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Constitutionalizing the Human Right to Food in Maine: A People's Tool to Advance Food Sovereignty in the U.S.

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CONSTITUTIONALIZING THE HUMAN RIGHT TO FOOD IN MAINE: A PEOPLE'S TOOL TO ADVANCE FOOD SOVEREIGNTY IN THE UNITED STATES

R. Denisse Córdova Montes, Heather Retberg, & Photini Kamvisseli Suarez

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ABSTRACT

On November 2, 2021, Maine voters overwhelmingly supported a statewide referendum approving an amendment to enshrine the right to food in Maine's constitution. This vote was preceded by a decade of food sovereignty advocacy in Maine. This advocacy was led by small farmers and homesteaders and supported by people looking to opt out of the industrial food system, which is dominated by a few corporate monopolies and promotes charity-based solutions to hunger. This vote was a resounding proclamation by the people of Maine in support of the right to food, 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.

Maine's efforts are connected to a wider national and international community of smallholder farmers—or peasants—and people living and working in rural areas, food system workers, and people experiencing hunger and food insecurity. Although Maine is the first U.S. state to enshrine the right to food in its constitution, international human rights law firmly recognizes a right to adequate food. The International Covenant on Economic, Social and Cultural Rights upholds “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.” The right is further enumerated in international law through additional conventions and standards and is continuously being interpreted and analyzed by United Nations expert bodies. Moreover, the groundbreaking adoption of the U.N. Declaration on the Rights of Peasants and Other People Working in Rural Areas, after seventeen years of global mobilization and negotiations by peasant movements, led to the international recognition of their

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rights. These include the rights to food sovereignty and individual and collective access to natural resources, including land, water, and seeds.

This Article examines Maine’s constitutional amendment on the right to food by looking at its food sovereignty origins and relying on international human rights law. This analysis reflects on how Maine’s right to food could serve as an antidote for the privatization of water and natural resources and pave the road for people to regain access to land and water, reclaim native seeds, restore biodiversity, and promote sustainability and autonomy in a localized food system. Drawing on their involvement in a growing right to food movement in the United States that is made up of small farmers, legislators, advocates, academics, and people with lived experiences of hunger, the authors also reflect on opportunities to translate Maine’s experience to other states with ongoing legislative and organizing efforts focused on the human right to food.

INTRODUCTION

December 10, 2023, marked the seventy-fifth anniversary of the Universal Declaration of Human Rights (UDHR).¹ This foundational instrument on human rights prominently recognized economic, social, and cultural (ESC) rights as indispensable to ensure a life of dignity. However, there have been long-standing debates about the justiciability of ESC rights. While this debate has been settled in many countries around the world as courts have shown that adjudication of ESC rights is well within their powers,² this debate continues in the United States.³ Not only are ESC rights missing from the U.S. Constitution, but the United States is also one of a small group of countries that has not ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR).⁴ Hunger, food insecurity, and dependence on charity-based solutions in the United States stem, in part, from the country’s refusal to guarantee its people a universal right to adequate food—a right enshrined in the ICESCR.

On November 2, 2021, Maine voters overwhelmingly supported a statewide referendum approving an amendment to enshrine the right to food in the Maine Constitution.⁵ This was a stunning victory not just for the people of Maine, but for the right to food movement in the United States and for ESC rights all over the

1. *The Universal Declaration of Human Rights Turns 75*, UNITED NATIONS, <https://www.un.org/en/observances/human-rights-day> [<https://perma.cc/HS5G-YJHF>] (last visited May 5, 2024).

2. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

3. See generally MARTHA F. DAVIS ET AL., HUMAN RIGHTS ADVOCACY IN THE UNITED STATES 435–49 (3rd ed. 2023).

4. *United Nations Human Rights Treaty Bodies: UN Treaty Body Database*, OHCHR.ORG, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/treaty.aspx?treaty=cescr&lang=en [<https://perma.cc/DM7T-SCHK>] (last visited May 5, 2024) (presenting the ratification statuses by country of the ICESCR).

5. See *Tabulations for Elections Held in 2021*, DEP’T OF THE SEC’Y OF STATE, <https://www.maine.gov/sos/cec/elec/results/results21.html> [<https://perma.cc/DV3W-FEHH>] (last visited May 5, 2024); *Maine Question 3, Right to Produce, Harvest, and Consume Food Amendment (2021)*, BALLOTPEdia, [https://ballotpedia.org/Maine_Question_3_Right_to_Produce_Harvest_and_Consume_Food_Amendment_\(2021\)](https://ballotpedia.org/Maine_Question_3_Right_to_Produce_Harvest_and_Consume_Food_Amendment_(2021)) [<https://perma.cc/MAB5-6L3E>] (last visited May 5, 2024).

world. The November 2021 vote was preceded by a decade of movement-driven food sovereignty advocacy in Maine led by small farmers and homesteaders and supported by people looking to opt out of the industrial food system. Maine's efforts are connected to a wider national and international community of right to food and food sovereignty activists who are mobilizing human rights as a tool to make legal and political claims upon the state and other actors.

As the world commemorated the seventy-fifth anniversary of the UDHR, Eleanor Roosevelt's words of explanation from 1958 hold the same necessity and urgency in Maine today and weave the thread of advocacy efforts from small towns across Maine to international human rights law:

Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person: the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.⁶

This Article will examine Article I, Section 25 of Maine's constitution by looking at its food sovereignty origins and by relying on international human rights law. This Article is divided into four main parts. Part I discusses the advocacy that led to the successful adoption of the right to food constitutional amendment in Maine. Part II discusses how implementation of the right to food in Maine fits into the broader national and international political mobilization around food and ESC rights. Part III describes current efforts to interpret and implement Maine's constitutional amendment, drawing on a manual developed by the co-authors of the right to food amendment together with the University of Miami School of Law Human Rights Clinic and the National Right to Food Community of Practice. Finally, Part IV reflects on opportunities to translate efforts in Maine to other states.

I. THE ROAD TO CONSTITUTIONALIZING THE RIGHT TO FOOD IN MAINE

To properly understand the intent and interpretation of the right to food in Maine, it is necessary to examine the roots of the drafting and evolution of its language through the Maine food sovereignty movement as well as the larger international context of the movement for food sovereignty. Food sovereignty movements converge around seed and water protection, protection from privatization of natural resources, and center decision-making about the food system with individuals growing, raising, harvesting, producing, and consuming

6. *Quotations by Eleanor Roosevelt*, ELEANOR ROOSEVELT PAPERS PROJECT, <https://erpapers.columbian.gwu.edu/quotations-eleanor-roosevelt> [<https://perma.cc/52BZ-74FD>] (last visited May 5, 2024).

food rather than markets, corporations, or agencies of government.⁷ This Section will trace the origins and evolution of the food sovereignty movement in Maine, its participation in local and state legislative processes, and its role in enshrining the right to food in the Declaration of Rights in Maine's constitution.

A. The Food Safety Modernization Act and Downward Pressure on Maine's Local Food System

The origin of efforts in Maine toward the eventual inclusion of a right to food in the Declaration of Rights in Maine's constitution can be traced to a squawk over farm-raised chicken⁸ and "a regulatory turf [battle]" over fresh milk in 2009.⁹ Ostensibly, the friction between smallholder, diversified farms in rural Maine and the Department of Agriculture was about processing poultry and selling raw milk. As farmers and farm patrons engaged in the legislative process to maintain access to nutritious, farm-raised foods, it became clear that the problem that surfaced had little to do with scale-appropriate regulations. It had everything to do with a dysfunction in democracy and lack of community participation in decision-making processes. Legislative committees were compelled to follow the dictates of executive branch agencies and food industry lobbyists rather than creating laws representative of their constituents' needs.¹⁰ If the prevailing trajectory were allowed to go forward, small, diversified farms would disappear and access to nutritious food in rural areas would diminish. The nascent community-based food system model in Maine would become a relic of the past.¹¹ The policy push

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

8. The stated intent of L.D. 1034, as evident by the bill's title, was to increase access to farm-raised poultry. L.D. 1034 (124th Legis. 2009). However, rulemaking was assigned to the Quality Assurance and Regulations Division of the Department of Agriculture, Food, and Rural Resources. *Id.* The rules proposed at that time nullified the intent of the law requiring facilities beyond the scale of most poultry producers producing fewer than 1,000 birds, precisely the scale of farming the exemption was intended to cover. *See id.*

9. Wendy Heipt, *The Right to Food Comes to America*, 17 J. FOOD L. & POL'Y 111, 119 (2021); *see also* 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>; L.D. 1034 (124th Legis. 2009); *Farm Bill Support, Gun Control and BDN Carriers*, BANGOR DAILY NEWS (Feb. 14, 2013), <https://www.bangordailynews.com/2013/02/14/opinion/friday-feb-15-2013-farm-bill-support-gun-control-and-bdn-carriers/>.

10. *See generally* VINCENT H. SMITH & BENJAMIN GOREN, FARM-SECTOR SPENDING ON FEDERAL CAMPAIGN CONTRIBUTIONS AND LOBBYING EXPENDITURES: EVIDENCE FROM 2003 TO 2020 (2021), <https://www.aei.org/wp-content/uploads/2021/12/Farm-sector-spending-on-federal-campaign-contributions-and-lobbying-expenditures.pdf>.

11. While small, diversified farms in Maine had historically sold food directly to individuals pre-World War II, the federal policy shift since the Nixon and Ford era under Secretary of Agriculture from 1971 to 1976, Earl Butz, favored large-scale corporate farming and the commodification of food. Melanie J. Wender, *Goodbye Family Farms and Hello Agribusiness: The Story of How Agricultural Policy is Destroying the Family Farm and the Environment*, 22 VILL. ENV'T L.J. 141, 146–47 (2011). Butz's mantra was "get big or get out." *Id.* at 147. This federal shift in agriculture policy forced centralization, specialization, and vertical integration of food production, disappearing small-scale farms from the rural landscape. *Id.* The same era fostered the "back-to-the-land" movement in Maine with a surge of homesteading and growth of food self-sufficiency laying the foundation for the building of the

towards centralization and specialization would be complete and the dominant, industrial food production model would become the only accessible food choice at the expense of food adequacy, sustainability, and nutrition.

After a legislative loss regarding poultry processing in early 2010,¹² farmers and farm patrons learned with stunning clarity¹³ that both the Maine Department of Agriculture and the legislative Committee on Agriculture, Conservation and Forestry felt powerless to change the course of downward pressure from federal agencies and industrial food lobby influence in rulemaking. Indeed, the establishment of statutory “co-operative agreements” in the Wholesome Meat Act of 1967 had effectively shut the door on participatory democracy by authorizing state agencies to enter into any agreement with any corporation or federal agency.¹⁴ These agreements often tied funding to regulatory stipulations, thereby shutting the door on effective, true citizen participation in the laws and rules impacting the most elemental building blocks of individual and societal health: food and water. Mainers and their elected representation were reduced to a performative role in the legislative process. While farmers and farm patrons would be most impacted by

small-scale organic farming movement, a resistance and counter to the “get big or get out” policies coming down from the federal government. Christopher Cousins, *Bloom*, THE GOOD LIFE, <https://external.bangordailynews.com/projects/2014/04/goodlife/index.html?chapter=bloom> [<https://perma.cc/U4XD-KY46>] (last visited May 5, 2024). The Maine Organic Farmers and Gardeners Association was founded in 1971, a statewide organization that offered technical assistance to farmers and homesteaders who wanted to grow food without chemicals. See generally *About MOFGA*, ME. ORGANIC FARMERS & GARDENERS, <https://www.mofga.org/our-community/about-mofga/> [<https://perma.cc/4G6P-GFSZ>] (last visited May 5, 2024). By the late 1990s, more young farmers were moving to the state to farm. See Cousins, *supra* note 11. By the early 2000s, young farmers moving to the state were increasing in number and primarily selling food within their own communities. See *id.* The growth of small farms and community-based models of production and processing had happened simultaneously with the loss of regional food processing infrastructure and the growth of regulatory bureaucracy, setting up the eventual conflict over federal mandates for small farms to build meat and dairy processing infrastructure beyond their scale of production with no state or federal investment. See *id.* The resurgence of the community-based food production model was still relatively young and small-scale, making compliance with rules designed for industrial food production untenable. See *id.*

12. L.D. 1034 (124th Legis. 2009).

13. During the public hearing, co-Author Heather Retberg witnessed the state veterinarian leading the Department of Agriculture’s Red Meat and Poultry Inspection Program informing the legislative Committee on Agriculture, Conservation and Forestry that the Federal Food Safety Inspection System (FSIS) mandated that the state require rules “equal to” or more stringent than the federal USDA rules. See 22 M.R.S. § 2512 (“The commissioner shall implement a meat and poultry products inspection and licensing program that imposes and enforces requirements . . . at least as stringent as those imposed and enforced under the federal acts.”). This mandate was rooted in the Wholesome Meat Act of 1967, now known as the Federal Meat Inspection Act, which authorized states’ departments of agriculture to enter cooperative agreements with the USDA and other federal agencies. 21 U.S.C. § 661(a)(2)–(3). There was no flexibility to write rules based on the needs expressed in testimony of farms or their consumers according to co-Author Heather Retberg’s interpretation. Representative Jim Schatz (D-Blue Hill) later related to one of the Authors that in his negotiations with the Department on behalf of constituents’ farms that, had they prevailed, it would have cost the Department two jobs. It was their jobs or the farms.

14. See, e.g., U.S. DEP’T OF AGRIC., FOOD SAFETY & INSPECTION SERV., FSIS DIRECTIVE 2200.2 REVISION 1, COOPERATIVE AGREEMENTS (2009), https://www.fsis.usda.gov/sites/default/files/media_file/2020-07/2200.2.pdf; see also Wholesome Meat Act of 1967, Pub. L. No. 90-201, § 301, 81 Stat. 595 (1968).

these legislative processes, their only available channel of engagement was to offer three minutes of perfunctory testimony at public hearings.¹⁵ Farmers were rarely invited to participate meaningfully in the work sessions alongside agency officials and industrial food lobbyists, who were often called on as experts.

Meanwhile, the Food Safety Modernization Act (FSMA) was wending its way through Congress—and the small-scale farmers and food producers feared that the necessary and acceptable trade off was the loss of small farms rebuilding local and regional food systems.¹⁶ The cost of compliance would simply exceed the scale of production.¹⁷ Small, diversified farms would be written out of existence by a distant policy pen with little knowledge of how rural communities had been safely feeding one another and contributing to their economic development, physical health, and well-being.¹⁸

B. Local Participation of Farmers in Food System Legal Structures and the Birth of the Food Sovereignty Movement in Maine

The birth of the food sovereignty and right to food movements in Maine was a local response to the lack of participatory governance mechanisms and food processing infrastructure in the State of Maine. Faced by a rigid structure and a system that had effectively closed the doors on representative participation of farmers in the state and federal levels of governance, a group of farmers¹⁹ set out on a path to work with their town governments and draft the Local Food and Community Self-Governance Ordinance (LFCSGO).²⁰ To create such a new tool, they studied the state constitution, parts of Maine’s agricultural statute, and home rule. This research revealed that Article I, Section 2 of the constitution²¹ and the state’s home rule provision²² would pave the way forward. This group of farmers reached out to the Community Environmental Legal Defense Fund to learn about rights-based ordinances and organizing around those principles, as well as to the Farm-to-Consumer Legal Defense Fund to test their thinking and if the LFCSGO

15. See generally *Testifying at a Legislative Hearing*, ME. HOUSE OF REPRESENTATIVES, <https://legislature.maine.gov/house/house/Documents/Testifying> [https://perma.cc/DU5Q-TQ8D] (last visited May 5, 2024).

16. Heipt, *supra* note 9, at 117; see also Eric Blair, *Why the Tester Amendment Does NOT Help Small Food Producers Under S.510*, ACTIVIST POST (Dec. 2, 2010), <https://www.activistpost.com/2010/12/why-tester-amendment-does-not-help.html> [https://perma.cc/UFY7-74DT].

17. *Will the Food Safety Modernization Act Harm Small Farms or Producers?*, GRIST (Nov. 16, 2010), <https://grist.org/politics/food-2010-11-15-food-fight-safety-modernization-act-harm-small-farms/> [https://perma.cc/TDR7-CV4D].

18. *Id.* (espousing views of small farm advocates and organizations on the potential impact of the FSMA).

19. Including Heather and Phil Retburg, Quill’s End Farm; Deborah Evans, Bagaduce Farm; Bob St. Peter, Saving Seeds Farm; and Larissa Reznick, Hypertherm.

20. See, e.g., Penobscot, Me., Local Food and Community Self-Governance Ordinance (2011), <https://penobscotmaine.org/documents> [https://perma.cc/3ZP8-CH2A].

21. ME. CONST. art. I, § 2 (“[A]ll power is inherent in the people; all free governments are founded in their authority and instituted for their benefit, they have therefore an unalienable and indefeasible right to institute government and to alter, reform, or totally change the same when their safety and happiness require it.”).

22. 30-A M.R.S. § 3001 (2023).

was legally sound.²³ It became increasingly evident to the core group of food sovereignty advocates that if they were going to continue to build a local food system based on the needs of people in their community—those who eat and those who grew food—they would have to claim a space in the field of legal decision-making.

In 2011, the LFCSGO was introduced at four neighboring town meetings, using local law to address communities' specific food needs and outlining how those needs would be met.²⁴ The first articulation of the right to food was penned in Hancock County and enacted by the towns of Sedgwick, Penobscot, Blue Hill, and Trenton.²⁵ The LFCSGO stated that "citizens possess the right to produce, process, sell, purchase, and consume local foods of their choosing."²⁶

A strong proponent in the early years of organizing was Bob St. Peter, then-director of Food for Maine's Future. He characterized these early food sovereignty efforts and their role in shaping human rights and food system discourse in Maine in the following way:

Differences on specific policies or issues have not deterred LFCSGO proponents around the State of Maine from forging a common identity that embraces the positive attributes of rural life: self-sufficiency; productive work; trust in your neighbors; localized monetary and non-monetary economies; personal and community responsibility for health and well-being. These unifying themes are bringing together people across the political spectrum and engaging them in honest, straight-forward discourse about what rural people need and expect from their government. At its most fundamental, the LFCSGO is about asserting democratic control over food policy decisions and prioritizing direct input from small-scale farmers, food producers and the local community where they live.²⁷

Unbeknownst to these farmer-advocates at the outset, they had charted a course engaging deeply in the principles of food sovereignty and had begun down the road toward enshrining a right to food in Maine's constitution. Heather Retberg explained the concept of food sovereignty at a water protection rally in this excerpt from a speech in 2015:

Who decides? Who decides what we eat? Who decides if we have access to food that we choose? Who decides if we have access to food that sustains our health

23. Notes on file with Authors.

24. See *Maine Town Passes Landmark Local Food Ordinance*, CORNUCOPIA INST. (Mar. 9, 2011), <https://www.cornucopia.org/2011/03/maine-town-passes-landmark-local-food-ordinance/> [<https://perma.cc/5RN6-N5QX>].

25. See *Seeds of Change: New Farmers Running Smaller Operations Invigorate Maine's Agricultural Landscape*, MAINEBIZ (May 2, 2011), <https://www.mainebiz.biz/article/seeds-of-change-new-farmers-running-smaller-operations-invigorate-maines-agricultural> [<https://perma.cc/92ER-7NG3>]; see also *More Towns Pass Food Sovereignty Ordinances*, MAINEBIZ (June 22, 2012), <https://www.mainebiz.biz/article/more-towns-pass-food-sovereignty-ordinances> [<https://perma.cc/QX9H-6CDB>].

26. Penobscot, Me., Local Food and Community Self-Governance Ordinance § 5.2 (2011).

27. Bob St. Peter & Juli Perry, *The Right to Eat Local: Assessing the Relevance & Impact of the Local Food & Community Self-Governance Ordinance*, WHYHUNGER (Feb. 20, 2013), <https://whyhunger.org/the-right-to-eat-local-assessing-the-relevance-impact-of-the-local-food-community-self-governance-ordinance/articles/> [<https://perma.cc/RT2Z-EMNQ>].

and our economies? Just who or what was making these decisions? And, even more importantly, who had the *right* to decide? . . . What is food sovereignty? Food sovereignty puts those who eat and those who grow food at the heart of the decision-making about our food and farming rather than the demands of markets and corporations. It says that access to food is a human right. It prioritizes local and national markets, and empowers peasant and family-farmer driven, ecological agriculture Our expression of food sovereignty in Maine has been to regain democratic participation and *voice* in food policy, to ensure the survival of small-scale farming, to maintain scale-appropriate rules around food production, to grow community resilience, to strengthen local economies, and to preserve personal freedom of choice about food.²⁸

As the template ordinance spread across the state from Hancock County, the core group of organizers grew into the advocacy group Local Food Rules (LFR)²⁹ and braced for state action. By November of 2011, the State took action, suing farmer Dan Brown of Blue Hill, which was one of the first towns to pass the LFCSGO.³⁰ Dan Brown milked one cow and sold milk and homemade canned goods from his farm stand and at farmers' markets.³¹ The case galvanized the movement across the state and fueled beneficial legislation³² from sympathetic, supportive legislators eager to defend what the people of Maine had articulated in the local ordinances emerging in an increasing number of legislative districts.

C. Connecting Locally and Globally to Strengthen the Food Sovereignty Movement in Maine

As the farmer-advocates' efforts grew, so did the support from allies in Maine and beyond. From 2011 forward, Food for Maine's Future (FMF) lent its network and organizing capacity to support the core LFR group.³³ Together, the two groups engaged in community organizing, horizontal policy diffusion of the local ordinances, and vertical policy integration as representative legislation went forward in the state capitol.³⁴ This was a crash course in multi-scalar governance. The farmer-advocates were learning as much as they could, as fast as they could, and growing the movement from the municipal level to the state level and across branches of government. The problem, as they saw it then, was their exclusion from meaningful participation in decision-making around food and agriculture

28. Heather Retberg, *Advancing Food Sovereignty in Maine*, FARM-TO-CONSUMER LEGAL DEF. FUND (Jan. 28, 2015), <https://www.farmtoconsumer.org/blog/2015/01/28/advancing-food-sovereignty-in-maine/> [<https://perma.cc/6GG5-E3CL>].

29. See *Home*, LOCALFOODRULES.ORG, <https://www.localfoodrules.org/> [<https://perma.cc/3AZG-SAG9>] (last visited May 5, 2024).

30. *State v. Brown*, 2014 ME 79, ¶ 9, 95 A.3d 82.

31. *Id.* ¶ 1.

32. See *generally* H.P. 1176 (125th Legis. 2011); L.D. 366 (125th Legis. 2011); L.D. 330 (125th Legis. 2011).

33. See Bonnie Preston, *Important: L.D. 783 Is Not Dead*, FOOD FOR ME.'S FUTURE, <https://savingseeds.wordpress.com/> [<https://perma.cc/9QU8-XU5E>] (last visited May 5, 2024) (providing an example of working together with Local Food Rules).

34. See, e.g., L.D. 475 (126th Legis. 2013); P.L. 2013, ch. 323; L.D. 1282 (126th Legis. 2013); L.D. 925 (127th Legis. 2015); L.D. 835 (128th Legis. 2017).

policy.³⁵ Their immersion course exposed them to smallholder farmers—or “peasants” in other parts of the world—who had responded similarly to the downward pressure of (i) the industrial, corporate food system, and (ii) the regulatory branches of government so often populated by industry executives³⁶ charged with writing rules that would impact rural Maine in similar ways to comparable pressures impacting rural communities around the world.

As their initial efforts in Maine towns grew into a statewide movement, the group learned of similar efforts by smallholder farmers and rural communities across the globe. La Via Campesina (LVC)—which is the international farmers’ organization and movement that coordinates peasant organizations of small and middle-scale producers, agricultural workers, rural women, and Indigenous communities around the globe—had been building the food sovereignty road since 1993.³⁷ The paths of the Maine advocates intersected with those of LVC at Yale University’s “Food Sovereignty: A Critical Dialogue” conference in 2013.³⁸

At the conference, the leadership team from LFR worked with Hilda Kurtz, a geographer from the University of Georgia-Athens, to make Maine’s efforts toward food sovereignty visible for the first time in an international setting. The team presented their work, *Scaling Biopolitics: Enacting Food Sovereignty in Maine*,³⁹ which sought to present the case study of Maine’s LFCSGO as the first expression of food sovereignty in the United States and to provide “insight into possible trajectories of food sovereignty as a movement for radical change in the food system by reasserting the right to define a local food system and drawing a protective boundary around traditional foodways.”⁴⁰ The Maine presentation further argued that the concept of food sovereignty “implies a re-scaling of food production and trade regimes, away from industrial scale production for international trade to food systems organized at local and regional scales.”⁴¹

The gathering connected Maine activists with global movement actors and deepened Maine advocates’ understanding of food sovereignty from the practical application and response to the downward pressures of the centralized food

35. *Brown*, 2014 ME 79, ¶ 22, 95 A.3d 82.

36. Tom Philpott, *Monsanto’s Man Taylor Returns to FDA in Food-Czar Role*, GRIST (Jul. 9, 2009), <https://grist.org/politics/2009-07-08-monsanto-fda-taylor/> [<https://perma.cc/ANW4-6QVL>]; Melanie Warner, *Obama Gives Former Food Lobbyist Michael Taylor a Second Chance at the FDA*, CBS NEWS (Jan. 15, 2010), <https://www.cbsnews.com/news/obama-gives-former-food-lobbyist-michael-taylor-a-second-chance-at-the-fda/>; Marion Nestle, *The Revolving Door Keeps Turning*, FOOD POL. (Dec. 22, 2020), <https://www.foodpolitics.com/2020/12/the-revolving-door-keeps-turning/> [<https://perma.cc/EV6R-ECAR>]; Zahra Meghani & Jennifer Kuzma, *The “Revolving Door” Between Regulatory Agencies and Industry: A Problem That Requires Reconceptualizing Objectivity*, 24 J. AGRIC. & ETHICS 575, 578–79 (2011). See generally MARION NESTLE, FOOD POLITICS: HOW THE FOOD INDUSTRY INFLUENCES NUTRITION AND HEALTH 146–64 (Darra Goldstein ed., 10th ed. 2013).

37. See LA VIA CAMPESINA, 2022 ANNUAL REPORT 1 (2023), https://viacampesina.org/en/wp-content/uploads/sites/2/2023/05/EN-LVC_Annual_Report_2022_v2.pdf.

38. See *Food Sovereignty: A Critical Dialogue*, FOOD FIRST (Feb. 21, 2014), <https://archive.foodfirst.org/publication/food-sovereignty-a-critical-dialogue/> [<https://perma.cc/64P3-J9KN>].

39. HILDA E. KURTZ ET AL., SCALING BIOPOLITICS: ENACTING FOOD SOVEREIGNTY IN MAINE 1 (2013), https://www.tni.org/files/download/40_kurtz_2013.pdf.

40. *Id.*

41. *Id.*

production model in Maine to an understanding of the direct linkages of their work to the international movement of peasants and the principles LVC had outlined years before.⁴² Maine advocates learned directly from Paul Nicholson, a founder of LVC, about their early community organizing efforts to protect their local food system, and about safeguarding the agrarian culture, life, and livelihoods in the Basque Country.⁴³ LFR leaders and FMF also met with others working towards food sovereignty in Brazil,⁴⁴ the Basque Country,⁴⁵ and India.⁴⁶ After the conference at Yale, the farmer-advocates had more grounding in the experience and principles LVC had articulated and a new network of connection lending greater perspective on the shared experience of smallholder farmers around the globe, including the shared experience with urban farmers and Black communities' struggles for food sovereignty in the United States.

D. From Food Sovereignty to State Constitutional Recognition of the Right to Food

The six principles of food sovereignty became a new metric for advocates in Maine as the local ordinances spread around the state and the push toward statewide recognition of food sovereignty grew. Advocates were increasing their political leverage in communities across Maine by establishing the following principles of food sovereignty in local laws: focusing on food for people over commodity markets; valuing food providers; localizing food production, processing, and distribution; regaining local authority over direct exchanges of food; securing legal space to build knowledge and skills; and working with nature.⁴⁷ The successful passage of the Maine Food Sovereignty Act recognized similar principles and, for the first time, included a definition of traditional foodways in a Maine statute, though this would be removed in an emergency special legislative session later that year.⁴⁸ Originally, Title 7, Chapter 8-F, Section 283 of the Maine Revised Statutes specifically mentioned that its goal was to: “[e]nsure the preservation of family farms and traditional foodways through small-scale farming and food production.”⁴⁹ However, while the principles had been recognized by state law, the rights outlined in those principles were still not secured. Namely, the “right to sufficient, healthy and culturally appropriate food

42. NYÉLÉNI, *supra* note 7.

43. See Transnational Institute, *Paul Nicholson: Food Sovereignty a Critical Dialogue*, YOUTUBE (Mar. 18, 2014), <https://www.youtube.com/watch?v=J8apjmw9MQM&t=1s> [<https://perma.cc/MP3M-J3K3>].

44. See Transnational Institute, *Sofia Monsalve: Food Sovereignty a Critical Dialogue*, YOUTUBE (Mar. 18, 2014), <https://www.youtube.com/watch?v=jOqL0d-wGy4> [<https://perma.cc/3V9J-U3QG>]; *Food Sovereignty: A Critical Dialogue*, *supra* note 38.

45. Transnational Institute, *supra* note 43.

46. See Transnational Institute, *Bina Agarwal: Food Sovereignty a Critical Dialogue*, YOUTUBE (Mar. 18, 2014), <https://www.youtube.com/watch?v=LEdSbabML0E> [<https://perma.cc/VPM8-THD3>].

47. See *Food Sovereignty*, U.S. FOOD SOVEREIGNTY ALL., <https://usfoodsovereigntyalliance.org/what-is-food-sovereignty/> [<https://perma.cc/5G8W-XX3T>] (last visited May 5, 2024) (listing the principles for food sovereignty).

48. Compare L.D. 1947 (131st Legis. 2023), with 7 M.R.S. § 283 (2023).

49. *Id.*

for all” and “the right of food providers to have control over their land, seeds and water.”⁵⁰

In 2017, food sovereignty movement leaders made a first legislative attempt to secure food and water sovereignty together in L.D. 725, An Act To Recognize Local Control Regarding Food and Water Systems.⁵¹ In 2013, an earlier attempt to recognize food sovereignty in a state statute had failed.⁵² While parts of food sovereignty were recognized in the eventual passage of the Maine Food Sovereignty Act in 2017, the parts of the bill addressing water sovereignty were stripped in the legislative process.⁵³

By 2019, farmer-advocate Heather Retberg and then-Representative Craig Hickman⁵⁴ began work to enshrine the missing two rights from the food sovereignty principles into law. The right to sufficient, healthy, and culturally appropriate food for all people and the right of people to have control over land, seeds, and water had not yet been encoded and legally secured, nor had food freedom.⁵⁵ The pair set to work building on the legislative victories and the growing upward pressure of the food sovereignty movement in Maine, while also drawing inspiration from the countries of Nepal—which had passed The Right to Food and Food Sovereignty Act during the previous year⁵⁶—and Ecuador, which had enshrined the right to food in its constitution in 2008.⁵⁷

50. U.S. FOOD SOVEREIGNTY ALL., *supra* note 47.

51. L.D. 725 (128th Legis. 2017).

52. L.D. 475 (126th Legis. 2013).

53. Comm. Amend. A to L.D. 725, No. S-74 (128th Legis. 2017). During a work session on L.D. 725, the bill was amended to remove all language having to do with local control of water. *Id.* This prevailed and L.D. 725 received a majority ought to pass vote from the State and Local Government Committee with no reference to water. *Id.*

54. Co-Author of this Article Heather Retberg met with Senator Craig Hickman for the first time in Governor Paul LePage’s office in 2013 to discuss issues of urgent importance to small-scale, diversified farmers. Senator Hickman was then a freshman farmer-legislator and appointed to the Joint Standing Committee on Agriculture, Conservation, and Forestry. After that meeting, Senator Hickman and Heather Retberg began work on the first iteration of food sovereignty legislation, food freedom legislation, raw milk and poultry exemption legislation, the future Maine Food Sovereignty Act, and Article 25 of the Maine Constitution.

55. The term “food freedom,” as used by activists in Maine, refers to a right to obtain the food of your choice from the source of your choice. UNIV. MIA. SCH. L., RIGHT TO FOOD DICTIONARY 21 (2023), <https://miami.app.box.com/s/5pww89muoxjz6oupolig50zms4ui23ci> [<https://perma.cc/53U2-7DJ6>]. The food freedom movement was largely in response to a 2010 federal articulation by the U.S. Food and Drug Administration (FDA) that individuals do not have an explicit right to consume or feed any particular food or a right to bodily and physical health, stating that “[t]here is no absolute right to consume or feed children any particular food,” “[t]here is no deeply rooted historical tradition of unfettered access to foods of all kinds,” and “[the] assertion of a fundamental right to their own bodily and physical health . . . is similarly unavailing because [consumers] do not have a fundamental right to obtain any food they wish.” Brief in Support of United States’ Motion to Dismiss Plaintiff’s Amended Complaint at 25–26, *Farm-to-Consumer Legal Def. Fund v. Sebelius*, 734 F. Supp. 2d 668 (N.D. Iowa 2010) (No. C 10-4018-MWB).

56. The Right to Food and Food Sovereignty Act, 2075 (2018) (Act No. 13/2075) (Nepal).

57. FOOD FIRST INFORMATION AND ACTION NETWORK (FIAN) ECUADOR, THE RIGHT TO FOOD IN ECUADOR: AN EVALUATION OF THE ECUADORIAN PEOPLE’S NUTRITIONAL STATE FROM A HUMAN RIGHTS PERSPECTIVE 1 (2010), http://www.fian.org/fileadmin/media/publications_2015/2011_12_EcuadorRighttoFood_EnglishSummary.pdf.

The resolution then-Representative Hickman and Heather Retberg drafted and proposed in 2019 drew from what was articulated by communities across Maine in the LFCSGO.⁵⁸ According to drafter Heather Retberg, it was informed by the losses during the legislative process in the first attempts to constitutionally recognize the right to food in 2015 and 2016,⁵⁹ bolstered by an understanding of the space Maine farmers occupied in alignment with farmers globally, and inspired by Nepal and Ecuador's efforts to protect their local food systems and secure food with dignity for all. The draft in 2019 most clearly represented what the communities of Maine had been putting forward.⁶⁰ Maine farmer-advocates had become increasingly aware that small farms were struggling against the forces of centralization and specialization, which contributed to the disappearance of those farms and the resulting limited access to nutritious food.⁶¹ Moreover, the number of people suffering from hunger and food insecurity was continuing to rise, making Maine the most food insecure state in New England.⁶² The policy in Maine was simultaneously driving small farms out of business, furthering the push towards only very large farms or very small backyard production (less than one acre), and increasing hunger in Maine.

The issue presented to Maine advocates had now become twofold: how could they empower greater individual and community food self-determination⁶³ or sovereignty⁶⁴ and greater food security? How could they ensure dignity, rather than a reliance on food charity, and secure food sovereignty and a food supply for present and future generations? This would entail codifying the right to food and the right to save and exchange seeds; the protection of water and other natural resources; and the protection of hunting, gathering, gardening, raising, fishing, foraging, and growing. The 2019 formulation demonstrates the full intent of the right to food amendment in Maine:

Section 25. Rights to food and food sovereignty and freedom from hunger.

58. *Local Food and Community Self-Governance Ordinance Template*, LOC. FOOD RULES (Feb. 4, 2020) [hereinafter *Local Food and Community Self-Governance Ordinance Template*], https://www.localfoodrules.org/wp-content/uploads/2020/02/D09_LFCSGO_PDF-Template.pdf.

59. L.D. 783 (127th Legis. 2015).

60. See generally Stewart Smith, *Sustainable Agriculture and Public Policy*, 2 ME. POL'Y REV. 68 (1993) (recommending that Maine support local farmers by embracing and encouraging sustainable agriculture); Ellen Sabina, *Results of 2017 Ag Census Concerning for Maine Farms and Farmland*, ME. FARMLAND TR. (Apr. 19, 2019), <https://www.maineFarmlandtrust.org/blogs/results-of-2017-ag-census-concerning-for-maine-farms-and-farmland> [<https://perma.cc/KGF8-N7L5>]; *Local Food and Community Self-Governance Ordinance Template*, *supra* note 58.

61. Sabina, *supra* note 60.

62. 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/dacf/about/commissioners/endhunger/docs/maines-roadmap-to-end-hunger.pdf>.

63. The Authors understand community food self-determination as the community's process for meeting their food need. See Heather Retberg, Craig Hickman, & Photini Kamvisseli Suarez, *Food is Life: A Vision for the Right to Food in Maine*, NAT'L RIGHT TO FOOD COMM'Y OF PRACTICE (forthcoming 2024) [hereinafter *Food is Life*].

64. Food sovereignty has been defined by global peasant movements as the right of communities to govern how their food needs are met. See NYÉLÉNI, *supra* note 7.

All individuals 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 individuals 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.⁶⁵

While L.D. 795 was tabled in 2020 on the floor of the Maine House with the closure of the legislative session due to the pandemic,⁶⁶ the amended language from that legislative session went forward in 2021 when Representative Billy Bob Faulkingham reintroduced this language in L.D. 95⁶⁷:

Section 25. Right to food. 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.⁶⁸

This was the language that went forward with more than a two-thirds supermajority vote from both chambers of the Legislature.⁶⁹ It then passed by sixty-one percent at the ballot box,⁷⁰ securing the right to food in Maine's constitution, a first in the United States.⁷¹

65. L.D. 795 (129th Legis. 2019).

66. See STATE OF ME. LEGIS. INFO. OFF., HISTORY AND FINAL DISPOSITION OF LEGISLATIVE DOCUMENTS OF THE 129TH LEGISLATURE 5 (2020).

67. While Representative Faulkingham emphasized the food freedom aspects of Maine's right to food amendment, he also referenced its unique formulation and intent to ensure both individual liberty rights and universal human rights when he reintroduced it to the Committee on Agriculture, Conservation and Forestry in 2021; he additionally noted its grounding in the food sovereignty movement in Maine and also referenced previous bill sponsor, then-Representative Craig Hickman in his reference to human rights. *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. (2021) (testimony of Representative Billy Bob Faulkingham).

68. L.D. 95 (130th Legis. 2021).

69. STATE OF ME. LEGIS. INFO. OFF., HISTORY AND FINAL DISPOSITION OF LEGISLATIVE DOCUMENTS OF THE 130TH LEGISLATURE 4 (2021).

70. Jennifer Mitchell, *Maine Voters Enshrine 'Right to Food' In State Constitution*, ME. PUB. (Nov. 3, 2021, 1:01 AM), <https://www.mainepublic.org/politics/2021-11-03/maine-voters-enshrine-right-to-food-in-state-constitution>.

71. Senator Craig Hickman drew the connection between human rights, protection of food sovereignty, and ending hunger in these remarks:

Most importantly, the right to food and food sovereignty are integral to ending hunger in Maine. The right to food and food sovereignty need to more clearly guide public policy and decision-making in localities across the state from Kittery to Fort Kent. The right of the people to define their own food and agricultural systems is paramount to ensure that all people have access to nourishing food.

II. MAINE'S IMPLEMENTATION OF THE RIGHT TO FOOD IN THE CONTEXT OF NATIONAL AND INTERNATIONAL POLITICAL MOBILIZATION TO ADDRESS PROBLEMS IN THE FOOD SYSTEM

Maine's efforts should also be understood in the context of a broader political mobilization effort around food as a human right in the United States. In part prompted by the need for legal support for Maine's legislative efforts, a group of people including those with lived experiences of hunger, legislators, farmers, food justice advocates, human rights scholars, practitioners, and students from around the country came together informally in 2020 to form what would later become the National Right to Food Community of Practice.⁷² The right to food movement in the United States draws on international human rights instruments and processes as well as lessons learned from state and community efforts across the country, including those related to other U.S. movements for ESC rights. This Section briefly discusses the international rights to food and food sovereignty as enshrined in international human rights law, as well as the U.S. movement's efforts to mobilize human rights instruments and mechanisms for political, economic, and social change around the food system.

A. *The International Rights to Food and Food Sovereignty*

The right to food is a human right recognized under international law. The right to food was first articulated in 1948 in Article 25 of the UDHR, as a critical component of the right to an adequate standard of living.⁷³ In 1966, the right to food was enshrined in Article 11 of the ICESCR.⁷⁴

The International Covenant on Civil and Political Rights (ICCPR) has also construed the right to life to include access to food and nutrition,⁷⁵ and the Committee on the Elimination of Racial Discrimination (CERD) has recognized violations of the right to food as being intimately connected to racial discrimination.⁷⁶ The right to adequate food is also included in several other international treaties in the context of protecting the rights of marginalized groups: the Convention on the Rights of the Child (CRC),⁷⁷ Convention on the Rights of

Aryan Rai, *Food Banks Join Effort to End Hunger in State by 2030*, PORTLAND PRESS HERALD (Aug. 18, 2023), <https://www.pressherald.com/2023/08/18/local-food-banks-join-effort-to-end-hunger-in-maine-by-2030>.

72. *What We Stand For*, NAT'L RIGHT TO FOOD CMTY. OF PRAC., <https://www.righttofood.us.org/about> [<https://perma.cc/8KBD-4LDB>] (last visited May 5, 2024).

73. UDHR, *supra* note 2, art. 25.

74. G.A. Res. 2200A (XXI), International Covenant on Economic, Social, and Cultural Rights, art. 11, ¶ 1 (Dec. 16, 1966) [hereinafter ICESCR].

75. U.N. Human Rts. Comm., *ICCPR General Comment No. 36, Article 6: The Right to Life*, U.N. Doc. CCPR/C/GC/36, at 6 (Sept. 3, 2019). See generally G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 6, ¶ 1 (Dec. 16, 1966) [hereinafter ICCPR] (establishing the inherent right to life).

76. Comm. on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Tenth to Twelfth Reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/10-12, at 10 (Sept. 21, 2022) [hereinafter CERD Concluding Observations: United States].

77. G.A. Res. 44/25, Convention on the Rights of the Child, art. 24, ¶ 2(c) (Nov. 20, 1989).

Persons with Disabilities (CRPD),⁷⁸ and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁷⁹

The normative content of the right to food was defined in 1999 by the U.N. Committee on Economic, Social, and Cultural Rights' General Comment 12, which states that "the right to adequate food is realized when every man, woman and child, alone and in community with others, has physical and economic access at all times to adequate food or means for its procurement."⁸⁰ The right to food is further expressed as the right to feed oneself and one's family with dignity, through sufficient availability, accessibility, and adequate fulfilment of dietary needs in a sustainable manner.⁸¹ More specifically, there are four main components of the right to food: accessibility (food must be both economically and physically accessible), availability (food must be available through either one's land or natural resources, or through an efficient distribution system), adequacy (food must satisfy dietary needs, be culturally acceptable, and be safe from harmful substances), and sustainability (food must be accessible, available, and adequate for present and future generations).⁸² Under General Comment 12, states have the obligation to progressively realize the right to food by respecting, protecting, and fulfilling the right to food.⁸³

Moreover, the human right to food has evolved over the last several years and has increasingly been understood by U.N. Special Rapporteurs and other international actors through the lens of a food sovereignty framework.⁸⁴ LVC led the movement for the promotion of a food sovereignty framework as an alternative to a food security framework.⁸⁵ Where food security mainly approaches hunger as a question of accessibility, food sovereignty approaches hunger as a question of power over resources.⁸⁶ Under this framework, hunger can be addressed not just by providing food to those in need, but by breaking the systemic barriers that perpetuate hunger.⁸⁷ In 2007, LVC adopted the Declaration of Nyéléni, which declared that "[f]ood sovereignty is 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 agriculture systems . . . and policies

78. G.A. Res. 61/106, Convention on the Rights of Persons with Disabilities, art. 24, ¶ 2(c) (Dec. 13, 2006).

79. G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination against Women, art. 12, ¶ 2 (Dec. 18, 1979).

80. Comm. on Econ., Soc., and Cultural Rts., *General Comment No. 12: The Right to Adequate Food (art. 11)*, 20th Sess., ¶ 6, U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter General Comment No. 12].

81. *See id.* ¶¶ 4, 12–13.

82. *Id.* ¶¶ 7–8, 10–13.

83. *See id.* ¶¶ 14–18.

84. *See* Flavio L.S. Valente et al., *Closing Protection Gaps through a More Comprehensive Conceptual Framework for the Human Right to Adequate Food and Nutrition*, in *GENDER, NUTRITION, AND THE HUMAN RIGHT TO ADEQUATE FOOD: TOWARD AN INCLUSIVE FRAMEWORK* 341, 341–95 (Anne C. Bellows et al. eds., 2016).

85. *See* LA VIA CAMPESINA, *supra* note 37, at 2–3.

86. *See* Valente et al., *supra* note 84, at 343–50.

87. *Id.*

rather than the demands of markets and corporations.”⁸⁸ The movement for the recognition of food sovereignty as a right culminated in 2018 when the U.N. General Assembly adopted the U.N. Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP).⁸⁹ In that instrument, food sovereignty is defined in Article 15 as access to the “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 . . . cultures.”⁹⁰ Notably, the United States voted against the adoption of UNDROP,⁹¹ likely due in part to the fact that food sovereignty is an alternative model for agriculture—one that is farmer-driven, and serves as a counter to large-scale, corporate, industrial agri-business.⁹²

B. Connecting Globally

As an illustrative example of how international frameworks can support the right to food and food sovereignty movement in the United States, since 2019 the University of Miami School of Law Human Rights Program and Clinic have supported strategic engagement by members of what would later become the National Right to Food Community of Practice with international human rights mechanisms to build awareness and accountability around hunger in the United States.⁹³ Use of international human rights frameworks has helped to exert political pressure, contributed to social mobilization, and sought to further develop international standards and recommendations that could then be implemented domestically.⁹⁴ As part of this advocacy, people with lived experiences of hunger and resource dispossession, advocates, and scholars engaged in self-education and training, supported organizing efforts around a human rights framework, and convened strategy meetings with other movements also focused on ESC rights.⁹⁵ These efforts led to engagement with several U.N. human rights mechanisms, including the U.N. Special Rapporteur on the right to food, U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, CERD, U.N. Human Rights Committee, and Universal Periodic Review (UPR) by the U.N. Human Rights Council.⁹⁶

U.N. advocacy on the part of U.S.-based right to food advocates has resulted in increased international pressure on the United States. Recently, advocacy with the

88. NYÉLÉNI, *supra* note 7.

89. See 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].

90. *Id.* art. 15, ¶ 4.

91. G.A. Dec. 73/165, U.N. Doc. A/73/PV.55, at 24–25 (Dec. 17, 2018).

92. NYÉLÉNI, *supra* note 7.

93. *Food Rights Initiative*, UNIV. OF MIA. SCH. OF L., <https://www.law.miami.edu/academics/programs/human-rights/initiatives/food-rights/> [<https://perma.cc/3268-NV75>] (last visited May 5, 2024).

94. MARTHA F. DAVIS ET AL., HUMAN RIGHTS ADVOCACY IN THE UNITED STATES 667-709 (3d ed. 2023).

95. UNIV. OF MIA. SCH. OF L., STRATEGY MEETING: REALIZING THE RIGHTS TO FOOD, HEALTH AND HOUSING IN THE U.S. 1 (2020) [hereinafter STRATEGY MEETING], <https://miami.app.box.com/s/xv0eid3835pnlhmt1oapcwtnrdv2dy17> [<https://perma.cc/Y5ZZ-D2A9>].

96. *Food Rights Initiative*, *supra* note 93.

CERD Committee resulted in the adoption of the first set of U.N. recommendations to the United States focused on its obligation to realize the right to food of Americans.⁹⁷ More specifically, in August 2022, the U.N. CERD Committee issued the following powerful concluding observations to the United States:

The Committee recommends that the State party take all measures necessary to guarantee the right to adequate food and to strengthen its efforts to combat hunger and food insecurity, which disproportionately affects racial and ethnic minorities, and especially women and children, including by strengthening the institutional framework and adopting a comprehensive and rights-based national plan to end hunger. The Committee encourages the State party to take effective measures against hunger, in consultation with all relevant stakeholders, including members of the communities most affected by food insecurity, and including through the White House Conference on Hunger, Nutrition and Health, due to be held in September 2022.⁹⁸

Similarly, recent advocacy by U.S. right to food advocates with the U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance during her recent visit to the United States resulted in recommendations that the United States “take[] urgent action to address racially discriminatory food systems and their impact, including racial inequities in food insecurity.”⁹⁹

C. Connecting Nationally

In addition to engaging with global human rights standard-setting and accountability processes, the right to food national movement has also sought to use the human rights framework to connect with other groups advocating for ESC rights in the United States.¹⁰⁰

In 2020, the University of Miami School of Law Human Rights Clinic together with the Cardozo Law Institute in Holocaust and Human Rights, hosted a two-day national strategy meeting on “Realizing the Rights to Food, Health and Housing in the U.S.”¹⁰¹ The meeting brought together advocates and scholars for cross-movement discussion and to share strategies and experiences for realizing ESC rights across the nation and at different levels.¹⁰² Participants in the meeting shared tools and models for narrative shifting, pushing back against the financialization of basic services, and legislative change and litigation.¹⁰³ Professor Córdova Montes, Heather Retberg, and Senator Craig Hickman presented on the human right to food

97. CERD Concluding Observations: United States, *supra* note 76, ¶ 42.

98. *Id.*

99. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, *End of Visit Statement: United States of America* (Nov. 14, 2023), <https://www.ohchr.org/sites/default/files/documents/issues/racism/sr/statements/2023-11-14-EOM-SR-Racism-usa-en.pdf>.

100. STRATEGY MEETING, *supra* note 95.

101. *Id.*

102. *Id.*

103. *Id.* at 7–8.

in the United States with a focus on efforts in Maine.¹⁰⁴ Professor Smita Narula, who was also a participant in the meeting, highlighted that “shared messaging and collective action in policymaking and legislation is important to advance economic and social rights in the U.S.”¹⁰⁵ She stressed that messaging around the right to food in the United States is very place-based and must take into account the place-specific political context.¹⁰⁶ Professor Narula further noted that “in the U.S., the right to food can serve as a broad umbrella that brings together sustainability, food security, food justice, racial justice concerns, and access to land into one narrative.”¹⁰⁷

Most recently, in April 2023, the University of Miami School of Law Human Rights Clinic hosted the symposium *Food, Housing, and Racial Justice in the U.S.*, which “sought to provide a space for deep reflection and strategizing by foregrounding the lived experiences and strategies of survival and resistance of communities of color around food insecurity; food system governance; access to housing, land, and natural resources; and the environment.”¹⁰⁸ This symposium unpacked the meaning of the human right to food in the United States given its context of colonization, slavery, and corporate control of the food system. Repeatedly, symposium participants noted the importance of thinking expansively when interpreting the right to food and of drawing on the definitions of global and local social movements.¹⁰⁹ At the symposium, the current U.N. Special Rapporteur on the right to food, Michael Fakhri, powerfully summarized the discussions by saying:

“[A]t its simplest form, the right to food is people’s ability to access good food through their relationship with the land, or through fair and stable markets” [T]he right to food also means that people have the right to decide as a community what counts as good food and what is nutritious, healthy, culturally appropriate, or ecologically sustainable “To be free from hunger is to be free from exploitation and to be free from oppression.”¹¹⁰

National strategy meetings have enabled cross-movement and cross-state sharing of experiences and lessons learned. These gatherings have informed and supported efforts in Maine and in turn, the experiences in Maine have sparked and fueled right to food efforts in other states.¹¹¹ At the end of “Realizing the Rights to Food, Health, and Housing in the U.S.” in 2020, co-author of the right to food amendment Heather Retberg reflected, “if you are not doing the internal work and allowing yourself to be challenged by experiences that are different than your own,

104. *Id.*

105. *Id.* at 8.

106. *Id.*

107. *Id.*

108. Denisse Córdova Montes et al., *Food, Housing, and Racial Justice Symposium*, 31 U. MIA. INT’L & COMPAR. L. REV. 77, 82 (2024).

109. *See generally id.*

110. *Id.* at 84–85.

111. R. D. Córdova Montes, *Using International Human Rights Law to Address Hunger in the U.S.*, 6 BUS. ENTREPRENEURSHIP & TAX L. REV. 16–19 (2022).

it is hard to take any structural changes forward because you are operating from a blind spot.”¹¹²

III. INTERPRETING MAINE’S RIGHT TO FOOD CONSTITUTIONAL AMENDMENT: A PEOPLE’S VISION FOR THE RIGHT TO FOOD

The right to food movement in Maine mirrors community-led right to food movements emerging around the world. Like these movements, Maine’s right to food movement is rooted in the need to address the challenges facing Maine’s most vulnerable communities, including small-scale farmers; Black, Indigenous, and other historically marginalized groups; and structural weaknesses in the local food system.¹¹³ International human rights law supports and affirms the right to food in Maine, but it does not define it. This definition comes from the ground up, from those directly impacted by food injustice who are working to change the food system in Maine. This Section presents a discussion of the meaning of Article 25 as intended by its drafters and encapsulated in a soon-to-be-released document entitled *Food is Life: A Vision for the Right to Food in Maine*. This document, also referred to as the People’s Implementation Manual (PIM), is a document co-authored by the drafters of the right to food constitutional amendment¹¹⁴ and by the Authors of this Article.¹¹⁵ The PIM is expected to be a tool to help facilitate the interpretation of Maine’s right to food amendment for the people of Maine and policymakers, as well as provide guidance for organizers and policymakers in other states looking to adopt a human right to food framework to address problems in their food system.¹¹⁶

More specifically, Maine’s right to food amendment should be interpreted according to the drafters’ intent, which is aligned with international human rights law and the vision of national and global food sovereignty movements. First, we argue that the amendment includes the language of the international human right to food in the first clause, the language of food sovereignty in the second clause, and the language of food freedom in the third clause. We also argue that the amendment includes strong protections of public lands, natural resources, and private property in the fourth clause, explicitly articulating constraints on the right. The fourth clause thereby fortifies the principles of sustainability set forth in the first clause, and safeguards natural resources elemental to the production, consumption, and acquisition of food. Next, this Section describes pending litigation and proposes to interpret the amendment in the context of its drafting history, which prioritizes the common definitions of the terms included in the amendment. Finally, this Section explains ongoing legislative efforts to give meaning to the amendment that are in line with the drafters’ intent and human rights law.

112. STRATEGY MEETING, *supra* note 95, at 15.

113. *The U.S. Food Sovereignty Alliance*, U.S. FOOD SOVEREIGNTY ALL., <https://usfoodsovereigntyalliance.org/> [<https://perma.cc/M3YJ-XYH6>] (last visited May 5, 2024); EVERYONE AT THE TABLE, *supra* note 62.

114. *Food is Life*, *supra* note 63.

115. *Id.*

116. *Id.*

A. Defining the Amendment in Four Clauses: The People's Implementation Manual

The PIM defines the amendment word-for-word and provides additional contextual terms and definitions that build upon the international definition of the human rights to food and food sovereignty.¹¹⁷ The Authors of this Article and the PIM break up the amendment into four clauses for definitional purposes: (i) the natural, inherent, unalienable right to food, which is further broken down into four components: adequacy, availability, accessibility, and sustainability; (ii) the right to save and exchange seeds; (iii) the right to grow, raise, harvest, produce and consume the food of one's own choosing for their own nourishment, sustenance, bodily health and well-being; and (iv) the limiting language of the amendment.

1. Clause 1: "All individuals have a natural, inherent and unalienable right to food"

This first clause means that food must be adequate, available, accessible, and sustainable according to the normative content of the international right to food.¹¹⁸ A right to food requires that a person either be able to feed themselves directly from the land or other natural resources, or be able to acquire or purchase adequate food.¹¹⁹ The government's role is not to provide food, but rather to protect, respect, facilitate, and promote this right progressively¹²⁰ and according to its available resources while also ensuring that no one goes hungry as a fundamental human right.¹²¹

The concept of adequacy means that food should be of "quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture" and to feed oneself with dignity.¹²² In a right to food context, dignity exists when individuals are not forced to make trade-offs or choose between one essential component of basic human life or another.¹²³ Relying on public or private charity limits food options and an individual's ability to obtain food of their choosing, from the place of their choosing, for their own nourishment, sustenance, bodily health, and well-being.¹²⁴

The concept of accessibility means that food should be both economically and physically accessible.¹²⁵ People should be able to pay for food in a way that does not interfere with other human rights and have easy physical access to places where food is available.¹²⁶ Adequate food should not cost so much that individuals are forced to choose between food or other basic needs.¹²⁷ Adequate food should also be physically accessible to all physically vulnerable people, including people with

117. *Id.*

118. See General Comment No. 12, *supra* note 80, ¶ 6; UNDROP, *supra* note 89, at 5, 7.

119. General Comment No. 12, *supra* note 80, ¶ 12.

120. *Id.* ¶ 15.

121. *Id.*

122. *Id.* ¶¶ 4, 8.

123. *Id.* ¶ 13.

124. See ME. CONST. art 1, § 25.

125. General Comment No. 12, *supra* note 80, ¶ 13.

126. *Id.*

127. *Id.*

illnesses, people with disabilities, children, or older people.¹²⁸ Food accessibility as expressed in Section 25 should also include access to land, clean water, air, and soils to ensure access to the ability “to grow, raise, harvest, produce and consume the food of [an individual’s] choosing for their own nourishment, sustenance, bodily health, and well-being.”¹²⁹

The concept of availability means that individuals have the right to autonomously acquire food from the land and other natural resources or through a supply-and-demand system that allows food to be acquired and consumed.¹³⁰ This concept serves to inform public policy around land access, housing, transportation, seeds, wages, and the necessity of clean water, air, and soils for food production.

Finally, the concept of sustainability means that food should be accessible for both present and future generations.¹³¹ Therefore, healthy soils, clean air, and water are given a place of policy primacy and protection to ensure this necessity. In Maine’s Article I, Section 25, this portion of the definition of the right to food works in concert with the fourth clause, which protects public lands and natural resources.¹³²

Food sovereignty must also ensure water sovereignty.¹³³ Nutritious food for individual health and well-being is unattainable without clean water.¹³⁴ This clause, in context with the other three, establishes a direct connection between the necessity of protecting water, air, and soil and the right to food. There now exists a duty to citizens as rights-holders to safeguard Maine’s water and other natural resources to ensure (i) the ability of Maine’s peoples to acquire food and (ii) their right to “grow, raise, harvest, produce and consume the food of their choosing for their own nourishment, sustenance, bodily health, and well-being.”¹³⁵ Section 25 shifts this from an aspirational policy goal to a constitutional imperative.

2. Clause 2: “including the right to save and exchange seeds”

This clause is about ensuring Maine’s food security in the face of supply chain disruptions and volatile weather changes. The right to save and exchange seeds is vital to the regional resilience needed to strengthen communities in the face of climate disruption and other emergencies that make community food supplies vulnerable.¹³⁶ It is essential for people to retain the ability to save and exchange seeds as micro-climates and bioregions change over time. This allows for seeds to adapt to local changing environments, ensuring the ability of people to preserve emerging genetic diversity. Thus, this right also protects unpatented seeds and

128. *Id.*

129. ME. CONST. art. I, § 25.

130. General Comment No. 12, *supra* note 80, ¶ 12.

131. *Id.* ¶ 7.

132. *See* ME. CONST. art. I, § 25.

133. UNDROP, *supra* note 89, art. 21.

134. *Id.*

135. ME. CONST. art. I, § 25.

136. UNDROP, *supra* note 89, art. 19; Michael Fakhri (Special Rapporteur on the Right to Food), *Seeds, Right to Life, and Farmers’ Rights*, ¶ 6, U.N. Doc. A/HRC/49/43 (Dec. 30, 2021).

allows for biodiversity and the regional food supply to not be defined by the limited seeds patented by corporations.¹³⁷

Importantly, as the wording of the amendment suggests, this right protects individuals' personal use of seeds. This right is not to be interpreted under the idea of "personhood" as it may refer to corporations, but rather solely for human "individuals."¹³⁸ Additionally, the focus on "nourishment, sustenance, bodily health and well-being,"¹³⁹ which implies the amendment's application to a human body, further supports this intent and understanding. Section 25 puts into place a vital element for the resilience of Maine people by nurturing genetic seed diversity and future food supply. Similarly, the human rights principle of non-discrimination emphasizes the need for a focus on historically marginalized communities, which in Maine's case should include Indigenous people, rural and urban poor, small scale farmers, non-commercial homesteader communities, and all people already facing or at risk of facing food insecurity.¹⁴⁰ This human rights principle supports the argument that the amendment should be interpreted in line with the needs and priorities of those most affected communities, which means privileging the interests of the most affected people over corporate interests.

3. *Clause 3: "[including] 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"*

This clause secures a right to food self-determination, ensuring that Maine people will always retain the autonomy to grow, raise, harvest, and produce food. Additionally, it includes a right to choose what foods people consume to nourish their own health. The government has a role in respecting and protecting¹⁴¹ this right by restraining its own agencies or third-party actors that interfere with an

137. "Today, four corporations—Bayer, Corteva, ChemChina and Limagrain—control more than 50% of the world's seeds." Charli Shield, *Who Controls the World's Food Supply?*, DEUTSCHE WELLE (Apr. 8, 2021), <https://www.dw.com/en/agriculture-seeds-seed-laws-agribusinesses-climate-change-food-security-seed-sovereignty-bayer/a-57118595>. "Seeds are ultimately what feed us and the animals we eat," states Jack Kloppenburg, a rural sociologist and professor at the University of Wisconsin-Madison. *Id.* "Control over seeds is, in many ways, control over the food supply. The question of who produces new plant varieties is absolutely critical for the future of all of us." *Id.*

138. See Memorandum from William Talley, Law Student Intern, Univ. of Mia. Sch. of L. Hum. Rts. Clinic, to Aaron Frey, Me. Att'y Gen. (Apr. 13, 2021), <https://miami.app.box.com/s/oatj0isyglmilyetvz7kgpuri2arwleh> [<https://perma.cc/E8ZA-DBC9>]. The Memorandum, which was drafted under the supervision of co-Author R. Denisse Córdova Montes, relies on common dictionary definitions to support the argument that the word "individual" is defined as "[o]f, relating to, or involving a single person or thing, as opposed to a group." *Individual*, BLACK'S LAW DICTIONARY (5th ed. Pocket 2016). Legal dictionaries define a "person" as "a human being," but another possible use of the term is "artificial person," which includes entities, "such as a corporation, created by law and given certain legal rights and duties of a human being." *Person*, BLACK'S LAW DICTIONARY (5th ed. Pocket 2016). The term "individual," however, does not apply to legal entities treated as persons, and it strictly excludes entities composed of many people.

139. ME. CONST. art. I, § 25.

140. See General Comment No. 12, *supra* note 80, ¶¶ 13, 18, 26; EVERYONE AT THE TABLE, *supra* note 62, at 11–20.

141. General Comment No. 12, *supra* note 80, ¶ 15; ME. CONST. art I, § 25.

individual's ability to grow, raise, harvest, produce, and consume foods of their own choosing, and also a role in promoting policies that empower and facilitate greater self-determination. As eaters and consumers, individuals can determine what is best for their health and well-being by choosing what foods to consume and the source of those foods. Consumers must have a seat at the table where decisions regarding their food supply are being made.¹⁴² Consumers hold leverage as both the right-holders and stakeholders with regards to their food choices and sources.

4. Clause 4: "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"

The last clause is a protection against abuse. It is a clause that affirms people's role as stewards of nature and limits the protected liberties named above by explicitly constraining the right. This Article began noting the recent commemoration of seventy-five years of the UDHR, an effort guided by Eleanor Roosevelt. Maine's articulation of the right to food stands as a practicable application of the principles espoused in that instrument and a careful balance of individual freedoms and universal human rights.

Section 25 builds a human rights framework to protect essential freedoms and secure the rights of people while cautiously guarding against abuse of public lands, natural resources, and private property. Protected natural resources include wildlife, water, air, and soils. Private property, such as domestic animals and plant crops, is protected against all trespass, as are patents under intellectual property law. Under the right to food amendment, any violation of private property rights or the abuse of public lands or natural resources that violate existing statutes remains prohibited and governed by existing statute. Individuals are still not permitted to forage for food on the property of others. Unless land is posted, Maine operates under an "implied permission structure," which allows hunting on the private property of others.¹⁴³ The implied permission structure remains as it always has been. Additionally, to protect and fulfill an individual's right to save and exchange seeds, and grow, raise, harvest, produce or consume nutritious foods, the protection of public lands and the health of natural resources must be elevated in statutory deliberations. This requires an evaluation of existing laws and bill proposals to ensure that mining, PFAS¹⁴⁴ contamination, water extraction for export, and other extractive activities must be viewed through the lens of Maine's right to food. However, beyond this, all regular rules and regulations remain in force. The right to food is not an invitation to break the laws of Maine.

142. See UNDROP, *supra* note 89, art. 10; General Comment No. 12, *supra* note 80, ¶ 23.

143. *Where to Hunt*, ME. DEP'T OF INLAND FISHERIES & WILDLIFE, <https://www.maine.gov/ifw/hunting-trapping/hunting/where-to-hunt.html> [<https://perma.cc/7PKD-7ECC>] (last visited May 5, 2024).

144. PFAS are per- and polyfluoroalkyl substances; PFAS is an umbrella term for a family of thousands of chemicals. Rachel Salvidge & Leana Hosea, *What Are PFAS, How Toxic Are They, and How Do You Become Exposed?*, GUARDIAN (Feb. 23, 2023), <https://www.theguardian.com/environment/2023/feb/23/what-are-pfas-forever-chemicals-how-toxic-are-they-and-how-do-you-become-exposed>.

B. Interpreting the Amendment Through Legislation

This Section describes two recent legislative efforts that assist in interpreting Section 25 and are in line with the drafters' understanding of the amendment.¹⁴⁵

1. An Act to Protect and Respect the Right to Food

L.D. 1823, An Act to Protect and Respect the Right to Food, amends the Maine Food Sovereignty Act (MFSA) to define terms related to the right to food amendment and the MFSA, including “traditional foodways,” “food sovereignty,” “food producer,” “consumer,” “vegetable garden,” and “food or food products.”¹⁴⁶ L.D. 1823 seeks to amend the MFSA to include the idea that advancing the six principles of food sovereignty further protects and respects the right to food.¹⁴⁷ The proposed language includes explanations of the following: focus on the people, value of food producers, localizing food systems, promoting local control, building knowledge and skills, and working with nature.¹⁴⁸

L.D. 1823 further establishes the Maine Vegetable Garden Protection Act, allowing for the cultivation of vegetable gardens on one's own private property or the property of another with the owner's permission, and allows for the leasing of unneeded land in parks, historic sites, and public land for the cultivation of edible crops.¹⁴⁹ L.D. 1823 further allows for the development of a Maine food economics curriculum for state public schools, which must cover nutrition and meals, gardens and agricultural fairs, and food production and consumption.¹⁵⁰

L.D. 1823 provides additional contextual support in understanding and implementing the right to food amendment by defining and providing related and supportive terms and principles. Such clarifications allow for effective and true implementation and enforcement of the right to food amendment by clarifying the intent of the drafters of Section 25 and avoiding misuse, misunderstanding, and manipulation of the right to food. Additionally, L.D. 1823 allows for efforts that support the principles of the right to food amendment and the MFSA by localizing food systems, increasing local food access, and promoting public education about food systems.

2. An Act to Amend the Maine Food Sovereignty Act

Another recent law surrounding the right to food amendment is L.D. 1947, also known as An Act to Amend the Maine Food Sovereignty Act. L.D. 1947 made notable changes to the Maine Food Sovereignty Act.¹⁵¹ This includes an updated definition of a “direct producer-to-consumer transaction,” removing the portion requiring the transaction to be face-to-face and at the site of production, and instead defining it as:

145. *Food is Life*, *supra* note 63.

146. Comm. Amend. A to L.D. 1823, S-673 (131st Legis. 2023).

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. L.D. 1947 (131st Legis. 2023).

an exchange of food or food products directly between a food producer and a consumer by barter, trade or purchase on the property or premises owned, leased or rented by the food producer; at roadside stands, fundraisers, farmers' markets and community social events; or through buying clubs, deliveries or community-supported agriculture programs, herd-share agreements and other private arrangements.¹⁵²

Significantly, this definition was adopted by the Legislature almost directly from the model template LFCSGO, an alignment with the grassroots movement that had previously been opposed.¹⁵³ This amendment serves as a meaningful legal protection for traditional exchanges of food: it secures a place in the food regulatory regime for local governance of community food systems and for the authority of those communities to define their own food system and be fully recognized by state law.

C. Interpreting the Amendment Through the Courts

Courts have also recently worked to interpret Section 25 in two new cases: *Deschaine v. Department of Health and Human Services* and *Parker v. Department of Inland Fisheries and Wildlife*. In March 2023, the Farm-to-Consumer Legal Defense Fund (FTCLDF) filed a complaint for declaratory action against the state's Department of Health and Human Services (DHHS) in the Kennebec County Superior Court, arguing that DHHS was acting in violation of the MFSA by ordering the closure of Nathan and Rhiannon Deschaine's business for operating an eating establishment without a license.¹⁵⁴ This action aims to defend a small home kitchen food business known as Kenduskeag Kitchen.¹⁵⁵ Run by plaintiffs Nathan and Rhiannon Deschaine, Kenduskeag Kitchen is a home-based food producer operating out of Kenduskeag, Maine.¹⁵⁶ Frank Roma, another plaintiff in the case along with FTCLDF and the Deschaines, argues that DHHS violated his constitutional right to food under Section 25 in shutting down Kenduskeag Kitchen and therefore depriving him of the right to food of his own choosing for his own nourishment, sustenance, bodily health and well-being.¹⁵⁷

In *Parker v. Department of Inland Fisheries & Wildlife*, plaintiffs Virginia and Joel Parker argued that Maine's Sunday hunting ban is unconstitutional because it violates the right to food amendment by infringing on the right to hunt for food.¹⁵⁸ The plaintiffs argued that a Sunday hunting ban is not covered by the amendment's

152. *Id.*

153. *Local Food and Community Self-Governance Ordinance Template*, *supra* note 58.

154. Complaint for Declaratory Judgment and Injunctive Relief ¶¶ 15–17, *Deschaine v. Dep't of Health & Hum. Servs.*, No. CV-23-45 (Me. Super. Ct. Mar. 24, 2023) [hereinafter *Complaint for Declaratory Judgment*]; *see also* Suzanne Sisk, *Help FTCLDF Fight for Food Freedom in Maine*, FARM-TO-CONSUMER LEGAL DEF. FUND (June 12, 2023), <https://www.farmtoconsumer.org/blog/2023/06/12/help-ftcldf-fight-for-food-freedom-in-maine/> [<https://perma.cc/Y2DR-K43R>].

155. Complaint for Declaratory Judgment, *supra* note 154, ¶ 1.

156. *Id.* ¶¶ 14–15.

157. *Id.* ¶ 3.

158. Brief of Petitioner-Appellants at 4, *Parker v. Dep't of Inland Fisheries & Wildlife*, 2024 ME 22, ___ A.3d ___.

limiting language and therefore is not an exception to the newly enshrined rule.¹⁵⁹ The Superior Court dismissed the plaintiffs' complaint on November 30, 2022.¹⁶⁰ The plaintiffs then appealed to the Maine Supreme Judicial Court. On March 28, 2024, the Law Court¹⁶¹ first confirmed that the plaintiffs' claim, their right to hunt for food, creates an interest that is sufficiently substantial so as to "result in hardship if review were withheld;" therefore, the plaintiffs have a sufficiently justiciable claim.¹⁶² Next, the court was tasked with answering two questions: (1) whether the right to food amendment creates a "right to hunt wild animals" and (2) whether the Sunday hunting ban infringes upon such a right.¹⁶³ As for the first question, the court determined that the right to food amendment does include a right to hunt by interpreting the word "harvest" in the amendment to include hunting.¹⁶⁴ This court references dictionary definitions and judicial precedent in making this determination,¹⁶⁵ and affirms that constitutional amendments, including the right to food amendment, should be construed broadly because "they are expected to last over time and are cumbersome to amend."¹⁶⁶

As for the second question, the Law Court ruled that the Sunday hunting ban was still constitutional despite the enshrined right to hunt, because this ban falls under the poaching exception outlined in Section 25.¹⁶⁷ The court essentially determined "poaching" to mean the illegal killing or hunting of fish and game,¹⁶⁸ and therefore emphasized that "the right to hunt exists in situations in which hunting is otherwise legal but does not extend to situations in which hunting is illegal."¹⁶⁹ Because the Sunday hunting ban makes the type of hunting that the plaintiffs seek to partake in illegal, the poaching exception applies and the plaintiffs' right to hunt is not violated by the ban.¹⁷⁰

In applying the amendment and the recent court decision in *Parker* to pending and future litigation, this Article argues that all the words included in Section 25 should be understood by their common definitions,¹⁷¹ as intended by its drafters,¹⁷² and not more narrowly construed to limit the realization of the human right to food. It is of note that in the legislative process in 2019, the amended language was significantly reduced to condense, for example, the verbs in the phrase "hunting,

159. *Id.*

160. *Virginia Parker et al. v. Dep't of Inland Fisheries & Wildlife*, STATE OF ME. JUD. BRANCH, <https://www.courts.maine.gov/news/parker/index.html> [<https://perma.cc/9S42-UH44>] (last visited May 5, 2024).

161. 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).

162. *Parker v. Dep't of Inland Fisheries & Wildlife*, 2024 ME 22, ¶ 14, ___ A.3d. ___.

163. *Id.*

164. *Id.* ¶ 20.

165. *Id.*

166. *Id.* ¶ 19.

167. *Id.* ¶ 22.

168. *Id.* ¶ 23.

169. *Id.* ¶ 24.

170. *Id.*

171. *Id.* ¶ 20.

172. See *Food is Life*, *supra* note 63.

gathering, foraging, farming, fishing, gardening” into one word—harvest—and the number of verbs in the preceding clause from “acquire, produce, process, prepare, preserve and consume the food” to the current “right to grow, raise, harvest, produce and consume the food of their own choosing.”¹⁷³

The rationale for the amended language is important to note as the people of Maine begin to flesh out the contours of this right. As the resolution was debated between the Maine House and Senate, then Representative Hickman amended the above clauses to be congruent with the other rights outlined in the declaration of rights, understanding that the language must be intentionally broad to not unnecessarily limit the right to food, especially in regard to the eventual terms included: “harvest” and “acquisition.”¹⁷⁴ The concept was that the specificity of the longer list of verbs could unintentionally narrowly define the right. Therefore, “harvest” was advisable as a broader term encompassing its commonly understood meaning including hunting, foraging, farming, fishing, and gardening.¹⁷⁵ Similarly, the words process, prepare, preserve, and acquire were consolidated into the present language and acquire was re-positioned to the final clause as acquisition.¹⁷⁶ Hickman amended the resolution to allow the broadest construction, application, and realization of the right, while still including protections of public lands, natural resources and private property.¹⁷⁷ Case law supports the notion that the broad construction was in no way intended to more narrowly construe or limit the common meanings of the words included in the final articulation.¹⁷⁸

Part III has examined Maine’s constitutional amendment on the right to food by relying on the drafters’ intent and international human rights law. In addition to shedding light on how the right to food should be interpreted in Maine, this analysis also reflected on how Maine’s right to food could serve as an antidote for the privatization of water and natural resources: it paves the road for people to regain access to land and water, reclaim native seeds, restore biodiversity, and promote sustainability and autonomy in a localized food system that serves people over profits.

IV. REFLECTION ON OPPORTUNITIES TO TRANSLATE MAINE’S RIGHT TO FOOD EFFORTS TO OTHER STATES

With Maine’s constitutional amendment, the United States joins other nations seeking to address gaps in ESC rights via national and subnational constitutions. Notably, Maine is serving as a reference point for other states on successful advocacy and lessons learned throughout this process. Maine’s example highlights

173. Compare L.D. 795 (129th Legis. 2019), with L.D. 95 (130th Legis. 2021).

174. House Amend. B to L.D. 795 (129th Legis. 2019).

175. *Harvest*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/harvest> [https://perma.cc/Rf4E-ERY5] (last visited May 5, 2024); *Parker*, 2024 ME 22, ¶¶ 20–21, ___ A.3d ___.

176. Compare *id.*, with ME. CONST. art I, § 25.

177. Interview with Senator Craig Hickman, Me. State Senate, April 30, 2024.

178. *Id.*; *Parker*, 2024 ME 22, ¶¶ 18–19, ___ A.3d ___. When determining legislative intent, “it is always perilous to derive the meaning of an adopted provision from another provision deleted in the drafting process.” *District of Columbia v. Heller*, 554 U.S. 570, 590 (2008).

the international right to food standards while also reflecting Maine's right to food vision.

Today, other states, such as West Virginia, are actively looking to follow in Maine's footsteps and amend their own state constitutions. In 2021, Delegate Walker of West Virginia, introduced a constitutional amendment on the right to food in the House of Delegates.¹⁷⁹ The introduction of this amendment was partially inspired by the participation of West Virginian advocates in the same strategy meeting attended by Maine advocates in 2020.¹⁸⁰ Later that same year, the City of Morgantown, West Virginia, passed a city resolution on the right to food,¹⁸¹ becoming an example for other municipalities to follow and a leader in the state on the implementation of ESC right.¹⁸²

While Maine's efforts served as inspiration for enshrining the right to food in law, West Virginians also have a long history of activism around food justice. Unlike in Maine, where the right to food movement was born out of a desire for food sovereignty and an independent food system, the right to food movement in West Virginia revolves around food access, race, and poverty.¹⁸³ West Virginia consistently ranks as one of the states with the highest rates of food insecurity.¹⁸⁴ As a result, advocates in West Virginia involved with the National Right to Food Community of Practice primarily interpret the international right to food framework to require effective social protection programs that secure adequate nutrition, income, healthcare, childcare, unemployment benefits, and school meals, among other benefits.¹⁸⁵ However, state and local jurisdictions also play an important role in expanding or hindering the availability of nutrition entitlement through their interpretation of the applicability of federal nutrition assistance programs.

While policy responses to address the right to food in states like West Virginia might focus on strengthening social welfare programs, Maine's focus on centering those most affected by problems in food system policy provides important lessons for advocates who seek to overcome contradictory policies and narratives at the state and local levels. Maine is an example of how local jurisdictions can

179. H.J.R. Res. 30, 2021 Leg., Reg. Sess. (W. Va. 2021); see also Miami Law Staff Report, *Human Rights Clinic Contributes to Victory for Right to Food in West Virginia as City of Morgantown Adopts New Municipal Resolution*, UNIV. MIA. SCH. OF L. NEWS & EVENTS, (Mar. 9, 2022), <https://news.miami.edu/law/stories/2022/03/human-rights-clinic-contributes-to-victory-for-right-to-food-in-west-virginia-as-city-of-morgantown-adopts-new-municipal-resolution.html> [https://perma.cc/JN8Y-NFUK].

180. See STRATEGY MEETING, *supra* note 95.

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

182. See Joshua Lohnes & Mackenzie Steele, *The Uneven Legal Geographies of Nutrition Entitlement Programs in the United States. Realizing or Hindering the Right to Food?*, 31 U. MIA. INT'L & COMP. L. REV. 15, 38 (2024).

183. See *id.*; Patrick Whittle, *Maine Voters Pass the Nation's First 'Right to Food' Amendment*, PORTLAND PRESS HERALD (Nov. 2, 2021), <https://www.pressherald.com/2021/11/02/supporters-of-right-to-food-amendment-lead-in-early-returns/>.

184. *Food Insecurity in United States*, UNITED HEALTH FOUND., https://www.americashealthrankings.org/explore/measures/food_insecurity_household [https://perma.cc/WMN7-KMP5] (last visited May 5, 2024).

185. Lohnes & Steele, *supra* note 182.

progressively realize the right to food even when this right is not formally recognized in state or federal law. Moreover, applying a right to food framework is not purely about enacting new laws, but also about shaping conversations and fostering alliances across sectors, geographies, and with advocates, lawyers, and elected officials. Maine offers important guidance on how to go about successfully researching legal frameworks, connecting with technical groups and global social movements, scaling up successful local efforts, and organizing for a constitutional amendment.

Finally, Maine is an important case study for how the international human rights framework, including the normative content of the right to food of adequacy, accessibility, availability, and sustainability, can provide an important platform for intersectoral work and policymaking to address problems in the food system. The right to food framework brings together small food producers, consumers, food system workers, and food insecure households, which helps connect nutrition programs with policies governing agricultural production practices, food manufacturing standards, and labor standards for food workers.

CONCLUSION

November 2, 2021, was a seminal moment for the human right to food in the United States. Since then, the right to food has seen increasing support in the United States with several states adopting laws and policies recognizing dimensions of the right to food.¹⁸⁶ This Article has explored the important role of food producers in the recognition of this right and how Maine's experience can pave the way for the implementation of the right to food and related human rights in other states. The incoherence between policymaking and the priorities of small farmers, their patrons, and rural communities in Maine created the conditions for right to food and food sovereignty advocates in the state to claim political and legal space to make the needed arguments for formalizing the right to food through a constitutional amendment. Political participation of those small farmers and their supporters throughout the entire process leading to the 2021 referendum, as well as the support of national and global human rights and food sovereignty movements, proved crucial for its ultimate success.

The U.N. Special Rapporteur on the right to adequate food recently said, “[p]eople are watching Maine to see what’s going to happen.”¹⁸⁷ As Maine implements and interprets the right to food, it will be an important example for other states working to advance legal and programmatic interventions that make meaningful progress toward realizing the right to food across sectors. In the meantime, U.S. advocates, legislators, academics, students, and people with lived experiences of food injustice continue to come together around the need to address the most pressing problems in the U.S. food system. The right to food offers one

186. *See id.* at 17. *See generally* MARY MILLER ET AL., STRATEGY MEETING: ENSHRINING THE RIGHT TO FOOD IN LAW IN THE UNITED STATES (2020), <https://miami.app.box.com/s/aaxgiw5sudcixt5b4v3qi206fssyuvu> [<https://perma.cc/3J7B-YB47>] (last visited May 5, 2024).

187. Victoria Namkung, *UN Hunger Expert: US Must Recognize ‘Right to Food’ to Fix Broken System*, GUARDIAN (Nov. 9, 2023), <https://www.theguardian.com/environment/2023/nov/09/united-nations-right-to-food-us-hunger>.

more tool for this nascent movement to hold governments and corporate actors accountable, to organize and mobilize across sectors, and to rebuild and reimagine a world where “[a]ll 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.”¹⁸⁸

188. ME. CONST. art I, § 25.