to food; develop and implement social protection measures to safeguard vulnerable populations against hunger and malnutrition; and establish legal remedies and mechanisms for individuals to seek redress in case their right to food is violated. BULTRINI, *supra* note 165, at 55, 68, 82. In this regard, “the need to ensure justiciability of the established right must be considered, and account should be taken of the means that have proven to be most effective in the country concerned in ensuring the protection of other human rights.” *Id.* at 4. It is important to note that these elements of a framework law serve as a general guide, and specific recommendations may vary based on the unique circumstances and needs of each country or state. Ultimately, Maine’s framework law should be tailored to address its specific context and challenges. See also EMILY M. BROAD LEIB, LAURIE J. BEYRANEVAND & EMMA CLIPPINGER, BLUEPRINT FOR A NATIONAL FOOD STRATEGY 7–9 (2017) (providing four principles around which a U.S. national food strategy should be drafted: (i) coordination, (ii) participation, (iii) transparency and accountability, and (iv) durability).

188. In 2012, the Latin American and Caribbean Parliament employed a human rights-based approach to food policy in adopting its *Framework Law on Right to Food, Food Security and Sovereignty*. José Graziano da Silva, Food & Agric. Org. of the U.N., Framework Laws on the Right to Adequate Food: Legal Brief for Parliamentarians in Latin America and the Caribbean No. 2, at 3 (2019), <https://www.fao.org/3/cb0447en/CB0447EN.pdf>. In 2013, the Community of Latin American and Caribbean States adopted the *Food Security, Nutrition, and Hunger Eradication Plan 2025* roadmap to guide individual countries in guaranteeing a right to adequate food. *Id.* These regional policies reflect individual countries’ commitments to securing the right to food at the national level. See *id.* at 1.

189. José Graziano da Silva, Food & Agric. Org. of the U.N., Framework Laws on the Right to Adequate Food: Legal Brief for Parliamentarians in Africa No. 2, at 2 (2019), <https://www.fao.org/3/ca3519en/ca3519en.pdf>. Mali recognizes the right to food in its *Agriculture Policy Framework Law* and, in 2011, Zanzibar adopted a framework law on food security. *Id.*

America;<sup>190</sup> some are explicitly grounded in the right to food, while others are not.<sup>191</sup> Scotland, for example, takes a cross-government approach to its food policy, connecting food with “a wide range of outcomes, including social and economic wellbeing, environmental, health, physical and mental wellbeing, economic development, animal welfare, education, and child poverty.”<sup>192</sup> Although Scotland has not constitutionally recognized a right to food, it recognizes that human rights should “underpin [its] approach to food policy.”<sup>193</sup> In 2022, it adopted the *Good Food Nation (Scotland) Act 2022*, a legislative framework to pursue “a Good Food Nation, where people from every walk of life take pride and pleasure in, and benefit from, the food they produce, buy, cook, serve, and eat each day.”<sup>194</sup> In 2023, it adopted the plan *Cash First: Towards Ending the Need for Food Banks in Scotland* in order to promote a rights-based approach to food policy and advance a three-year plan to end the country’s current food crisis.<sup>195</sup> In January 2024, as required by its 2022 Act, Scotland adopted its *National Good Food Nation Plan*,<sup>196</sup> which draws on international human rights law to create six “Good Food Nation Outcomes.”<sup>197</sup> The national plan also identifies existing cross-

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190. Laurie J. Beyranevand & Emily M. Broad Leib, *The Future of Planning for Food System Governance*, in RESEARCH HANDBOOK ON INTERNATIONAL FOOD LAW 117, 136 (Michael T. Roberts ed., 2023).

191. The United States does not have a national food policy. Instead, various federal, state, and local agencies regulate food and agriculture sectors, resulting in a piecemeal and conflictual system of food governance. BROAD LEIB, BEYRANEVAND & CLIPPINGER, *supra* note 187, at 16. The COVID-19 pandemic made existing issues much worse and made apparent the inefficacy of the United States’ food governance as it failed to respond to “soaring rates of food insecurity and reduced access, disproportionate impacts to underserved and BIPOC communities, inadequately protected food system workers, staggering amounts of lost income for farmers and threats to farm viability, increased food waste, concentrated distribution networks, and concerns about food safety.” LAURIE J. BEYRANEVAND & EMILY M. BROAD LEIB, THE URGENT CALL FOR A U.S. NATIONAL FOOD STRATEGY: AN UPDATE TO THE BLUEPRINT 1, 28 (2020).

192. CHELSEA MARSHALL ET AL., OUR RIGHT TO FOOD: AFFORDING TO EAT WELL IN A GOOD FOOD NATION 3 (2023).

193. SCOTTISH GOV’T, NATIONAL GOOD FOOD NATION PLAN 8 (2024).

194. *Food and Drink*, SCOTTISH GOV’T, <https://www.gov.scot/policies/food-and-drink/good-food-nation> [<https://perma.cc/A2LC-F6E9>] (last visited May 10, 2024).

195. SCOTTISH GOV’T, CASH-FIRST: TOWARDS ENDING THE NEED FOR FOOD BANKS IN SCOTLAND 6, 12–17 (2023).

196. NATIONAL GOOD FOOD NATION PLAN, *supra* note 193, at 4.

197. In developing the following six outcomes, Scotland cites to the ICESCR and other international human rights treaties, as well as the Sustainable Development Goals. *Id.* at 11–14. The six outcomes are: (i) “Everyone in Scotland eats well with reliable access to safe, nutritious, affordable, sustainable, and age and culturally appropriate food”; (ii) “Scotland’s food system is sustainable and contributes to a flourishing natural environment. It supports our net zero ambitions, and plays an important role in maintaining and improving animal welfare and in restoring and regenerating biodiversity”; (iii) “Scotland’s food system encourages a physically and mentally healthy population, leading to a reduction in diet-related conditions”; (iv) “Our food and drink sector is prosperous, diverse, innovative, and vital to national and local economic and social wellbeing. It is key to making Scotland food secure and food resilient, and creates and sustains jobs and businesses underpinned by fair work standards”; (v) “Scotland has a thriving food culture with a population who are [sic] interested in and educated about good and sustainable food”; (vi) “Scotland has a global reputation for high-quality food that we want to continue to grow. Decisions we make in Scotland contribute positively to local and global food systems transformation. We share and learn from best practice internationally.” *Id.* at 9.



sectoral Scottish government policies that aim to achieve these outcomes, as well as indicators and targets to help measure progress.<sup>198</sup>

Brazil, which constitutionalized the right to food in 2010,<sup>199</sup> offers another example. Its “governance framework consist[ed] of three main laws:” (i) *Framework Law on Food and Nutrition Security* (LOSAN), “which lays out the overarching principles;” (ii) *National Food and Nutrition Security Policy*, “which creates implementation guidelines, evaluation procedures, and obligations for other levels of government;” and (iii) *National Food and Nutrition Security Plan*, “which allocates resources, sets goals and timelines, and delegates responsibility to specific entities.”<sup>200</sup> Notably, the LOSAN established the National Food and Nutrition Security System (SISAN) which aimed to “coordinate and monitor decentralised public policies to ensure the right to adequate food.”<sup>201</sup> SISAN took a cross-sectoral approach, interacting with Brazil’s policies on public health, education, social assistance, and agriculture.<sup>202</sup> Although this governance scheme is no longer operationalized due to political corruption and changes in leadership,<sup>203</sup> its multilayered approach can nonetheless prove instructive.<sup>204</sup>

Canada’s approach to food governance may also shed some light. In 2019, the country adopted its *Food Policy for Canada*, following decades of advocacy that called on the government to address food and nutrition issues.<sup>205</sup> Prior to this milestone, Food Secure Canada released *Resetting the Table* in 2015, a People’s Food Policy that reflected grassroots engagement regarding the Canadian food system crisis.<sup>206</sup> As noted by food law scholars Beyranevand and Broad Leib, Food Secure Canada’s participatory approach “serves as a model for democratic food system policymaking by recognizing that those most affected by certain issues possess the knowledge to develop lasting and informed solutions.”<sup>207</sup> The Canadian government followed this example when drafting its *Food Policy for Canada*, engaging diverse stakeholders across sectors in an effort to co-develop the policy with those who it affects the most.<sup>208</sup> Although Canada’s process was not seeking to ensure food as a human right, its approach speaks to the possibility and

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198. *Id.* at 18–23.

199. Andhressa Fagundes et al., *Public Infrastructure for Food and Nutrition Security in Brazil: Fulfilling the Constitutional Commitment to the Human Right to Adequate Food*, 14 FOOD SEC. 897, 898 (2022).

200. Beyranevand & Broad Leib, *supra* note 190, at 134.

201. JENNIFER CONSTANTINE & MARIANA SANTARELLI, INST. OF DEV. STUD., BRAZIL’S FOOD AND NUTRITIONAL GOVERNANCE PLAN 8 (2017), [https://foodfoundation.org.uk/sites/default/files/2021-10/4-Briefing-Brazil\\_vF.pdf](https://foodfoundation.org.uk/sites/default/files/2021-10/4-Briefing-Brazil_vF.pdf).

202. *Id.*

203. Beyranevand & Broad Leib, *supra* note 190, at 134.

204. According to the FAO, Brazil reduced the percentage of its citizens living in extreme poverty and hunger from 14.8% between 1990–92 to 1.7% between 1990–2015. MARIANA SANTARELLI ET AL., INST. OF DEV. STUD., LEARNING FROM BRAZIL’S FOOD AND NUTRITION SECURITY POLICES 12 (2018), [https://foodfoundation.org.uk/sites/default/files/2021-10/Learning-from-Brazilian-Food-and-Nutrition-Security-Policies\\_final\\_clean\\_rev\\_FF.pdf](https://foodfoundation.org.uk/sites/default/files/2021-10/Learning-from-Brazilian-Food-and-Nutrition-Security-Policies_final_clean_rev_FF.pdf).

205. Beyranevand & Broad Leib, *supra* note 190, at 137.

206. *Id.*

207. *Id.* at 138.

208. *Id.*

importance of ensuring participatory governance in efforts to advance food system reforms.

In adopting a statewide right to food strategy, and as shown above, Maine would step into a global trend, joining numerous countries that have adopted national food strategies that “provide processes for developing and implementing priorities and goals to address existing food systems challenges and shape future-decision making.”<sup>209</sup> By “holistically planning and implementing laws and policies that address food systems issues in a coordinated manner,” these countries have been able to center a multi-faceted approach, by addressing “(1) sustainability, climate change, and food system resilience; (2) economic development; (3) health and nutrition; and (4) food access and food security.”<sup>210</sup> Maine’s adoption of a statewide strategy would also set an example for other states while potentially influencing U.S. national policy.<sup>211</sup>

To ensure a rights-based approach, Maine’s right to food strategy should be co-designed with those experiencing violations of the right and with other key stakeholders.<sup>212</sup> These processes should include, especially, those who suffer disproportionately from food insecurity in the state,<sup>213</sup> as well as small-scale farmers who struggle to secure access to food producing resources. The need to focus on vulnerable groups seems particularly salient in Maine, where researchers found worsening disparities in food access despite other progress. For example, Maine’s *Roadmap to End Hunger* notes that hunger rates are much higher among Black and Indigenous Mainers as a result of historic harms done to these communities.<sup>214</sup>

Small-scale farmers are also a vulnerable group in need of specific legislative attention. As noted above, an overwhelming majority of farms in Maine are family owned, with many accruing less than \$10,000 in annual sales.<sup>215</sup> Small-scale farmers struggle to access new markets because they are unable to produce enough to gain market share and because they lack access to efficient and cost-effective transportation to markets, among other issues.<sup>216</sup> Small-scale and prospective

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209. *Id.* at 132.

210. *Id.* at 136–37.

211. Municipal and state food-related laws can lay groundwork for national policy change. For example, in 2007, New York City banned restaurants from serving artificial trans fats, which eventually contributed to a national ban. Laurie J. Beyranevand & Diana R.H. Winters, *Retooling American Foodralism*, 44 AM. J. L. & MED. 489, 490 (2018); Marisa Schultz, *FDA to Spread Bloomberg’s Trans-Fat Ban Nationwide*, N.Y. POST (Jun. 1, 2015, 10:56 AM), <https://nypost.com/2015/06/01/fda-to-spread-bloombergs-trans-fat-ban-nationwide>.

212. De Schutter 2014, *supra* note 142, ¶ 44. *See also* General Comment No. 12, *supra* note 106, ¶ 29 (“In developing the benchmarks and framework legislation, States parties should actively involve civil society organizations.”). Importantly, these stakeholders should include both food sovereignty and anti-hunger advocates, including those involved in creating *Roadmap to End Hunger*, which was developed using a highly participatory process. EVERYONE AT THE TABLE, *supra* note 6, at 1.

213. *See supra* notes 9–10 and accompanying text.

214. EVERYONE AT THE TABLE, *supra* note 6, at 19.

215. *See* MCBRADY, *supra* note 12.

216. ME. DEP’T OF ECON. & CMTY. DEV., MAINE’S FOOD SECTOR: INDUSTRY PROFILE 7 (SEPT. 2023). According to a report to Maine’s Joint Standing Committee on Agriculture, Conservation, and Forestry, many contemporary and historic factors also “impede the ability of Indigenous and African-descended peoples to access programs, funding, and grant opportunities related to farming and food

farmers also struggle to access land for farming, especially land that is in close proximity to markets.<sup>217</sup>

Since Maine's statewide right to food strategy and accompanying policies should be co-designed with those most affected by these policies, it is impossible to prescribe specific legislative solutions up front. Scholars can, however, identify categories of potential legislative action. Though by no means exhaustive, legislation could, for example: ensure a living wage so that Mainers have economic access to food;<sup>218</sup> strengthen social safety nets to better reach those who are unable to provide for themselves; facilitate greater access to land so that individuals can grow food for themselves and their communities; establish policies to ensure that farmers have a right to save and exchange seeds; and encourage sustainable and agroecological farming practices that limit environmental harm and fortify the resiliency of food systems, including in the face of climate shocks. Together, these measures can help address the root causes of food insecurity and the lack of food self-sufficiency in Maine.

Legislation to implement the right to food amendment, at least in part, has already been proposed. In 2023, Senator Craig Hickman sponsored a bill entitled *An Act to Respect and Protect the Right to Food*.<sup>219</sup> This bill seeks to: (i) apply provisions of Maine's Food Sovereignty Act to all local food ordinances; (ii)

systems in Maine today." PERMANENT COMM'N ON THE STATUS OF RACIAL, INDIGENOUS & TRIBAL POPULATIONS, REPORT TO THE JOINT STANDING COMMITTEE ON AGRICULTURE, CONSERVATION, AND FORESTRY 19 (Feb. 2022).

217. See Bo Dennis, *Leasing Land to and From Farmers as Farmers*, ME. ORGANIC FARMERS & GARDENERS (Mar. 6, 2023), <https://www.mofga.org/resources/farmer-resources/leasing-land-to-and-from-farmers-as-farmers/> [<https://perma.cc/KMP5-53EG>]; Michaela Cavallaro, *Big Farm Small Farm*, DOWNEAST, <https://downeast.com/arts-leisure/big-farm-small-farm/> [<https://perma.cc/9SR2-F3T5>] (last visited May 10, 2024); see also PERMANENT COMM'N RACIAL INDIGENOUS & TRIBAL POPULATIONS, LAND ACCESS FOR INDIGENOUS & AFRICAN AMERICAN FARMERS IN MAINE 22 (2022) (recommending "increasing land access for Black or African American and Wabanaki people, including culturally significant spaces," and increasing access "to pre-existing farms, agricultural areas, and critical coastal locations historically the primary source of sustenance for the Tribal communities.").

218. Although Maine's minimum wage was set to increase to \$14.15 per hour in January 2024, this rate falls far below what would be considered a living wage, especially if the wage earner has dependents. *Maine's Minimum Wage to Increase to \$14.15 Per Hour in 2024*, ME. DEP'T OF LAB. (Sept. 15, 2023), [https://www.maine.gov/labor/news\\_events/article.shtml?id=11887762](https://www.maine.gov/labor/news_events/article.shtml?id=11887762) [<https://perma.cc/3WQ6-QNLA>]; *Living Wage Calculation for Maine*, LIVING WAGE CALCULATOR, <https://livingwage.mit.edu/states/23> [<https://perma.cc/7VBR-AN3S>] (last visited May 10, 2024). Any efforts to ensure a living wage in Maine must also extend to farmworkers and other vulnerable groups. About one quarter of farmworkers in Maine live in poverty, "making them roughly 4.5 times as likely to live below the poverty line as other Maine workers." Arthur Phillips, *Farmworkers Deserve the Same Rights as All Workers*, MAINE CTR. FOR ECON. POL'Y (May 2, 2023), <https://www.mecp.org/blog/farmworkers-deserve-the-same-rights-as-all-workers/> [<https://perma.cc/R5S3-W6SH>]. *Roadmap to End Hunger* recommends "[i]nclud[ing] all workers—including food supply chain workers—in wage and workplace protections to prevent food insecurity among food system workers," but agricultural workers continue to be generally exempted from the state's minimum wage and overtime pay laws. EVERYONE AT THE TABLE, *supra* note 6, at 32; *Maine - Workers' Rights*, FARM WORKER JUST., <https://www.farmworkerjustice.org/maine/> [<https://perma.cc/SE2A-GANS>] (last visited May 10, 2024). Extending the state's minimum wage law to cover farmworkers is under active consideration by the state. Me. Exec. Order No. 1 FY 23/24 (July 25, 2023).

219. L.D. 1823 (131st Legis. 2023).

establish the Maine Vegetable Garden Protection Act to allow Mainers to cultivate vegetable gardens on their property or on the private property of another without state interference; (iii) provide for the adoption of local ordinances to further regulate the cultivation of gardens; and (iv) authorize municipalities to develop programs to create edible landscaping, food forests, and community gardens in public spaces.<sup>220</sup> The bill, which faces some opposition because of concerns around its implications for landowner rights,<sup>221</sup> was amended and is currently pending passage in the Maine Legislature.<sup>222</sup>

As made clear by its title and text, the bill is intended, among other things, to “respect[] and protect[], by not interfering with, the individual right to food” as found in the right to food amendment.<sup>223</sup> The bill achieves this by affirming and elaborating on the principles of food sovereignty, by enabling Mainers to grow food on their private property and that of others, and by calling on municipalities to enable food production in public spaces.<sup>224</sup> The bill does not, however, emphasize Maine’s duty to *fulfill* the right to food, which includes both a duty to *facilitate* and to *provide*. Additional legislative interventions will be needed along the lines suggested above for Maine to facilitate the right to food.<sup>225</sup> Meanwhile, Maine’s duty to provide food could arguably be addressed through the 2022 Act to Implement Maine’s Roadmap to End Hunger by 2030,<sup>226</sup> which promotes improved access to nutrition assistance programs such as SNAP, among other measures.<sup>227</sup> Tellingly, the roadmap does not reference the right to food amendment—which could provide constitutional weight and urgency to the measures proposed—further underscoring the need for a coordinated and holistic approach.

### *B. Challenges to Implementing the Right to Food Amendment*

Implementing the legislative and policy initiatives described above is not without challenge. These challenges are both ideological and fiscal in nature and may also be movement-based.<sup>228</sup> To begin, the right to food amendment in Maine reflects a strong libertarian impulse that seeks to limit state intervention in the lives of its citizens.<sup>229</sup> The right to food, as conceived and promoted in Maine,

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220. Me. Mun. Assoc., *Hearings of the Week*, XLV LEGIS. NEWS BULL., May 6, 2023, at 1, 7.

221. *Legislative Action*, ME. WOODLAND OWNERS, <https://www.mainewoodlandowners.org/legislative-advocacy> [<https://perma.cc/P3H2-ZBXXB>] (last visited May 10, 2024).

222. *See* Comm. Amend. A to L.D. 1823 (S-673) (131st Legis. 2024).

223. *Id.* § 4.

224. *Id.*

225. As explained above, the duty to facilitate means that states must “pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security.” *See supra* text accompanying note 162.

226. L.D. 174 (130th Legis. 2022); EVERYONE AT THE TABLE, *supra* note 6, at 27.

227. EVERYONE AT THE TABLE, *supra* note 6, at 27.

228. There are, of course, challenges beyond what is described here, including challenges of ensuring justiciability and how to address competing rights claims. These challenges are, however, beyond the scope of this Article.

229. *See* Heipt, *supra* note 22, at 123 (arguing that the right to food amendment is “grounded in a farmer/producer, independent locality, and libertarian perspective” and that “most of the work in the food sovereignty arena was initiated by towns seeking autonomy,” which “garnered support across the

emphasizes its negative dimensions by underscoring producers' and consumers' freedom from government regulation and their "right to grow, raise, harvest, produce and consume the food of their own choosing."<sup>230</sup>

It is perhaps unsurprising that Maine would root a social and economic right in the notion of freedom from government intervention. But implementing the amendment in a manner that achieves its multiple objectives requires resources and regulation. As described in Section II.B, the right to food encompasses both negative and positive dimensions. In addition to refraining from acts that interfere with these rights, states must also proactively facilitate their fulfillment. Maine's deregulatory impulse, then, may come into conflict with the need for greater regulation to respect, protect, and fulfill the right to food. As such, the efficacy of the amendment may ultimately depend on the extent to which Maine chooses to operationalize the positive dimensions of the right.

The legislative initiatives outlined in Section III.A can also be costly, especially as they pertain to expanding and strengthening social safety nets or ensuring greater access to food producing resources. Food production and the need to address food insecurity must be centered in the state's planning and budgeting,<sup>231</sup> but the Fiscal Impact Statement prepared by the Office of Fiscal and Program Review states that the amendment "is not anticipated to create costs for, or impact the revenues of, the State or local units of government."<sup>232</sup> Here, legislators could be reminded that food insecurity and a lack of food self-sufficiency can prove quite costly to the state, such that investment to address these issues may be warranted for both fiscal and constitutional reasons.<sup>233</sup>

Yet another challenge is the potential co-option of the right to food amendment by "Big Ag" actors in Maine, who could use the amendment's food sovereignty dimensions to assert their right to engage in industrial agricultural practices—even when they prove harmful to environmental and community health. This risk is worth noting given the ways in which Big Ag actors have utilized right to farm laws<sup>234</sup> to avoid environmental and social accountability,<sup>235</sup> despite the fact that

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political spectrum."); *see also* Pierre Desrochers & Pierre Lemieux, *Maine's Mysterious New 'Right to Food'*, REGULATION, Spring 2022, at 6–9 (questioning whether the right to food amendment is a "libertarian advance or a Trojan horse" that restricts trade and economic freedom and obligates the government to provide food rather than just refrain from interference).

230. ME. CONST. art. I, § 25. As noted above, the United States has traditionally upheld so-called "negative rights" over positive ones. *See supra* note 55 and accompanying text. State constitutions have also similarly embraced the negative dimensions of human rights. In adopting the right to food amendment, Maine has positioned the right to food alongside other fundamental rights, such as the right to religious freedom or the right to bear arms, but the positive and negative dimensions of the right remain unsettled. *See* Sarah Everhart, *Green Amendments and Ham: How Green Amendment Jurisprudence Can Inform Maine's Right to Food*, 76 ME. L. REV. 205, 210–12 (2024).

231. *See* Córdova Montes, *supra* note 3, at 19 (discussing state planning and budgeting with respect to the implications of the city of Morgantown, Virginia's recognition of the right to food).

232. MAINE CITIZEN'S GUIDE, *supra* note 3, at 19.

233. EVERYONE AT THE TABLE, *supra* note 6, at 22.

234. Right to farm laws vary across states, but in general they are legislative schemes that seek to protect qualifying farmers and ranchers from nuisance lawsuits brought by nearby residents aiming to shut down ongoing agriculture operations. Alexandra Lizano & Rusty Rumley, *State Right-to-Farm Provisions*, NAT'L AGRIC. L. CTR (June 2023), <https://nationalaglawcenter.org/state-compilations/right-to-farm-provisions/> [<https://perma.cc/2D6J-BD5P>]. By the 1980s, every state in the United States had

those laws were initially intended to protect small-scale farmers.<sup>236</sup> Rather than protect the rural small-scale farmer, right to farm laws “have paved the way for the rapid expansion of large-scale, industrialized, corporate-owned agriculture”<sup>237</sup> by making it more challenging to hold Big Ag actors liable for “pervasive stench, water quality degradation, toxic air emissions, health endangerment, declines in property values, and the loss of enjoyment of one’s backyard.”<sup>238</sup> A statewide right to food strategy, including a framework law that further defines the right to food, could help clarify that the right cannot be used to evade nuisance claims or otherwise engage in practices harmful to environmental or public health.

Challenges may also arise in ensuring cohesion among the different facets of food-related movements in Maine. Ultimately, harnessing the transformative potential of the right to food amendment will require pressure from strong social movements that are united by a shared analysis of the problem and a common vision for the solution. Food-related movements have “many parts, potentially creating a multifaceted and powerful movement for change. The parts, demands, and strategies, however, do not always fit neatly together . . . .”<sup>239</sup>

There are clearly synergies between Maine’s food-related movements. Anti-hunger advocates have recommended that nutrition security can be improved in Maine by supporting a local, diverse, and robust food supply system. They have, for example, recommended using local foods in nutrition security programs and investing in socially disadvantaged food producers and other food-related businesses “as a means for creating living wage jobs, enabling access to culturally appropriate foods, and contributing to thriving local economies.”<sup>240</sup> Meanwhile, food sovereignty advocates paved the way for Maine’s constitutional amendment,

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enacted a right to farm law. Ross H. Pifer, *Right to Farm Statutes and the Changing State of Modern Agriculture*, 46 CREIGHTON L. REV. 707, 709 (2013) (explaining that prior to the development of right to farm laws farmers relied on the common law defense “coming to the nuisance”; however, this became more and more ineffective as rural areas were rapidly developed into suburban and urban areas).

235. See LOKA ASHWOOD ET AL., *EMPTY FIELDS, EMPTY PROMISES: A STATE-BY-STATE GUIDE TO UNDERSTANDING AND TRANSFORMING THE RIGHT TO FARM* 6 (Lucas Church ed., 2023).

236. Initially, these laws proved effective in protecting individual or family-owned farms, but as industrial farming took root across the United States, these laws shifted from protecting the traditional farmer to enabling Big Ag actors. SIERRA CLUB, *RIGHT TO FARM HISTORY OF HARM* 4 (2022), <https://www.sierraclub.org/sites/default/files/202210/Right%20to%20Farm%20History%20of%20Harm.pdf>

237. Danielle Diamond et al., *Agricultural Exceptionalism, Environmental Injustice, and U.S. Right-to-Farm Laws*, 52 ENV’T L. INST. 10727, 10747 (2022).

238. SIERRA CLUB, *supra* note 236, at 4. Moreover, traditional or small-scale farmers are the least likely to win right-to-farm litigation in comparison to those operating concentrated animal feeding operations (CAFOs), even though CAFOs cause significantly more environmental and social harm. ASHWOOD ET AL., *supra* note 235, at 8–9; Madeleine Skaller, *Protecting the Right to Harm: Why State Right to Farm Laws Should Not Shield Factory Farms from Nuisance Liability*, 27 SAN JOAQUIN AGRIC. L. REV. 217, 221 (2018) (describing the environmental, public health, and property implications of CAFOs, including manure and fertilizer mismanagement, which can lead to ammonia exposure and disease outbreak).

239. Romer, *supra* note 48, at 6.

240. EVERYONE AT THE TABLE, *supra* note 6, at 32; *see also* Romer, *supra* note 48, at 7 (emphasizing that when government-subsidized school meals are purchased from local farmers, it “expands the local food economy, builds decent jobs in the food system, improves the sustainable practices of the local food system . . . and produces healthier, fresher food for children”).

which includes “a natural, inherent and unalienable right to food.”<sup>241</sup> The amendment may elevate the demands of anti-hunger advocates and help enhance government nutrition assistance programs while transforming them into legal entitlements.

Maine’s food-related movements also diverge. The movement to adopt the right to food amendment was led by small-scale farmers.<sup>242</sup> Anti-hunger groups did not take part in the grassroots coalition calling for the amendment’s passage.<sup>243</sup> Meanwhile, anti-hunger advocates have set a lofty goal of ending hunger by 2030 in Maine, but they have yet to embrace a rights-based approach in their efforts.<sup>244</sup> Notably, *Roadmap to End Hunger* makes both a social and economic case for ending hunger,<sup>245</sup> but any mention of the right to food is conspicuously absent.<sup>246</sup> Ultimately, a robust and united food movement that is committed to ensuring the many facets of the right to food will be needed to realize the goals of the right to food amendment and the intentions of those who advocated for its passage.

#### CONCLUSION

In November 2021, Maine took the historic step of constitutionalizing the right to food, something no other U.S. state has done. In so doing, it elevated a basic human need to the status of a fundamental human right, as many communities and countries have done before. The amendment’s language reflects multiple commitments. It proclaims that individuals have an inalienable right to food and empowers Mainers to shape their own food policies as part of their right to food sovereignty. The amendment also reflects an aspiration to address food insecurity and increase self-sufficiency of food production in Maine. As explored in this Article, the international human rights law framework can lend critical support and normative guidance to Maine as it takes steps to implement this right. Even with the challenges of implementation, the right to food amendment carries the potential to ensure lasting food security and to shift the balance of power in the food system. How the state proceeds will continue to inspire and be watched by many.

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241. ME. CONST. art. I, § 25.

242. Email from Alison Cohen, *supra* note 51.

243. *Id.*

244. *Id.*

245. See EVERYONE AT THE TABLE, *supra* note 6, at 22–23.

246. The roadmap does, however, center the voices of impoverished and marginalized communities while seeking to address the root causes of food insecurity. *Id.* at 6, 41–42.