

# From A Culture Of Food Waste To A Culture Of Food Security: A Comparison Of Food Waste Law And Policy In France And In The United States

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# FROM A CULTURE OF FOOD WASTE TO A CULTURE OF FOOD SECURITY: A COMPARISON OF FOOD WASTE LAW AND POLICY IN FRANCE AND IN THE UNITED STATES

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## INTRODUCTION

Fighting food waste fights hunger. It also cleans the planet. Currently, one third of all the food produced in the world—1.3 billion tons of edible food—goes to waste every year.<sup>1</sup> Each ton of food wasted produces 3.8 tons of the world's greenhouse gas emissions.<sup>2</sup> In America, wasted food produces over 20% of methane gas emissions annually.<sup>3</sup> Recovering all this wasted food could feed the food insecure, could clean the environment, and could even create new market opportunities within the food industry.<sup>4</sup> If food industry businesses find ways to resell or recover the cost of what they currently throw away, this recovery improves their efficiency.<sup>5</sup> But what serves as the best legislative or legal framework to eliminate food waste? Or is the fight against food waste more a private matter? This Note will evaluate and compare both the American and the French approaches to the complex worldwide problem of food waste, or *gaspillage alimentaire*.<sup>6</sup>

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<sup>1</sup> *Key facts on food loss and waste you should know!*, FOOD & AGRIC. ORG. OF THE UNITED NATIONS, <http://www.fao.org/save-food/resources/keyfindings/en/> [https://perma.cc/Y8QA-XH67] (last visited Jan. 11, 2019).

<sup>2</sup> Bonnie L. Smith, Note, *Heat Up Those Leftovers, Not the Planet: How Combatting Food Waste Can Affect Climate Change*, 18 VT. ENVTL. L.J. 648, 650 (2017).

<sup>3</sup> *Id.* at 649.

<sup>4</sup> *Id.*; Karen Schanes, Karin Dobernic & Burcu Gozet, *Food waste matters—A systematic review of household food waste practices and their policy implication*, 182 J. CLEANER PROD. 978, 986, 988 (2018).

<sup>5</sup> See Coralie Garandeau, *Alimentation: l'appli maligne contre le gaspillage*, LE PARISIEN (Sept. 4, 2017, 12:20 AM), <http://www.leparisien.fr/environnement/alimentation/alimentation-l-appli-maligne-contre-le-gaspillage-04-09-2017-7233093.php> [https://perma.cc/4RP7-AASE].

<sup>6</sup> See Eric de la Chesnais, *Comment une loi a réussi à réduire le gaspillage alimentaire en France*, LE FIGARO (Feb. 3, 2017, 3:57 PM), <https://www.lefigaro.fr/conjoncture/2017/02/03/20002-20170203ARTFIG00199-comment-une-loi-a-reussi-a-reduire-le-gaspillage-alimentaire-en-france.php> [https://perma.cc/BYA4-NT63].

In the United States, the Bill Emerson Good Samaritan Food Donation Act's intention is to encourage businesses and individuals to donate unused food.<sup>7</sup> This Act reduces liability for those businesses and individuals who donate unwanted food to charities and food banks.<sup>8</sup> In France, the lawmakers have taken a much more aggressive approach to the problem of food waste.<sup>9</sup> They passed a law mandating the donation of unsold food from supermarkets to non-profit organizations.<sup>10</sup> If the supermarket fits certain criteria, it must then contract with local charities to donate unwanted food to avoid a monetary penalty.<sup>11</sup>

Although the U.S. law seems insufficient and ineffective to tackle the problem of food waste in America, the French law goes too far.<sup>12</sup> Penalties should be a last resort to a problem, especially when other solutions could prove more effective. Adequate policies to reduce food waste include the use of technology and tax incentives, the promotion of local agriculture, Community Supported Agriculture ("CSA"), urban farming, and public advertising campaigns.<sup>13</sup> A government approach that promotes private-sector initiatives can feed our hungry and reduce the carbon emissions caused by the food we throw away.

This Note will (1) lay out and evaluate the current status of American law regarding food waste, (2) explain and evaluate the current French law and the 2016 ban on supermarket food waste, (3) compare and contrast the French and the American approach to food waste, and (4) propose multipronged legal and policy-based solutions that find a more effective middle ground between the two approaches.

## I. THE STATUS OF AMERICAN LAW: HOW U.S. LAW COMBATS FOOD WASTE

In October of 1996, Congress passed the Bill Emerson Good Samaritan Food Donation Act ("Bill Emerson Food Donation law" or

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<sup>7</sup> Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C. § 1791 (2012) [hereinafter Bill Emerson Food Donation Act].

<sup>8</sup> *Id.*

<sup>9</sup> See Loi 2016-138 du 11 février 2016 relative à la lutte contre le gaspillage alimentaire, JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.], Feb. 12, 2016, [https://www.legifrance.gouv.fr/jo\\_pdf.do?id=JORFTEXT000032036289](https://www.legifrance.gouv.fr/jo_pdf.do?id=JORFTEXT000032036289) [<https://perma.cc/NLM5-P87T>] [hereinafter Loi 2016-138].

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Bill Emerson Good Samaritan Food Donation Act, *supra* note 7; Loi 2016-138, *supra* note 9.

<sup>13</sup> See *infra* Part V.

“Act”).<sup>14</sup> This Act, designed to encourage individuals and organizations to donate food to the needy, reduced the liability of people, gleaners,<sup>15</sup> and nonprofit organizations participating in food donation efforts.<sup>16</sup> Normally, American law uses strict liability when it comes to food preparation and distribution.<sup>17</sup> This means that if a person gets sick as a result of the food they consume, whoever prepared and/or distributed that food is automatically liable for the illness, regardless of intent or other mitigating factors.<sup>18</sup> By enacting the Bill Emerson Food Donation law, Congress protected those who wanted to feed and distribute food to the poor and needy.<sup>19</sup> This Act eliminated strict liability and imposed a standard of gross negligence liability on all qualified food donations.<sup>20</sup> Only grossly negligent donators could be held liable if such donated food resulted in injury or illness.<sup>21</sup>

The Bill Emerson Food Donation law, originally passed in 1996, has been supported by similar legislation combatting food waste, such as the Volunteer Protection Act of 1997<sup>22</sup> (reducing liability for nonprofit and government volunteers),<sup>23</sup> the Federal Food Donation Act of 2008<sup>24</sup> (requiring contract language of all federal contracts over \$25,000 to include language encouraging food donation of any surplus food),<sup>25</sup> and Emergency Food Assistance Program<sup>26</sup> (allowing the Secretary of Agriculture to give monetary assistance to agencies participating in gleaning initiatives).<sup>27</sup> Current federal law also allows the Secretary of Agriculture to distribute grants to non-profits helping impoverished communities,<sup>28</sup>

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<sup>14</sup> Bill Emerson Good Samaritan Food Donation Act, *supra* note 7.

<sup>15</sup> Gleaning, or “[f]ield gleaning,” connotes “the ‘collection of crops from farmers’ fields that have already been mechanically harvested or where it is not economically or logistically feasible to field harvest. It can also include the collection of already harvested food at packing sheds.’” Laurie J. Beyranevand, Amber Leasure-Earnhardt & Rebecca Valentine, *The National Gleaning Project: Gleaning Resources Hub*, VT. L. SCH. 1, 7 (May 2015), <http://forms.vermontlaw.edu/farmgleaning/GleaningReport.pdf> [<https://perma.cc/LSR4-5FXC>].

<sup>16</sup> *Id.* at 10.

<sup>17</sup> David L. Morenoff, *Lost Food and Liability: The Good Samaritan Food Donation Law Story*, 57 FOOD & DRUG L.J. 107, 108 (2002).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Bill Emerson Good Samaritan Food Donation Act, *supra* note 7.

<sup>21</sup> *Id.*

<sup>22</sup> Volunteer Protection Act, 42 U.S.C.A. § 14501 (2012).

<sup>23</sup> *Id.*

<sup>24</sup> Federal Food Donation Act of 2008, 42 U.S.C.A. § 1792 (2012).

<sup>25</sup> *Id.*

<sup>26</sup> 7 U.S.C. § 7508 (2012).

<sup>27</sup> *Id.*

<sup>28</sup> 7 U.S.C. § 2034 (2012).

encourages U.S. Department of Agriculture (“USDA”) Farmers Markets to donate surplus food at the end of each market day,<sup>29</sup> and grants enhanced tax deductions for C corporations donating unwanted foodstuffs.<sup>30</sup> The primary focus of current federal law seems to be encouraging businesses and individuals to more freely give unwanted food and produce to food banks and charities in the United States by relaxing their fear of lawsuits and offering them exchange incentives like tax write-offs (incentives similar to tax deductions allowed for many other charitable contributions).<sup>31</sup>

The downside of reducing liability is less legal protection for the poor people who consume donated food.<sup>32</sup> However, alleviating hunger mitigates the risks associated with reduced liability. Furthermore, the Bill Emerson Food Donation law still requires the donator to ensure the food is “apparently wholesome” and “donated in ‘good faith.’”<sup>33</sup> Although this law seems like a necessary and important first step in the fight against food waste in America, it does not go far enough.<sup>34</sup> The law’s main focus is to provide for the poor.<sup>35</sup> It is not designed to address environmental issues, such as the modern carbon crisis.<sup>36</sup>

Examining the legislative history behind the Bill Emerson Food Donation law reveals the congressional intent for the legislation.<sup>37</sup> The bill had two co-sponsors, Pat Danner, a Democrat from Missouri, and Bill Emerson, a senior Republican from Missouri.<sup>38</sup> Both of these co-sponsors testified to Congress that the bill would help encourage food donation to local charities.<sup>39</sup> Their testimony addressed food insecurity in America and how this bill might help alleviate hunger.<sup>40</sup> Representative Danner added that the “a major corporate donor to the Missouri-Kansas Regional Food Bank withdrew its donations citing the ‘patchwork of laws governing food donation throughout the United States as a reason for discontinuing

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<sup>29</sup> 7 C.F.R. § 170.12(c) (2005).

<sup>30</sup> I.R.C. § 170(e)(3) (2010).

<sup>31</sup> *Id.*

<sup>32</sup> See Bill Emerson Good Samaritan Food Donation Act, *supra* note 7.

<sup>33</sup> See Beyranevand, Leasure-Earnhardt & Valentine, *supra* note 15, at 10 (quoting Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C. § 1791 (2010)).

<sup>34</sup> See Bill Emerson Good Samaritan Food Donation Act, *supra* note 7.

<sup>35</sup> *See id.*

<sup>36</sup> *See id.*

<sup>37</sup> See Stacey H. Van Zuiden, Note, *The Good Food Fight for Good Samaritans: The History of Alleviating Liability and Equalizing Tax Incentives for Food Donors*, 17 DRAKE J. AGRIC. L. 237, 244 (2012).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

[their] food donation policy.’”<sup>41</sup> The Act helped feed the hungry by supporting “emergency food facilities,” because it universalized food liability laws that apply to donations.<sup>42</sup> Representative Danner added in her testimony that the new law would “dramatically aid in the national effort to coordinate public and private efforts to properly utilize the abundant excess of food that goes unused in this country.”<sup>43</sup> Thus, the legislative history behind the Bill Emerson Food Donation law points to its primary purpose as a measure to combat food waste in America.<sup>44</sup>

The Bill Emerson Food Donation law passed without too much opposition because it had bipartisan support.<sup>45</sup> Lawmakers also wanted to pay tribute to Bill Emerson, who had recently passed away after fighting a long battle with cancer.<sup>46</sup> Tragedy does not need to predetermine the success of future legislation; the bipartisan support given to the Bill Emerson Good Samaritan Food Donation Act seems essential to its success.<sup>47</sup> Only around four percent of bills become law, and “[b]ipartisanship in co-sponsor lists is a good sign that a bill is viable.”<sup>48</sup> Legislative history surrounding the Bill Emerson Food Donation law demonstrates how people across the political spectrum believed food insecurity to be a pressing concern for the nation, and then acted on this concern.<sup>49</sup>

However, this focus on feeding the hungry addresses just one aspect of the problem we face as a result of the \$160 billion of food we waste in the United States.<sup>50</sup> If the debate over food waste encompassed not just concerns for the food insecure, but also for the environmental consequences of food waste, then perhaps this problem would be able to gain even more support from disparate political groups. Admittedly,

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<sup>41</sup> Jessica A. Cohen, *Ten Years of Leftovers with Many Hungry Still Left Over: A Decade of Donations under the Bill Emerson Good Samaritan Food Donation Act*, 5 SEATTLE J. SOC. JUST. 455, 472 (Fall/Winter 2006) (quoting *Hearing on H.R. 2428 Before the House Comm. On Econ. & Educ. Opportunities Subcomm. On Postsecondary Educ., Training & Life-Long Learning*, 104th Cong. (1996)).

<sup>42</sup> *Id.* at 456.

<sup>43</sup> *Id.* at 472–73.

<sup>44</sup> *Id.* at 471.

<sup>45</sup> Van Zuiden, *supra* note 37, at 245.

<sup>46</sup> *Id.* at 244.

<sup>47</sup> *Id.*

<sup>48</sup> SUNLIGHT FOUND., *Only Four Percent Of Bills Become Law*, HUFFPOST (Sept. 25, 2009, 5:12 AM), [https://www.huffingtonpost.com/entry/the-vast-majority-of-bill\\_ws\\_268630](https://www.huffingtonpost.com/entry/the-vast-majority-of-bill_ws_268630) [<https://perma.cc/U83Q-N3QY>].

<sup>49</sup> See Cohen, *supra* note 41, at 456–73; Van Zuiden, *supra* note 37, at 244–45.

<sup>50</sup> Carmen Shaeffer Kalashian, Comment, *Out of Sight, Out of Mind: Finding a Solution to Food Waste in America*, 23 S.J. AGRIC. L. REV. 103, 103 (2013–2014).

environmental legislation seems to be a prerogative of the political left.<sup>51</sup> However, environmental concerns affect all Americans, regardless of their political persuasion. Rotting food produces methane gas; wet food waste pollutes groundwater and streams; and fertilizing, processing, and transporting food products wastes fossil fuels.<sup>52</sup> For these reasons, reducing food waste should be a top priority in our fight against climate change. Smart ways to fight food waste not only help the hungry, but also foster environmental health.<sup>53</sup> As the old adage goes, “waste not, want not.”

Food waste’s economic consequences might serve as yet another reason to advocate for measures in favor of conservation. Furthermore, economic rhetoric, rather than environmental rhetoric, might more effectively motivate the political right.<sup>54</sup> For example, old food could be used as a new source of energy.<sup>55</sup> If businesses had a way to sell their waste, then food waste could open up new market opportunities.<sup>56</sup> Implicitly, with new market opportunities come new jobs and economic opportunities for citizens. Furthermore, when businesses waste the food that they intend to sell, they waste their money and their resources. Efficient businesses find ways to eliminate waste; they know how to predict and then satisfy market demand.<sup>57</sup> At any rate, it seems apparent that if future attempts to pass legislation concerning food waste are to be as successful as the Bill Emerson Food Donation law, lawmakers must gain bipartisan support.<sup>58</sup> American culture must reject food waste as “unthinkable,” and even “immoral,” as one blogger put it,<sup>59</sup> in order to have any real success addressing this complex issue.

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<sup>51</sup> *Compare Environment*, DEMOCRATS.ORG, <https://democrats.org/issues/environment> [<https://perma.cc/YGF8-QA4V>] (last visited Jan. 11, 2019) (discussing regulatory and legislative solutions to climate change) *with America’s Natural Resources: Agriculture, Energy, and the Environment*, GOP.COM, <https://www.gop.com/platform/americas-natural-resources/> [<https://perma.cc/7SM4-TARD>] (last visited Jan. 11, 2019) (discussing deregulation and development of private capital).

<sup>52</sup> Kalashian, *supra* note 50.

<sup>53</sup> *Id.*

<sup>54</sup> *See supra* note 51.

<sup>55</sup> Food Recovery Act of 2017, H.R. 3444, 115th Cong. § 101 (2017).

<sup>56</sup> *See* Garandean, *supra* note 5.

<sup>57</sup> *See* STRATEGIC SOURCEROR, *Eliminate waste and boost efficiency all along the supply chain*, GREEN BIZ (Dec. 11, 2014, 12:01 AM), <https://www.greenbiz.com/article/eliminate-waste-and-boost-efficiency-all-along-supply-chain> [<https://perma.cc/H3XM-XAN3>].

<sup>58</sup> *See* Cohen, *supra* note 41, at 456–73; Van Zuiden, *supra* note 37, at 244–45.

<sup>59</sup> Vytenis Andriukaitis, *The Immorality of Food Waste*, HUFFPOST (June 9, 2016, 7:13 AM), [https://www.huffingtonpost.com/vytenis-andriukaitis/the-immorality-of-food-waste\\_b\\_10366702.html](https://www.huffingtonpost.com/vytenis-andriukaitis/the-immorality-of-food-waste_b_10366702.html) [<https://perma.cc/AA96-C7CG>].

## II. ATTEMPTS TO CHANGE THE AMERICAN LAW

The Food Recovery Acts of 2016 and 2017 proved to be unsuccessful attempts to change the U.S. law.<sup>60</sup> The Food Recovery Act of 2016 would have established grant and loan programs to (1) raise awareness of food waste, (2) help agriculture and food donation non-profits cooperate, (3) help school lunches to incorporate waste from local farms, and (4) promote composting and food-to-energy conversion.<sup>61</sup> The bill, similar to the French law, also mandated food donation from companies receiving federal food service contracts.<sup>62</sup> The Food Recovery Act of 2017 (1) encourages conversion of farm waste to energy and the use of composting; (2) expands the charitable tax deductions allowed for donated retail and restaurant food; (3) allows school lunches to introduce local farm produce, as well as nonstandard-size and -shaped produce; (4) changes the food label and dating system in order to help consumers more clearly identify unexpired food; and (5) funds media awareness campaigns and food waste-to-energy projects.<sup>63</sup> Unfortunately, this bill also has a low chance of passing.<sup>64</sup>

Many of the ideas in these bills would go far to help with the food waste crisis in America. However, the problem remains the lack of political will for such ambitious, and ultimately expensive, ideas. These multi-pronged pieces of legislation lack support because they move too fast and require too much money for a problem that most Americans might recognize, but certainly do not prioritize.<sup>65</sup> Put simply, the bills are too complex. Emily Broad Leib, director of the Harvard Food Law and Policy Clinic, explains that she would be surprised if the whole bill passed because, “[t]here’s so much in [the Food Recovery Act] that there might be people against this little provision or that little provision.”<sup>66</sup> Piecemeal legislation

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<sup>60</sup> See Food Recovery Act of 2016, S. 3108, 114th Cong. (2016); Food Recovery Act of 2017, H.R. 3444, 115th Cong. (2017).

<sup>61</sup> Food Recovery Act of 2016, S. 3108, 114th Cong. (2016).

<sup>62</sup> *Id.*

<sup>63</sup> Food Recovery Act of 2017, H.R. 3444, 115th Cong. (2017).

<sup>64</sup> See 115 Legislative Outlook H.R. 3444, United States Legislative Outlook (LexisNexis 2018) (concerning Food Recovery Act of 2017, H.R. 3444, 115th Cong. (2017)).

<sup>65</sup> See Joseph Erbentraut, *77% of Us Feel Bad About Wasting Food, But Aren't Sure What to Do*, HUFFPOST (July 27, 2016, 11:43 AM), [https://www.huffingtonpost.com/entry/food-waste-poll-americans-guilt\\_us\\_5797ac1ee4b01180b53071e7](https://www.huffingtonpost.com/entry/food-waste-poll-americans-guilt_us_5797ac1ee4b01180b53071e7) [<https://perma.cc/9FYZ-NWPM>] (explaining Americans' concern that reducing food waste “would be difficult” and that “they don’t have enough time to worry about it”).

<sup>66</sup> Casey Williams, *Here's How Congress Plans to Save Food From The Trash*, HUFFPOST (June 29, 2016, 10:00 AM), [https://www.huffingtonpost.com/entry/senate-food-recovery-act\\_us\\_5772e731e4b0d1f85d47a455](https://www.huffingtonpost.com/entry/senate-food-recovery-act_us_5772e731e4b0d1f85d47a455) [<https://perma.cc/9YK2-A2DQ>].



might be a more effective way to pass food waste initiatives. Nonetheless, reform becomes most effective when the citizens want it.<sup>67</sup>

One of the best indicators of national support is the study of the legislative initiatives of the states. Before the Bill Emerson Food Donation law passed Congress, all fifty states, beginning with California in 1977, passed some form of a Good Samaritan food donation law.<sup>68</sup> After fifty separate state bills and almost twenty years of legislative history, the United States passed a piece of national legislation.<sup>69</sup>

Perhaps, in combatting food waste, the states should serve as the first battleground for new ideas and new legislation. As explained by the Brookings Institute, “important policy innovations [have] had their origins, as Justice Louis Brandeis famously said, in a few courageous states.”<sup>70</sup> Then, once a food waste-related idea seems popular among the states, lawmakers in Washington should use the momentum of that popular support to implement nationwide legislation.

Such ideas and legislation are already taking root in the laboratory of the states as twenty states and the District of Columbia have introduced more than eighty separate bills tackling food waste in 2017.<sup>71</sup> These initiatives are not regional and span from Texas to New Jersey to Maine to West Virginia.<sup>72</sup> As Emily Broad Leib suggests, “[t]hese state policies offer great opportunity to turn the tide on food waste, and the sheer number of proposed bills evidences the growing interest in addressing this massive issue.”<sup>73</sup>

Taking the text of the 2016 and 2017 bills and attempting to pass just one of the ideas presented in the individual states might be the best way to successfully legislate against food waste. If a bill only advocated for media and public awareness campaigns, then successive bills might

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<sup>67</sup> For example, Mothers Against Drunk Driving successfully changed laws relating to drinking and driving by “altering a collective moral mentality” surrounding such activities. Nady El-Guebaly, *Don't drink and drive: the successful message of Mothers Against Drunk Driving (MADD)*, 4(1) WORLD PSYCHIATRY 35, 36 (Feb. 2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1414720/> [<https://perma.cc/ZJ3W-R9AZ>].

<sup>68</sup> See Van Zuiden, *supra* note 37, at 43.

<sup>69</sup> *Id.*

<sup>70</sup> Pietro S. Nivola, *Report: Why Federalism Matters (Brookings Policy Brief Series No. 146)*, BROOKINGS INST. (Oct. 1, 2005), <https://www.brookings.edu/research/why-federalism-matters/> [<https://perma.cc/CB9H-5EJU>].

<sup>71</sup> Emily Broad Leib, *It's Time For Congress To Join The Fight Against Food Waste*, HUFFPOST (July 26, 2017, 9:03 AM), [https://www.huffingtonpost.com/entry/its-time-for-congress-to-join-the-fight-against-food\\_us\\_5977e5d3e4b0940189700d9d](https://www.huffingtonpost.com/entry/its-time-for-congress-to-join-the-fight-against-food_us_5977e5d3e4b0940189700d9d) [<https://perma.cc/F8KT-QFVR>].

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

have succeeded in passing some of the other measures.<sup>74</sup> Successful food waste initiatives depend on gaining more bipartisan support in the electorate.<sup>75</sup> After more public interest and support is generated, then federal legislative initiatives seem vital to provide the necessary “infrastructure needed to recover surplus food or divert food scraps to anaerobic digestion or composting.”<sup>76</sup> According to Leib, “federal support for this infrastructure can plug gaps in state budgets.”<sup>77</sup>

However, passing these complex federal food waste bills has proven difficult, as evidenced by the failure and predicted failure of the Food Recovery Acts of 2016 and 2017.<sup>78</sup> Nationwide consensus for a policy predetermines Congressional willpower to pass legislation and to spend federal dollars as evidenced by the bipartisan support of the last significant bill combatting food waste, the Bill Emerson Food Donation Act.<sup>79</sup>

Furthermore, the food waste problem requires more than legal solutions. It requires transforming the current culture of waste in America.<sup>80</sup> Just as the public awareness campaigns waged against littering in the 1960s changed the social acceptability of throwing trash wherever one pleased, so too, a public awareness campaign championing the elimination of food waste can change the currently acceptable practice of throwing away perfectly edible food.<sup>81</sup> Typically, cultural shifts begin with grassroots, word-of-mouth campaigns and/or media campaigns to raise awareness of a certain issue.<sup>82</sup> Food waste awareness might first be achieved through the efforts of business, non-profit, and other community leaders. Advertising and social media campaigns can effectively bring awareness to an issue, reaching an even more varied and expansive community.<sup>83</sup> Even celebrity sponsors for an issue can serve as catalysts for change.<sup>84</sup>

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<sup>74</sup> See Williams, *supra* note 66.

<sup>75</sup> See Cohen, *supra* note 41, at 456–73; Van Zuiden, *supra* note 37, at 244–45.

<sup>76</sup> See Leib, *supra* note 71.

<sup>77</sup> *Id.*

<sup>78</sup> See 115 Legislative Outlook H.R. 3444, United States Legislative Outlook (LexisNexis 2018) (concerning Food Recovery Act of 2017, H.R. 3444, 115th Cong. (2017)).

<sup>79</sup> See Cohen, *supra* note 41, at 456–73; Van Zuiden, *supra* note 37, at 244–45.

<sup>80</sup> See El-Guebaly, *supra* note 67, at 36.

<sup>81</sup> ADCOUNCIL, PUBLIC SERVICE ADVERTISING THAT CHANGED A NATION 1, 6–7 (Sept. 2004) (explaining that “Keep America Beautiful reported that its local network had helped reduce litter by as much as 88 percent in 300 communities in 38 states, and even in several countries”).

<sup>82</sup> See *id.*

<sup>83</sup> See *id.*

<sup>84</sup> George E. Newman et al., *Celebrity Contagion and the Value of Objects*, 38 J. CONSUMER RES. 215, 216 (2011).

The more attention granted to an issue, the more that issue becomes incorporated into the public psyche. For example, cultural shifts against drinking and driving showcase the effects of a successful public awareness campaign.<sup>85</sup> Organizations such as Mothers Against Drunk Driving raised awareness of the negative effects of drunk driving, and helped propel the success of new laws regulating the intoxication levels of motorists.<sup>86</sup> Effects of media communication can even be felt on the cognitive level or change the “awareness, knowledge, beliefs and images” of a social problem.<sup>87</sup> In a certain sense, even this Note might contribute in some small way to the awareness of food waste as a pressing social concern. However, in order for the issue to gain broad appeal, the debate cannot be partisan. The language framing the issue must appeal to both sides of the political spectrum, as it did in past legislative accomplishments, such as the Bill Emerson Food Donation law.<sup>88</sup> Food waste must become a priority and a universally acknowledged “American” concern.

### III. THE STATUS OF FRENCH LAW AGAINST FOOD WASTE: THE 2016 SUPERMARKET LAW

The French, recognizing that solutions to the food waste problem should address both environmental and social needs, proposed their own legislation that reaches much farther than the Bill Emerson Food Donation law. On February 11, 2016, L'Assemblée nationale et le Sénat adopted a law “*relative à la lutte contre le gaspillage alimentaire*,” (“having to do with the fight against food waste.”)<sup>89</sup> This law required grocery stores in France to sign contracts with local non-profits and food banks.<sup>90</sup> According to the law, French supermarkets must allow such non-profits to distribute any of the excess, usable food.<sup>91</sup> The law requires the store to sign a contract with a local charity in order to donate any unwanted food, and the charity determines what donated food it will accept.<sup>92</sup> The penalty only attaches if the grocery store refuses to sign a contract.<sup>93</sup> The

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<sup>85</sup> See El-Guebaly, *supra* note 67, at 36.

<sup>86</sup> Charles K. Atkin, *Mass Communication Effects on Drinking and Driving*, in SURGEON GEN. WORKSHOP ON DRUNK DRIVING: BACKGROUND PAPERS 15, 21 (1989), <https://profiles.nlm.nih.gov/ps/access/nbcxx.pdf> [<https://perma.cc/3B42-RBQH>].

<sup>87</sup> *Id.* at 15.

<sup>88</sup> See Cohen, *supra* note 41, at 456–73; Van Zuiden, *supra* note 37, at 244–45.

<sup>89</sup> Loi 2016-138, *supra* note 9.

<sup>90</sup> *Id.* at art. 1.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

French law also sanctions the deliberate destruction of unused food<sup>94</sup> and modifies liability laws associated with defective food products.<sup>95</sup> The law's main idea is to eliminate the food that grocery stores throw away, which serves the dual purpose of cleaning the environment and helping to feed the poor. The law states, “[l]a lutte contre le gaspillage alimentaire comprend la sensibilisation et la formation de tous les acteurs, la mobilisation des acteurs au niveau local et une communication régulière auprès des consommateurs, en particulier dans le cadre des programmes locaux de prévention des déchets.”<sup>96</sup> (“The fight against food waste encompasses raising public awareness and training all actors, the mobilization of local actors and regular communication requesting consumers, in particular in the category of local programs, to prevent waste.”) Thus, the French law aims for much more than just a reduction of liability. The French law wants to eliminate food waste through awareness campaigns, as well as through penalties imposed on supermarkets unwilling to donate their excess.<sup>97</sup>

The history behind the French law, which was the first in the world to ban supermarket waste, reflects the broad public support behind measures to stop food waste in France.<sup>98</sup> In April 2015, French policymakers issued a report entitled “Fighting Food Waste: Proposals for a Public Policy” that detailed thirty-six separate ideas designed to help eliminate food waste.<sup>99</sup> Developed by experts, government agencies, and members of Parliament working together, these policies incorporate ideas that range from using Quick Response (“QR”) codes in to better inform consumers to requiring clemency for dumpster-diving and gleaning in the criminal code.<sup>100</sup> This report highlights the broad-based government

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<sup>94</sup> Grocery stores were known to douse thrown out food with bleach to prevent consumption. See Angelique Chrisafis, *French law forbids food waste by supermarkets*, THE GUARDIAN (Feb. 4, 2016, 11:03 AM), <https://www.theguardian.com/world/2016/feb/04/french-law-for-bids-food-waste-by-supermarkets> [https://perma.cc/H6TX-EG5M].

<sup>95</sup> *La loi sur la lutte contre le gaspillage alimentaire adoptée au Parlement*, LEMONDE (Feb. 3, 2016, 5:50 PM), [http://www.lemonde.fr/planete/article/2016/02/03/la-loi-sur-la-lutte-contre-le-gaspillage-alimentaire-adoptee-au-parlement\\_4858807\\_3244.html#meter\\_toaster](http://www.lemonde.fr/planete/article/2016/02/03/la-loi-sur-la-lutte-contre-le-gaspillage-alimentaire-adoptee-au-parlement_4858807_3244.html#meter_toaster) [https://perma.cc/7SPG-S6KC].

<sup>96</sup> Loi 2016-138, *supra* note 9, at art. L. 541-15-4.

<sup>97</sup> *Id.*

<sup>98</sup> Josh Hafner, *French supermarkets must now donate unsold food to charity*, USA TODAY (Feb. 9, 2016, 6:02 PM), <https://www.usatoday.com/story/money/nation-now/2016/02/09/french-supermarkets-must-now-donate-unsold-food-charity/80076632/> [https://perma.cc/XAR8-6T44].

<sup>99</sup> Marie Mourad, *France Moves Toward a National Policy Against Food Waste*, NAT. RES. DEF. COUNCIL 3 (Sept. 2015), <https://www.nrdc.org/sites/default/files/france-food-waste-policy-report.pdf> [https://perma.cc/YZA8-VJ55].

<sup>100</sup> *Id.* at 4.

support in the fight against food waste that “could make France an international model for food waste prevention and recycling.”<sup>101</sup>

Furthermore, the French law began with a grassroots movement to raise awareness of food waste.<sup>102</sup> A petition presented as “*dire stop au gâchis alimentaire*,” (“to say stop to food waste”), shows the support of ordinary citizens in the food waste debate.<sup>103</sup> This petition, started by Arash Derambarsh, received the signatures of 200,000 voters.<sup>104</sup> Bill sponsors described this petition as “*Cela témoignait d’une forte prise de conscience de l’opinion publique sur le gaspillage alimentaire et encourageait les parlementaires à ne pas faiblir et avancer sur le sujet.*”<sup>105</sup> (“This testifies of the strong consciousness of public opinion concerning food waste, and encourages representatives to not be weak and to advance efforts concerning the public will.”) Lawmakers in France viewed themselves as acting to further the will of the people of France.<sup>106</sup> With popular support, the French passed food waste legislation that seems more effective than our liability-based American laws.

Even the French language itself might be seen as helpful in the fight against food waste in France. The French have special words designated to the concept of food waste: *gaspillage alimentaire*.<sup>107</sup> The literal translation is “the waste of food products” or “nutritional waste.”<sup>108</sup> “The waste of food” would be translated literally as *gaspillage nourriture*.<sup>109</sup> The English language places all these concepts under the umbrella of one expression: “food waste.” Arguably, a language that has more precise terms to articulate a concept shows signs that the cultural recognition of that concept is stronger and more robust. Thus, because the French articulate the “waste of food products,” as opposed to the simpler English idea of “food waste,” this articulation might exhibit the heightened French sensitivity to the problems surrounding food waste. At any rate, cultural recognition of food waste as a legitimate social ill, as well as demonstrated

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<sup>101</sup> *Id.* at 11.

<sup>102</sup> *Id.* at 10.

<sup>103</sup> de la Chesnais, *supra* note 6.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Loi 2016-138, *supra* note 9.

<sup>108</sup> *Alimentaire*, CAMBRIDGE FRENCH-ENGLISH DICTIONARY (2016), <https://dictionary.cambridge.org/us/dictionary/french-english/alimentaire> [<https://perma.cc/JPM8-843L>]; *Gaspillage*, CAMBRIDGE FRENCH-ENGLISH DICTIONARY (2016), <https://dictionary.cambridge.org/us/dictionary/french-english/gaspillage> [<https://perma.cc/8HNG-R8PH>].

<sup>109</sup> *Nourriture*, CAMBRIDGE FRENCH-ENGLISH DICTIONARY (2016), <https://dictionary.cambridge.org/us/dictionary/french-english/nourriture> [<https://perma.cc/C4QC-HH3Z>].

popular support, propelled French legislative initiatives to combat food waste by limiting French grocery stores' ability to throw away still edible food. These actions show that, unlike American consumers, the French have the time and willpower to fight an epidemic of food waste.<sup>110</sup>

#### IV. PROS AND CONS OF THE FRENCH LAW COMBATTING FOOD WASTE

The French law *contre le gaspillage alimentaire* seems to have done much in France to combat food waste. A blog on Huffington Post entitled "*Il y a un an, la France a voté la loi contre le gaspillage alimentaire, le combat ne s'arrête pa là*"<sup>111</sup> ("One year after France voted for a law against food waste, the fight doesn't end there") explains that donated supermarket food has benefited more than 5,000 new organizations, and the number of donated meals increased by more than 10 million as compared to previous years.<sup>112</sup> This article praises the law, "*qui ne coûte rien à l'Etat ni aux contribuables*" ("which doesn't cost the state or the [supermarket] contributors anything").<sup>113</sup>

While it is true that the French law has positively impacted French society by fighting against hunger and mitigating the environmental impact of food waste at no cost to the state or to businesses, this law would not work in the context of the United States.<sup>114</sup> Draconian measures requiring businesses to donate food or face a fine would meet opposition and criticism as an overreach of state power if the United States were to model its law on the French statute.<sup>115</sup> By comparison, when Hillary Clinton attempted in the 1990s to find support for universal health care, many Americans objected to such legislative proposals as a violation of

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<sup>110</sup> Erbentraut, *supra* note 65.

<sup>111</sup> Arash Derambarsh, *Il y a un an, la France a voté la loi contre le gaspillage alimentaire, le combat ne s'arrête pa là*, HUFFPOST (Feb. 3, 2017, 3:05 PM), [http://www.huffingtonpost.fr/arash-derambarsh/loi-gaspillage-alimentaire\\_a\\_21705517/](http://www.huffingtonpost.fr/arash-derambarsh/loi-gaspillage-alimentaire_a_21705517/) [<https://perma.cc/489U-F6U4>].

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Jonathan Bloom, author of the book *American Wasteland*, recently commented on NPR that "the French law is great, and he would love to see such a policy shift in Washington. But it strikes him as difficult, politically, especially in today's climate. He knows Americans will be less excited about the government telling businesses what to do." Eleanor Beardsley, *French Food Waste Law Changing How Grocery Stores Approach Excess Food*, All Things Considered, NPR (Feb. 24, 2018, 5:28 PM), <https://www.npr.org/sections/thesalt/2018/02/24/586579455/french-food-waste-law-changing-how-grocery-stores-approach-excess-food> [<https://perma.cc/M5FC-9DKS>].

<sup>115</sup> *Id.*

personal rights, because they perceived universal health care as an overreach of federal power.<sup>116</sup> Public approval of health care reform in the 1990s waned as powerful groups mounted a successful media campaign against Clinton's idea of universal coverage.<sup>117</sup> The Affordable Care Act, or "Obamacare," was met with similar opposition and controversy because it required many more Americans to purchase health insurance.<sup>118</sup> Many of these Americans saw requiring the purchase of health care as an impediment to individual liberty—a socialized overreach of the central government's power.<sup>119</sup>

Similar to the health care story, American critics already assert that mandating food donations by grocery stores "could do more harm than good."<sup>120</sup> "Hidden costs," such as logistical concerns for getting food safely transported from stores to food banks and to the needy, might outweigh the benefits of mandating food donation by supermarkets, according to one USDA official.<sup>121</sup> The United States already encourages a robust system of food donation through its laws limiting liability, such as the Bill Emerson Food Donation law.<sup>122</sup> The French did not limit liability for food donations in a similar way, and as a result, many grocery chains hesitated to donate near-expired food for fear that it would cause illness.<sup>123</sup> It seems that the two countries came up with distinct solutions to the same problem, yet both systems still do not come close to eliminating the food wasted by their citizens. Neither the American "carrot" approach nor the French "stick" approach seems to provide sufficient policy solutions to food waste.

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<sup>116</sup> Adam Clymer, Robert Pear & Robin Toner, *The Health Care Debate: What Went Wrong? How the Health Care Campaign Collapsed—A special report.; For Health Care, Times Was A Killer*, N.Y. TIMES (Aug. 29, 1994), <http://www.nytimes.com/1994/08/29/us/health-care-debate-what-went-wrong-health-care-campaign-collapsed-special-report.html?page-wanted=all> [<https://perma.cc/6JQE-53JR>].

<sup>117</sup> *See id.*

<sup>118</sup> M.J., *Why Republicans hate Obamacare*, THE ECONOMIST (Dec. 11, 2016), <https://www.economist.com/blogs/economist-explains/2016/12/economist-explains-1> [<https://perma.cc/3PHV-8BW5>]; Tami Luhby, *Why so many people hate Obamacare*, CNN (Jan. 6, 2017), <https://money.cnn.com/2017/01/05/news/economy/why-people-hate-obamacare/index.html> [<https://perma.cc/9QM2-MC9B>].

<sup>119</sup> M.J., *supra* note 118.

<sup>120</sup> Edward Delman, *Should It Be Illegal for Supermarkets to Waste Food?*, THE ATLANTIC (May 29, 2015), <https://www.theatlantic.com/international/archive/2015/05/law-france-supermarkets-food-waste/394481/> [<https://perma.cc/DT5M-E9H3>].

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

The law in France could do more, and do it in less draconian ways. First, the French law only addresses a small percentage of the food waste problem; large supermarkets only account for around five percent of food waste in France.<sup>124</sup> Critics of the law, such as Martin Caraher, a professor at the University of London and co-author of a new report signed by the Food Research Collaboration, suggest that the new law does not go far enough.<sup>125</sup> Caraher submits that “*La distribution des surplus alimentaires ne réparera pas un système alimentaire qui fonctionne mal. Elle ne répondra pas aux problèmes environnementaux et ne fournira pas la motivation nécessaire pour réduire les surplus ou diminuer le gaspillage à long terme.*”<sup>126</sup> (“The distribution of surplus food products will not repair a system of food products that functions badly. It [the law] does not respond to the environmental problems, nor does it form the necessary motivation to reduce the surplus or diminish the waste in the long term.”)

Other critics and grassroots organizers, such as members of the foraging group *Gars’pilleurs*, founded in Lyon, gather food from supermarket waste bins at night and redistribute this food the next day in order to raise awareness of food waste and hunger.<sup>127</sup> *Gars’pilleurs*, in conjunction with four other groups, issued a statement explaining that the new French law could “give a ‘false and dangerous idea of a magic solution’ to food waste.”<sup>128</sup> These groups claim the new supermarket law “create[s] an illusion that supermarkets had done their bit, while failing to address the wider issue of overproduction in the food industry as well as the wastage in food distribution chains.”<sup>129</sup> Such critics and other grassroots advocates press for more radical changes to the system used to distribute food.<sup>130</sup>

Furthermore, the law could do more to encourage, or to incentivize, trends in French society, i.e., grant tax incentives to charitable individuals and institutions, or to change the education system to raise awareness

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<sup>124</sup> Angelique Chrisafis, *France to force big supermarkets to give unsold food to charities*, THE GUARDIAN (May 22, 2015, 1:59 PM), <https://www.theguardian.com/world/2015/may/22/france-to-force-big-supermarkets-to-give-away-unsold-food-to-charity> [<https://perma.cc/8WFA-UBAP>].

<sup>125</sup> Marina Fabre, *Gaspillage Alimentaire: Un An Après, Quel Bilan?*, NOVETHIC (Feb. 7, 2017), <http://www.novethic.fr/actualite/entreprise-responsable/isr-rse/gaspillage-alimentaire-un-an-apres-quel-bilan-144278.html> [<https://perma.cc/LYP4-AU67>].

<sup>126</sup> *Id.*

<sup>127</sup> See Chrisafis, *supra* note 124.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*



of food waste and its humanitarian and environmental impacts. Grant programs that partner industry and government, rather than set them against each other with fines and penalties, might more effectively deal with the food waste problem and could potentially cover more of the food supply chain than grocery stores. For example, in prior grant-based initiatives, the French president, Emmanuel Macron, offered four-year grants to U.S. “researchers, entrepreneurs, [and] engineers working on climate change” to come to France when President Donald Trump withdrew U.S. support from the Paris climate agreement in the summer of 2017.<sup>131</sup> Macron and the French government promised robust funding for climate initiatives as a way to lure Americans to bring their work to France.<sup>132</sup> This approach did not penalize French businesses, but instead incentivized solutions to another modern ill—climate change.<sup>133</sup> In a similar way, French law could combat food waste, and incentivize work that reduces *gaspillage alimentaire*.

Beyond legal solutions, it seems that the key to French success in their recent legislative efforts is the widespread consensus that food waste remains a legitimate problem.<sup>134</sup> The French prioritize measures that ameliorate the food waste situation.<sup>135</sup> Even the largest supermarket chain in France, *Carrefour*, did not oppose the increased government regulation, but instead “welcomed the law.”<sup>136</sup> When it was announced in France, both supermarkets and food banks supported the new legislation on *gaspillage alimentaire* because they both recognized the environmental and social problems exacerbated by throwing out perfectly edible food.<sup>137</sup>

Many industries and individuals not affected by the French law even stepped up their efforts to combat food waste.<sup>138</sup> As evidenced by the widespread use of apps such as “Too Good To Go,” “*Dans mon frigo*,” “GaspiFinder,” “Frigo Magic,” and “Mummyz,” it seems like the latest French crusade is a mission to eliminate all food waste and combat

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<sup>131</sup> Chris Weller, *France is offering US scientists 4-year grants to move to the country and do research*, BUSINESS INSIDER (June 8, 2017, 11:41 AM), <https://www.businessinsider.com/emmanuel-macron-american-climate-scientists-france-2017-6> [<https://perma.cc/8UAA-PYME>].

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* (explaining that this climate change example also exhibits French willingness to tackle modern environment challenges and a culture geared toward environmental awareness). This example further highlights cultural differences on environmental issues outside of *gaspillage alimentaire*.

<sup>134</sup> de la Chesnais, *supra* note 6.

<sup>135</sup> Loi 2016-138, *supra* note 9, at art. L. 541-5-4.

<sup>136</sup> Chrisafis, *supra* note 124.

<sup>137</sup> *Id.*

<sup>138</sup> Garandau, *supra* note 5.

hunger.<sup>139</sup> For example, using the app, “Too Good to Go” (“TGTG”), *commerçants*, or merchants, voluntarily post unsold food that they will sell for a reduced price before throwing it out, often after peak hours or right before their bakery or restaurant closes.<sup>140</sup> In the first year after its creation, TGTG saved 65,000 meals in Paris and more than 1,500 meals in towns outside Paris.<sup>141</sup> One participant, Grégoire Baron, a bakery owner, explains, “*D’autant que les vitrines doivent toujours-être bien fournies pour donner envie d’acheter, c’est un principe du commerce.*”<sup>142</sup> (“Especially since the baked goods must always be well made in order to give people a desire to buy them, this [using the app to sell the food] is a principle of commerce.”) TGTG, as well as other apps currently gaining popularity in France, shows more than a desire to combat food waste because such actions benefit the environment or feed the hungry; such technological innovations trim commercial waste and increase the profitability of businesses.<sup>143</sup>

Public awareness campaigns, and resulting cultural changes, more effectively eliminate food waste than fines and penalties. Americans need the same awareness as the French of the food we waste and the same desire to eliminate the environmental and social impacts of food waste. Our system needs to change in favor of real results in the fight against food waste. Success in France has less to do with sanctions against supermarkets, and more to do with both a growing consciousness and consensus that this problem needs to be addressed, as well as the idea that every *acteur* in France’s food industry needs to be involved.<sup>144</sup>

V. A HAPPY MEDIUM: HOW TO COMBINE THE IDEAS OF FRANCE AND THE UNITED STATES TO MOST EFFECTIVELY SOLVE OUR AMERICAN *GASPILLAGE ALIMENTAIRE*

Although France and the United States use distinct ways to combat food waste and its resultant environmental and social impacts, both systems seem ineffective to really solve the food waste problem. The U.S. laws limiting liability and incentivizing donations through tax benefits do not seem comprehensive enough to solve the food waste problem in America, if only because the United States still wastes more

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Loi 2016-138, *supra* note 9, at art. L. 541-5-4.

than \$160 billion of food.<sup>145</sup> On the other hand, the French law goes too far in imposing sanctions and fines on non-compliant supermarkets, and yet doesn't go far enough because supermarkets only compose a small portion of the food waste problem in France.<sup>146</sup> For food waste to be eliminated, the solutions need to be multipronged, cost-effective, and include public-private partnerships. Most importantly, efforts must include the cooperation of ordinary citizens.

In the United States, we might find similar results and improve upon our already strong system of food donation if we can similarly raise awareness.<sup>147</sup> Again, our solutions to food waste in America must be multipronged. Success in the fight against food waste must include public awareness campaigns and grassroots movements. As they did in France, these campaigns have the potential to prepare citizens for legal remedies, as well as help to solve the food waste epidemic voluntarily through non-profits and on a local level.

Several of these anti-food waste organizations currently exist in America. An international organization called Feedback sponsors events called "Feeding the 5,000," in which organizers gather food that would have been wasted in order to feed 5,000 people.<sup>148</sup> This group launched a social media campaign asking individuals to pledge to take initiative to end food waste; it uses the hashtag #Feeding5000NYC in order to distribute photos and ideas about how to reduce food waste.<sup>149</sup> New York City held its first Feeding the 5,000 event on May 10, 2016.<sup>150</sup> In 2011, the Environmental Protection Agency started the "Food Recovery Challenge" in order to encourage universities, businesses and other organizations to recover unused food.<sup>151</sup> Sustainable America has launched a similar food waste awareness initiative called "I Value Food."<sup>152</sup> Using social media, this group encourages individuals to post ideas to fight food waste using the hashtag #IValueFood.<sup>153</sup> Also, the "Be a Zero" tagline launched by the

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<sup>145</sup> *U.S. Food Waste Challenge, Frequently Asked Questions*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/oce/foodwaste/faqs.htm> [<https://perma.cc/T6CE-KHXN>] (last visited Jan. 11, 2019).

<sup>146</sup> Loi 2016-138, *supra* note 9, at art. L. 541-4-5.

<sup>147</sup> Delman, *supra* note 120.

<sup>148</sup> Madelon Bird, *10 Campaigns Working to Reduce Food Waste*, HUNTER COLL. N.Y.C. FOOD POL'Y CTR. (June 29, 2016), <http://www.nycfoodpolicy.org/10-food-waste-campaigns/> [<https://perma.cc/VJU2-FKGT>].

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

Manhattan-based “No Food Waste” campaign encourages food waste reduction ideas via social media.<sup>154</sup> These organizations, as well as several others, encourage voluntary participation in the global movement to fight food waste. They do not require taxpayer dollars, and do not mandate participation like the French law. As more individuals participate in such campaigns and raise awareness of food waste, maybe, over time, the American culture of waste can change. Social media may prove to be one of the most powerful and effective tools in the fight against food waste.

Next, solutions to food waste must include public-private partnerships.<sup>155</sup> Legislative action may be determined by the food industry’s support of food waste initiatives.<sup>156</sup> In France, supermarket giants such as *Carrefour* saw the value of French legislation, and willingly complied with the new French law.<sup>157</sup> This support and lack of opposition helped the new law to pass. When Congress is able to partner with business to combat waste, businesses will also benefit. As in France, they can turn their waste to profit. Some ways of doing this might include programs that divert waste to biofuels or grants that encourage the sale of unused food products at lower cost, such as the app TGTG currently used in France. The Department of Agriculture or the Department of Commerce might develop such apps and programs or might give entrepreneurs resources to develop these initiatives. The government could also help publicize any businesses participating in such food waste prevention initiatives. Any time industry partners with the government, the combination can create an abundance of financial and human capital.<sup>158</sup> Although such collaboration might go far to solve the food waste problem, the government must be careful not to create new subsidized industries or increase the corporate welfare state, and thereby misuse tax payer dollars in the process.

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<sup>154</sup> Bird, *supra* note 148.

<sup>155</sup> See Alisa Chang, *When Lobbyists Literally Write The Bill*, NPR (Nov. 11, 2013, 2:03 PM), <https://www.npr.org/sections/itsallpolitics/2013/11/11/243973620/when-lobbyists-literally-write-the-bill> [<https://perma.cc/AQA2-TPKM>] (discussing the impact of lobbyists for different industries on the development of legislation).

<sup>156</sup> *Id.*

<sup>157</sup> Chrisafis, *supra* note 124.

<sup>158</sup> The Advanced Technology Program serves as an example of the success of public-private partnerships. This grew out of legislative initiatives that encouraged partnership and incentivized research and development arms of companies to create early stage technological innovations. Lura J. Powell, *Government-Industry Joint R&D Ventures: Bridging the Gap Between the Laboratory and the Marketplace*, in RESEARCH TEAMS AND PARTNERSHIPS: TRENDS IN THE CHEMICAL SCIENCES, REPORT OF A WORKSHOP (1999), <https://www.nap.edu/read/9759/chapter/13> [<https://perma.cc/J8Q9-4A4W>].

More economic incentives through tax breaks, local farm subsidies, and government grants can help to eliminate food waste. Also, farm-to-table initiatives in local communities and schools can further fight the food waste epidemic. Bret C. Birdsong, a scholar and law professor, suggests that reducing food waste is “low hanging fruit” in the battle against greenhouse gas emissions.<sup>159</sup> He explains the important role of governments in battling food waste, as they “adopt policies to incentivize greater utilization of food, such as by providing tax relief for food donations or evaluating procurement policies.”<sup>160</sup> Even though such economic incentives might cost taxpayers money, they are worth the cost because they encourage the reduction of food waste, and provide the long-term environmental benefit of reducing carbon emissions.

Lastly, popular support for locally produced products (such as support for Community Supported Agriculture (“CSA”)), as well as the widespread use of technological tools (such as the use of food waste apps), can work to promote a cultural shift against food waste in America. Such support does not cost taxpayer money, can be non-political, and can encourage individual health and personal economy. Use of easily available technology can streamline and add efficiency to efforts to get unwanted food to needy individuals. However, without funding and government action, these grassroots initiatives might not reach far enough to solve the food waste dilemma.

Finally, in order for any new food waste initiative to become federal law, politicians on both sides of the aisle must frame such initiatives in terms of their business and economic benefits to communities, and not only highlight a food waste initiative’s positive environmental and social impact.<sup>161</sup> When an issue becomes non-political and is truly bipartisan, then it does not risk the same defeat suffered by the Clinton health care initiatives of the 1990s.<sup>162</sup> The Bill Emerson Food Donation law found sponsors in both the Democratic and Republican parties and, thus, passed Congress easily.<sup>163</sup> Similarly, the French supermarket law passed unanimously.<sup>164</sup> Therefore, it follows that any future successful bills in the fight against food waste must seek non-partisan or universal appeal.

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<sup>159</sup> Bret C. Birdsong, *From “Food Miles” to “Moneyball”: How We Should Be Thinking About Food and Climate*, 65 ME. L. REV. 409, 411 (2013).

<sup>160</sup> *Id.* at 423.

<sup>161</sup> Cohen, *supra* note 41, at 477–78, 482–84; Van Zuiden, *supra* note 37, at 246.

<sup>162</sup> Clymer, Pear & Toner, *supra* note 116.

<sup>163</sup> *See* Cohen, *supra* note 41, at 471; Van Zuiden, *supra* note 37, at 245.

<sup>164</sup> Chrisafis, *supra* note 124.

## CONCLUSION

In essence, over time, our society must transform from a culture of food waste to a culture of food security. While U.S. and French laws mark good first efforts in the fight against food waste, these laws far from resolve the food waste dilemma. Even after the passage of the Good Samaritan Food Donation Act, Americans waste more than 200 billion pounds of food every year.<sup>165</sup> In France, after the supermarket law, the French people still waste around sixty-six pounds of food per person each year.<sup>166</sup> The two laws take two different approaches, with the French law focusing on penalties and the American law focusing on the reduction in liability, but both approaches remain inadequate on their own. The correct approach to the food waste problem is multipronged, starts with the legislative initiatives of the states, remains bipartisan, and encourages the innovations of private *acteurs*.<sup>167</sup> Fostering a cultural shift, the governments of both nations can form true public-private partnerships. Individuals working through grassroots campaigns and with the development of new technology can mitigate the “sin”<sup>168</sup> of food waste. Patient efforts can change cultures. Over time, food waste can be fixed.

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<sup>165</sup> Beardsley, *supra* note 114.

<sup>166</sup> *Id.*

<sup>167</sup> See Loi 2016-138, *supra* note 9, at art. L. 541-15-4.

<sup>168</sup> Andriukaitis, *supra* note 59 (discussing the immorality of food waste).

