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THE RIGHT TO FOOD COMES TO AMERICA

Wendy Heipt

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The Right to Food Comes to America

Wendy Heipt*

Abstract

The people of Maine recently exercised an opportunity no citizen of this country has ever had before: the ability to vote on whether to enshrine a right to food in their state constitution. This Essay provides an overview of Maine's experience with food rights in order to explain how the state came to occupy this unique position.

I. Introduction

The Right to Food ("RtF") movement holds that hunger is a human rights violation and not an inevitable systematic by-product.¹ Although many people assume the RtF confers an affirmative obligation on the government to provide sufficient food directly to each person, rarely is this the case.² The RtF movement looks at food

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¹ While the term 'right to food' most correctly describes the state constitutional push this article focuses on, 'food sovereignty' is an aligned movement whose definition often overlaps with RtF principles. The term 'food sovereignty' was introduced at the 1996 World Food Summit by Via Campesina, an international movement founded in 1993 working on behalf of peasant agriculture. Although the term is now in widespread use with numerous definitions, as forwarded by Via Campesina it includes free access to seeds and the right of consumers to be able to decide what they consume and by whom it is produced. See LA VIA CAMPESINA, <https://viacampesina.org/en> (last visited Oct. 3, 2021); Tina D. Beuchelt & Detlef Virchow, *Food Sovereignty or the Human Right to Adequate Food: Which Concept Serves Better as International Development Policy for Global Hunger and Poverty Reduction*, 29 AGRIC. & HUM. VALUES 259, 259-261 (2012); *Declaration of Nyéléni*, NYÉLÉNI (Feb. 27, 2007), <https://nyeleni.org/IMG/pdf/DeclNyeleni-en.pdf>; Jessica Clendenning et al., *Food Justice or Food Sovereignty? Understanding the Rise of Urban Food Movements in the USA*, 33 AGRIC. & HUM. VALUES 165, 169 (2016). The term 'food security' is also distinguishable from the RtF, as it is not a legal concept and does not confer legal obligations.

² Certain events and subpopulations, such as prisoners, do confer such an obligation, as the state is the only source of food for people who are incarcerated. Prisoners have a right to safely receive nutritionally adequate food that must comport with the 1st and 8th Amendments to the Constitution. Lawsuits over prison food have focused on religious dietary needs, food safety, and food discipline, most notoriously over 'nutraloaf,' a composite food made up of rotating ingredients fed to inmates as punishment. See Complaint at 14, *Estate of Thomas v. Milwaukee County*, No. 2:17-cv-01128 (E.D. Wis. dismissed May 13, 2019) (alleging that the nutraloaf served at the Milwaukee County Jail was so dry that the

determination as a human right and seeks to ensure that conditions allow for citizens to access adequate amounts of appropriate and available food themselves. In other words, the right to food is a person's right to feed themselves, through their own efforts, with dignity. In order to fulfill this right, governments must afford the conditions that allow full realization of the right. There is no internationally agreed-upon model language for the RtF,³ and assorted treaties, constitutions and international bodies have used different definitions in explaining the right.⁴ I employ what I have termed the '4As' to most clearly define the RtF. The '4As' are: (1) Availability, (2) Accessibility, (3) Adequacy, and (4) Appropriateness. Availability means that individuals are able to produce, procure, and/or purchase the amount and types of food they need and desire. Accessibility means that there is sufficient infrastructure, both physical and economic, in a nation and a community, to allow individuals physical proximity to the food they need and desire and the resources to purchase that food without sacrificing other basic needs. Adequacy means that individuals are getting and will continue to get, enough calories, nutrients and micronutrients to lead healthy and safe lives. Appropriateness means that individuals are able to access food relating to their cultural preferences in a dignified manner and that food systems are environmentally sustainable over time.

The 4As emphasize that the RtF is one part of the human rights framework – an interdependent element whose achievement rests on the realization of other rights.⁵ This is because human rights

dust from the loaf set off the fire alarm); *Prude v. Clarke*, 675 F.3d 732, 733 (7th Cir. 2012).

³ See DUBRAVKA BOJIC BULTRINI, FOOD & AGRIC. ORG. OF THE UNITED NATIONS, GUIDE ON LEGISLATING FOR THE RIGHT TO FOOD 1, 3 (2009) (noting no model can account for each state's context, history or systems, but discussing key elements).

⁴ For example, the UN Special Rapporteur on the right to food defines it as the right to have regular, permanent, and unrestricted access — directly or by means of financial purchases — to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling, and dignified life free of fear. The Committee on Economic, Social and Social Rights, general comment No. 12, determined that the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. U.N., Off. of the High Comm'r, About the Right to Food and Human Rights, <https://www.ohchr.org/EN/Issues/Food/Pages/AboutHRFood.aspx> (last visited Oct. 3, 2021).

⁵ Many international instruments recognize that using a human rights framework when discussing the RtF implicates multiple other rights. For example, the ICESCR recognizes the RtF is connected to the rights to health, housing and social security. See International Covenant on Economic, Social and Cultural Rights art.

are integrally intertwined and the full realization of any one of them depends on the progress of others.⁶ To illustrate at its extreme, starvation will essentially nullify the fulfillment of all other rights. Less dramatically, a lack of sufficient food hinders the full realization of other rights. To ensure that human beings can fully realize all their fundamental human rights, they must be able to feed themselves amid conditions allowing for adequate realization of this right. The RtF asks that the government refrain from actions that stymie its realization and act in a manner that will facilitate realization of the right. It also means that the government will step in to ensure that third-party actors are not permitted to undermine the right.⁷ RtF amendments including the 4As provides future courts with a structure for interpretation and pushes recognition of the fact that hunger is a human rights and social access issue that effects marginalized communities most acutely.⁸

While the Rtf is recognized under international law and by governments around the globe, the United States has no such right in its federal constitution and has not signed onto any documents that would give that right to its citizens.⁹ Until Maine made history with

9, 11, 12, Dec. 16, 1966, U.N.T.S.14531. The UN 2030 Agenda for Sustainable Development is built around seventeen Sustainable Development Goals (SDGs) which recognize that ending hunger is inextricably linked with ending other deprivations and with strategies promoting economic growth and justice. *See* U.N., Dep't of Econ. & Social Affs., *The Sustainable Development Goals Report* (2018), <https://unstats.un.org/sdgs/report/2018/interlinkages/> (last visited Oct. 4, 2021).

⁶ *See* K. Heather Devine, *Vermont Food Access and the "Right to Food": Using the Human Right to Food to Address Hunger in Vermont*, 41 VERMONT L. REV. 177, 181-82 (2016).

⁷ As one example, this is thought to include proactive measures to eliminate harmful pesticides and the adoption of policies addressing climate change. *See* Hum. Rgts. Council, Rep. of the Special Rapporteur on the Right to Food, U.N. Doc. A/HRC/34/48 (2017); Hilal Elver (Special Rapporteur on the Right to Food), *Right to Food*, U.N. Doc. A/70/287 (2015).

⁸ That said, not every nation with an explicit or implicit right to food incorporates the 4As. This is not only because this is an evolving right but also because incorporating all of the 4As makes it more difficult to pass amendments when there is opposition. As explained below, this holds true for the experience in Maine, where drafters had to hone their proposed language to garner the votes necessary for passage. *See* H.R. 95, 130th Leg., Reg. Sess. (Me. 2021).

⁹ U.N. Food & Agric. Org., *The Right to Food Around the Globe*, <http://www.fao.org/right-to-food-around-the-globe/countries/usa/en/> (last visited Oct. 1, 2021). The most comprehensive RtF language is found in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Other relevant documents include the Universal Declaration on Human Rights, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, 1996 World Food Summit and Convention on the Rights of Persons with Disabilities. *See generally* Margaret E. McGuinness, *Exploring the Limits of*

their RtF amendment, concerns over food regulations, availability and equity in the United States have focused on only two areas: the food regulatory system and programs to feed the hungry. Efforts to challenge the food regulatory system have resulted in ‘cottage food’ or ‘food freedom’ laws, both of which provide small-scale producers with the ability to sell or donate certain food products. Efforts to address issues of food availability and equity have resulted in anti-hunger efforts such as federal nutrition programs and charitable food banks,¹⁰ both of which received increased attention during the Covid-19 pandemic.¹¹ All of these efforts to address problems with the food system actually further entrench the current structure, allow the monetization of food waste, and depend on the populace embracing temporary charity as a solution to the structural problem of hunger.¹²

International Human Rights Law, 34 GA. J. INT’L & COMP. L. 393 (2006) (discussing state behavior and international human rights). The existence of the RtF on the world stage provides two things to advocates in this country: a framework for pursuing the right and proof of an evolving standard.

¹⁰ The largest food nutrition entitlement program is the Supplemental Nutrition Assistance Program (SNAP), which actually provides significantly more food than food banks. See Dan Charles, *Food Banks Say SNAP is a Better Way to Get Food to People*, NAT’L PUB. RADIO (May 21, 2020), <https://www.npr.org/2020/05/21/860475302/food-banks-say-snap-is-a-better-way-to-get-food-to-people>. In order to qualify for SNAP in Maine, a family of four must have a before-tax annual household income below \$49,025. *Maine Supplemental Nutrition Assistance Program*, BENEFITS.GOV, <https://www.benefits.gov/benefit/1272> (last visited Oct. 2, 2021).

¹¹ Covid-19 exposed the depths of food insecurity in the country. The term food insecurity, as officially monitored by the USDA, describes households that do not have sufficient access at all times to enough food for an active, healthy life. *Food Security in the U.S.*, ECON. RSCH. SERV., U.S. DEP’T AGRIC., <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/> (Sept. 8, 2021). Many others have written about the exposure of food insecurity during the pandemic. *ee generally*, Lauren Bauer, *The Covid-19 Crisis Has Already Left Too Many Children Hungry in America*, BROOKINGS (May 6, 2020), <https://www.brookings.edu/blog/up-front/2020/05/06/the-covid-19-crisis-has-already-left-too-many-children-hungry-in-america/> (noting April 2020 survey finding a 400% increase in hunger rates); John Burnett, *Thousands of Cars Line Up at One Texas Food Bank as Job Losses Hit Hard*, NAT’L PUB. RADIO (Apr. 17, 2020), <https://www.npr.org/2020/04/17/837141457/thousands-of-cars-line-up-at-one-texas-food-bank-as-job-losses-hit-hard> (showing aerial footage of Texans lining up outside a San Antonio food bank); and Helena Bottemiller Evich, *There’s Only so Much We Can Do: Food Banks Plead for Help*, POLITICO (June, 8, 2020), <https://www.politico.com/news/2020/06/08/food-banks-plead-for-help-306492> (discussing the choice to increase public food dispersal rather than increase benefits).

¹² One way the current system has monetized waste is by reframing it as “charity” and distributing it to marginalized communities via programs such as the government’s pandemic Farmers to Families Food Box Program. Jocelyn Meyer, *Burdening Food Banks with the Charity of Waste*, ME. J. CONSERVATION & SUSTAINABILITY (2021), https://umaine.edu/spire/2021/04/08/meyer/#_edn4. See also Andrew Coe, *Free Produce, With a Side of Shaming*, N.Y. TIMES (June 25,

Unlike the RtF, none of these avenues use a human rights lens, and none provide a whole-scale transformation of a system where hungry people exist while there is sufficient food to feed everyone.¹³ But the realization that there are issues with the current system and efforts to address these problems provided a foundation of food-rights work that the RtF movement in Maine built on.

How a RtF will explicitly play out in Maine, or in any other locale, depends on what the people do with the right once it is ratified. While international human rights language provides a RtF framework, once the right is a part of the Maine constitution, the meaning it holds will be shaped by the way in which those adopting it adapt it to fit their local concerns.¹⁴ At the least, the people of Maine will be able to rely on this amendment if they believe that an existing or proposed law, regulation, or ordinance infringes on their RtF. But the means of its implementation will no doubt build on the food independence work Mainers have been doing for decades.¹⁵

II. Maine's History of Food Advocacy

Maine's RtF work rests on a recognition of food insecurity and a foundation of local food advocacy and independent local government action that has been particularly strong for the last three decades.¹⁶ Historically, the relationship between the state of Maine

2020), <https://www.nytimes.com/2020/06/25/opinion/snap-food-pantry-aid.html>. Food is often rejected after reaching grocery stores, as it is often easier for stores to discard and write-off what they do not want, even if hungry people are geographically close.

¹³ See Eric Holt-Giménez et al., *We Already Grow Enough Food for 10 Billion People...and Still Can't End Hunger*, 36 JOURNAL OF SUSTAINABLE AGRICULTURE 595, 595 (2012). See also Victor Rodriguez, *How to Feed 10 Billion People*, UNITED NATIONS ENVIRONMENT PROGRAMME (2020), <https://www.unep.org/news-and-stories/story/how-feed-10-billion-people>; Bridget Shirvell, *Should Emergency Food Be the Long-Term Solution to Hunger?*, HUNTER COLL. FOOD POL'Y CENTER. (Oct. 29, 2019), <https://www.nycfoodpolicy.org/should-emergency-food-be-the-long-term-solution-to-hunger/>; Olivier de Schutter et al., *Food Banks Are No Solution to Poverty*, THE GUARDIAN (Mar. 24, 2019), <https://www.theguardian.com/society/2019/mar/24/food-banks-are-no-solution-to-poverty>.

¹⁴ The manner in which localities adopt human rights claims to their particular needs is termed 'vernacularization.' See Peggy Levitt & Sally Merry, *Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States*, 9 GLOB. NETWORKS 441, 441 (2009).

¹⁵ Naomi Hossain & Dolf te Lintelo, *A Common Sense Approach to the Right to Food*, 10 J. HUM. RTS. PRAC. 367 (2019).

¹⁶ According to the U.S. Department of Agriculture's Economic Research Service, Maine has a food insecurity rate above the national average. See *State Fact Sheets: Maine*, ECON. RSCH. SERV., U.S. DEP'T AGRIC.,

and its localities held that municipalities were subdivisions of the state without independence.¹⁷ Over time it became clear that local issues required individualized solutions and having to procure state approval for each problem was a burden to both the municipality involved and to the state. In response, Maine added a home rule constitutional amendment in 1969, which has been accorded liberal construction and gives a presumption of authority to local enactments.¹⁸ Home rule began to flourish in the 1990s when judicial interpretation gave the amendment more teeth.¹⁹ At about the same time, Maine began a “farm renaissance,” with the number of farms, new farmers, farm production, farm size, and the percent of principal farm operators all increasing, and giving Maine the largest number of farms in New England.²⁰ Maine is also particularly supportive of community-supported agriculture and farmers’ markets – the state ranked fifth in the most recent Locavore Index and second in direct sales per capita, meaning that it has one of the nation’s strongest communities of producers and consumers of local food.²¹ Finally, Maine has also shown a willingness to innovate, resulting in its being first in the nation in a number of areas of food systems and access. For example, Maine has one of the earliest cottage food laws in the

<https://data.ers.usda.gov/reports.aspx?StateFIPS=23&StateName=Maine&ID=17854> (Sept. 9, 2021). The rate of food insecurity in Maine is higher in BIPOC communities than in white communities. See James Myall, *Issue Brief: Food Insecurity in Maine*, ME. CTR. FOR ECON. POL’Y (Dec. 23, 2019), <https://www.mecep.org/wp-content/uploads/2019/12/MECEP-Hunger-Issue-Brief-2019.pdf>.

¹⁷ Sarah Schindler, *Food Federalism: States, Local Governments, and the Fight for Food Sovereignty*, 79 OHIO ST. L. J. 772, 773, 776 (2018).

¹⁸ This amendment came out of a 1967 commission set up to study the issue, which forwarded their recommendations in 1968. A Home Rule Enabling Act was passed in 1970. In the U.S., ‘home rule’ definitions vary but generally mean that localities have the ability to exercise some governing power without express state delegation, generally resulting in a decrease in state influence over pockets of the state and a rejection of Dillon’s Rule. See ME. CONST. art. VIII, pt. 2, § 1.

¹⁹ Shane Wright, *Smith v. Town of Pittston: Municipal Home Rule’s Narrow Escape from the Morass of Implicit Preemption*, 57 ME. L. REV. 613, 614 (2005). This builds on a tradition of new England farmers who bucked authority in favor of autonomy, going back as far as the American Revolution.

²⁰ Gary Keough, *Maine Agriculture is “Up” in More Ways than One*, U.S. DEP’T. OF AGRIC. BLOG (Feb. 21, 2017), <http://blogs.usda.gov/2014/07/10/maine-agriculture-is-up-in-moreways-than-one/>; Timothy B. Clark, *Can Maine Lead New England to a Farming Renaissance?*, ROUTE FIFTY (Aug. 11, 2015), <https://www.route-fifty.com/management/2015/08/maine-farming-new-england-agriculture/119025/>.

²¹ For the most recent results, see Locavore Index 2019, STROLLING OF THE HEIFERS (May 31, 2019), <https://www.strollingoftheheifers.com/locavore/>.

country, a ‘home manufacturing’ law that has been in place since 1980.²²

Against this backdrop, the modern story of Maine and food advocacy began in 2011, with the passage of the Food Safety Modernization Act.²³ The legislation represented an overhaul of food-handling regulations aimed at increasing safety. Still, opponents worried it would negatively impact small farmers by, among other things, imposing expensive regulations, reducing access to local food, increasing chemical use, decreasing natural fertilizers, and making it harder for farms to diversify.²⁴ This law was seen as the latest affront to small farmers and food advocates in Maine, who had been battling what they saw as overly onerous regulations relating to issues such as poultry and milk since at least 2009.²⁵ Relying on the tradition of town meetings and the state’s strong home

²² On the other side, Maine was one of the first states to begin limiting SNAP, reducing the number of childless adults receiving aid by 80% but increasing reliance on food banks and the percentage of food-insecure people in the state. Aimee Picchi, *Must Work for Food Stamps: A Modest Proposal or Recipe for Hunger?*, CBS News (May 18, 2018), <https://www.cbsnews.com/news/must-work-for-food-stamps-a-modest-proposal-or-recipe-for-hunger/>.

²³ Prior to passage of the Food Safety Modernization Act, Maine advocates had formed GE Free Maine, an organization that worked with Maine communities to pass resolutions against genetically engineered foods. In 2006 GE Free Maine merged with the Independent Food Project, a local organization working on food sovereignty issues, to form Food for Maine’s Future. Food for Maine’s Future continued the work of both these organizations, and supported the town of Montville when, in 2008, they became the first Maine town to pass a binding ordinance banning the cultivation of genetically engineered crops in their community. *About*, FOOD FOR MAINE’S FUTURE, <https://savingseeds.wordpress.com/about/> (last visited Jan. 20, 2022).

²⁴ *Top 10 Problems with the Food and Drug Administration’s Proposed Food Safety Regulations for Farmers and Local Food Businesses*, NAT’L SUSTAINABLE AGRIC. COAL. (Oct. 11, 2013), <https://sustainableagriculture.net/blog/food-safety-comments-top-10/>.

²⁵ HILDA E. KURTZ ET AL., *SCALING BIOPOLITICS: ENACTING FOOD SOVEREIGNTY IN MAINE (USA)* 8, 10-12 (2013), available at https://www.tni.org/files/download/40_kurtz_2013.pdf. During this time period, Maine farmers and food advocates also had to contend with state officials encouraging compliance with the National Animal Identification System (NAIS), a program that sought to identify and track most livestock. Small farmers across the country opposed the system, and in 2006 Maine agriculture officials were assaulted with manure at a meeting discussing the system. Matthew E. Rohrbaugh, *It’s Eleven O’Clock, Do You Know Where Your Chicken Is? The Controversy Surrounding the National Animal Identification System and Its Application to Small and Organic Farmers*, 32 *Vt. L. Rev.* 407, ? (2007). In 2010, the USDA ended the NAIS program, giving a victory to farmers and their allies in Maine. *Animal Identification & Tracing: An Overview*, THE NAT’L AGRIC. L. CTR., <https://nationalaglawcenter.org/overview/animalid/> (last visited Jan. 20, 2022).

rule, a group of farmers and their allies met, consulted various community organizations, surveyed the food freedom laws being discussed and researched rights based ordinances enacted in Maine relating to water extraction. Before the Food Safety Modernization Act Passed through Congress, the group had drafted the “Local Food and Community Self-Governance Ordinance,” in order to exempt small local producers selling products for home consumption from state license and inspection regulations.²⁶ This ordinance was passed by four towns in Maine’s Hancock County,²⁶ one of which, Blue Hill, passed it by an overwhelming voice vote margin at their annual town meeting.²⁷ While there was no official state support for these ordinances, the legislature did pass a joint resolution expressing their support for food sovereignty and specifically their opposition to “any federal statute, law or regulation that attempts to threaten our basic human right to save seed and grow, process, consume and exchange food and farm products within the State of Maine.”²⁸

It was within this context – the passage of the Food Safety Modernization Act and the Blue Hill Self-Governance Ordinance – that farmer Dan Brown literally stepped in. Brown, a raw milk producer, had been selling his product without a license and without labels notifying consumers the milk was unpasteurized. Brown had been offering his wares since 2006 at his farm stand and at local farmers’ markets in the town of Blue Hill. In 2011, state officials ordered him to cease selling his product without proper licensing and labeling. Citing the local ordinance, Brown continued his operation, and on November 3, 2011 the state of Maine filed a lawsuit against Brown.²⁹

²⁶ These advocates were Heather and Phil Retberg, Deborah Evans, Bob St. Peter, and Larissa Curlik, and were supported by Kevin Ross and Liz Solet. The Ordinance caught the attention of the Community Environmental Legal Defense Fund, who brought farmer and advocate Heather Retberg to a Democracy School they sponsored.

²⁶ The other Hancock Country towns were Sedgwick, Penobscot, and Trenton, joined by a fifth town (Hope) in Knox County. Subsequently, other self-governance food ordinances were passed in and outside of Maine.

²⁷ Blue Hill, Me, Local Food and Community Self-Governance Ordinance of 2011 (Apr. 1, 2011), available at <https://www.animallaw.info/sites/default/files/lousmebluehillfarmingandfoodproduction.pdf>.

²⁸ H.P. 1176, 125th Leg., 1st Reg. Sess. (Me. 2011). Two state bills along the same lines were also introduced although neither passed, LD 366 and LD 330, both of which were proposed by Representative Walter Kumiega.

²⁹ Summons at 1, *State v. Brown*, ELLSC-CV-11-70 (Me. Super. Ct., Han. Cty., Nov. 3, 2011).

While the state claimed that a sample of Brown's raw milk had levels of bacteria high above the state's standard, they also acknowledged that the case was part of a regulatory turf war.³⁰ In response, Brown declared that he would rely on the Blue Hill ordinance and continue to sell his milk. Brown became a cause célèbre, and support for his position grew.³¹ On November 18, 2011 the Blue Hill Board of Selectmen unanimously voted to request that the state drop the charges against Brown. Despite the support, the charges remained and in April 2013, the Hancock County Superior Court granted summary judgment to the state of Maine and imposed civil penalties and costs on Brown.³² The court also enjoined Brown from selling milk without a license, selling unpasteurized milk without labeling it as such, and operating a food establishment without a license.³³ Support for Brown's position remained strong in the state, and Brown appealed his loss.³⁴ In June 2014, the Maine Supreme Judicial Court, relying on statutory construction, upheld the lower court's decision that Brown had broken the law.³⁵

Maine's food independence fight continued after Brown's loss, and by the following year seventeen towns had passed local food ordinances. At this point, activists in Maine decided to pursue a RtF at the state constitutional level. They viewed the RtF as a human right demanding forward-thinking unlike litigation, which most often looks backward to address wrongs already committed. A constitutional amendment would establish a RtF beyond the reach of

³⁰ Kevin Miller, *State Sues Blue Hill Farmer for Selling Unpasteurized Milk at Farmers' Markets*, BANGOR DAILY NEWS (Nov. 16, 2011), <https://bangordailynews.com/2011/11/16/news/hancock/blue-hill-farmer-cited-for-violating-state-law/?ref=inline>. See Press Release, Food for Maine's Future, Internal Dept. of Ag Emails Raise Questions About Motivation in Farmer Brown Case (Apr. 4, 2012) (on file with author).

³¹ See We Are All Farmer Brown, *Farmer Brown Tells His Story*, YOUTUBE (Nov. 14, 2011), <https://www.youtube.com/watch?v=NeS4RZ50uWU> (explaining that his behavior hadn't changed but the Department of Agriculture rules had).

³² *State v. Brown*, ELLSC-CV-11-70 at 1 (Me. Super. Ct., Han. Cty., Apr. 27, 2013) (Murray, J.).

³³ *Id.* at 9. Brown has since become a medical marijuana grower. Jennifer Osborn, *Marijuana Growing Supply Shop Opening in Blue Hill*, ELSWORTH AM. (Feb. 21, 2017), <https://www.ellsworthamerican.com/maine-news/business-news/marijuana-growing-supply-shop-opening-blue-hill/>.

³⁴ In the midst of Farmer Brown's fight state legislator Craig Hickman introduced concept draft HP 325. Entitled "An Act to Increase Food Sovereignty in Local Communities," it sought to "preserve the ability of local communities to produce, process, sell, purchase and consume local foods." On April 11, 2013, it received a 10-2 vote of "ought not to pass." H.P. 325, 126th Leg., 1st Reg. Sess. (Me. 2013).

³⁵ The court did not address the ordinance or Brown's claim that the ordinance exempted him from state licensing requirements and from their health and sanitation regulations. *State v. Brown*, 95 A.3d 82, 90 (Me 2014).

changing legislatures and would transform the conversation from one about marginalized individuals seeking special handouts to one about empowered communities demanding accountability.³⁶ They also recognized that a RtF embraces both positive and negative rights and that state constitutions are historically disposed to recognize positive social and economic rights.³⁷

Rep. Craig Hickman introduced the first of what would be several attempts to pass a RtF constitutional amendment in the 2015-2016 session.³⁸ The language for the proposed amendment was based on work done by food sovereignty advocates in the state, who had surveyed RtF language used internationally and also assessed food sovereignty issues nationwide in an effort to construct a proposal that reflected both human rights concerns and practical applications.³⁹ While the first attempts to pass the amendment did not have the necessary support to pass, they did receive notable backing from within the state and individuals outside Maine's borders.⁴⁰

³⁶ In addition, state constitutions are also largely flexible documents amenable to modification, offering fifty opportunities to try out different solutions. They also provide a forum for evolving standards that go beyond federal constitutional mandates. *State v. Caouette*, 446 A.2d 1120, 1122 (Me. 1982). This flexibility provides an opportunity to more accurately represent human rights values reflecting community standards particular to a single state. The close relationship between the voice of the community and their state representatives is reflected in Maine's constitutional process, where the voting public will ultimately get to vote on the RtF Amendment 384.

³⁷ Because our federal constitution is commonly believed to be an exceptional and negative document lacking positive rights, the idea of amending it to include a positive social right is generally dismissed at the outset. Negative rights are constraints on the government to prevent it from intruding on citizens' lives, and positive rights obligate the government to provide something for its citizens. While not completely accurate, it is true that for the most part, and as compared to other countries, the U.S. Constitution is more a document of negative than positive rights. EMILY ZACKIN, *LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA'S POSITIVE RIGHTS* 4, 8 (2013). The creation of both negative and positive rights attached to the RtF has been recognized even when those specific terms are not used. *See* U.N. FOOD & AGRIC. ORG., *VOLUNTARY GUIDELINES TO SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD SECURITY* 3, 5 (2004).

³⁸ H.P. 532, 127th Leg., 2d Reg. Sess. (Me 2015).

³⁹ These advocates include Heather Retberg and Craig Hickman, who consulted with legislative committee members, farmworkers, and members of the Maine Farm Bureau."

⁴⁰ For example, these RtF proposals were supported by Food for Maine's Future, the Farm-to-Consumer-Legal-Defense-Fund, the Maine State Grange, Local Food Rules, the Maine Organic Farmers and Gardeners Association, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and numerous local food co-operatives.

In 2017, Maine again made food news history when it passed LD 725, “An Act to Recognize Local Control Regarding Food Systems,” a bill that gave Maine towns and cities the right to pass local ordinances allowing food products to be exempt from state and federal regulation or inspection.⁴¹ This exemption included but was not limited to, meat, poultry, milk, dairy products, processed foods, canned foods, juice, eggs, fish, and seafood. The governor signed the bill, and the Maine Food Sovereignty Act was set to take effect November 1, 2017, by which point twenty Maine towns had passed these ordinances.⁴² The USDA reacted quickly, sending a letter that questioned whether the state would be able to maintain sufficient food safety standards to enable it to retain its inspection authority.⁴³ If Maine lost that authority, it would no longer be legal to sell meat processed at state facilities. Practically, this would mean fewer facilities for processing, increased and more expensive transportation for farmers, longer waits for products, and, ironically, increased federal involvement. Maine farmers, faced with a shutdown of the meat inspection program during their fall season – a shutdown that would likely close the doors of small-scale livestock and poultry farmers and slaughterhouses – began to support a proposed fix to the bill.⁴⁴ In response to the USDA’s warning and the farmers’ concerns, the state legislature held a special session and voted to amend LD 725 to, among other things, exempt meat and poultry processing from the food sovereignty law so that the state-inspected meat processing facilities would be able to continue operating.⁴⁵ The amendment was signed by the governor on October 31, 2017.⁴⁶

Each of these skirmishes: the local ordinances, Brown’s legal fight, and the Maine Food Sovereignty Act, generated increased awareness around issues of food independence and brought new

⁴¹ S.P. 242, 128th Leg., 1st Reg. Sess. (Me. 2017).

⁴² Suzanne Dunham, *New Local Food Ordinances Important for Maine Farmers*, SUN J. (Aug. 20, 2017), <https://www.sunjournal.com/2017/08/20/new-local-food-ordinances-important-for-maine-farmers/>.

⁴³ Letter from Alfred V. Almanza, Acting Deputy Under Sec’y, Off. of Food Safety, to Walter Whitcomb, Maine Dept. of Agric. Comm’r (July 6, 2017), https://drive.google.com/file/d/0B3PYp5sROj_1NkxMa3BRMHNVOXdkTDDVwajNZN245VDA0Vzdj/view?usp%3Dsharing

⁴⁴ *Legislative Alert*, ME. FARMERS MARKETS, <http://www.maine farmers markets.org/wp-content/uploads/2017/10/Legislative-Update-re-Food-Sovereignty-Law.pdf>. (last visited Oct. 7, 2021).

⁴⁵ Letter from Governor Paul R. LePage to the Legislature (Aug. 29, 2017), https://drive.google.com/file/d/0B3PYp5sROj_1QTEzTWZaZWtBV05NUFhnVmZudGItYlp3aFJJ/view?usp%3Dsharing.

⁴⁶ SP 242, 128th Leg., 1st Reg. Sess. (Me. 2017).

allies into the push for a state constitutional RtF. In January 2021, Representative Billy Bob Faulkingham introduced H.P. 61 (L.D. 95) in the Maine House of Representatives, again seeking to add a RtF amendment to the Maine Constitution.⁴⁷

In order to move forward, both the House and the Senate had to approve the amendment by a two-thirds majority. The proposal first went before the Committee on Agriculture, Conservation and, Forestry, which considered testimony and input and, in April 2021, gave the resolution a unanimous ought-to-pass report.⁴⁸ On May 18, 2021, the Maine House of Representatives voted 104 to 41 in favor of passage, exceeding the two-thirds threshold.⁴⁹ The resolution then went to the Senate, and on June 14, 2021, was placed on the Special appropriations table pending final passage before the session adjourned.⁵⁰ On July 2, 2021 the proposal passed the Maine Senate with a bipartisan two-thirds majority of 23-10.⁵¹ The amendment was placed on the statewide ballot in November of 2021 and passed with over 60% of the popular vote, making the RtF an official part of the Maine constitution.⁵² The state of Maine now has the only constitutionally enshrined RtF in the country.⁵³

III. Analyzing Maine's Work

While advocates recognize that the interests of those working for independence, food security, and farmers are

⁴⁷ The only other state to introduce legislation seeking to establish a constitutional RtF is West Virginia. On March 15, 2021, Delegate Danielle Walker introduced House Joint Resolution 30, the "Right to food, food sovereignty and freedom from hunger," a proposed addition to article three, section twenty-three of the West Virginia Constitution. H.R.J. Res. 30, 85th Leg., 2021 Reg. Sess. (W. Va. 2021). The state of Washington has also begun the process, inaugurating an advisory council in 2021 with the intention of introducing RtF legislation by 2023.

⁴⁸ Proposing an Amendment to the Constitution of Maine to Establish a Right to Food, H.R. Res. 61, 130th Leg., 1st Spec. Sess. (Me. 2021), https://legislature.maine.gov/legis/bills/display_ps.asp?LD=95&snum=13.

⁴⁹ *Maine LD95*, TRACK BILL, <https://trackbill.com/bill/maine-legislative-document-95-resolution-proposing-an-amendment-to-the-constitution-of-maine-to-establish-a-right-to-food/1975008/>.

⁵⁰ *Id.* Note that this year Maine also considered a piece of concept draft legislation that sought to end hunger by 2030, in line with the SDG recommendations. *See* H.P. 127, 130th Leg., 1st Spec. Sess. (Me. 2021).

⁵¹ *See* LD 95, FASTDEMOCRACY, <https://fastdemocracy.com/bill-search/me/130/bills/MEB00008554/#votes> (last visited Oct. 7, 2021).

⁵² Patrick Whittle, *Maine Voters Pass the Nation's First 'Right to Food' Amendment*, PRESS HERALD,

<https://www.pressherald.com/2021/11/02/supporters-of-right-to-food-amendment-lead-in-early-returns/> (Nov. 3, 2021).

⁵³ *Id.*

interconnected, in my view, Maine's RtF work is grounded in a farmer/producer, independent locality, and libertarian perspective.⁵⁴ Specifically in Maine, most of the work in the food sovereignty arena was initiated by towns seeking autonomy.⁵⁵ This work garnered support across the political spectrum. Maine's experience, viewed with an understanding of the unique characteristics of the state and the origination perspective of its RtF work, can inform other localities seeking to incorporate a RtF in their state constitutions that encompasses the 4As.

The proposed amendment that passed both houses of the Maine legislature this summer reads as follows:

All individuals have a natural, inherent and unalienable right to food, including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food.⁵⁶

It is enlightening to contrast this language with that of the first RtF constitutional amendment drafted in Maine. As further explained below, the differences between the two proposals are, first and

⁵⁴ In my view, West Virginia's decision to seek a constitutional amendment on the RtF originated with advocates working on anti-hunger and anti-poverty projects, and the decision to forward the proposed amendment came from a legislator with a personal history of food insecurity. This differing origination point may influence allies, approaches, and the language used as the work proceeds.

⁵⁵ Joao Fonseca, *Empowering the People to Nourish: Right to Food in the State of Maine*, WHYHUNGER, (June 17, 2019), <https://whyhunger.org/category/blog/empowering-the-people-to-nourish-right-to-food-in-the-state-of-maine/>. While Maine's largest food bank has most recently hesitated in supporting the RtF, see they testified in support of a previous iteration of the bill. Austin Bryniarski, *How Food Banks Are Advancing the Right to Food Movement*, FOOD BANK NEWS (Jan. 27, 2021), <https://foodbanknews.org/how-food-banks-are-advancing-the-right-to-food/>.

⁵⁶ H.P. 61, 130th Leg., 1st Spec. Sess. (Me. 2021). When the proposed amendment went to the voters, it read: "Do you favor amending the Constitution of Maine to declare that all individuals have a natural, inherent and unalienable right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health, and well-being?" *Maine Question 3, Right to Produce, Harvest, and Consume Food Amendment (2021)*, BALLOTPEDIA, [https://ballotpedia.org/Maine_Question_3,_Right_to_Produce,_Harvest,_and_Consume_Food_Amendment_\(2021\)](https://ballotpedia.org/Maine_Question_3,_Right_to_Produce,_Harvest,_and_Consume_Food_Amendment_(2021))(last visited Oct. 7, 2021).

foremost, the result of the fact that Maine has been honing their proposal through multiple legislative sessions, gathering input, and engaging in compromise. Deletions made were in response to concerns about the language as written, as opponents assumed that the foundational principle contained in the proposal would mandate specific future actions they would take issue with. While proposal advocates were committed to retaining language they deemed essential, they were willing to compromise.⁵⁷ The original resolution, as amended by the House and forwarded to the Senate, read as follows:

All individuals have a natural, inherent and unalienable right to food, including the right to acquire, produce, process, prepare, preserve and consume the food of their own choosing by hunting, gathering, foraging, farming, fishing, gardening and saving and exchanging seeds or by barter, trade or purchase from sources of their own choosing for their nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the acquisition of food; furthermore, all people have a fundamental right to be free from hunger, malnutrition, starvation and the endangerment of life from the scarcity of or lack of access to nourishing food. Every individual is fully responsible for the exercise of these rights, which may not be infringed.⁵⁸

Most striking in the 2021 version of the proposal is the omission of the final sentence, “all people have a fundamental right to be free from hunger, malnutrition, starvation and the endangerment of life from the scarcity of or lack of access to nourishing food.” Contextual setting pronouncements such as this one are often used to guide future implementation and interpretation by making the purpose of the proposal clear.⁵⁹ In this case, the sentence was amended out of

⁵⁷ BULTRINI, *supra* note 3, at 6 (noting no model can account for each state’s context, history or systems, but discussing key elements).

⁵⁸ H.P. 583, 129th Leg., 2d Spec. Sess. (Me. 2019). Note that when first submitted, the proposal read as follows: “Every individual has a natural and unalienable right to food and to acquire food for that individual’s own nourishment and sustenance by hunting, gathering, foraging, farming, fishing or gardening, or by barter, trade or purchase from sources of that individual’s own choosing, and every individual is fully responsible for the exercise of this right, which may not be infringed.” H.P. 532, 127th Leg., 2d Reg. Sess. (Me. 2015).

⁵⁹ See generally, ANN SEIDMAN ET AL., LEGISLATIVE DRAFTING FOR DEMOCRATIC SOCIAL CHANGE: A MANUAL FOR DRAFTERS (1st ed. 2000); OPEN SOC’Y JUST.

the bill on the floor of the House, when legislators expressed concern that this language would require the Maine government to literally provide food to each Maine resident.

There is also the elimination of the phrase “purchase from sources of their own choosing.” Opposition to this phrase was epitomized the second time this proposed amendment was introduced. While the Maine Department of Agriculture supported the RtF ‘in concept’ this round, they expressed concern over the intent of the language and its possible conflict with existing law.⁶⁰ Also eliminated are the words “hunting, gathering, foraging, farming, fishing, gardening.” These were struck when the Maine Department of Inland Fisheries and Wildlife and the Department of Agriculture expressed apprehension that these words would be interpreted as meaning that people would not have to adhere to existing regulations.⁶¹ Interestingly, the last sentence of the version that passed this summer does include the words “harvesting, production or acquisition of food” while the original language spoke only of the “acquisition of food.” While implementation is yet to come, it stands to reason that these words may in fact cover much of the activity originally sought to be contained when the proposal was first drafted. Finally, the language of the passed proposal enumerates specific examples of the rights it is bestowing, using words most associated with farming, such as ‘grow,’ ‘raise,’ and ‘harvest,’ as opposed to ‘acquire,’ ‘process,’ ‘prepare,’ and ‘preserve.’⁶²

INITIATIVE, LEGAL WRITING FOR HUMAN RIGHTS CLAIMS PRACTICE NOTES 3 (2018); LEGIS. COUNCIL, ME. STATE LEGIS., MAINE LEGISLATIVE DRAFTING MANUAL (6th rev. 2016), available at <https://legislature.maine.gov/doc/1353>.

⁶⁰ *Proposing an Amendment to the Constitution of Maine to Establish a Right to Food: Hearing on L.D. 795 before the J. Comm. on Agric., Conservation & Forestry*, 129th Leg. (2019) (statement of Emily Horton, Director of Policy and Community Engagement for the Department of Agriculture, Conservation and Forestry).

⁶¹ *Id.*

⁶² Each of the changes detailed above were made in an effort to strike a compromise that would mollify detractors while also preserving a RtF. For future drafters seeking to fully incorporate the 4As ‘food’ could be replaced with ‘adequate, available, accessible, and adequate food’ to more perfectly incorporate human rights language. Similarly, ‘right’ can be replaced with ‘human right’ to make that intention clearer. These words hold import, as they reinforce underlying human rights principles. ‘Adequacy’ in this context means individuals are now getting, and will continue to get, enough calories and nutrients to lead healthy and safe lives. ‘Available’ references an intent to ensure all people have the capacity to buy or produce what they need. ‘Accessible’ interlocks this right with others, not just by ensuring that people have the physical means to reach food but also that they have the means to purchase whatever food is not otherwise secured. ‘Appropriate’ ties in environmental sustainability concerns and ensures that the RtF is delivered in a respectful manner. Additionally, from a human rights

In addition to disagreements over specific language, the RtF also encountered opposition from parties asserting that the amendment was unnecessary and simultaneously expressing concerns about the effects it might have. While opponents were ultimately unsuccessful in preventing the proposal from effectively passing both chambers, the issues raised throughout the process are instructive for both Maine's future debate around public approval of the amendment and for RtF advocates in other jurisdictions. For the most part, these concerns focused on the lack of a need for the amendment, on seeds, animal welfare, excessive litigation, zoning, and general unintended consequences.

The supposed superfluosity of the proposal had been raised since its initial introduction. Even opponents contesting specific aspects of the legislation usually began their testimony by averring that it was unnecessary, as the right already existed both practically and in varying fragments of existing Maine law.⁶³ This difficulty in conceptualizing the need for a RtF is a common one, as many people believe that the right is both abstract and a natural one, belonging to everyone by virtue of their being human. Proponents were able to successfully explain that passing a RtF ensures that this right has a responsibility attached to it, and that responsibility includes respecting the rights of individuals to feed themselves, protecting that right against those whose actions would encroach upon it, and helping to facilitate realization of that right through connected concerns.

Other objections were more specific than a general worry about natural law. The Maine Veterinary Association feared a right to access food might lead to individuals raising food animals in unhealthy conditions, such as a cow in an apartment or hens in a

perspective, including limiting language such as "commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources" shifts the perspective from the traditional goal of respecting, protecting, and fulfilling a right to one of constraint. This language of limitation was added at the very start of Maine's fight for a constitutional amendment, when in initial discussions legislators raised concerns that not having such limitations would be a green light for stealing and other crimes, despite the fact that even though those crimes would still be valid. In states where it is feasible to do so, another way to approach the goal of ensuring respect for all rights while embracing a human rights point of view could be: *No limitation to the exercise of the right to food is permitted unless it is compatible with the right to food and is required by law.*

⁶³ *Proposing an Amendment to the Constitution of Maine to Establish a Right to Food: Hearing on L.D. 783 before the J. Comm. on Agric., Conservation & Forestry*, 127th Leg. (2015) (statement of Ellis Addition, Director of the Bureau of Agriculture, Food and Rural Resources).

basement.⁶⁴ Animal Rights Maine testified about concerns over the effect the amendment might have on the ability to enact animal management and gun safety laws.⁶⁵ Other parties testified about future unintended consequences in general,⁶⁶ with some labeling these “severe” for “agriculture and food safety” across the state.⁶⁷ The Maine Municipal Association, while agreeing “that the right to food is inherent,” testified against the bill because they also believed it might create problematic case law in the future.⁶⁸ One legislator testifying in opposition to the proposed amendment asserted that she and the Municipal Association had concerns about having to litigate ordinances already in place in areas such as Lewiston, Auburn, and Portland, congested areas where raising farm life would be problematic.⁶⁹ There was also deliberation over whether the language pertaining to seeds posed any conflict with Maine’s certified seed/seed potato program.⁷⁰ At an Agriculture, Conservation and

⁶⁴ *Proposing an Amendment to the Constitution of Maine to Establish a Right to Food: Hearing on L.D. 95 before the J. Comm. on Agric, Conservation & Forestry*, 130th Leg. (2021) (statement of Janelle D. Tirrell, Legislative Committee Chair, Maine Veterinary Medical Association); *see also Id.* (statement of Katie Hansberry, Maine State Director, Humane Society).

⁶⁵ *Id.* (statement of Melissa Gates, Founding Director, Animal Rights Maine).

⁶⁶ *Id.* (statement of Susanna Richer); *Id.* (statement of Emily Horton, Director of Policy and Community Engagement, Maine Department of Agriculture, Conservation & Forestry).

⁶⁷ *Action Alert: Contact Your Legislators Today to OPPOSE LD 795!*, ME. FARM BUREAU (June 18, 2019), <https://www.maine farm bureau.us/action-alert-contact-your-legislators-today-to-oppose-ld-795/>.

⁶⁸ *See Hearing on L.D. 95, supra* note 65 (statement of Janelle D. Tirrell, Legislative Committee Chair, Maine Veterinary Medical Association); *see also Id.* (statement of Rebecca Graham, Legislative Advocate, Maine Municipal Association).

⁶⁹ *Proposing an Amendment to the Constitution of Maine to Establish a Right to Food: Hearing on L.D. 95 before the House of Representatives*, 130th Leg. (2021) (statement of Kathleen Dillingham). Note that Lewiston, Auburn and Portland are the immigrant centers of Maine, and Lewiston has one of the highest per capita Muslim populations in the United States. Kathryn Skelton, *Stronger Than Barriers: Lewiston-Auburn’s Immigrant Community Hustles, Thrives with the Help of Local Groups*, SUN J. (Apr. 26, 2021), <https://www.sunjournal.com/2021/04/25/new-mainers-new-jobs/> (Apr. 26, 2021). Maine also has the highest per capita number of anti-Muslim incidents per person. *See Anti-Muslim Activities in the United States 2012-2018*, NEW AM. MUSLIM DIASPORA INITIATIVE, <https://www.newamerica.org/in-depth/anti-muslim-activity/> (last visited Oct. 7, 2021).

⁷⁰ Although for most of human history, seeds were sold or exchanged freely, a rash of laws in the 1980s transformed the seed market, exponentially increasing the number of plant patents from less than 120 in 1990 to over 12,000 today. Four companies currently own over 60% of the world’s seeds, contributing to a constriction of biodiversity and an increase in biopiracy. *See Dan Barber, Save our Food. Free the Seed*, N.Y. TIMES (June 7, 2019),

Forestry committee work session, the committee's legislative analyst reported on two opinions advising that the language revealed an intent to limit the application to individuals, who could save and reuse seeds for their own use but could not sell them commercially, and a distinction between certified seed potatoes and seeds.⁷¹ In the end, the language on seeds was accepted as written, but the dispute highlights the need for utilization of a common human rights language, as struggles over seeds have been a consistent factor in RtF work across the globe.⁷²

For each of the concerns raised above, advocates of the bill engaged in discussions, with those raising objections and sought to clarify both their intent and the purpose of the bill. In response to these explanations and the compromise language laid out above, some opponents changed their positions. For example, the Maine Department of Agriculture stated that they were neither for nor against the bill, based on conversations with Sen. Hickman and his openness to their concerns.⁷³ This year's long dialogue relied on the relationships between legislators and neighbors and the willingness of those forwarding the amendment to explain themselves and to compromise.

Advocates of the proposed amendment also relied on themes that resonated in the state to bring people on board. Those included an argument that the RtF is the 'second amendment for food' and distinguishing between protecting and providing, a distinction Rep. Hickman had been asserting since he began submitting these proposals and one that continued through the current submission.⁷⁴

<https://www.nytimes.com/interactive/2019/06/07/opinion/sunday/dan-barber-seed-companies.html>.

⁷¹ Note that the opinions of the state assistant attorney general and the University of Miami law clinic related only to what the plain language suggests at this juncture and did not purport to predict future judicial interpretations. See Maine Agriculture, Conservation and Forestry Committee, *ACF Work Session 4/15/2021*, YOUTUBE (Apr. 15, 2021), <https://youtu.be/PdyY8LU20EA?t=5443>.

⁷² Controversies over seeds often ignore the contributions of farmers and indigenous communities. Recognition of this omission gave rise to a 2001 treaty that, *inter alia*, seeks to protect farmers' rights to participate in decision making and benefits. See International Treaty on Plant Genetic Resources for Food and Agriculture art. 9, Mar. 11, 2001, Exec. Rep. 111-7, 2400 U.N.T.C. I-43345.

⁷³ *Proposing an Amendment to the Constitution of Maine to Establish a Right to Food: Hearing on L.D. 95 Before the J. Comm. on Agric., Conservation & Forestry*, 130th Leg. (2021) (statement of Emily Horton, Director of Policy and Community Engagement, Maine Department of Agriculture, Conservation and Forestry).

⁷⁴ See *Proposing an Amendment to the Constitution of Maine to Establish a Right to Food: Hearing on L.D. 795 Before the J. Comm. on Agric., Conservation &*

Proponents repeatedly explained the difference between a constitutional statement and the fulfillment of that right, making it clear through the years that a RtF does not automatically obligate the government to provide food.⁷⁵ Finally, they addressed the concern that the amendment was not needed. In the words of Rep. Faulkingham, “if we needed this Amendment now, then it would already be too late. Rarely are amendments adopted when they are needed. They are adopted many years before, by legislators who had the foresight to pass them for the benefit of future generations.”⁷⁶

Despite the objections raised by detractors, backers of Maine’s RtF amendment were able to successfully explain the proposal to the people, and again give Maine the distinction of being first in the nation in an area of food advocacy.

IV. Conclusion

As we can see, individuals with negative experiences around the food system started the push for a constitutional right to food in Maine. That experience primarily came from local farmers facing restrictions on their ability to sell their products and was forwarded for six years before passing. As the nation becomes increasingly aware of the prevalence of food insecurity, the push for a right to food will only increase. Maine’s experience will continue to provide guidance for activists across the country.

Forestry, 129th Leg. (2019) (statement of Rep. Craig Hickman); *Proposing an Amendment to the Constitution of Maine to Establish a Right to Food: Hearing on L.D. 95 Before the J. Comm. on Agric., Conservation & Forestry*, 130th Leg. (2021) (statement of Rep. Billy Bob Faulkingham).

⁷⁵ See *Proposing an Amendment to the Constitution of Maine to Establish a Right to Food: Hearing on L.D. 795 Before the J. Comm. on Agric., Conservation & Forestry*, 129th Leg. (2019) (statement of Rep. Craig Hickman).

⁷⁶ *Proposing an Amendment to the Constitution of Maine to Establish a Right to Food: Hearing on L.D. 95 Before the J. Comm. on Agric., Conservation & Forestry*, 130th Leg. (2021) (statement of Rep. Billy Bob Faulkingham).