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Fast Food: Oppression Through Poor Nutrition

Andrea Freeman†

Fast food has become a major source of nutrition in low-income, urban neighborhoods across the United States. Although some social and cultural factors account for fast food's overwhelming popularity, targeted marketing, infiltration into schools, government subsidies, and federal food policy each play a significant role in denying inner-city people of color access to healthy food. The overabundance of fast food and lack of access to healthier foods, in turn, have increased African American and Latino communities' vulnerability to food-related death and disease.¹ Structural perpetuation of this race- and class-based health crisis constitutes "food oppression."

Popular culture has raised some awareness of the deleterious effects of fast food, but media delivering this message often fails to reach the communities suffering the greatest harm. Even where efforts at education succeed, government support of the fast food industry severely limits dietary choices for low-income, urban African Americans and Latinos. To eradicate food oppression and improve health and life expectancy in these communities, activists must lobby for drastic changes in law, policy, and education. Individuals and groups have mounted attacks on food oppression through litigation, education, lobbying, and community-based organization. These efforts must continue and grow if they are to effect real and meaningful change.

INTRODUCTION

West Oakland, California, a neighborhood of 30,000 people populated primarily by African Americans and Latinos, has one supermarket and thirty-six liquor and convenience stores. The supermarket is not accessible on foot to

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1. Food-related diseases and deaths include heart disease, stroke, diabetes, sleep apnea, and obesity.

most of the area's residents. The convenience stores charge twice as much as grocery stores for identical items. Fast food restaurants selling cheap and hot food appear on almost every corner. West Oakland is not unique. The prevalence of fast food in low-income urban neighborhoods across the United States, combined with the lack of access to fresh, healthy food, contributes to an overwhelmingly disproportionate incidence of food-related death and disease among African Americans and Latinos as compared to whites.²

Urban communities of color suffer the harshest effects of poor nutrition. Individuals living in these communities often lack sufficient access to adequate health care and education, compounding the deleterious effects of a diet monopolized by fast food. Members of these communities also experience multiple forms of oppression as a result of their class and race. Attributes such as gender, age, disability, or sexual orientation can add further layers of vulnerability. Although the harm caused by over-consumption of fast food cuts across race and class lines, its pronounced and extreme effect on low-income people of color represents a form of structural oppression that activists must incorporate into a struggle for racial and economic justice.

Food oppression undermines both the survival and well-being of low-income, urban communities of color. As one scholar notes, "[h]ealth is fundamental to every aspect of life: without health, a student cannot do well in school; a worker cannot hold a job, much less excel at one; a family member cannot be an effective parent or spouse. Health crises and the staggering costs they impose are critical underlying causes of poverty, homelessness and bankruptcy."³ Reducing the physical quality and expectancy of individuals' lives fosters the creation of an underclass of people who become progressively more marginalized and powerless as a result of economic and health crises.⁴

Food oppression is structural because it is not the product of individual acts of discrimination, but stems rather from the institutionalized practices and policies of government and the fast food industry. Government policies engendering food oppression range from providing public assistance insufficient to cover the cost of fresh food to collaboration with the fast food giants to ensure that their products dominate lunch-room counters and dinner tables. This state-sponsored racial inequality is obscured by the distinction between public and private spheres of action and is perpetuated by the myth of personal choice, even where a lack of options and resources severely limits the ability to exercise choice.

2. For the purpose of this paper I have grouped African Americans and Latinos together, despite their many differences, to simplify discussion of food and health issues affecting both communities.

3. MICHAEL K. BROWN, ET AL., *WHITEWASHING RACE: THE MYTH OF A COLOR-BLIND SOCIETY* 24 (2003).

4. Iris Young provides an insightful definition of oppression based on five interconnected elements: exploitation, marginalization, powerlessness, cultural imperialism, and violence. IRIS YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 40 (1990).

Too often, advocates of “personal choice” blame low-income people of color for their own weight issues and health crises, linking these problems to individual moral and cultural failures instead of placing the problems in the broader, historical context of long-entrenched policies and practices. Activists for racial equality also encounter similar and related arguments that social ills facing African Americans and Latinos, such as high rates of incarceration, segregation in housing and education, and drastic disparities in health and lifestyles, arise from individuals’ failure to choose to better themselves.⁵ These arguments are part of a new color-blind rhetoric that refuses to acknowledge the role of race in the challenges faced by communities of color. Furthermore, this emphasis on individual responsibility frees corporations and the government from culpability, and allows them to maintain the status quo and reap resultant benefits without social accountability.

This Comment focuses on fast food, as opposed to analyzing the food industry more generally, for several reasons.⁶ Not only does the fast food industry exploit the market forces that drive supermarkets and produce stands out of low-income urban neighborhoods, but it also specifically targets African Americans and Latinos through race-based marketing and advertising, and expends extensive resources lobbying the government for subsidies, exemptions, endorsements, and other perks.⁷ Cooperation between the state and the fast food industry engenders artificially low prices, permits public schools to push fast food products and advertising, and leads to false information about the health benefits and harms of fast food. This close association between the government and the fast food industry can foment confusion and misinformation, yet it remains largely hidden from the public.

Activists across the United States have begun to address the problem of food oppression through the food justice movement. Community organizing, popular culture, and litigation have successfully raised awareness and created solutions for specific communities. Despite these efforts, however, food oppression continues to be part of structural economic and racial inequalities that limit access to and lower the quality of health care, reduce income levels, limit job opportunities, and inflate the cost of low-quality housing for many African Americans and Latinos. To combat food oppression effectively, activists must lobby for the government to create meaningful, sustainable change through education, regulation, taxation, and redistribution.

5. See BROWN, *supra* note 3, at 6 (explaining how “racial realists” such as Dihesh D’Souza, Jim Sleeper, Tamar Jacoby, Shelby Steele and Stephen and Abigail Thernstrom view the current state of racial politics in the United States).

6. For interesting new work on the current state of the food industry, see MICHAEL POLLAN, *THE OMNIVORE’S DILEMMA: A NATURAL HISTORY OF FOUR MEALS* (2006). See also MARION NESTLE, *FOOD POLITICS: HOW THE FOOD INDUSTRY INFLUENCES NUTRITION AND HEALTH* (2002).

7. For an example of race-targeted marketing, see McDonald’s “I am Asian” web page, <http://www.i-am-asian.com/> (last visited June 20, 2007).

Part I of this Comment examines the place of fast food in the U.S. economy and social landscape. Part II explores fast food's entrenchment in low-income, urban neighborhoods and in African American and Latino diets as a result of social, cultural, economic, and political factors, focusing on the cultural reasons that fast food has had a particular appeal to African American and Latino clienteles. Part III offers a definition of food oppression as a form of structural subordination that operates in conjunction with race and class to deprive low-income communities of color of the nutritious food needed to support long, happy, and productive lives. Finally, Part IV looks to solutions to the problem of food oppression, documenting individual and community efforts to litigate, educate, and organize. Part IV also considers political strategies, particularly those that have proven effective against other health threats such as alcohol and tobacco. In conclusion, the Comment recognizes the need for continued work by individuals and communities supported by strong government action. Most importantly, it calls for recognition of food oppression as a form of institutionalized inequality that must be acknowledged, addressed, and eradicated.

I

WHAT IS FAST FOOD AND WHY SHOULD WE CARE?

A. The Origins and Growth of Fast Food

Unknown to Americans until the 1940s, fast food originated in Southern California and quickly spread across the country. The rapid growth of the fast food industry catalyzed dramatic changes in agriculture, employment practices, the economy, and the population's physical shape and health.⁸ In the United States today, in addition to restaurants and drive-throughs, elementary schools, colleges, hospitals, airports, zoos, gas stations, cruise ships, Wal-Marts, trains, stadiums, and airplanes all serve fast food. Americans currently spend more money on fast food than on movies, books, magazines, newspapers, videos, and music combined.⁹ In thirty years, the fast food market grew almost twenty times: from six billion dollars in 1970 to over 110 billion dollars in 2001.¹⁰ Now, one in four Americans visits a fast food restaurant every day.¹¹ Fast food has also spread across the globe, creating and responding to a demand for American food that is low in price and consistent in taste.¹²

8. See generally ERIC SCHLOSSER, *FAST FOOD NATION* (2001) for a thorough and fascinating history of fast food and its effects.

9. *Id.* at 3.

10. *Id.* at 42.

11. *Id.*

12. As of 2004, McDonald's had 28,700 outlets in 120 countries. *Id.* Carefully manufactured chemicals ensure global taste consistency. *Id.* at 111-131.

1. Fast Food Defined

Fast food, by definition, is “designed for ready availability, use, or consumption with little consideration given to quality or significance.”¹³ The phrase “fast food” gained common parlance in 1954 as a shorthand for the fare of restaurants that provided “fast food service.”¹⁴ Fast food usually does not require cutlery and generally consists of finger food such as hamburgers, french fries, chicken nuggets, tacos, and pizza. McDonald’s is the leader of the fast food industry.¹⁵ Its founder, Ray Kroc, transformed a hamburger, fries, and a shake into the quintessential American meal, erected golden arches to guide hungry travelers, and appointed a kid-friendly clown as fast food’s ambassador.¹⁶ Fast food has since expanded to include an extensive array of foods. In 2005, the top ten fast food chains in the United States were McDonald’s, Burger King, Wendy’s, Subway, Taco Bell, Pizza Hut, Starbucks, KFC, Dunkin’ Donuts and Domino’s Pizza.¹⁷

Fast food is highly processed and prepared using standardized ingredients and production techniques. Much fast food is deep-fried in partially hydrogenated oils (or trans fats), which lead to high cholesterol rates and heart attacks.¹⁸ Combined with starchy vegetables and sugary drinks, these foods have a high glycemic load, a factor that contributes to obesity and diabetes.¹⁹ Fast food also contains a large amount of chemical additives²⁰ and often lacks accurate nutrition labeling.²¹

Even fast food’s “natural” contents have wrought significant and often undesirable changes. The highly industrial methods of producing fast food’s

13. Merriam-Webster’s Online Dictionary, available at <http://www.m-w.com/dictionary/fast%20food> (last visited Aug. 19, 2007).

14. Answers.com, Word Origin: Fast Food, <http://www.answers.com/topic/fast-food> (last visited June 25, 2007) (citing America in So Many Words: Words That Have Shaped America, <http://www.pbs.org/speak/words/trackthatword/ttw/?i=1006> (last visited June 25, 2007)).

15. In 2005, McDonald’s made \$25,643 million. Burger King at number 2, made \$7,717 million. QSRMagazine.com, QSR 50 Segment Sales: Burgers, <http://www.qsrmagazine.com/reports/qsr50/2006/charts/burgers.phtml> (last visited August 4, 2007).

16. SCHLOSSER, *supra* note 8, at 31-59 (2001) (discussing Ray Kroc’s life and successes).

17. QSRMagazine.com, The QSR 50: Service and Fast-Casual Restaurant Rankings, <http://www.qsrmagazine.com/reports/qsr50/2006/charts/qsr50.phtml> (last visited August 4, 2007).

18. CNNMoney.com, Report: McDonald’s Admits to Fattier Fries, Feb. 8, 2006, http://money.cnn.com/2006/02/08/news/companies/mcdonalds_fat_fries/index.htm (last visited June 25, 2007).

19. There is some controversy about the utility of the glycemic index to health and nutrition. See David S. Ludwig & Robert H. Eckel, *The Glycemic index at 20 y*, 76 AM. J. OF CLINICAL NUTRITION 264S-265S (July 2002) (offering scientific perspectives on the controversy).

20. SCHLOSSER, *supra* note 8, at 111-33.

21. In February 2006, contrary to promises to reduce trans fats in their cooking oil as part of a settlement with public interest group BanTransFats.com, McDonald’s announced that the oil actually contained one third more trans fat than previously reported. CNNMoney.com, Report: McDonald’s Admits to Fattier Fries, *supra* note 18.

staple ingredients have led to a dramatic increase in food-borne illnesses²² and, in contrast to traditional animal husbandry, unprecedented incidence of cruelty to animals.²³ Breeding techniques create new types of chickens designed specifically for the purpose of making popular fast food items such as chicken nuggets.²⁴ Through subsidies from the federal government, intensive agriculture and corporate monocultures have developed to satisfy the needs of the fast food giants by yielding higher rates of production per acre for specific crops such as corn.²⁵ The external cost of these higher production rates is the destruction of environmental niches, leading in turn to the extinction of disfavored crop species, the elimination of small farmers' capacity to plant secondary crops as a back-up to ensure their economic survival, and the decline of rural populations and their supporting communities.²⁶

2. Fast Food Expands

The ubiquity of fast food outlets has dramatically altered the appearance of American highways, city streets, and suburbs.²⁷ Recently, market forces have pushed supermarkets out of urban areas to meet the demand created by suburban sprawl, leaving inner city residents with few, if any, sources of healthy food.

Fast food first began to infiltrate urban neighborhoods in earnest after the 1973 oil embargo, when gasoline shortages caused many Americans to believe that the decline of the car culture had begun.²⁸ After McDonald's' stock market value fell dramatically in response to the shortage, the chain shifted its focus from highways to urban centers and suburbs in search of new, more dependable markets.²⁹ Today, McDonald's and other chains strategize their expansion based on sophisticated cartographic software that uses satellite imagery to predict urban growth and locate school districts.³⁰

While the growth of fast food in poor urban neighborhoods has increased steadily, supermarkets stocking fresh, high-quality food have simultaneously relocated to the more spacious and affluent suburbs.³¹ Economic realities,

22. SCHLOSSER, *supra* note 8, at 193-222.

23. CRAIG SAMS, *THE LITTLE FOOD BOOK* 110-11 (2004).

24. SCHLOSSER, *supra* note 8, at 140.

25. Gilbert M. Gaul, Sarah Cohen & Dan Morgan, *Federal Subsidies Turn Farms Into Big Business*, WASH. POST, Dec. 21, 2006, at A01.

26. SAMS, *supra* note 23, at 47; *see also* Gaul et al., *supra* note 25, at A01.

27. While fast food has also had a significant impact on other countries, the topic is beyond the scope of this paper.

28. SCHLOSSER, *supra* note 8, at 24.

29. *Id.*

30. McDonald's pioneered this method in the 1980s using Quintillion, one of the first geographic information systems available for business analysis. Jacob Ward, *Better Directions: Digital Maps Are Changing How We Navigate Our Lives*, WIRED MAG., Oct. 2005.

31. Chanjin Chung & Samuel Myers, *Do the Poor Pay More for Food? An Analysis of Grocery Store Availability and Food Price Disparities*, 33 J. CONSUMER AFF. 276-96 (1999).

spatial considerations, industry-related concerns, and social factors have all led to supermarket divestment of poor urban areas.³² This migration, combined with lack of transportation to the suburbs and the higher prices charged by local convenience stores, has made fast food the dominant food source in many low-income, urban communities.³³

Market forces have motivated the movement of supermarkets to the suburbs. Suburban neighborhoods enjoy a much higher median income than urban centers.³⁴ Suburbs have high-density residential space, allowing suburban supermarkets located between sprawling communities to reach a much larger and more mobile population than their urban counterparts. The suburbs also tend to have large parcels of land available for grocery stores.³⁵ As the number of grocery chains decreases through consolidation, market pressures to increase profits and cash flow have led to a business model of multi-service operations demanding higher per-store sales.³⁶ The high cost of store development and maintenance also makes investment in large stores serving dense residential areas more economically efficient.³⁷ Finally, corporate decision-makers welcome the prospect of abandoning poorer, often crime-ridden areas to serve middle- and upper-class customers living in statistically safer locales.³⁸

B. Why Fast Food Matters

Due to entrenched patterns of segregation and pervasive, institutionalized

32. Jane Kolodinsky & Michele Cranwell, *The Poor Pay More? Now They Don't Even Have a Store to Choose From: Bringing a Supermarket Back to the City*, 46 CONSUMER INTERESTS ANN. 1-2 (2000).

33. Shiriki Kumanyika & Sonya Grier, *Targeting Interventions for Ethnic Minority and Low-Income Populations*, 16 FUTURE CHILD 187, 194 (Spring 2006) (citing J.P. Block et al., *Fast Food, Race/Ethnicity and Income*, 27 AM. J. PREVENTIVE MED., 211-17 (2004)). See also L.B. Lewis et al., *African Americans' Access to Healthy Food Options in South Los Angeles Restaurants*, 95 AM. J. PUB. HEALTH 668-73 (2005). Fruit and vegetable consumption are inversely associated with distance from home to supermarket. See Donald Rose and Rickelle Richards, *Food Store Access and Household Fruit and Vegetable Use Among Participants in the US Food Stamp Program*, 7 PUB. HEALTH NUTRITION 1081-88 (Dec. 2004); see also Kumanyika & Grier, *supra*, at 193 (citing S.N. Zenk et al., *Fruit and Vegetable Intake in African Americans: Income and Store Characteristics*, 29 AM. J. PREVENTIVE MED. 1-9 (2005)).

34. See Bruce Katz, *Enough of the Small Stuff! Toward a New Urban Agenda*, 18 BROOKINGS REVIEW 4, 5-6 (2000).

35. See Kennedy Smith, *Wanted: Downtown Grocery Stores*, 63 PLANNING COMMISSIONERS J. 11 (Summer 2006) (offering further analysis of the obstacles to locating modern grocery stores in urban centers).

36. Wal-Mart provides the perfect example of this new type of multi-service store, which has been popular in Europe (the hypermarket) for several decades.

37. The economics of modern large grocery stores may be prohibitive, but small grocery stores can seize the opportunity to pick up the slack. See PolicyLink.com, *Healthy Food Retailing: How to Develop New Grocery Stores*, <http://www.policylink.org/EDTK/HealthyFoodRetailing/NewStores.html> (last visited June 25, 2007).

38. SCHLOSSER, *supra* note 8, at 83-87 (explaining the numerous risks associated with fast food outlets, particularly those located in high-crime areas).

racism that affect housing, employment, and educational opportunities, low-income, urban neighborhoods are often populated by African Americans and Latinos. These communities disproportionately patronize fast food restaurants.³⁹ Statistically, they also tend to have nutritionally deficient diets and suffer disproportionately from diseases and deaths related to the consumption of unhealthy food.⁴⁰ There are higher rates of diabetes, heart disease, strokes, and cancer in poor neighborhoods than in any other areas.⁴¹ There are also striking disparities in the quality and availability of health care for African Americans and Latinos as compared to whites.⁴² These differences make nutrition-related problems both more likely to occur and more difficult to combat, particularly as they become more advanced.

Health disparities in the United States are alarmingly large and the consequences dire.⁴³ Infant mortality rates among African Americans are twice as high as they are for whites⁴⁴ and African American adults also have a far

39. Jonathan Goldman cites the following statistics in his article on similarities between the tobacco and fast food industries:

Thirty percent of Burger King's 1998 sales were from African Americans and Hispanics. In the same year, '25 cents of every \$1 spent at McDonald's' was spent by an African American or Hispanic consumer. This amounted to total sales of \$ 469 million from African Americans and \$279 million from Hispanics.

Jonathan S. Goldman, *Take That Tobacco Settlement And Super-Size It!: The Deep-Frying Of The Fast Food Industry?*, 13 TEMP. POL. & CIV. RTS. L. REV. 113, 117 18 Fall 2003. "By contrast, in 1998, African Americans made up 12.7% of the United States population and Hispanics comprised 11.2% of the United States population such that African Americans and Hispanics taken together comprised 23.9% of the United States population." *Id.* at 117 n.32; see M.A. Pereira et al., *Fast Food Habits, Weight Gain, and Insulin Resistance (The CARDIA Study): 15-Year Prospective Analysis*, 365 LANCET 36-42 (2005).

40. For example, the United States Department of Agriculture found that only five percent of African Americans have a good diet. Guadalupe T. Luna, *The New Deal and Food Insecurity in the "Midst of Plenty"*, 9 DRAKE J. AGRIC. L. 213, 219 (Summer 2004).

41. U.C. Davis Medicine, *Measuring Societal Influences on Nutritional Choices*, <http://www.ucdmc.ucdavis.edu/ucdavismedicine/issues/summer2005/features/7.html> (last visited August 4, 2007).

42. UNEQUAL TREATMENT: CONFRONTING RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE 1-27 (Brian Sniedley, et al. eds., 2002).

43. Non-white Americans face numerous life-threatening conditions at frighteningly higher rates than white Americans. African Americans have a 26% greater incidence of cancer (36% greater for prostate cancer), while an African American woman is 67% more likely to die of breast cancer than her white counterparts. African Americans have a 40% higher incidence of hypertension. Hispanic women suffer from heart disease at twice the rate of white women, and African American and Mexican American women face a 45% greater incidence of obesity. Hispanic men are 53% more likely to suffer from diabetes; African American men, 69% more likely, and African American and Native American women face more than two and three times higher rates of diabetes than white women. John Robbins, *Racism, Food and Health*, <http://www.foodrevolution.org/racismfoodhealth.htm> (last visited June 25, 2007).

44. Mary Ann Bobinski, *Health Disparities and the Law: Wrongs in Search of a Right*, 29 AM. J. L. MED. 363, 367 n.24 (citing V. Haynatzka et al., *Racial and Ethnic Disparities in Infant Mortality Rate -60 Largest U.S. Cities, 1995-1998*, 51 MORBIDITY MORTALITY WEEKLY REP. 329, 331 (2002)).

lower life expectancy than white adults.⁴⁵ Specifically, as compared to whites, African-Americans have a forty percent higher rate of death from heart disease, thirty percent higher death rate from all cancers, and two hundred percent higher death rate from prostate cancer.⁴⁶ Latinos are more likely than whites or African Americans to suffer from high blood pressure, obesity, tuberculosis, and diabetes.⁴⁷

A great deal of media attention has focused on obesity, labeling the phenomenon a national crisis and inspiring a desire for reform that has created optimism in proponents for change. Statistics show that sixty-five percent of Americans are overweight, and thirty percent of those overweight persons are obese.⁴⁸ Obesity causes over 325,000 deaths in the United States every year—more than car accidents, drugs, alcohol, and guns combined.⁴⁹ It is rapidly closing in on smoking as the leading cause of death.⁵⁰ Financially, obesity costs Americans 117 billion dollars every year in healthcare spending and lost wages.⁵¹ Obesity affects African Americans and Latinos at a much higher rate than whites⁵² and is correlated with poverty rates.⁵³

Differences in the incidence of child obesity are particularly startling. The National Health and Nutrition Examination Survey indicates that between 1999 and 2002, obesity rates were higher for both African American and Mexican American children than for white children, sometimes by as much as ten or twelve percentage points.⁵⁴ Studies also show that low-income children in

45. *Id.* at 365, 367 (citing a study of cardiac care and mortality rates documented in Unequal Treatment); *see also id.* at 316-19 (finding African-Americans were eighteen percent more likely to die than whites).

46. African-Americans also have a seven hundred percent higher death rate from HIV/AIDS. *Id.* at 367 n.24.

47. *Id.* at 367 (citing Donna E. Shalala, *Message from the Secretary: Healthy People 2010*, 1 U.S. DEPT. HEALTH & HUMAN SERV. 12 (2000), available at <http://www.health.gov/healthypeople>).

48. SAMS, *supra* note 23, at 39.

49. *Id.* at 40.

50. *Id.*

51. *Id.*

52. According to the Centers for Disease Control and Prevention, about 27% of Blacks and 21% of Hispanics are obese compared to 17% of whites. Moreover, black and Hispanic women become obese 2.1 times and 1.5 times faster, respectively, than white women, while Hispanic men become obese 2.5 faster than white men. Black and white men develop obesity at the same rate until age 28, after which black men become obese 2.2 times faster than their white counterparts, according to a 17-year study of 9,179 people. Ross D. Petty et al., *Regulating Target Marketing And Other Race-Based Advertising Practices*, 8 MICH. J. RACE & L. 335, 358 (Spring 2003).

53. Sixteen percent of whites earning \$50,000 a year are obese, compared with 23% obesity rates for whites earning \$15,000 a year; 22.5% of blacks who earn \$50,000 a year are obese compared with a 34% obesity rate for blacks earning \$15,000 a year. David Barboza, *Rampant Obesity, a Debilitating Reality for the Urban Poor*, N.Y. TIMES, Dec. 26, 2000, available at <http://query.nytimes.com/gst/health/article-printpage.html?res=980CE3D81238F935A15751C1A9669C8B63>.

54. Kumanyika & Grier, *supra* note 33, at 188.

general are at greater risk, regardless of their ethnicity.⁵⁵

Disparities in access to quality health care would appear to offer the most obvious explanation for these extreme health disparities. Yet such relative lack of access actually explains only a part of national health status, and other factors such as race, class, immigration status, and culture are also associated with the quality of health care.⁵⁶ These factors are also correlated with indicators of social status and structural oppression such as higher poverty rates and less education.⁵⁷

A combination of complex social, cultural, political, and economic factors thus explain and perpetuate fast food's entrenchment in lower-income, urban neighborhoods and in African American and Latino diets.

II

FAST FOOD'S ENTRENCHMENT IN POOR URBAN NEIGHBORHOODS AND IN THE DIETS OF AFRICAN AMERICANS AND LATINOS

A. Social and Cultural Factors

Social and cultural factors have contributed to the proliferation of fast food in the United States. Fast food had a particular appeal to lower-income people from its inception. As one historian has explained, "[w]orking-class families could finally afford to feed their kids restaurant food."⁵⁸ But the decision to eat fast food does not depend solely on simple price calculations.⁵⁹

1. Fast Food's Appeal to African Americans and Latinos

One attribute of fast food restaurants that makes them particularly appealing to African Americans and Latinos is their egalitarian nature.⁶⁰ Historically, African Americans, in particular, have experienced express and

55. *Id.* (citing B. Sherry et al., *Trends in State-Specific Prevalence of Overweight and Underweight in 2- through 4-Year-Old Children from Low-Income Families from 1989 through 2000*, 158 ARCHIVES PEDIATRIC & ADOLESCENT MED. 1116-24 (1994)).

56. Bobinski, *supra* note 44, at 364.

57. Jessie A. Satia, et al., *Eating at Fast-food Restaurants Is Associated with Dietary Intake, Demographic, Psychosocial and Behavioral Factors Among African Americans in North Carolina*, 7 PUB. HEALTH NUTRITION 1089-96 (July 2004).

58. SCHLOSSER, *supra* note 8, at 20 (quoting John F. Love, company historian for McDonald's Famous Hamburgers).

59. Ironically, fast food actually costs more in poor neighborhoods than in wealthier ones. See Kathryn Graddy, *Do Fast-Food Chains Discriminate on the Race and Income Characteristics of an Area?*, 15 J. BUS. & ECON. STATS. 391, 401 (1997) (finding that meal prices in fast food restaurants rise approximately 5% for a 50% increase in the black population within a zip code area).

60. Regina Austin outlines many of these democratic characteristics of fast food chains in her insightful article on African Americans as employees and customers in the fast food industry. See Regina Austin, "Bad For Business": *Contextual Analysis, Race Discrimination, And Fast Food*, 34 J. MARSHALL L. REV. 207 (1999).

covert discrimination in restaurants. Many of the defining elements of fast food restaurants help to reduce or eliminate potentially discriminatory behavior. Employees wait on customers according to their place in line, which avoids demonstrations of preference for more desirable clientele.⁶¹ Posted signs clearly announce food prices, ensuring that employees will not charge some customers more than others.⁶² Food quality and appearance are also consistent across fast food chains and within individual restaurants, providing no opportunity to discriminate by adjusting portion size or taste. The practice of paying for food before receiving it reduces employees' anxiety about their customers' inability to pay and makes tipping a non-issue. Finally, fast food restaurants in urban neighborhoods often hire security guards and implement other measures that contribute to an appearance of safety.⁶³

Courts have generally reinforced a sense of equality in fast food restaurants by refusing to tolerate overtly discriminatory practices.⁶⁴ Additionally, many fast food restaurants in low-income urban communities are franchises whose owners reflect the racial or ethnic make-up of the neighborhood, reducing the likelihood of racial discrimination against local customers.⁶⁵ Overall, fast food's style and service create a relatively

61. Although an African American customer has sued for being served after the white people in line behind him, this appears to be an extraordinary situation. *See Robertson v. Burger King*, 848 F. Supp. 78 (E.D. La. 1994).

62. Even though African Americans will often pay more for their fast food as compared to identical restaurants in other areas, prices within a store remain uniform among customers. Austin, *supra* note 60, at 228.

63. These measures also have disadvantages. They add to the cost of doing business in an urban neighborhood, and that cost may be passed on to the consumers who patronize that individual store, instead of being spread out among all customers generally; measures such as bulletproof Plexiglas partitions may serve to alienate rather than welcome customers; and implementing security measures may absolve fast food restaurants from liability for crimes occurring on their property even when the chosen measures prove inadequate. *See, e.g., Godfrey v. Boddie-Noell Enterprises, Inc.*, 843 F. Supp. 114 (E.D. Va. 1994) (finding that the fact that a restaurant is located in a high-crime area or that similar crimes have occurred at the restaurant in the past is insufficient to create a duty to protect customers because Hardee's "method of business" does not attract or provide a climate for assault crimes). The *Godfrey* court equated crime with minorities, declaring that a rule designating responsibility for crime to business owners "would make it nearly impossible to operate a business in an area which might be populated predominantly by minorities or poor people." *Id.* at 123. The considerable number of cases involving violent crimes at fast food restaurants suggests that this is a serious problem.

64. Consumers have successfully sued a number of pizza chains for refusing to deliver to certain neighborhoods based on unsubstantiated safety concerns. The threat of litigation led Domino's Pizza to enter into an agreement with the Department of Justice to implement policies ensuring geographic restrictions on deliveries would not be based on race or any other illegal criteria. Angry customers have also successfully attacked Denny's, a casual-style family restaurant classified as a step up from fast food, for engaging in discriminatory business practices. Austin, *supra* note 60, at 237, 239-40.

65. The downside of franchises' presence in urban neighborhoods is that their prices are higher than their corporate-owned counterparts. Francine LaFontaine, *Pricing Decisions in Franchised Chains: A Look at the Restaurant and Fast Food Industry*, Working Paper 5247, National Bureau of Economic Research (September 1995).

welcoming and democratic atmosphere appealing to communities that historically have experienced discrimination and disrespect while eating in public.

2. Historical and Cultural Significance of African American and Latino Diets

Both African Americans and Latinos retain a strong sense of culture through food. Unfortunately, many traditional, healthy eating practices have given way to less nutritious habits as a result of migration, immigration, changes in social status, and the availability and convenience of more harmful foods.

African American diets during slavery were sometimes, by necessity, very healthy. Slaves consumed fresh fruits, vegetables, and nuts during the day, then gathered for a communal meal of vegetable soup or stew in the evening.⁶⁶ Although migration, freedom, and urban employment dramatically altered the eating practices of most African Americans, Southern fruits and vegetables have remained staples of many African Americans' diets.⁶⁷

In 1962, cultural critic Amiri Baraka countered the charge that an African American cuisine did not exist with an article entitled *Soul Food*.⁶⁸ Malcolm X further popularized the idea of soul food by describing it in his autobiography.⁶⁹ Soul food became a popular signifier of Blackness, encompassing a wide range of food associated with Southern cooking including hushpuppies (corn meal soaked in fish grease), buttermilk biscuits, fatback, dumplings, okra, and neck bones.⁷⁰ High in fat and flavor, soul food is an amalgamation of African, West Indian, and North American cooking. While Baraka embraced soul food as a symbol and expression of a unique African American culture, other influential figures condemned its effects on African American health.⁷¹ Nation of Islam leader Elijah Muhammed advocated rejection of the white man's diet, embodied by white bread (cited by Baraka as an essential element of soul food) and pork.⁷² Comedian and activist Dick

66. *Slaves Made Map to Wellness*, SACRAMENTO OBSERVER, Apr. 13, 2005, available at http://www.sacobserver.com/health/042505/slaves_wellness.shtml (last visited Sept. 3, 2007).

67. See, e.g., JESSICA B. HARRIS, *THE WELCOME TABLE: AFRICAN-AMERICAN HERITAGE COOKING* (1996); see also PHOEBE BAILEY, *AN AFRICAN AMERICAN COOKBOOK: LIVING THE EXPERIENCE* (2002).

68. LEROI JONES, *HOME: SOCIAL ESSAYS*, *Soul Food*, 101-04 (1962).

69. Tracey N. Poe, *The Origins of Soul Food in Black Urban Identity: Chicago, 1915-1947*, in CAROLE M. COUHNHAN, *FOOD IN THE USA* 92 (2002) (citing ALEX HALEY & MALCOLM X, *AUTOBIOGRAPHY OF MALCOLM X* 59 (1964)).

70. Amiri Baraka distinguishes between soul food, which includes chitlins, potlikker, hoppin' John, and hushpuppies, and Southern cooking, which is limited to fried chicken, sweet potato pie, collard greens, and barbecue. Nonetheless, many people equate the two food traditions. Poe, *supra* note 69, at 92.

71. Marya Annette McQuirter & Tracye L. McQuirter, *Red, Black and Greens: The Politics of Soul Food in the 1960s*, www.blackvcgetarians.org/features/newfeature.htm.

72. ELIJAH MUHAMMED, *HOW TO EAT TO LIVE* (1967).

Gregory went as far as to equate soul food with genocide.⁷³

In fact, there has been a dramatic shift in the quality of African American diets from the 1960s to the present. In 1965, African Americans were more than twice as likely as whites to meet recommended intakes of fat, fiber, fruits, and vegetables.⁷⁴ By 1996, studies found that twenty-eight percent of African Americans had poor quality diets, as compared to only sixteen percent of whites.⁷⁵ Part of this shift can be attributed to culturally-identified cooking habits, such as deep frying and the use of fats in cooking.⁷⁶ Fast food restaurants often cater to African American tastes by offering items reminiscent of soul food, such as fried chicken and fish.

Social and cultural factors also account for the decreasing quality of Latino diets, particularly for immigrants.⁷⁷ A study of Mexican immigrants in California's San Joaquin Valley indicated a dramatic increase in weight and corresponding decline in nutrition over a very short period of time after arrival in the United States.⁷⁸ Fast food consumption increased five times in the Mexican population within one generation of emigration to the United States.⁷⁹ Many Latinos now disdain traditional foods, viewing processed foods as modern and consequently desirable.⁸⁰

B. Economic Factors

Profit is the driving force behind the fast food industry's attempts to target African Americans and Latinos. Fast food corporations spend millions of dollars each year to create advertising and marketing strategies with specific appeal to these communities.⁸¹ The industry directs its greatest efforts towards children. Not only are children more susceptible to manipulation, but they also represent a long-term investment. Eating habits developed in childhood usually continue through adulthood, when young people raised on fast food begin

73. DICK GREGORY, *CALLUS ON MY SOUL: A MEMOIR* (2000).

74. M. Christina F. Garces & Lisa A Sutherland, *Origins of the African American Diet: The Aftershocks of Slavery*, <http://www.faqs.org/nutrition/A-Ap/African-Americans-Diet-of.html> (last visited Aug. 19, 2007).

75. *Id.*

76. Other factors include the high cost of fruits, vegetables and lean meats and the greater availability and affordability of packaged and processed foods. *Id.*

77. Acculturation to the United States is significantly associated with greater fast food consumption that creates a risk of obesity in adolescents. Jennifer B. Unger et al., *Acculturation, Physical Activity, and Fast-Food Consumption Among Asian-American and Hispanic Adolescents*, 29 J. COMMUNITY HEALTH 467 (Dec. 2004).

78. Virginia S. Hinshaw, *Measuring Societal Influences on Nutritional Choices*, U.C. DAVIS MEDICINE, Summer 2005, available at <http://www.ucdmc.ucdavis.edu/ucdavismedicine/features/7.html>.

79. *Id.*

80. Theresa Braine, *Latino Diet Changes Deemed Health Crisis*, <http://www.hacer.org/current/US181.php> (last visited June 26, 2007).

81. Ross D. Petty et al., *Regulating Target Marketing and Other Race-Based Advertising Practices*, 8 MICH. J. RACE & L. 335, 342 (2003).

feeding their own families. To inculcate young people with a taste for fast food, industry giants infiltrate the American school system, trading perks for free advertising.⁸² Fast food restaurants also maintain a strong presence in low-income communities. In some cities, there are twice as many fast food restaurants in predominantly African American neighborhoods than in white ones.⁸³ Other factors, such as changes in American farming and the challenges facing small local food stores as they compete with the large chains, also contribute to the bleak urban food landscape.⁸⁴

I. Fast Food in Schools

Fast food advertising targeted towards children raises a host of serious concerns. Physically, children are more sensitive to nutritional deficiencies, which often have permanent effects. Intellectually, children are less equipped to distinguish accurate from inaccurate information about healthy eating.⁸⁵ Children living in poor urban areas are often inundated with billboards advertising unhealthy food. They also enjoy limited opportunities to exercise outdoors; in high-crime areas, parents tend to keep children indoors to protect them.⁸⁶ The fast food industry further ensures young people's access to fast food by strategically clustering franchises around schools, placing three to four times as many outlets within walking distance of schools than in locations where there are no schools nearby.⁸⁷

Under-funded schools in areas with low tax bases are particularly susceptible to fast food's encroachment because the schools cannot afford to refuse corporate sponsorship. As technology becomes increasingly important, poorer schools without resources to buy expensive, up-to-date technology such as computers and video cameras have turned to corporations, including fast food companies, to fund such purchases.⁸⁸ School districts that contract with fast food companies for promotion rights get money or equipment in exchange for the companies' right to sell their products on campus and to have their logo

82. See generally NAOMI KLEIN, *NO LOGO* 87-105 (2000).

83. Jason P. Block et al., *Fast Food, Race/Ethnicity, and Income: A Geographic Analysis*, 27 AM. J. PREVENTATIVE MED. 211, 214 (2004) (noting that "[f]or an average-sized neighborhood shopping area, predominantly black neighborhoods were exposed to six more fast food restaurants than predominantly white neighborhoods.").

84. See *infra* Part II.A.4.

85. Dina L.G. Borzekowski & Thomas N. Robinson, *The 30-Second Effect: An Experiment Revealing the Impact of Television Commercials on Food Preferences of Preschoolers*, 101 J. AM. DIETETIC ASS'N 30, 42-6 (2001).

86. See N. Chatterjee et al., *Perspectives on Obesity and Barriers to Control from Workers at a Community Center Serving Low-income Hispanic Children and Families*, 22 J. COMMUNITY HEALTH NURSING 23 (2005) (finding lack of safe places for walking and playing outside are a major obstacle to exercise).

87. Bryn Austin et al., *Clustering of Fast Food Restaurants Around Schools: A Novel Application of Spatial Statistics to the Study of Food Environments*, 95 AM. J. PUB. HEALTH 1575, 1578 (2005).

88. KLEIN, *supra* note 82, at 88-89.

on school equipment and facilities.⁸⁹ Corporations offer audiovisual equipment and sometimes computers in exchange for daily classroom broadcasts of Channel One, a youth-oriented current affairs program that includes two minutes of television advertising targeted to its captive young audience.⁹⁰ This advertising generally focuses on fast food and other unhealthy products such as candy, soda, and breakfast cereals.⁹¹ The soft drink giants Coke and Pepsi compete with each other to donate large sums to under-funded schools in exchange for exclusive vending rights.⁹² Advertisements for unhealthy foods also appear printed on school lunch menus, and fast food companies sell their food in schools either directly, at their own stands, or indirectly, through the cafeteria.⁹³

While some school boards have fought back against the fast food companies to protect their students' health, the majority remain in the industry's thrall.⁹⁴ The profit from selling fast food items in high school cafeterias often supports vital school operations, such as extracurricular programs and athletics.⁹⁵ In most cases, inadequate funding also prevents the provision of nutrition education that would counter fast food's ubiquity and sales pitches. To date, the fast food sold in cafeterias is not subject to the nutrition standards that govern meals sold under the National School Lunch program.⁹⁶ As a significant contributor to the obstacles preventing children from gaining access to healthy food, schools should reevaluate their priorities and institute changes to increase their students' welfare.⁹⁷

2. Television Advertising and Programming

The fast food industry's campaign to win over young people continues in their homes, through television advertising. Research shows that low-income

89. Lisa Craypo et al., *Fast Food Sales on High School Campuses: Results from the 2000 California High School Fast Food Survey*, 72 J. SCH. HEALTH 78, 80 (2002).

90. KLEIN, *supra* note 82, at 89.

91. *Id.*

92. *Id.* at 91.

93. Low-income students who avoid consuming these brands at school either because the fast food companies do not accept federal vouchers or because they simply charge too much eat school-provided lunches of equally questionable nutrition. Happily, the problem of the lack of nutrition in school lunches has received more attention lately. The famous "naked chef" Jamie Oliver has a program on the Food Channel where he attempts to revolutionize school lunches, and community groups have organized to provide nutritious lunches to students in underserved areas on a small scale. *Id.* at 90.

94. The Oakland school district banned soda and candy from its vending machines and New York City has banned junk food from its school vending machines. Anna Lappé, *The Push-Pull of the Food Movement*, Oct. 2003, <http://www.consciouschoice.com/2003/cc1610/foodmovement1610.html> (last visited June 26, 2007).

95. Craypo, *supra* note 89, at 80.

96. *Id.* at 78.

97. See Mary Story, Karen M. Kaphingst & Simone French, *The Role of Schools in Obesity Prevention*, 16 FUTURE CHILD. 109, Childhood Obesity Volume, Number 1 (2006), for a thorough analysis of the role of schools in child obesity.

African American and Latino youth use entertainment media such as television, movies, and video games more than their white counterparts, and are disproportionately exposed to marketing.⁹⁸ Children with single or two working parents often bear the greatest brunt of exposure to advertising.⁹⁹ With parents gone for large portions of the day, these so-called “latchkey kids” look after themselves, most often amusing themselves by watching television.¹⁰⁰ In general, the average child watches over thirty-two hours of television a week.¹⁰¹ Consumers in low-income households are more likely to view advertising as authoritative and helpful in selecting products.¹⁰² Children in these homes are more likely to have their own television sets, and to watch television during meals.¹⁰³ African American children are more likely than whites to report having televisions in their bedroom.¹⁰⁴

Fast food companies in turn spend billions of dollars a year to research and refine the most effective methods of instilling brand recognition in children.¹⁰⁵ Between 1991 and 2000, the money spent by companies on food advertising doubled from six billion to twelve billion dollars, and that number continues to rise.¹⁰⁶ The average child now sees 10,000 food ads per year.¹⁰⁷ Young people have very few defenses against this monolithic marketing machine, and research has found that advertising can affect children’s food preferences after only brief exposure.¹⁰⁸ For example, one in five American

98. Kumanyika & Grier, *supra* note 33, at 191 (citing D.F. Roberts, U.G. Foehr, & V.J. Rideout, *Kids and Media at the New Millennium*, Kaiser Family Foundation (1999)). See also E.H. Woodward IV & N. Gridina, *Media on the Home, 2000: The Fifth Annual Survey of Parents and Children*, Annenberg Public Policy Center of the University of Pennsylvania (2000); D.F. ROBERTS ET AL., *KIDS AND MEDIA IN AMERICA*, (2004).

99. African American girls currently consume more fast food and therefore more calories, fat, and sodium than white girls. Marcia Schmidt et. al., *Fast Food Intake and Diet Quality in Black and White Girls*, 159 *PEDIATRIC ADOLESCENT MED.* 626, 629 (2005).

100. *Id.* See also Barboza, *supra* note 53, at F5 (quoting Dr. Ross E. Andersen of Johns Hopkins University). Dr. Ross Andersen’s study revealed that forty-two percent of black children, as opposed to twenty-six percent of white children, watched more than four hours of television daily. *Id.*

101. *Id.*

102. Kumanyika & Grier, *supra* note 33, at 192 (citing L.F. ALWITT & T.D. DONLEY, *THE LOW INCOME CONSUMER: ADJUSTING THE BALANCE OF EXCHANGE* (1996)).

103. *Id.* at 198 (citing D.F. Roberts, U.G. Foehr & V. Rideout, *Generation M: Media in the Lives of 8-18 Year Olds*, Kaiser Family Foundation (2005)).

104. *Id.*

105. Robbins, *supra* note 43.

106. Lappé, *supra* note 94.

107. Barboza, *supra* note 53, at n.51.

108. Kumanyika & Grier, *supra* note 33, at 192 (citing D.L.G. Borzekowski & T.N. Robinson, *The 30-Second Effect: An Experiment Revealing the Impact of Television Commercials on Food Preferences of Preschoolers*, 101 *J. AM. DIETETIC ASS’N* 42-26 (2001)). See also D.L.G. Borzekowski & A.F. Poussaint, *Latino American Preschoolers and the Media*, Annenberg Public Policy Center (1998); G. Gorn & M.E. Goldberg, *Behavioral Evidence on the Effects of Televised Food Messages on Children*, 9 *J. CONSUMER RESEARCH: INTERDISCIPLINARY QUARTERLY* 200-05 (1982); G. Hastings et al, *Review of Research on the Effects of Food Promotion to Children Final Report Prepared for the Food Standards Agency*, Centre for Social Marketing, University of

children now requests particular food brands at age three.¹⁰⁹

Television programming can also communicate that nutrient-poor and high-fat foods are acceptable. Researchers studied the food messages on the most popular African American television shows, tracking the most-watched shows during prime time in black households.¹¹⁰ The study revealed that African American households watch seventy-five hours of television per week as opposed to the fifty-two hours per week watched by other viewers, and are more likely to watch shows with predominantly African American characters.¹¹¹ Searching for a relationship between these facts and the higher prevalence of obesity in African Americans, the study revealed that there are a greater number of food commercials on black prime time and that African American audiences may be subjected to as many as three times as many ads for candy and soda.¹¹² Black prime time also features a greater number of overweight characters,¹¹³ which though it might accurately represent African Americans' weight status, may also condone obesity in the eyes of African American viewers.¹¹⁴ Regardless of whether the relationship between images of African Americans on television and body size is one of causation or correlation, the simple act of watching television is both psychologically and physically damaging. Studies show a direct link between hours of television watched and body fat,¹¹⁵ and between higher caloric intake and watching television during meals.¹¹⁶ Movies also have a negative impact on certain communities because they depict stereotypical food-related behavior with respect to body shape, gender, and ethnicity.¹¹⁷

3. Race-Targeted Marketing

Fast food companies have devoted considerable resources to developing

Strathclyde (Sept. 22, 2003).

109. SAMS, *supra* note 23, at 163.

110. In the fall of 1999, these shows were *Moesha*, *Malcolm and Eddie*, *Jamie Foxx* and *The Parkers*. Manasi A. Tirodkar & Anjali Jain, *Food Messages on African American Television Shows*, 93 AM. J. PUBLIC HEALTH 439 (2003).

111. *Id.*

112. *Id.* at 441; *see also* Kumanyika & Grier, *supra* note 33, at 192 (citing V.R. Henderson & B. Kelly, *Food Advertising in the Age of Obesity: Content Analysis of Food Advertising on General Market and African American Television*, 37 J. NUTRITION EDUC. BEHAVIOR 191-96 (2005)).

113. *Id.*

114. *Id.*

115. Barboza, *supra* note 53, at F5 (quoting Dr. Ross E. Andersen of Johns Hopkins University). *See also* S.A. French et al., *Fast Food Restaurant Use Among Adolescents: Associations with Nutrient Intake, Food Choices and Behavioral and Psychosocial Variables*, 25 INT'L J. OBESITY 1823, 1851 (2001).

116. Kumanyika & Grier, *supra* note 33, at 198 (citing S.W. McNutt et al., *A Longitudinal Study of the Dietary Practices of Black and White Girls 9 and 10 Years Old at Enrollment: The NHLBI Growth and Health Study*, 20 J. ADOLESCENT HEALTH 27-37 (1997)).

117. *Id.* (citing G. P. Sylvester et al., *Food and Nutrition Messages in Film*, 699 ANNALS N.Y. ACADEMY SCIENCES 294-95 (1993)).

marketing strategies aimed specifically at African Americans and Latinos, and it appears that the investment reaps a significant reward.¹¹⁸ These schemes include corporate giveaways and community givebacks, the appropriation of cultural icons, “ethnic” food items, inundation of urban neighborhoods with billboards, and tailored restaurant design and decoration. McDonald’s regularly features cultural heroes such as Venus and Serena Williams and Enrique Iglesias in their television commercials to attract African American and Latino dollars.¹¹⁹ Other efforts by McDonald’s to woo Latinos have included designing and installing table formations to accommodate large family groups and creating a “Fiesta” menu of foods characterized as Latino such as tacos and burritos.¹²⁰ The numbers prove the success of these strategies. Latina women in a California study preferred fast food restaurants over other types of eating establishments,¹²¹ and McDonald’s is the top restaurant choice of American Latinos.¹²²

Targeted marketing also has a profound impact on African Americans. Research shows that African American youth identify with black characters in advertisements and rate these ads more favorably.¹²³ Ads in magazines geared towards African American adults are dominated by low-cost, low-nutrition foods and the magazines are less likely to contain health-oriented messages.¹²⁴ Similar race-based marketing occurred in the tobacco industry, with devastating

118. *Id.* at 192 (citing S.A. Grier & A.M. Brumbaugh, *Noticing Cultural Differences: Ad Meanings Created by Target and Non-target Markets*, J. ADVERTISING 79-93 (Spring 1999)). See also J.L. Aaker, A.M. Brumbaugh & S.A. Grier, *Nontarget Markets and Viewer Distinctiveness: The Impact of Target Marketing on Advertising*, 9 J. CONSUMER PSYCHOLOGY 127-40 (2000); S.A. Grier & A.M. Brumbaugh, *Consumer Distinctiveness and Advertising Persuasion*, in *Diversity in Advertising* (Jerome D. Williams, Wei-Na Lee & Curtis P. Haugtvedt eds., 2004).

119. The documentary film *McLibel* shows some very striking footage of McDonald’s advertisements featuring African American tennis stars Venus and Serena Williams and other spots conveying the message that regular consumption of McDonald’s food leads to better health. *MCLIBEL* (Spanner Films Ltd. 2005).

120. Goldman, *supra* note 39, at 118.

121. Kumanyika & Grier, *supra* note 33, at 194 (citing G. X. Ayala et al., *Restaurant and Food Shopping Selections Among Latino Women in Southern California*, 105 J. AM. DIETETIC ASS’N 38-45 (2005)).

122. Lauren Swann, *Better Living for Latinos*, Jan. 1, 2006, http://www.preparedfoods.com/CDA/Articles/Feature_Article/810566cf40ad8010VgnVCM100000f932a8c0.

123. Kumanyika & Grier, *supra* note 33, at 192 (citing O. Appiah, *Black, White, Hispanic, and Asian American Adolescents’ Responses to Culturally Embedded Ads*, 12 *HOW. J. COMM.* 29-48 (2001)). See also O. Appiah, *Ethnic Identification on Adolescents’ Evaluations of Advertisements*, J. ADVERTISING RESEARCH 7-22 (Sept.-Oct. 2001); O. Appiah, *It Must Be the Cues: Racial Differences in Adolescents’ Responses to Culturally Embedded Ads*, in *Diversity in Advertising* (Williams, Lee & Haugtvedt eds., 2004).

124. Kumanyika & Grier, *supra* note 33, at 192 (citing C.A. Pratt & C.B. Pratt, *Comparative Content Analysis of Food and Nutrition Advertisements in Ebony, Essence, and Ladies’ Home Journal*, 27 J. NUTRITION EDUC. 11-18 (1995)). See also C.A. Pratt & C.B. Pratt, *Nutrition Advertisements in Consumer Magazines: Health Implications for African Americans*, 26 J. BLACK STUDIES 504-23 (1996); S.C. Duerksen et al., *Health Disparities and Advertising Content of Women’s Magazines: A Cross-Sectional Study*, 5 *BMC PUBLIC HEALTH* 85 (2005).

effects.¹²⁵ Tobacco companies identified African Americans as potential customers for a more lethal menthol cigarette.¹²⁶ The tobacco giants then devoted considerable resources to developing these cigarettes and marketing them solely to African Americans, plastering African American neighborhoods with billboards and advertising exclusively in African American-oriented magazines.¹²⁷ The success of this campaign has led to grave health problems in the African American population.¹²⁸ Many African Americans continue to prefer menthol cigarettes, despite public knowledge that they cause more health damage than regular cigarettes. Race-targeted marketing in industries such as food and tobacco that are directly linked to health and life expectancy require exposure and regulation to redress the disproportionate number of deaths and disease that African Americans and Latinos suffer from these products.

4. Market Forces

While the factors outlined above have allowed fast food to achieve a dominant place in the urban landscape, other economic factors have operated to eliminate healthy alternatives from low-income urban neighborhoods.

The disappearance of American farmland plays a large part in the decline in the availability of fresh food in general and especially in areas with few or no supermarkets.¹²⁹ As the number of local farms decreases, consumers become more dependent on distant, more expensive sources, reducing the quality and affordability of available fruits and vegetables. African American farmers have suffered a particularly dramatic decline in land ownership, partially as a result of exclusion from the mainstream agricultural system.¹³⁰

125. For an example of activism around this issue, see Fact Sheet: Menthol Civil Rights Lawsuit, available at <http://www.tcsg.org/tohacco/minorities/menthfs.htm> (last visited Sept. 3, 2007).

126. Ross D. Petty, et al., *Regulating Target Marketing And Other Race-Based Advertising Practices*, 8 MICH. J. RACE & L. 335, 352-53 (2003); see also Fact Sheet: Menthol Civil Rights Lawsuit, *supra* note 125.

127. Fact Sheet: Menthol Civil Rights Lawsuit, *supra* note 125.

128. African American smokers suffer the highest rates of tobacco-related deaths and diseases. Heart disease, a tobacco-related condition and the leading cause of death in the United States, was thirty-eight percent higher in African American men than in white men and eighty-three percent greater than for all men during 1990-1992. See Bruce Allen, *African Americans and Mentholated Cigarettes*, http://www.trdrp.org/research/PageGrant.asp?grant_id=1648 (last visited June 26, 2007).

129. For example, according to the Northeast Sustainable Agricultural Working Group, the total number of farms in the Northeast decreased by more than fifty percent between 1964 and 1997. Brian Braiker, *Beets Not Burgers*, NEWSWEEK, June 25, 2003, available at <http://www.b-healthy.org/Newsweek/>.

130. African American land ownership has decreased from over 15 million acres in 1910 to less than 2.3 million in 2005 and it continues to erode. Denied access to markets and conventional lending institutions, African American farmers by necessity adopted sustainable agricultural practices before they became widespread. Mo'Better Food, <http://www.mobetterfood.com/table.html> (last visited June 26, 2007) (quoting The Federation of Southern Cooperatives Land Assistance Fund).

At the other end of the distribution chain, supermarket flight from the inner cities left the typical low-income neighborhood with thirty percent fewer supermarkets than high-income areas in 1995.¹³¹ Small local grocery stores in low-income urban areas have higher operating costs than large chain stores. These stores offer little variety, as they are limited by shelf space, customer preference, and are unable to buy goods in bulk. Because small local stores cannot afford to stock fresh fruits and vegetables to the extent that their large, chain counterparts can, most of their products are processed, pre-packaged foods. These stores also sometimes charge more for healthier foods.¹³² Despite these deficiencies, they often represent the only source of packaged foods for sale accessible by foot. Low-income, often single-parent, families rely on these establishments as sources of fast, convenient food. As a result, small local convenience stores exert significant market control in poor, urban neighborhoods.

C. Political Factors

Economic forces combined with complex social factors leave poor urban residents with very few choices regarding food purchases and equally few resources to combat poor nutrition. Political factors perpetuate these problems and highlight the need for government action.

The federal government has acknowledged the health disparities between whites and other groups, although federal solutions have not been readily available. An extensive, official study of national health disparities by the United States Department of Agriculture (USDA) resulted in an initiative entitled "Healthy People 2010." The initiative purports to be "a set of health objectives for the Nation" to be used by "[s]tates, communities, professional organizations and others to help them develop programs to improve health."¹³³ One of its two stated goals is to "eliminate health disparities among different segments of the population."¹³⁴

Healthy People 2010 identified lack of information as the main source of health problems related to poor nutrition and declined to take a more active role

131. Kumanyika & Grier, *supra* note 33, at 193 (citing K. Morland et al., *Neighborhood Characteristics Associated with the Location of Food Stores and Food Service Places*, 22 AM. J. PREVENTIVE MED. 23-29 (2002)). See also C.R. Horowitz et al., *Barriers to Buying healthy Foods for People with Diabetes: Evidence of Environmental Disparities*, 94 AM. J. PUBLIC HEALTH 1549-54 (2004); Rodolpho M. Nayga Jr. & Zy Weinberg, *Supermarket Access in the Inner Cities*, 6 J. RETAILING CONSUMER SERVICES 141-45 (1999).

132. One study found that stores charged more for low-fat than regular milk. Kumanyika & Grier, *supra* note 33, at 193 (citing H. Wechsler et al., *The Availability of Low-Fat Milk in an Inner-City Latino Community: Implications for Nutrition Education*, 85 AM. J. PUBLIC HEALTH 1690-92 (1995)).

133. Healthy People 2010, *What is Healthy People?*, <http://www.healthypeople.gov/About/whatis.htm> (last visited June 26, 2007).

134. Healthy People 2010, *What Are Its Goals?*, <http://www.healthypeople.gov/About/goals.htm> (last visited June 26, 2007).

in providing healthy food to communities with inadequate access to it.¹³⁵ The report assumed that people are willing and able to make healthy choices, an assertion that reflected a reluctance to intervene in a realm traditionally considered a matter of private responsibility and choice. By embracing this widespread view of weight issues, the state effectively avoids taking costly and potentially unpopular action to help people combat powerful forces brought to bear by profit-motivated corporations.

Because the current social climate also makes it taboo to speak openly about race, the government may hesitate to delve too deeply into dietary disparities between different racial and ethnic groups.¹³⁶ Evaluating health statistics from a racial perspective raises many complex issues, including intersectionality, race as social construction, and the lumping together of people from diverse cultures and backgrounds into monolithic groups, such as "Asian American." Granted, it may be more informative to analyze health patterns based on socioeconomic status or geographical location than on constructed racial categories. Nonetheless, the government's decision to forego more interventionist solutions to observed disparities reflects an unwillingness to address a problem that, regardless of how it is defined, disproportionately impacts poor African Americans and Latinos.¹³⁷

Another government-sponsored initiative to increase food-related health was an online cookbook called *Heart-Healthy Home Cooking African American Style*, published by the Department of Minority Health Services in 1997.¹³⁸ Its recipes include Good-for-you Cornbread, Mouth-Watering Oven-Fried Fish, and Mock-Southern Sweet Potato Pie.¹³⁹ The introduction states that preparing dishes according to the book's recipes "is important because heart disease is the first and stroke is the third leading cause of death for African Americans."¹⁴⁰

Despite this limited government recognition of the increased health risks associated with the diet of certain communities, official policies continue to exacerbate these disparities by subsidizing and promoting foods integral to the fast food industry, failing to provide adequate food assistance, and permitting the fast food industry to exert disproportionate influence over the direction of government policy.

135. Shalala, *supra* note 47.

136. See Sandra Soo-Jin Lee et al., *The Meanings of "Race" in the New Genomics: Implications for Health Disparities Research*, 1 YALE J. HEALTH POL'Y L. & ETHICS 33 (2001).

137. This neglect resembles other political decisions that have had catastrophic effects on poor African Americans, such as the government failure to respond adequately to Hurricane Katrina.

138. Heart Healthy Home Cooking African American Style, <http://www.nhlbi.nih.gov/health/public/heart/other/chdblack/cooking.htm> (last visited June 26, 2007).

139. *Id.*

140. *Id.* at 2 (Introduction).

1. Government Subsidies

Although at first glance fast food's corporate strategy appears to embrace free-market capitalism, the industry actually relies heavily on state support to shore up its profitability. Government subsidies for animal feed, sugar, and fats such as rapeseed and soy oil keep the price of producing fast food artificially low.¹⁴¹ The government also subsidizes large farms that produce crops for the fast food industry.¹⁴² Without all of these subsidies, the price of a typical fast food meal would triple.¹⁴³ Other factors controlled by the government that artificially lower the cost of fast food include: the use of hormones and antibiotics to promote rapid animal growth;¹⁴⁴ market deficiency loans;¹⁴⁵ cheap immigrant labor; and special tax breaks. Many Americans would be unable to afford fast food if its price reflected its true costs, including externalities such as the impact on health and the environment.

The french fry provides a good example of how the fast food industry thrives on government subsidies that also significantly alter the American landscape. Eighty percent of all fast food french fries are made from the Columbia River Basin Russett Burbank potato.¹⁴⁶ This potato must be grown in heavily watered desert farmlands.¹⁴⁷ To facilitate the cultivation of this particular tuber, the federal government subsidizes an extensive irrigation system that brings water to the Columbia Basin via the Grand Coulee Dam.¹⁴⁸ Irrigation projects such as this one consume three billion tax dollars every

141. SAMS, *supra* note 23, at 42-43.

142. Large farms receive 54% of government subsidies even though they represent only 7% of American farms. Gilbert M. Gaul, Sarah Cohen & Dan Morgan, *Federal Subsidies Turn Farms Into Big Business*, WASH. POST, Dec. 21, 2006, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/20/AR2006122001591.html>.

143. SAMS, *supra* note 23, at 43.

144. Milk poses a particular danger to the general population from the injection of bovine growth hormone (BGH) into American dairy cows. The members of the European Union have banned the use of this hormone, while other countries, such as Canada, have refused to approve it. In the United States, the Food and Drug Administration approved the use of BGH at the insistence of the powerful multinational agricultural corporation Monsanto. Although some labeling requirements exist, they are confusing and ineffective at informing consumers of the grave health problems associated with human consumption of the hormone. Reporters' efforts to educate the public about BGH and its effects met with strong resistance from a local Florida Fox news affiliate, who buried the story then fired the reporters. The court upheld Fox's actions. *New World Communications of Tampa, Inc. v. Akre*, 866 So. 2d 1231 (Fla. 2 Dist. Ct. App.) (2003); *see also* *Hidden Danger in Your Milk?*, <http://www.foxbghsuit.com/home.htm> (last visited June 26, 2007).

145. The Department of Agriculture provides loans to producers of barley, corn, wheat, peanuts, grain sorghum, oats, soybeans, and rice that enables them to store harvested production instead of selling it on the market when prices are low. United States General Accounting Office: GAO Report to the Ranking Minority Member, Nov. 23, 1999, www.gao.gov/cgi-bin/getrpt?GAO/RCED-00-9.

146. Edward A Chadd, *Manifest Subsidy: How Congress Pays Industry—with Federal Tax Dollars—to Deplete and Destroy the Nation's Natural Resources*, COMMON CAUSE NATIONAL MAGAZINE (Fall 1995), available at <http://www.ccsi.com/~comcause/news/ehadd.html>

147. *Id.*

148. *Id.*

year.¹⁴⁹

The government also subsidizes and promotes staples, such as milk and wheat, that feature prominently in fast food meals yet cause severe health problems in African Americans and Latinos.¹⁵⁰ Wheat allergies are exceedingly common and usually undiagnosed.¹⁵¹ Problems related to the consumption of dairy products are even more widespread. Approximately seventy percent of African Americans, ninety-five percent of Native Americans, sixty percent of Latino Americans and ninety percent of Asian Americans are lactose intolerant.¹⁵² Despite these statistics, the government subsidizes dairy farmers heavily and engages in promotional campaigns that insist that milk is part of a balanced diet and essential to provide calcium sufficient to create strong bones, especially in children.¹⁵³ Fast food companies both support and exploit the government's efforts by offering dairy products in several fast food staples, such as milkshakes, cheeseburgers, pizza, sandwiches, and tacos. The federal government also supports individual fast food outlets through guaranteed loans and other aid.¹⁵⁴

2. Federal Food Guidelines

The U.S. Department of Agriculture creates federal dietary guidelines that form the basis of the widely-distributed "food pyramid." The pyramid recommends a daily diet consisting of grains, vegetables, fruits, milk, and meat or beans.¹⁵⁵ A number of groups led by the Physicians' Committee for

149. *Id.*

150. Even fast food that appears to be wheat and dairy free may not be: in February 2006 McDonald's announced that, contrary to its previous claims about its french fries, the fries actually contained wheat gluten and milk products. The revelation has exposed McDonald's to several lawsuits from customers who suffered allergic reactions to the fries. Christian Nordqvist, *Fury at Milk and Wheat in McDonalds' French Fries*, MED. NEW TODAY, Feb. 20, 2006, available at <http://www.medicalnewstoday.com/healthnews.php?newsid=38082>.

151. WebMD.com, Allergies: Living with a Wheat Allergy, <http://www.webmd.com/allergies/guide/wheat-allergy> (last visited August 4, 2007).

152. *Id.* Health professionals have suggested a change in terminology to reflect these percentages, eliminating the label "lactose intolerant" and referring to adults who can tolerate milk as "lactose persistent." See Foodintol: Dairy - Lactose Intolerance and Milk / Casein Allergy, <http://www.foodintol.com/dairy.asp> (last visited June 26, 2007); see also Milton Mills & Merlene Alicia Vassall, *Biased Food Guidelines Ignore African Americans*, Healthy School Lunches, <http://www.healthyschoollunches.org/legislative/guidelines.html> (last visited June 26, 2007).

153. Growth hormones in milk also create health problems for the general population. See U.C. Davis Medicine, *supra* note 41.

154. Chris Edwards, *Empowering Citizens to Monitor Federal Spending*, Cato Institute: Tax & Budget Bulletin (July 2006), http://www.cato.org/puhs/tbb/tbb_0718-38.pdf (citing www.census.gov/govs/www/faads.html).

155. United States Department of Agriculture, MyPyramid Plan, <http://www.mypyramid.gov/mypyramid/index.aspx> (last visited June 26, 2007). On the Internet, the government site recommends portions of these food groups according to the age, sex and amount of daily physical activity the user indicates.

Responsible Medicine have attacked these guidelines as racially biased.¹⁵⁶ The Committee objects to the guidelines' emphasis on meat and dairy products because these foods are leading contributors to diseases especially prevalent among African Americans, particularly high blood pressure or hypertension, diabetes, prostate cancer, and obesity.¹⁵⁷ The guidelines fail to recommend calcium-rich foods, such as broccoli, collard greens, kale, and beans, which are lower in fat and cholesterol than dairy products.¹⁵⁸ The guidelines also do not include healthy foods traditionally found in Latino and African American diets, such as tortillas, corn bread, or okra.¹⁵⁹ Identifying the guidelines as "a fundamental form of institutionalized racism," the Committee asked the government to eradicate racial bias from the latest version of the pyramid.¹⁶⁰ To date, there has been no significant revision of the guidelines. Official resistance to changing the guidelines may stem from the overlap between members of the USDA advisory board and members of the National Dairy Board, the National Dairy Council, the American Egg Board, the National Cattlemen's Beef Association, the American Meat Institute, and other interest groups.¹⁶¹

3. Government Assistance

The government does provide some relief to lower-income families through food assistance programs. Unfortunately, these programs are inadequate to counter the effects of fast food in communities and schools. The National School Lunch Program, which feeds many children their most substantial meal every day, relies on federal food guidelines, and spends ninety percent of its budget on ground pork, ground beef, eggs, and whole-milk cheeses instead of fruits, vegetables, and other healthy foods.¹⁶² While a balance among these foods could benefit students, the emphasis on proteins and the exclusion of fresh produce is unhealthy. Food banks, designed originally as stopgap measures to deal with crises, have also become an integral part of many low-income families' survival.¹⁶³ Unfortunately, due to scant resources

156. Mills & Vassall, *supra* note 152. See also Salim Muwakkil, *Food Pyramid Scheme*, IN THESE TIMES, (2000), <http://www.karlloren.com/diet/p38.htm> (last visited Aug. 19, 2007).

157. *Id.*

158. U.S. Dept. of Agriculture, *supra* note 155.

159. *Id.*

160. Robbins, *supra* note 43 (quoting Milton Mills, M.D. of Physicians Committee for Responsible Medicine).

161. Muwakkil, *supra* note 156. Many food advocates also hold this overlap responsible for the government's promotion of genetically modified foods. For informative exposés on links between the government, the food industry, and the corporations manufacturing and promoting genetically modified foods, see FED UP! THE FUTURE OF FOOD (Lily Films 2004); see also FED UP! GENETIC ENGINEERING, INDUSTRIAL AGRICULTURE AND SUSTAINABLE ALTERNATIVES (Wholesome Goodness Productions 2002).

162. Robbins, *supra* note 43.

163. Children's Defense Fund, *13 Million Children Face Food Insecurity* (June 2 2004),

and unforeseen need, the banks offer mostly packaged and processed foods, often past their expiration dates, with a poor selection of wilted produce.¹⁶⁴ Food assistance programs are unlikely to improve as long as the government continues to maintain close relationships with the dairy, meat, and fast food industries.

4. *Strange Bedfellows: Government and Fast Food*

Fast food companies foster a close association between their industry and the national government. Through generous political donations,¹⁶⁵ fast food receives a number of political perks, including subsidies, official food guidelines that support the production of cheap, low-quality fast food products, and endorsements by politicians.¹⁶⁶ In February 2006, for example, President George Bush made a speech promoting a new national health care plan from the Wendy's headquarters in Dublin, Ohio.¹⁶⁷ The industry also benefited immensely from exemption from the food labeling requirements of the 1990 Federal Nutritional Labeling and Education Act.¹⁶⁸ While health-conscious consumers can obtain nutrition information about the food products they purchase in stores directly from the packaging, restaurant patrons are generally unaware of the nutritional content of the food sold at fast food restaurants. Under these circumstances, the government's admonition to consumers to make meaningful food choices becomes significantly more problematic.

III

FOOD OPPRESSION DEFINED

Food oppression is a form of structural subordination that builds on and deepens pre-existing disparities along race and class lines. Food oppression is difficult both to identify as a social wrong and to redress, because it stems from a combination of market forces and government policy. Conventional wisdom holds that food consumption is a matter of private choice and free will, but blaming individuals for their own health problems obscures the structural

www.childrensdefense.org/site/DocServer/foodinsecurity2005.pdf?docID=482.

164. Mark Feinberg, *Starving for Good PR: Corporations Force-Feed the Poor*, *BUS SOC'Y REV.* 36 (Summer 1989), for commentary on the ineffectiveness of food banks.

165. Fast food companies give an overwhelming proportion of their donations to Republicans. In the 2000 election, McDonald's gave \$ 479,537 to politicians, seventy-nine percent of which went to Republicans. Burger King gave \$150,725 with ninety-seven percent going to Republicans. Tricon Global Restaurants, a conglomerate including Pizza Hut, KFC, and Taco Bell, gave \$201,579, with eighty-six percent to Republicans. Goldman, *supra* note 39, at 128.

166. See *infra* Parts IV.C.i, IV.C.ii.

167. WLWT.com, *Bush Bashes Junk Lawsuits at Wendy's HQ* (Feb. 15, 2006) <http://www.channelcincinnati.com/news/7084797/detail.html>.

168. Despite this exemption, in February 2006 McDonald's succumbed to pressure from health advocates and began nutrition labeling in four US test markets. *McDonald's Unveils Nutrition Labeling*, <http://www.foodfacts.info/blog/2006/02/mcdonalds-unveils-nutrition-labeling.html> (last visited August 18, 2007).

nature of food oppression. Despite substantial obstacles to change, racial and class progressives must demand accountability from those responsible for the institutionalization of poor health and lower life expectancy for groups already facing multiple sites of oppression.

The fast food industry and the government are complicit, in varying degrees, in the oppression that results from the fact that the consequences of their actions fall heaviest on certain traditionally subordinated groups. Instead of trying to reduce or mitigate the disparate effects of their products, fast food companies exploit existing social conditions through targeted marketing that includes billboard campaigns in low-income urban neighborhoods, a strong presence in under-funded schools, and race-based advertising. This stands in contrast to the tobacco and alcohol industries, which have made some gestures in recognition of the social responsibility that the harmfulness of their product dictates.¹⁶⁹ The fast food industry could similarly adopt practices to mitigate the particularly harmful effects of their food on certain communities, ranging from ending race-targeted marketing to financing nutrition education programs in poor urban neighborhoods. To date, fast food companies have not taken any of these steps.

As an institution charged with protecting the welfare of its constituents, the government has an even greater responsibility than the fast food industry to implement harm reduction strategies. By allying itself with fast food in exchange for financial support, the government neglects this duty. More specifically, government complicity with the fast food industry furthers the government's narrow self-interest in re-election and party support at the expense of the health and well-being of many of its most disadvantaged citizens.

The illusion of choice in food consumption is a particularly powerful and entrenched social myth that contributes to food oppression's perpetuation and invisibility. Dominant ideology places strong value on the vision of society as a meritocracy with each individual equally placed at the starting line of the race to social and economic success. Many Americans believe that economic mobility depends on individual accomplishment, that success is a reflection of personal fortitude.¹⁷⁰

To support this colorblind ideology, a language of cultural attribution has

169. For example, in the name of social and shareholder responsibility, cigarette giant Philip Morris invests in youth smoking prevention programs and anti-smoking advertising campaigns aimed at children. Philip Morris International, *Why We're Working to Stop Children From Smoking*, <http://www.philipmorrisinternational.com/PMINTL/pages/eng/ysp/YSP.asp> (last visited June 26, 2007). For a critique of this ad campaign, see <http://tobaccofreekids.org/research/factsheets/pdf/0010.pdf>.

170. Many leaders in communities of color also emphasize agency and the American dream, teaching young people that the only obstacles to their achievements are self-made. In this context, this rhetoric can be empowering for youth who are denied access to external resources to accomplish their goals.

evolved that links traits such as laziness, criminality, and lack of intelligence to certain groups, providing a moral basis for their exclusion from the upper echelons of society. This form of racism, combined with the concept of meritocracy, allows privileged classes to view social conditions such as the concentration of poor people of color in under-served urban neighborhoods, in inadequate housing, and in low-paying jobs as the product of their own choices. This version of the American dream, however, ignores the reality of persistent stratification along race, gender, class, and other lines. Such a portrayal of American society also allows the economically privileged to ignore the structural forces that significantly curtail food and dietary choices.

Food oppression disproportionately affects individuals whose identities comprise an intersection of traditionally subordinated groups, including people of color who experience racism, poor people who experience class oppression, and other marginalized individuals such as immigrants, children, seniors, and single parents. Faced with challenges and disempowerment on multiple levels, these groups lack the resources to combat food oppression. For this reason, activists across the progressive spectrum should add food oppression to their political agenda.

IV

FIGHTING FOOD OPPRESSION

Alarm about the health and obesity crisis has motivated struggles for change on a variety of fronts. While the food justice movement emphasizes the connection between poor nutrition and its impact on lower-income African American and Latino communities, other forms of resistance, such as litigation and education through popular culture, sweep more broadly.

A. Individual and Community Efforts

1. Litigation

The highly publicized class action suit against McDonald's, *Pelman v. McDonald's*, was a turning point in litigation against fast food companies.¹⁷¹ The *Pelman* court gave a great deal of guidance and hope to future litigants by describing viable legal theories for suits attacking the sources of obesity.¹⁷² Perhaps most significantly, the court allowed the discovery of documents such as internal memos discussing the health effects or addictive qualities of food

171. Dismissal of McDonald's Obesity Law Suit Was Expected: Four Wins, One Loss, and Several Legal Theories Yet to Go, <http://banzhaf.net/docs/mcd2no.html> (last visited June 26, 2007); see also Akin Gump Strauss Hauer & Feld LLP, *Litigation Alert: Second Circuit Reinstates Obesity Claims Against McDonald's: What Does it Mean for Your Company?*, www.akingump.com/docs/publication/730.pdf (last visited June 26, 2007).

172. *Pelman v. McDonald's Corp.*, 237 F. Supp. 2d 512, 543 (S.D.N.Y. 2003) ("*Pelman I*") (granting leave to amend).

ingredients and preparation techniques, opening the door to liability based on these types of documents in future suits.¹⁷³

The class action against McDonald's spearheaded by the parents of obese teenagers Ashley and Roberta Pelman came on the heels of national panic about obesity in August 2002.¹⁷⁴ The complaint alleged that McDonald's engaged in deceptive practices in violation of New York's Consumer Protection Act and New York General Business Laws §§ 349 and 350, and acted negligently in selling and marketing their food. The suit further alleged that these violations caused the plaintiffs' "obesity, diabetes, coronary heart disease, high blood pressure, elevated cholesterol intake, related cancers, and/or other detrimental and adverse health effects."¹⁷⁵ After removal to federal court, several dismissals, and an appeal to the Second Circuit, only the § 349 claims remained.¹⁷⁶

The plaintiffs' § 349 claims consisted of three allegations: (1) that McDonald's misled plaintiffs, through advertising and other publicity, into thinking that daily consumption of its products was part of a healthy lifestyle; (2) that McDonald's failed to disclose that processing and additives made its food substantially less healthy than the company represented in its advertising campaigns; and (3) that McDonald's engaged in unfair and deceptive practices by failing to provide informational brochures at many of its outlets while representing that this information was available at all of its stores.¹⁷⁷

The District Court's initial opinion in *Pelman I* acknowledged the need to create a buffer between individuals and "a behemoth corporation that spans the globe."¹⁷⁸ District Court Judge Sweet openly declared his opposition to the criminalization of drugs, his predilection for personal choice based on knowledge about harmful substances, and his belief that the law should not regulate freedom of choice.¹⁷⁹ Yet in spite of his personal views, Sweet encouraged the plaintiffs to file an amended complaint that would establish that fast food was so unhealthy that it fell outside of a reasonable consumer's expectations.¹⁸⁰ The court acknowledged that the Restatement of Torts' assertion that unhealthy food is not "unreasonably dangerous" might become obsolete in the same way that its provisions on cigarettes were altered in

173. *Id.*

174. In July 2002, a month before the *Pelman* suit, Caesar Barber sued several fast food companies alleging failure to disclose levels of fat and salt in their products that caused obesity and health problems when consumed in large quantities. Barber sought compensatory damages and structural relief. He dropped the suit several months later. Howard M. Wasserman, *Fast Food Justice*, (Oct. 6, 2005) http://writ.news.findlaw.com/commentary/20051006_wasserman.html (last visited Aug. 19, 2007).

175. *Pelman v. McDonald's Corp.*, 396 F.3d 508, 510 (2nd Cir. 2005) ("*Pelman II*").

176. *Pelman II*, 396 F.3d at 512.

177. *Id.*

178. *Pelman I*, 237 F. Supp. 2d at 516.

179. *Id.* at 516 n.2.

180. *Id.* at 522.

response to dramatic changes in the social view of tobacco.¹⁸¹ The relevant Restatement section states that “[g]ood tobacco is not unreasonably dangerous merely because the effects of smoking may be harmful.”¹⁸² Litigation against the tobacco industry subsequently overruled this section by finding tobacco to be an unreasonably dangerous product.¹⁸³

Another of *Pelman*'s major issues was the question of whether information about the nutritional content of their food was “solely within McDonald's possession.”¹⁸⁴ This issue may also play a central role in future suits. Although McDonald's published nutritional information on its website in reaction to the suit,¹⁸⁵ it is unlikely that the majority of consumers actually access the information online, particularly at the time of purchase. McDonald's does not advertise or otherwise inform customers of the availability of the nutrition information. Moreover, lower-income consumers may have more limited access to the Internet than their wealthier counterparts. McDonald's also demonstrated its reluctance to disseminate truthful information about its products by bringing a major lawsuit alleging libel on the part of activists attempting to publicize accurate information about the nutritional value of McDonald's' food.¹⁸⁶

Finally, the *Pelman* court pronounced that “[n]obody is forced to eat at McDonald's.”¹⁸⁷ While this statement is clearly accurate when applied to Judge Sweet and his associates, its truth is not nearly as self-evident when applied to communities with few or no viable alternatives. The *Pelman* suit is still in litigation, and the resolution of these issues remains pending.

John Banzhaf, the key attorney in the successful tobacco litigation that led to multi-million dollar settlements with cigarette consumers, is now at the forefront of the litigation against fast food companies.¹⁸⁸ Banzhaf and his team have laid out a clear litigation strategy: (1) sue fast food companies that misrepresent the actual content of their food; (2) sue companies that make misleading claims about their products' nutritional value; (3) sue companies for failure to warn consumers about material facts regarding fat, caloric, and nutritional content; and (4) seek restitution for money spent on health problems caused by fast food.¹⁸⁹

Although Banzhaf's prospects for victory remain uncertain, even

181. *Pelman I*, 237 F. Supp. 2d at 531-32.

182. RESTATEMENT (SECOND) OF TORTS, § 402A, cmt. i. n19 (1965).

183. Franklin E. Crawford, *Fit For Its Ordinary Purpose? Tobacco, Fast Food and the Implied Warranty of Merchantability*, 63 OHIO ST. L. J. 1165 (2002/2003)

184. *Id.* at 529.

185. McDonald's USA Nutrition Facts for Popular Menu Items, http://www.mcdonalds.com/app_controller.nutrition.index1.html (last visited June 26, 2007).

186. See JOHN VIDAL, *McLIBEL: BURGER CULTURE ON TRIAL* (1997).

187. *Pelman I*, 237 F. Supp. 2d at 533.

188. Professor John F. Banzhaf III Webpage, <http://banzhaf.net/> (last visited June 26, 2007).

189. Goldman, *supra* note 39, at 133.

unsuccessful lawsuits have had positive effects.¹⁹⁰ In Canada, McDonald's created a "Lighter Choices" menu in response to litigation; in France, McDonald's now runs magazine ads with health warnings similar to those that commonly appear in cigarette ads.¹⁹¹ Defending lawsuits also adds to the cost of doing business, a cost that fast food companies may pass on to their customers, driving prices up and consumption down.¹⁹²

Nonetheless, plaintiffs who take on the fast food giants face significant challenges. One problem is that people like the *Pelman* plaintiffs who frequent fast food places usually demonstrate other unhealthy eating habits, making it difficult to identify which health problems can be attributed to fast food alone. Another issue is addiction. In tobacco litigation, scientific proof of nicotine addiction played a large part in altering popular and judicial thinking about cigarettes. Although no widely accepted scientific studies to date have proven the presence of physically addictive chemicals or foodstuffs in fast food comparable to those in tobacco, studies have shown that creating psychological cravings, particularly in children, can cause a powerful psychological addiction in adults.¹⁹³ There is also evidence that sugar, a major ingredient in fast food, especially soft drinks, is addictive.¹⁹⁴ Before future plaintiffs can make significant headway, these discoveries will have to enter mainstream awareness such that a court may take judicial notice of them.¹⁹⁵

2. Legislation

The U.S. House of Representatives reacted to the *Pelman* suit by approving the "Hamburger Bill," or Personal Responsibility in Food Consumption Act, prohibiting similar suits. The bill states that a consumer may not sue a manufacturer or seller for an injury, potential injury, any health

190. For an argument against food litigation, see Joseph P. McMenamin & Andrea D. Tiglio, *Not the Next Tobacco: Defenses to Obesity Claims*, 61 *FOOD DRUG L.J.* 445 (2006).

191. Goldman, *supra* note 39, at 147.

192. To the extent that this might contribute to hunger in certain communities, this would not in fact represent a positive outcome.

193. There has been some indication that forthcoming studies will prove a link between consumption of foods high in fat and sugar, neurochemical changes, and addictive behavior in rats. Michelle M. Mello et al., *The McLawsuit: The Fast Food Industry and Legal Accountability for Obesity*, 22 *HEALTH AFF.* 207, 211 (2003) (citing J. Leake & A. Porter, *Burgers Are as Addictive as Drugs*, *SUNDAY TIMES*, July 13, 2003).

194. Society for Neuroscience, *Brain Briefings: Sugar Addiction* (Oct. 2003), http://www.sfn.org/index.cfm?pagename=brainBriefings_sugarAddiction (last visited Aug. 19, 2007).

195. Commentators have suggested that *Pelman* failed due to the weaknesses of the plaintiffs' attorneys, not the strength of the claims. See Caleb E. Mason, *Doctrinal Considerations for Fast-Food Obesity Suits*, 40 *TORT & INS. L. J.* 75 (2004) (proposing that attorneys base future fast-food suits on consumer expectations and negligent design theories). See John J. Zefutie, Jr., *From Butts to Big Macs – Can the Big Tobacco Litigation and Nation-wide Settlement with States' Attorneys General Serve as a Model for Attacking the Fast Food Industry?*, 34 *SETON HALL L. REV.* 1383 (2004), for further analysis of the future of fast food litigation.

condition related to being overweight, or death resulting from consumption of a “qualified” food product.¹⁹⁶ If this bill passes in the Senate, litigants will have to strategize to develop other cognizable causes of action.

Some new laws, however, represent significant progress in the struggle for healthier fast food and increased consumer awareness. In December 2006, New York became the first city to initiate a ban on the use of most trans fats, or partially hydrogenated oils, in restaurant food.¹⁹⁷ The law required restaurants to stop using oils, margarine, and shortening with more than half a gram of trans fats per serving by July 1, 2007, and to remove all menu items exceeding this limit by July 1, 2008.¹⁹⁸ The law also mandates that fast food restaurants must display the caloric content of each menu item prominently on menu boards or near cash registers.¹⁹⁹ Philadelphia followed New York’s lead and banned trans fats in restaurants in February 2007 and a number of other states have introduced similar bills.²⁰⁰ Likely in response to this trend, some fast food restaurants such as Taco Bell and KFC have elected to reduce or eliminate trans fats from their menus.²⁰¹

3. Popular Culture

Popular perception of the tobacco industry as diabolical was a crucial element of the struggle that eventually led to smoking regulation, substantial lawsuit settlements, and a decrease in cigarette-associated deaths and diseases. Consumers are only gradually beginning to see the fast food industry as similarly malevolent, with the help of media exposés, such as the film *Super Size Me* and the bestselling book *Fast Food Nation*.

i. *Super Size Me*

Super Size Me was a low-budget documentary created by Morgan Spurlock, who endeavored to eat only McDonald’s food for a month and measure the effects on his health and well-being.²⁰² To the dismay of his doctors, his vegan chef girlfriend, and the filmmaker himself, Spurlock’s health rapidly deteriorated and the movie featured sharply poignant images such as

196. H.R. Res 339, 108th Cong. (2004).

197. Thomas J. Lueck & Kim Severson, *New York Bans Most Trans Fats in Restaurants*, N.Y. TIMES, Dec. 6, 2006, at A1.

198. *Id.*

199. *Id.*

200. The Campaign to Ban Partially Hydrogenated Oils, <http://www.bantransfats.com> (last visited June 27, 2007).

201. Associated Press, *KFC, Taco Bell Complete Switch to Trans Fat-Free Foods*, Apr. 20, 2007, <http://www.foxnews.com/story/0,2933,269154,00.html>.

202. For a fascinating article about the political implications of this film, see Regina Austin, *Super Size Me and the Conundrum of Race/Ethnicity, Gender, and Class for the Contemporary Law-Genre Documentary Filmmaker*, University of Pennsylvania Law School, Research Paper No. 07-24.

Spurlock vomiting in his car in the middle of his lunch. *Super Size Me* did very well for a documentary in its theater release, making over eleven million dollars and spending three weeks on the top-ten list.²⁰³ In fact, the film did so well that it led to a *Super Size Me* book and a television series for Spurlock. Most importantly, *Super Size Me* had a significant social impact, exposing a relatively unsuspecting public to the true effects of fast food consumption. Spurlock positioned himself as the American everyman—white, male, heterosexual, junk-food loving, and invincible. He emerged from his experience defeated and wiser, learning a hard but valuable lesson on behalf of the general population.

McDonald's responded to Spurlock's documentary in several ways. MTV, a youth-oriented television network with strong support from fast food advertising, refused to air commercials for the film on the grounds that it was disparaging to fast food companies.²⁰⁴ In Australia, McDonald's launched a negative ad campaign worth \$1.4 million U.S. dollars, placing ad spots in the opening trailers and offering to pay theatres to have McDonald's employees distribute apples to exiting film-goers.²⁰⁵ After the film's success, American McDonald's eliminated its super-sized portions and introduced a "Bold Balanced Lifestyle Platform," publicly endorsed by Oprah Winfrey's trainer.²⁰⁶ While these changes are positive, they represent minimal responses to deep-seated, far-reaching problems.

Unfortunately, Spurlock's film did not screen in the communities where fast food presents the greatest problems. For the audience that it did reach, it successfully drew consumer attention to the dramatic disparities between what fast food companies tell them and what actually happens to their bodies when they consume fast food. Spurlock's exposé and McDonald's' quiet acknowledgment of the truth of some of *Super Size Me's* revelations has contributed to a significant public re-characterization of McDonald's as a more malevolent presence in the United States and abroad.²⁰⁷

203. Internet Movie Database, Inc., *Box Office / Business for Super Size Me* (2004), <http://www.imdb.com/title/tt0390521/business>, for box office statistics. See also Rotten Tomatoes, *Super Size Me* (2004), http://www.rottentomatoes.com/m/super_size_me/numbers.php, for ranking statistics.

204. Defamer.com, *MTV Won't Air Super Size Me Commercial* (May 27, 2004), <http://www.defamer.com/hollywood/movies/mtv-wont-air-super-size-me-commercial-009994.php>. MTV denied this version of the events surrounding the commercial. See Gregg Kilday, *IDP Has Beef With MTV Over Super Size Me Ads*, *HOLLYWOOD REPORTER* (May 27, 2004), available at http://hollywoodreporter.com/thr/article_display.jsp?vnu_content_id=1000520016.

205. Wikipedia.org, *Super Size Me*, http://en.wikipedia.org/wiki/Super_Size_Me (last visited June 28, 2007).

206. Defamer.com, *MTV Won't Air Super Size Me Commercial* (May 27, 2004), <http://www.defamer.com/hollywood/movies/mtv-wont-air-super-size-me-commercial-009994.php>.

207. Wikipedia.org, *Super Size Me*, http://en.wikipedia.org/wiki/Super_Size_Me (last visited June 28, 2007).

ii. Fast Food Nation

Eric Schlosser's *Fast Food Nation* also had a strong impact on the public perception of fast food companies. Although Schlosser's work is more in-depth than Spurlock's film, it was also directed at and marketed to a predominantly white, liberal audience in the United States. *Fast Food Nation* spent two years on the *New York Times*' bestseller list. It sold over a million copies and was translated into more than twenty languages.²⁰⁸ The strong positive reaction to Schlosser's book led to a 2006 *Fast Food Nation* feature film, directed by Richard Linklater, with the tagline "Do you want lies with that?"²⁰⁹

Schlosser took a broad look at fast food, examining the content and quality of the food and its effects on society, from obesity to food poisoning.²¹⁰ It further exposed harmful food production techniques, bad corporate practices, and the global impact of fast food.²¹¹ Schlosser's work has contributed immeasurably to the transformation of the popular view of McDonald's and other fast food restaurants as benevolent entities, represented by kid-friendly figures such as Ronald McDonald and The Colonel, to international corporations whose relentless drive for profits comes at the expense of the world's health and well-being. Broadcasting the message that fast food companies are a significant social evil is essential to changing people's minds about the intentions of the fast food industry. This transformation, in turn, will open the door to litigation based on fast food's deliberate refusal to correct the proven ill-effects of its products.

4. Community Organizing: The Food Justice Movement

Socially conscious individuals have created a food justice movement that strives to bring healthy food back into the diets of low-income, urban Latinos and African Americans. The movement stretches across the country, from farms to inner-city blocks.

i. Agricultural Projects

Several grass-roots projects have developed to connect people in the inner city with farms across the country. These projects recognize that farms must thrive for fresh food to find its way onto urban tables. Community Supported Agriculture, or CSAs, link farmers and producers by facilitating advance purchase of a farm's produce. Members help cover farms' costs by paying for items such as seeds, fertilizer, water, equipment maintenance, and labor in

208. DePauw University Webpage, *Fast Food Nation Author Eric Schlosser to Deliver Ubben Lecture November 11*, <http://www.depauw.edu/news/index.asp?id=12983>.

209. Internet Movie Database, *Taglines for Fast Food Nation* (2006), <http://imdb.com/title/tt0460792/taglines>.

210. SCHLOSSER, *supra* note 8, ch. 9.

211. *Id.* at chs. 7-8, 10.

exchange for a share of the harvest.²¹² Local efforts include projects like Oakland's Mo' Better Food, which sponsors a variety of programs designed to connect African American farmers to the urban community, including farm study tours, a corner store project, a community-owned Soul Food Cooperative, and a kitchen certification program that allows churches and community centers to provide opportunities for locals to cook and sell food.²¹³

The Community Food Security Coalition, started by Los Angeles-based urban planning student Andy Fisher, connects over 250 people working to bring farms and educational programs together, plant gardens at schools, and improve inner-city access to healthy food.²¹⁴ Fisher also successfully lobbied for the federal Community Foods Projects, which now distributes five million dollars annually to community-based food justice efforts.²¹⁵

ii. Urban Programs

The People's Grocery in West Oakland, California is a particularly inspiring example of a community-based food justice program.²¹⁶ West Oakland is a neighborhood of 30,000 residents that has one supermarket and thirty-six liquor and convenience stores. None of these convenience stores carry any chemical-free or organic foods, and their prices are fifty to 100 percent higher than prices for identical items sold in grocery stores.²¹⁷ Twenty-five percent of the area's residents rely on food emergency programs for the majority of their food.²¹⁸ The sole supermarket is not within walking distance of many of the area's residents, and does not cater to the food preferences of its mostly African American and Latino clientele. In this high crime area, the leading cause of death is heart disease.²¹⁹

To counter these circumstances, three community activists founded the People's Grocery.²²⁰ The Grocery runs a Mobile Market: a truck stocked with fresh organic produce and other healthy products that travels through the neighborhood like a bookmobile or ice cream truck. By coming to residents, the

212. U.S. Department of Agriculture: National Agricultural Library, *Community Supported Agriculture*, <http://www.nal.usda.gov/afsic/pubs/csa/csa.shtml> (last visited June 28, 2007).

213. Mo' Better Food: Connecting Black Farmers to the Urban Community, <http://www.mobetterfood.com/table.html> (last visited June 28, 2007).

214. Lappé, *supra* note 94.

215. *Id.*

216. People's Grocery: Healthy Food For Everyone!, <http://www.peoplesgrocery.org/mission.html> (last visited Sept. 3, 2007).

217. *Id.*

218. *Id.*

219. Gregory Dicum, *Green: Produce to the People!*, SFGate.com., Mar. 9, 2005, available at <http://sfgate.com/cgi-bin/article.cgi?f=/g/a/2005/03/09/gree.DTL&hw=dicum&sn=002&sc=987>.

220. Brahm Amadi, Malaika Edwards, and Leander Sellers are the co-founders of People's Grocery.

Mobile Market solves transportation problems as well as access and affordability issues. The Grocery provides affordable organic food with the support of Mountain People's Distributors, who give significant discounts in support of the project.²²¹ The project also employs and educates local young people and runs a healthy snack counter out of the West Oakland YMCA.²²²

In nearby East Oakland, an area where many residents live twenty minutes away from a grocery store but only five minutes away from fast food, two teenagers started another food justice program.²²³ As part of HOPE (Helping Oakland's People Eat) Enterprises, Ed James and Tony Douangviseth surveyed local students and found that fifty-three percent of them bought their lunch from liquor stores and twenty-nine percent ate lunch at fast food restaurants.²²⁴ The teenagers decided to provide a healthy alternative: shredded chicken sandwiches on organic greens with potato salad, fruit salad, and lemonade for three dollars.²²⁵ If they can raise more funds, the pair plans to deliver meals to recreation centers that will sell them to families at cost.²²⁶ Further north in Berkeley, internationally-renowned chef Alice Waters started the Edible Schoolyard, a program that affords urban public schoolchildren the opportunity to grow, cook, and eat their own produce.²²⁷

Other communities around the country have started similar programs, but organizers face significant barriers to change. In some neighborhoods, the ratio is 100,000 residents to one supermarket. In areas like these, solutions like the Mobile Market will prove inadequate unless launched on a major scale. Some of the most overwhelming obstacles to overcome are psychological. Bryant Terry, creator of New York's B-healthy! (Build Healthy Eating and Lifestyles to Help Youth) movement, explained that "[e]ating healthy is synonymous with whiteness for some of these kids."²²⁸ To counter the idea that health consciousness belongs to white hippies who listen to public radio and shop at food co-ops, B-healthy! incorporates foods and seasonings familiar to African American and Latino youth in their culinary training program.²²⁹ B-healthy! also offers political education to young people in the community that challenges stereotypes about healthy eating and raises awareness about food oppression.²³⁰

221. Dicum, *supra* note 219.

222. *Id.*

223. Janine De Fao, *Two Youths Work to Cure City of Fast Food Habit*, S.F. CHRON., Aug. 1, 2004, at B-2.

224. *Id.*

225. *Id.*

226. *Id.*

227. Braiker, *supra* note 129.

228. *Id.*

229. Mark Winston Griffith, *The "Food Justice" Movement: Trying to Break the Food Chains*, BLACK COMMENTATOR, http://www.blackcommentator.com/70/70_food_justice_pf.html (last visited June 28, 2007).

230. *Id.*

Efforts to coordinate food justice work include community-organized conferences such as Just Food's 2004 "Food Justice and the Public Good: A New York City Summit on Farms and Food" and the University of California at Hastings' 2006 "Hunger for Justice" symposium.²³¹ Ideally, as the food justice movement grows, it will find its way into mainstream political thought and lead to changes in government action and policy.

B: Government Action

Community-organized programs will have only a limited impact on the problem of food oppression unless the government provides support comparable to that it bestows on the fast food industry. There is some indication that a change in the political climate could lead to positive effects on the health of lower-income, urban residents. For example, Senator Barack Obama publicly stated that "we need targeted programs, particularly to children in [minority] communities, to make sure they've got sound nutrition, that they have access to fruits and vegetables and not just Popeyes, and that they have decent spaces to play in instead of being cooped up in the house all day."²³²

There are a number of positive steps that the government could take in this direction.²³³ One is a junk food tax, similar to that imposed on cigarettes, with the proceeds going to healthy food-related programs, such as educational projects, community gardens, and cooperative markets.²³⁴ A tax would decrease fast food's appeal, push it out of the price range of many families, and market it closer to its true cost. If the resulting revenue does not find a way into impoverished communities, however, this tax would simply serve to increase hunger and transform fast food into a luxury item.²³⁵

A more equitable measure would create an age restriction on the purchase of unhealthy food.²³⁶ An age requirement similar to the one imposed on

231. JustFood.org, *Food Justice and the Public Good: A New York City Summit on Farms and Food*, www.justfood.org/press/docs/Just_Food_press_release_rev1-BR2.pdf (last visited June 28, 2007).

232. Larissa MacFarquhar, *The Conciliator*, *NEW YORKER*, May 7, 2007, at 2.

233. One innovative article proposes performance-based regulation of the food industry. Stephen D. Sugarman & Nirit Sandman, *Fighting Childhood Obesity Through Performance-Based Regulation of the Food Industry*, 56 *DUKE L.J.* 1403 (2007).

234. In May 2005, Detroit mayor Kwame Kilpatrick proposed a two percent tax on all items sold in fast food restaurants, with the proceeds going into the city budget. New York Assemblyman Felix Ortiz proposed a one percent tax on junk food, video games, and television commercials with the proceeds going to fund anti-obesity programs. Sarah Karush, *Detroit Considers Fast Food Tax*, *CBS NEWS*, May 9, 2005, <http://www.cbsnews.com/stories/2005/05/09/politics/main693793.shtml>. Yale Professor Kelly Brownell introduced the idea into the national consciousness in a 1994 *New York Times* editorial. Kelly Brownell, *Get Slim With Higher Taxes*, *N.Y. TIMES*, Dec. 15, 1994, at A29.

235. On the other hand, reducing the number of fast food restaurants in poor urban areas would adversely affect employment opportunities in those communities. A discussion of this problem and potential solutions is beyond the scope of this paper.

236. At the 2003 American Public Health Association Meeting, Public Health Institute

cigarettes and alcohol sales might prevent or curtail the development of unhealthy eating habits in children. Although parents would inevitably continue to feed their children fast food, restricting sales to adults would reduce young people's intake of fast food and encourage parents to search for alternatives by sending a clear message that fast food is unhealthy.

Local governments could impose land use requirements on fast food restaurants that would reduce their appeal and availability to children. These measures could include prohibitions on the distribution of promotional toys and games and the location of playground equipment and arcade games in fast food restaurants; a requirement that fast food outlets maintain minimum distances from schools and playgrounds; a cap on the number of fast food outlets in one community and limits on their proximity to one another; prohibition of drive-through service; and charging a fee on all fast food outlets and directing the proceeds to recreational programs.²³⁷

The government could also take an active role in litigation against corporations responsible for producing unhealthy food. The Food and Drug Administration (FDA) could devote a branch to investigating and filing suits against the fast food giants, with damages going to health care to ensure a more equitable distribution of access and quality. The money could also go to the creation of cessation programs similar to those that address nicotine addiction and substance abuse, or to subsidize healthy alternatives to fast food.

Marketing and advertising regulation could eliminate youth-targeted campaigns.²³⁸ A ban on fast food in schools in combination with a publicly funded program to provide inexpensive, nutritional lunches would dramatically reduce children's intake of fast food. Finally, broader educational programs in schools, community centers, and other public spaces as well as government-sponsored advertisements for healthy eating on television and in movie theatres would increase awareness across communities and generations.²³⁹

The FDA could also raise its standards for healthy food, requiring fast food companies to reduce the amount of dangerous fats, sodium, and cholesterol in their products. Alternatively, the FDA could require fast food

attorney Ed Bolen called for minimum age requirements to buy certain junk foods. Center for Consumer Freedom, *Public Health Activists vs. Consumer Freedom: Video Highlights*, Dec. 4, 2003, http://www.consumerfreedom.com/news_detail.cfm/headline/2248.

237. Marice Ashe et al., *Land Use Planning and the Control of Alcohol, Tobacco, Firearms, and Fast Food Restaurants*, 93 AM. J. PUBLIC HEALTH 1404 (Sept. 2003).

238. *The Elephant in The Room: Evolution, Behavioralism and Counteradvertising in the Coming War Against Obesity*, 116 HARV. L. REV., 1161, 1180-84 (2003) (arguing that the line between commercial speech and fully protected speech will soon be so blurred so as to render advertising bans unconstitutional, and that counter-advertising of the same type and quality of private-sector advertising represents the most promising tool to undermine the fast food industry's power).

239. Merely posting nutrition information is unlikely to affect youth food choices. Julianne A. Yamamoto et al., *Adolescent Fast Food and Restaurant Ordering Behavior With and Without Calorie and Fat Content Men Information*, 37 J. ADOLESCENT HEALTH 397-402 (2005).

chains to warn their customers about the unhealthy elements of their food. Where heightened standards would directly affect the quality of food in fast food restaurants, warnings would increase awareness and provide a solution more palatable to advocates of personal choice.

With many of these methods already in use to counter the ill effects of other unhealthy products, it is difficult to determine what will mark the turning point in the official policy against fast food. The fast food companies are powerful and entrenched. Few people want them to disappear altogether and, instead, welcome the sight of a conveniently located McDonald's or KFC. Ideally, sustained efforts in the legal, political, and grassroots arenas will combine to create meaningful change and reverse the alarming rates of death and disease currently afflicting communities in poor urban areas.

CONCLUSION

Fast food is a multi-billion dollar industry that relies on a close relationship with the government to ensure profits. While many outspoken critics of the food justice movement advocate a free-market society based on consumer choice, these arguments ignore the fact that, in many cases, true freedom of choice is not available to many Americans. The narrowing of choice results from the deals made between the government and the meat, dairy, and fast food industries. This cooptation keeps fast food prices artificially low. Multi-billion dollar advertising campaigns infiltrate schools and poor neighborhoods, instilling mistaken beliefs about nutrition in communities that lack the resources to counter the deception. Until more people make these connections and understand the vulnerabilities faced by poor African American and Latino communities, food oppression will continue unabated.

To approach equality in health choices and quality of life, the government should acknowledge and terminate its complicity with the fast food industry. This would entail a shift in nutrition education, beginning with a racially inclusive and vegetarian-friendly revision of the federal food guidelines. The government should also support nutrition programming that targets areas and communities affected most by the health crisis. State governments should follow California's lead by banning junk food from schools.²⁴⁰ Regulations should require fast food companies to provide accurate nutrition labeling on all their products. Restaurants failing to comply should be fined, with the proceeds going to health and educational programs. The government should provide funding to groups like the People's Grocery and B-Healthy! that are taking responsibility for getting fresh food to the people who need it most. The

240. California now bans soft drinks in elementary, middle, and high schools, has a nutritional standard for vending machine snacks, and requires more fruits and vegetables in school lunch programming. Although not perfect, these laws are a step in the right direction. 2005 Cal. SB 12; 2005 Cal SB 965.

Federal Trade Commission should regulate fast food advertising, banning ads specifically aimed at children.²⁴¹ Activists should make food oppression a central concern, demanding media attention and government intervention. Sustained efforts to accomplish these goals will result in a major shift in public thinking that, in turn, may lead to significant improvements in health and quality of life for low-income, urban communities of color.

241. This type of legislation has already been implemented in several European countries. Anthony N. DeMaria, *Of Fast Food and Franchises*, 41 J. AM. COLLEGE CARDIOLOGY 1229 (Apr. 2003).

