

FROM DAY CARES TO CITY HALLS: PROSECUTING FRAUD AND REFORMING OVERSIGHT IN FEDERAL PROGRAMS

ABSTRACT

State agencies and local nonprofits play a critical role in addressing social problems, by administering federal programs and distributing aid. To uphold the integrity of federal programs, and ensure taxpayer funds achieve congressional goals, federal agencies impose complex regulations on program administrators. Nevertheless, fraud occurs. This forces federal prosecutors to intervene, enforcing 18 U.S.C. § 666 to prosecute federal programs fraud and bribery.

The Feeding Our Future prosecutions in Minnesota, where dozens of individuals were charged with fraud and bribery in the federal Child and Adult Care Food Program (CACFP), exemplify the application of administrative and criminal law to federal social programs. But as policymakers and prosecutors address fraud through rulemaking, legislation, and prosecutions, the Supreme Court in its 2024 decision, Snyder v. United States, weakened the power of federal prosecutors to address future crimes.

After discussing CACFP, the Feeding Our Future prosecutions, and the Snyder decision, this Note proposes solutions to achieve federal program integrity, without overburdening local agencies and nonprofits so as to discourage program participation. These include empowering insiders to bring qui tam claims under the False Claims Act, enforcing administrative penalties before misconduct reaches criminality, and providing prosecutorial guidelines to target conduct that evades civil and administrative enforcement.

TABLE OF CONTENTS

INTRODUCTION	1672
I. FEDERAL PROGRAMS FRAUD AND BRIBERY	1674
A. <i>CACFP's Structure and Oversight</i>	1675
B. <i>Failed Oversight and the Feeding Our Future (FOF) Fraud</i>	1680
C. <i>FOF Fallout: State and Federal Responses to the Oversight Failure</i>	1684
III. FEDERAL ANTI-BRIBERY ENFORCEMENT	1688
A. <i>Prosecuting "Public Officials"</i>	1689
B. <i>Expanding Prosecution to Federal Programs</i>	1690
IV. ENFORCEMENT ALTERNATIVES: PROMOTING SOCIAL GOALS WHILE PUNISHING CORRUPTION.....	1693
A. <i>Qui Tam Actions Under the False Claims Act (FCA)</i>	1695
B. <i>Administrative Rulemaking to Expose Corruption Before Criminality</i>	1700
C. <i>Supplement Administrative Rules with Strategic Prosecutorial Discretion</i>	1702
D. <i>Eliminate Federal Programs to Shift Aid and Enforcement Costs to States</i>	1704
CONCLUSION	1706

INTRODUCTION

In the spring and summer of 2020, federal agencies disbursed billions of dollars through state-run federal programs.¹ One Minnesota nonprofit, Feeding Our Future, jumped at the opportunity to profit from its involvement.² Like many recipients of federal funds, the organization was burdened by complex regulations, imposed to prevent fraud and abuse and to effectuate the program's statutory goals.³ But unlike thousands of

1. See, e.g., Leslie Hodges, Jordan W. Jones & Saied Toossi, *Coronavirus (COVID-19) Pandemic Transformed the U.S. Federal Food and Nutrition Assistance Landscape*, USDA ECON. RSCH. SERV.: AMBER WAVES (Oct. 4, 2021), <https://www.ers.usda.gov/amber-waves/2021/october/coronavirus-covid-19-pandemic-transformed-the-u-s-federal-food-and-nutrition-assistance-landscape> [https://perma.cc/QN87-BAN6] (stating that USDA food and nutrition programs received \$122.1 billion in 2020, a "historical high").

2. David A. Farenthold, *FBI Sees 'Massive Fraud' in Groups' Food Programs for Needy Children*, N.Y. TIMES (Mar. 8, 2022), <https://www.nytimes.com/2022/03/08/us/politics/food-aid-nonprofits-fraud-investigation.html> [https://perma.cc/FU8B-SNQG]. The organization's network of food distribution sites received \$3.5 million in USDA funds in 2019, before the Covid-19 pandemic. By 2021, that number was \$197 million. *Id.*

3. See 7 C.F.R. § 226.1 (2026) (regulating the Child and Adult Care Food Program, which "intend[s] to provide aid to child and adult participants and family or group day care homes for provision

nonprofit recipients across the country, Feeding Our Future was undeterred by the law.⁴ In late 2022, federal prosecutors charged forty-seven individuals in the organization’s network of meal distribution sites with stealing \$250 million in federal funds allocated toward child nutrition programs.⁵

The failure of state oversight to curb program fraud before it reached the level of criminality exemplifies the challenge of regulating federal programs. While criminal prosecutions can be an effective deterrent, litigation is costly and, here, only arose after smaller abuses were overlooked for years.⁶ As local needs persist, federal regulators face a difficult choice: ease regulations to give institutions more discretion over how to meet the needs of their community, or crack down on fraud and abuse, tightening enforcement to safeguard federal funds—potentially restricting access to resources in the communities most in need.

This Note considers whether federal prosecutions of federal programs fraud and bribery are effective at ensuring the integrity of federal funds. Part I discusses the Child and Adult Care Food Program (CACFP), administered by the USDA Food and Nutrition Service (FNS). This Part will illustrate how the failure to prevent a massive fraud scheme in Minnesota led to years of criminal litigation. Part II discusses the development of federal criminal anti-bribery law—beginning with enforcement against federal officials and expanding to state and local officials, then private and nonprofit administrators of federal programs. It contemplates the 2024 *Snyder v. United States*⁷ decision and its impact on future enforcement against public officials receiving “gratuities” from constituents.

Finally, in light of post-pandemic prosecutions and *Snyder*, Part III proposes alternative solutions to combat federal programs fraud and bribery and ensure the integrity of federal funds. First, expanding enforcement of

of nutritious foods that contribute to the wellness, healthy growth, and development of young children, and the health and wellness of older adults and chronically impaired persons”); *see also infra* Section I.A.

4. Press Release, Nat’l CACFP Ass’n, NCA Condemns Groups Charged with Conspiracy, Fraud Against Nutrition Programs (Sept. 23, 2022), <https://www.cacfp.org/2022/09/23/nca-condemns-groups-charged-with-conspiracy-fraud-against-nutrition-programs/> [https://perma.cc/Z4W4-V3J2] (condemning fraud while recognizing “thousands of community-based organizations fed millions of children [during the 2020 pandemic] while following federal guidelines with utmost integrity”).

5. Press Release, U.S. Dep’t of Just., Off. of Pub. Affs., U.S. Attorney Announces Federal Charges Against 47 Defendants in \$250 Million Feeding Our Future Fraud Scheme (Sept. 20, 2022), <https://www.justice.gov/opa/pr/us-attorney-announces-federal-charges-against-47-defendants-250-million-feeding-our-future> [https://perma.cc/G5XL-UWAX].

6. *See infra* Section I.B (discussing the state agency’s inability to stop the fraud).

7. 603 U.S. 1 (2024).

the False Claims Act by better informing agency employees and individuals in related organizations about their rights to bring *qui tam* claims. Second, issuing and enforcing federal rules that incentivize state agency oversight of the nonprofits implementing federal programs. And third, guiding prosecutorial discretion to catch misconduct that evades the False Claims Act and regulatory enforcement. By focusing federal enforcement on misconduct expressly prohibited by federal agencies and state and local governments, the Department of Justice (DOJ) can provide fair notice of federal jurisdiction without breaching the principles of state sovereignty.

I. FEDERAL PROGRAMS FRAUD AND BRIBERY

Article I of the Constitution authorizes Congress to create federal programs to provide for the general welfare of the United States.⁸ Exercising this power, Congress allocates funds to federal agencies, who disburse the money to public and private entities in exchange for one-off agreements, like raising the drinking age,⁹ or ongoing compliance, such as the enforcement of antidiscrimination laws.¹⁰ When accepting federal funds, entities must comply with the federal statutes that establish and regulate the funded programs, as “Congress surely did not intend for federal moneys to be expended to support the intentional actions it sought by statute to proscribe.”¹¹

In this way, federal funding can be an effective tool to ensure state, local, and private compliance with federal policy.¹² Expansive constructions of “federal financial assistance” could even broaden the impact of federal

8. U.S. CONST. art. 1, § 8, cl. 1 (“Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States . . .”).

9. *South Dakota v. Dole*, 483 U.S. 203, 211–12 (1987) (upholding a federal statute directing the Secretary of Transportation to withhold federal highway funds from states that allow individuals under the age of twenty-one to purchase or possess alcohol).

10. *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 75–76 (1992) (permitting a damages remedy for plaintiffs under Title IX of the Civil Rights Act of 1964). President Trump’s second administration has leveraged the spending power to limit antidiscrimination programs in institutions receiving federal funds. *See* Exec. Order No. 14173, 90 Fed. Reg. 20 (Jan. 21, 2025) (“Restoring Merit-Based Opportunity”).

11. *Franklin*, 503 U.S. at 75.

12. *See* Shariful Khan, *An Expansive View of “Federal Financial Assistance,”* 133 YALE L.J.F. 691 (2024). Congress’s civil rights legislation incentivizes compliance within federally funded programs. *See, e.g.*, Title VI of Civil Rights Act of 1964, 42 U.S.C. § 2000d (prohibiting discrimination by recipients of federal funds); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (prohibiting discrimination in education programs receiving federal funds).

statutes, reaching millions of people who work for, or benefit from, federally funded institutions, like universities and hospitals.¹³

In addition to civil rights law, qualified recipients of federal funds are subject to another ongoing commitment: federal anti-bribery law.¹⁴ Before discussing the enforcement of the federal criminal statute,¹⁵ this Part demonstrates the funding structure and resulting pitfalls of one federal program: CACFP.

A. CACFP's Structure and Oversight

Authorized to administer the country's "agriculture, food and nutrition, natural resource protection and management, rural development, and related issues," the U.S. Department of Agriculture (USDA) annually distributes billions of dollars through its sub-agencies.¹⁶ One sub-agency, FNS, distributes healthy meals to children and adults across the country through several programs, including CACFP.¹⁷

CACFP reimburses "centers" and day care homes for up to two meals and a snack per participant per day.¹⁸ "Centers" are public or private institutions that provide child care or adult day care; they may also provide emergency shelter for homeless families.¹⁹ Unless the site is an independently operating "center," day care homes require sponsorship from a public, private, or nonprofit entity to help them perform financial and administrative functions.²⁰ Sponsors are under significant pressure; among other tasks, they facilitate and document staff training, obtain and store child enrollment information, submit reimbursement claims based on meal counts and attendance records, review food menus and recipes, and ensure the sites

13. Khan, *supra* note 12, at 712–15. Khan asserts that "federal financial assistance" could include all recipients of noncompensatory funds. *Id.* at 711–12. This expanded definition could "offer nearly 1.5 million new students Title IX's protections against sex discrimination," increase the consistency and clarity of federal enforcement, and punish institutions that "might refuse benefits in order to maintain discriminatory practices . . ." *Id.* at 713, 715.

14. 18 U.S.C. § 666.

15. See *infra* Section II.B.

16. U.S. DEP'T OF AGRIC., FY 2024 BUDGET SUMMARY 1; see also 7 U.S.C. § 2201 (establishing the department).

17. FNS Nutrition Programs, USDA FOOD & NUTRITION SERV., <https://www.fns.usda.gov/programs> [<https://perma.cc/PP62-MMBS>].

18. KARA CLIFFORD BILLINGS, CONG. RSCH. SERV., R46234, SCHOOL MEALS AND OTHER CHILD NUTRITION PROGRAMS: BACKGROUND AND FUNDING 29 (2022).

19. *Id.* at 31.

20. *Id.* at 29–30. Day care homes looking to become a CACFP site can find sponsors using a publicly accessible online database. *Find a Food Program Sponsor*, NAT'L CACFP ASS'N, <https://info.cacfp.org/sponsor> [<https://perma.cc/44JK-N8BV>].

they sponsor (their “network”) comply with federal civil rights law.²¹ In return, sponsors receive monthly administrative reimbursements based on the number of sites they oversee; this can be up to 15 percent of the federal funds allocated to sites.²²

Instead of directly overseeing local organizations, FNS empowers state agencies, often departments of education or health and human services, to oversee the distribution of federal funds.²³ These agencies review CACFP institutions’ facilities²⁴ and finances,²⁵ use federal funds to conduct audits,²⁶ and may impose fines against sponsors.²⁷

CACFP’s impact has expanded significantly since its creation. In 1968, the USDA predecessor to CACFP fed 23,000 children in day care homes—today it feeds over 4.4 million in day care homes, centers, and after school programs.²⁸ As Congress expanded federal food aid, the administrators

21. See, e.g., MINN. DEP’T OF EDUC., CHILD AND ADULT CARE FOOD PROGRAM REQUIREMENTS CHECKLIST (Nov. 3, 2022).

22. BILLINGS, *supra* note 18, at 31 n.130. Sponsors can waive the 15 percent cap by justifying to the state agency that their administrative costs exceed this amount. 7 C.F.R. § 226.7(g)(1) (2026).

23. 7 C.F.R. § 226.6 (2026); *Child & Adult Care Food Program Contacts*, USDA FOOD & NUTRITION SERV. (June 22, 2023), <https://www.fns.usda.gov/cacfp/program-contacts> [<https://perma.cc/AJ2N-VCFJ>] (providing an interactive map indicating the relevant state agencies).

24. 7 C.F.R. § 226.6(m)(6) (requiring state agencies to annually review one third of all CACFP institutions). Every two years, state agencies must review sponsors with over 100 facilities that have, or are at risk of having, “serious management problems.” 7 C.F.R. § 226.6(m)(6)(ii). Such problems include “administrative weaknesses that affect an institution’s ability to meet CACFP performance standards.” *Implementation Guidance: State Agency Review Requirements*, NAT’L CACFP ASS’N (Feb. 26, 2024), <https://www.cacfp.org/2024/02/26/state-agency-review-requirements> [<https://perma.cc/DX93-SAVG>] (outlining risks such as: “sizable differences in the number of claims or the amount of claims submitted by an institution, or large increases in the number of sponsored centers or day care homes”). Every three years, state agencies must review sponsors with under 100 sites. 7 C.F.R. § 226.6(m)(6)(i). Finally, within their first ninety days, state agencies must review new sponsors with over five sites. 7 C.F.R. § 226.6(m)(6)(iv).

25. 7 C.F.R. § 226.7(b)(1) (2026). State agencies must annually review sponsors’ bank account activity to ensure that “[p]rogram funds are being spent on allowable cost categories approved in the budget” and that administrative reimbursements do not exceed the 15 percent cap. 7 C.F.R. § 226.7(b)(1)(i)–(ii); *Final Rule: Child Nutrition Program Integrity*, NAT’L CACFP ASS’N (Aug. 28, 2023), <https://www.cacfp.org/2023/08/28/final-rule-child-nutrition-program-integrity/?t> [<https://perma.cc/LM8B-Q3UL>].

26. 7 C.F.R. § 226.4(j) (2026). State agencies may apply for increased audit funds through a written request to the USDA. Procedural Matters, 88 Fed. Reg. 57792, 57817 (Aug. 23, 2023) (codified at 7 C.F.R. pts. 210, 215, 220, 225, 226, 235 (2026)).

27. 7 C.F.R. § 225.18(k)(1) (2026). The state agency, upon its own determination or under the direction of FNS, may impose fines when a sponsor or its site has “(i) Failed to correct severe mismanagement of the Program; (ii) Disregarded a Program requirement of which the sponsor or its site had been informed; or (iii) Failed to correct repeated violations of Program requirements.” 7 C.F.R. § 225.18(k)(1)(i)–(iii). The state agencies themselves may also be subject to fines imposed by FNS for the same misconduct. 7 C.F.R. § 235.11(c)(1) (2026).

28. *Program History*, NAT’L CACFP ASS’N, <https://www.cacfp.org/program-history/> [<https://perma.cc/UT9M-H7SU>]; National School Lunch Act and Child Nutrition Act of 1966 Amendments of 1975, Pub. L. No. 94-105, 89 Stat. 511 (codified at 42 U.S.C. § 1766) (creating CACFP and expanding FNS aid to include sponsored day care homes).

implementing the programs continued to rely on the sponsor oversight structure.²⁹ While this structure appears efficient for federal administrators, who shift oversight costs to state agencies and community-level sponsors, it exposes federal funds to fraud and corruption.³⁰ Despite federal regulations requiring state agency oversight, insufficient performance of these tasks provides an opportunity for sponsors to conspire with distribution sites to inflate meal counts and increase their administrative fee reimbursements.³¹

In 1998, the USDA Office of Inspector General (OIG) released a report on fraud within CACFP, critiquing the program's sponsorship structure for tempting institutions to evade weak government controls over sponsors and sites.³² The report was commissioned in response to a 1996 whistleblower complaint in California, which prompted unannounced "sweeps" of suspected noncompliant organizations.³³ Alongside FNS, state agencies, and U.S. Attorneys Offices, the OIG's targeted sweeps found thirty-two "seriously deficient" entities based on their "lack of recordkeeping, claims for unsupported and ineligible costs, lack of provider training and monitoring, and numerous health and safety violations."³⁴ Together, these seriously deficient entities had been receiving \$51.5 million annually in CACFP funds.³⁵

As the OIG uncovered the scope of fraud, its report questioned CACFP's structure.³⁶ The OIG's central concern was that the reimbursement process encourages abuse, by incentivizing sponsors to compete for more sites to raise their administrative reimbursements.³⁷ The report proposed restrictions on sites' ability to change sponsors, uniform federal law limiting

29. FNS also implements the Summer Food Service Program (SFSP), which provides free meals and snacks at neighborhood sites after the school year. *SUN Meals (Summer Food Service Program)*, USDA FOOD & NUTRITION SERV., <https://www.fns.usda.gov/summer/sunmeals> [<https://perma.cc/QZN9-ZHUL>]. This program similarly relies on state agencies and sponsors to oversee local distribution. USDA FOOD & NUTRITION SERV., SUMMER FOOD SERVICE PROGRAM ADMINISTRATIVE GUIDE (2024).

30. See discussion *infra* Section I.B.

31. See *infra* Section I.B (discussing a scheme to collect millions of dollars in CACFP funds by inflating meal counts and providing kickbacks to a sponsor to avoid regulatory enforcement).

32. ROGER C. VIADERO, INSPECTOR GEN., U.S. DEP'T OF AGRIC., OPERATION "KIDDIE CARE" (INTERIM REPORT), AUDIT NO. 27601-3-SF (Apr. 1998) [hereinafter OIG REPORT].

33. *Id.* at 3.

34. *Id.* at 2–6. The OIG also found sponsors with conflicts of interest with state agencies and those who submitted inflated budgets and payments to nonexistent employees to raise their administrative reimbursement. Multiple sponsors were convicted and sentenced to prison time. *Id.* at 2.

35. *Id.* at 1.

36. *Id.* at 7 ("Are there some basic problems with this program?").

37. *Id.* at 7–8.

administrative reimbursements, and a termination process for seriously deficient sponsors.³⁸

While the mass “sweep” operation may have deterred and eliminated some deficient sponsors, CACFP maintained its sponsorship structure, exposing it to the schemes the OIG sought to prevent. In one high profile incident in New York City, the owner of the Red Apple Child Development Centers submitted false documents to the state agency administering CACFP and, over five years, allegedly stole \$3 million in funds designated for child nutrition.³⁹ After pleading guilty to charges of federal programs fraud⁴⁰ for inflating the number of children fed at his sites, he was ordered to pay over \$2 million in restitution to USDA.⁴¹

Despite Red Apple’s flagrant abuse of federal funds, its mission, like that of many CACFP sites, was genuinely valuable to the community.⁴² Before the criminal charges, and after the organization was cut off from city funding for allegedly bribing a city inspector, a New York City councilman defended Red Apple, saying that the organization should have continued receiving city funds because, locally, they were “the largest provider of prekindergarten services to the Asian community.”⁴³ Like Red Apple, CACFP sites are an important tool to address hunger—an issue disproportionately impacting immigrant and nonwhite communities.⁴⁴

38. *Id.* At the time, administrative reimbursements could be as high as 30 percent of total meal reimbursements. In 2026, the maximum is 15 percent, but state agencies can waive this cap upon a sponsor’s application. 7 C.F.R. § 226.7(g)(1) (2026).

39. Brief and Appendix for the United States at *3–4, *Shen v. United States*, No. 22-378 (2d Cir. June 6, 2023), 2022 WL 5434529. The Government alleged the defendant used CACFP funds to pay personal loans and income taxes, and to fund his furniture company. *Id.* at *4.

40. For a full discussion of federal programs fraud and bribery, see *infra* Section II.B.

41. *Shen v. United States*, No. 22-378, 2023 WL 3830481, at *1 (2d Cir. June 6, 2023); Sharon Otterman, *Couple Accused of Stealing Millions Intended for Preschoolers’ Meals*, N.Y. TIMES (Sept. 16, 2011), <https://www.nytimes.com/2011/09/17/nyregion/couple-accused-of-stealing-food-money-from-red-apple-preschools.html> [<https://perma.cc/8WH2-6N2X>].

42. *Why CACFP Is Important*, USDA FOOD & NUTRITION SERV. (June 11, 2024), <https://www.fns.usda.gov/cacfp/why-cacfp-important> [<https://perma.cc/9YZP-XKN8>] (highlighting that children are eligible for free meals when their household’s income falls below 130 percent of the poverty line).

43. Otterman, *supra* note 41. New York City initially cut off contracts with Red Apple after the owner allegedly attempted to bribe a city inspector to ignore his false occupancy certificates. *Id.* The organization continued receiving federal funds. *Id.*

44. Areeba Haider & Lorena Roque, *New Poverty and Food Insecurity Data Illustrate Persistent Racial Inequities*, CTR. FOR AM. PROGRESS (Sept. 29, 2021), <https://www.americanprogress.org/article/new-poverty-food-insecurity-data-illustrate-persistent-racial-inequities/> [<https://perma.cc/ZCG2-FJ7N>]. In 2021, Black and Hispanic households were twice as likely as white households to experience food insecurity. *Id.* For U.S. immigrants from Mexico and West Africa, immigrant status also indicates a lower likelihood of achieving food security. Joshua Berning, Caroline Norris & Rebecca Cleary, *Food Insecurity Among Immigrant Populations in the United States*, 15 FOOD SEC. 41 (2023); FEEDING AM., MAP THE MEAL GAP 2024, at 4 (May 2024), <https://www.feedingamerica.org/sites/default/files/2024-05/MMG%202024%20Executive%20Summary%20%281%29.pdf> [<https://perma.cc/57S3-KAJL>] (finding

Given the value of these federal programs, it is essential that their funding be directed toward organizations that truly feed children and adults in need, especially in immigrant communities, where median household wealth is lower than in U.S. born households.⁴⁵

In 2020, pandemic-related shutdowns and the subsequent economic downturn heightened this need, as millions of children were no longer able to access healthy meals.⁴⁶ In response to the pandemic, USDA issued a nationwide waiver of several monitoring requirements to limit in-person contact and support social distancing.⁴⁷ With these waivers in place, state agencies were no longer required to conduct annual onsite reviews of existing sponsors⁴⁸ or pre-approval visits of new sponsors.⁴⁹ In addition to limiting state agency oversight, USDA granted flexibility to sites, allowing them to serve meals and snacks at the same time, permitting locations in areas that would not have been eligible under CACFP's income requirements,⁵⁰ and giving Summer Food Service Program sites the ability to serve "grab and go" rather than congregate meals.⁵¹

Black and Latino individuals face higher rates of food insecurity than white individuals in 90 percent of U.S. counties with comparable data). These racial disparities "highlight the urgent need for targeted interventions" to combat the history of structural racism and economic disparities in the U.S. *Id.*

45. Mohamad Moslimani, *Key Facts About the Wealth of Immigrant Households During the COVID-19 Pandemic*, PEW RSCH. CTR. (Dec. 4, 2023), <https://www.pewresearch.org/short-reads/2023/12/04/key-facts-about-the-wealth-of-immigrant-households-during-the-covid-19-pandemic/> [<https://perma.cc/BF6B-KDS4>]. While the median wealth of immigrant households increased from 2019 to 2021, its 2021 level, \$104,400, is far behind that of U.S. born households—\$177,200. *Id.*

46. Cory Turner, "Children Are Going Hungry": Why Schools Are Struggling to Feed Students, NAT'L PUB. RADIO (Sept. 8, 2020), <https://www.npr.org/2020/09/08/908442609/children-are-going-hungry-why-schools-are-struggling-to-feed-students> [<https://perma.cc/KE8N-A4DD>]. In the summer of 2020, out of thirty million students who receive free or reduced-price meals during the school year, only 15 percent of students from eligible low-income households were receiving those meals. *Id.*

47. *Nationwide Waiver of Onsite Monitoring Requirements for State Agencies in the CACFP*, USDA FOOD & NUTRITION SERV. (Mar. 27, 2020), [<https://web.archive.org/web/20251117075325/https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-8>] [hereinafter *Nationwide Waiver*] (available by archive link only).

48. 7 C.F.R. § 226.6(m)(6) (2026) (requiring annual onsite reviews).

49. 7 C.F.R. § 226.6(b)(1) (requiring pre-approval visits for new CACFP institutions).

50. OFF. OF THE LEGIS. AUDITOR, STATE OF MINN., MINNESOTA DEPARTMENT OF EDUCATION: OVERSIGHT OF FEEDING OUR FUTURE, SPECIAL REVIEW 44–45 (2024), <https://www.auditor.leg.state.mn.us/sreview/pdf/2024-mdefof.pdf> [<https://perma.cc/SRUM-FFYD>].

51. *Nationwide Waiver to Allow Non-Congregate Meal Service Institutions Operating the SFSP During Unanticipated School Closures in SY 2021–22*, USDA FOOD & NUTRITION SERV. (Sept. 22, 2021), [<https://web.archive.org/web/20211015101826/https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-101>] (available by archive link only). Before the waiver, federal regulations required meals to be served in congregate settings and consumed onsite. 7 C.F.R. § 225.6(i)(15) (2026).

To address the immense need,⁵² relaxed requirements helped local organizations act with more flexibility to get food into the hands of children⁵³ without subjecting staff to the ongoing public health risk.⁵⁴ Although state agencies were encouraged “to the maximum extent practicable, [to] continue monitoring activities of program operations offsite (e.g., through a desk audit),”⁵⁵ the scale of federal funds⁵⁶ coupled with relaxed regulations exposed these programs to fraud.

B. Failed Oversight and the Feeding Our Future (FOF) Fraud

In Minnesota, the Minnesota Department of Education (MDE) administers CACFP sponsors, sites, and reimbursements.⁵⁷ As the relevant state authority, MDE has the power to terminate reimbursement payments to sponsors and sites.⁵⁸ MDE exercised this power in January 2022, suspending payments to sponsors subject to a federal investigation,⁵⁹ which eventually implicated FOF and uncovered widespread fraud.⁶⁰

One distribution site in FOF’s network, Advance Youth Athletic Development, received \$3.2 million in federal funds and claimed to serve

52. Food insufficiency, a statistic measuring households that did not have enough to eat sometimes or often in the past seven days, reached 13.4 percent in December 2020. *Food and Consumers*, USDA ECON. RSCH. SERV. (Aug. 8, 2025), <https://www.ers.usda.gov/covid-19/food-and-consumers#sufficiency> [<https://perma.cc/DJ7N-WJ3W>]. Despite a fall in food insufficiency after the pandemic peak, racial and ethnic minority groups were disproportionately food insufficient in 2022. *Id.* (almost 20 percent for Black and American Indian households, 23 percent for Native Hawaiian and Pacific Islander, and 17 percent for Hispanic). Further, among every racial and ethnic group, food insufficiency during the same period was higher for households with children. *Id.*

53. Hodges et al., *supra* note 1. Between March and May 2020, 1.8 billion fewer meals were served than during the same period the year prior through CACFP, the National School Lunch Program, and the School Breakfast Program. *Id.* To partially make up for this loss, the Summer Food Service Program served 564.4 million meals during the same period—up from just 1.2 million in 2019. *Id.*

54. *Nationwide Waiver*, *supra* note 47 (“[S]uspending onsite monitoring is vital to support social distancing.”). The waiver was extended three times, ending thirty days after the end of the federally declared public health emergency. *Nationwide Waiver of Onsite Monitoring Requirements for Sponsors in the Child and Adult Care Food Program – EXTENSION*, USDA FOOD & NUTRITION SERV. (Apr. 20, 2021), [<https://web.archive.org/web/20210924190051/https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-96>] (available by archive link only).

55. *Nationwide Waiver*, *supra* note 47.

56. Child nutrition programs received \$10.6 billion in federal funds during the Covid-19 pandemic. *Pandemic Oversight: USDA COVID-19 Funding Dashboard*, USDA OFF. OF THE INSPECTOR GEN., <https://usdaoig.oversight.gov/pandemic-oversight> [<https://perma.cc/P8ZW-KAXW>].

57. OFF. OF THE LEGIS. AUDITOR, *supra* note 50, at 10–11.

58. 7 C.F.R. § 226.10(f) (2026) (“If . . . a State agency has reason to believe that an institution . . . has engaged in unlawful acts with respect to Program operations, the evidence . . . is a basis for nonpayment of claims for reimbursement.”).

59. *Partners in Nutrition v. Minn. Dep’t of Educ.*, 955 N.W.2d 631, 637 (Minn. Ct. App. 2023). One institution subject to the investigation challenged its termination, succeeding on appeal when the court found MDE failed to comply with the § 226 program-specific requirements for termination. *Id.* at 649.

60. Fahrenthold, *supra* note 2.

5,000 dinners every weeknight out of an apartment in Minneapolis.⁶¹ FOF, a nonprofit with a troubled past,⁶² saw the number of sites under their sponsorship skyrocket after the 2020 waivers, receiving close to \$200 million in federal funds in 2021—\$19 million of which they kept in administrative fees.⁶³ Given the ease of creating new sites, along with the very real need for accessible meals, it is no surprise that FOF was able to obtain federal funds so quickly.⁶⁴

MDE raised suspicions over FOF's "lack of financial controls" in the summer of 2020, but a judge ordered payments to continue due to the state agency's failure to comply with procedural requirements.⁶⁵ The concerns surrounding CACFP's sponsorship structure were nothing new, as the suspected abuse mirrored the conduct outlined in the OIG report over twenty years prior.⁶⁶ Instead of encouraging sponsors to regulate misconduct in their network, CACFP's structure actually incentivizes sponsors to ignore it—as sites inflate meal counts, the sponsor's administrative reimbursements increase.⁶⁷ In September 2022, the DOJ

61. *Id.*

62. *Id.* After being approved by MDE as a sponsor in 2018, the IRS revoked FOF's nonprofit status in 2020 for failing to file annual tax reports. The IRS later reinstated them. *Id.*

63. *Id.* The number of sites they sponsored grew from 116 in 2020 to 384 in 2021. OFF. OF THE LEGIS. AUDITOR, *supra* note 50, at 16. But FOF never hired an accountant. Fahrenthold, *supra* note 2.

64. See *supra* text accompanying notes 47–51. Despite the relaxed requirements, the total number of CACFP day care providers declined during the pandemic. *CACFP Family Day Care Home Participation Study*, NAT'L CACFP ASS'N (July 5, 2024), <https://www.cacfp.org/2024/07/05/cacfp-family-day-care-home-participation-study/?t> [<https://perma.cc/U5A4-WJPG>].

65. Fahrenthold, *supra* note 2. FOF accused MDE of discriminating against African immigrants, and successfully prevented any termination of payments. *Id.* Almost all the leaders of sites in the network, and subsequent defendants in federal lawsuits, were Somali-American. See Kayseh Magan, Commentary, *A Somali-American Former Investigator: Why You're Hearing About Fraud in My Community*, MINN. REFORMER (July 17, 2024), <https://minnesotareformer.com/2024/07/17/a-somali-american-investigator-heres-why-youre-hearing-so-much-about-fraud-in-my-community/> [<https://perma.cc/P7V6-RPAW>]. Minnesota is home to the largest Somali population in the U.S., and Magan argues that while the lack of recognition for immigrants' education and professional credentials may push individuals to "seek shortcuts" to make money, the opportunity for fraud stems from the failure of government controls. *Id.*; Steve Karnowski, *5 Things to Know About the Somali Community in Minnesota After Trump's Attacks*, PBS NEWS (Dec. 3, 2025), <https://www.pbs.org/newshour/nation/5-things-to-know-about-the-somali-community-in-minnesota-after-trumps-attacks> [<https://perma.cc/95FT-ENKG>]. Magan points out that MDE failed to take early regulatory action against FOF due to "feckless fear" of charges of racism or Islamophobia. Magan, *supra* note 65. "In June 2021, more than 100 people, mostly Somali, protested outside MDE's office. Many held signs that read 'F.O.F. Feeds our kids, MDE won't' and accused MDE of discrimination. So far, at least two people who attended that rally are among those charged." *Id.*

66. OIG REPORT, *supra* note 32.

67. Fahrenthold, *supra* note 2 ("[The structure] creates a perverse incentive: a reason for the watchdog not to bark . . . [it] rewards sponsors that pursue bigger networks and larger checks instead of those who crack down on fraud—a problem that has been evident for decades."). Fahrenthold critiques

charged forty-seven defendants with stealing \$250 million in CACFP funds.⁶⁸ By November 2025, seventy-eight individuals had been charged for their participation in FOF's scheme,⁶⁹ including Aimee Bock, the organization's founder and executive director.⁷⁰ Bock, who prosecutors referred to as the "mastermind" of the scheme, was convicted after a jury trial in March 2025.⁷¹

The first case to reach a verdict was *United States v. Farah*.⁷² In *Farah*, eight defendants were charged with wire fraud, money laundering, and federal programs bribery for their involvement in the scheme.⁷³ Three defendants paid bribes to FOF employees in exchange for the organization's continued sponsorship of Empire Cuisine, a newly enrolled meal distribution site that received over \$40 million in federal aid between 2020 and 2022, and claimed to distribute 3,500 meals per day early 2021.⁷⁴ But instead of using the federal reimbursements to purchase and distribute meals, the defendants submitted false documents to MDE, paid FOF employees to cover it up, and used the money for personal gain.⁷⁵

CACFP's structure, writing: "States and the federal government count on groups like Feeding Our Future to guard against corruption—even as the system incentivizes the organizations to push more money out the door by giving them a cut of it." *Id.* "[T]he case has highlighted how the government's reliance on nonprofits to help carry out an array of programs can increase vulnerability to fraud." *Id.*

68. U.S. Dep't of Just., *supra* note 5.

69. Press Release, U.S. Dep't of Just., U.S. Att'y's Off., Dist. of Minn., 78th Defendant Charged in Feeding Our Future Fraud Scheme (Nov. 24, 2025), <https://www.justice.gov/usao-mn/pr/78th-defendant-charged-feeding-our-future-fraud-scheme> [<https://perma.cc/U5P5-4JDK>]. For an updated list of the seventy-eight defendants and their roles in the fraud, see Hibah Ansari, *Who's Been Charged in the Feeding Our Future Food Fraud Investigation?*, SAHAN J. (Dec. 1, 2025), <https://sahanjournal.com/news/feeding-our-future-indictments-who-charged-food-fraud-minnesota/> [<https://perma.cc/L87N-DZGR>].

70. David A. Fahrenthold, *Justice Dept. Charges 48 in Brazen Pandemic Aid Fraud in Minnesota*, N.Y. TIMES (Sept. 20, 2022), <https://www.nytimes.com/2022/09/20/us/politics/pandemic-aid-fraud-minnesota.html> [<https://perma.cc/ZZA5-ETYH>] ("When pandemic-relief programs flooded the programs with money, [Bock] exploited her position to bring in nearly 200 new feeding operations she knew were submitting fake or inflated invoices. . . . In effect, Feeding Our Future operated a pay-to-play scheme in which individuals seeking to operate fraudulent sites under the sponsorship of Feeding Our Future had to kick back a portion of their fraudulent proceeds.").

71. Verdict Form, *United States v. Bock*, No. 22-CR-00223 (D. Minn. Mar. 19, 2025); Press Release, U.S. Dep't of Just., U.S. Att'y's Off., Dist. of Minn., Federal Jury Finds Feeding Our Future Mastermind and Co-Defendant Guilty in \$250 Million Pandemic Fraud Scheme (Mar. 19, 2025), <https://www.justice.gov/usao-mn/pr/federal-jury-finds-feeding-our-future-mastermind-and-co-defendant-guilty-250-million> [<https://perma.cc/KCE5-QE6B>].

72. Verdict Form, *United States v. Farah*, No. 22-cr-00124 (D. Minn. June 7, 2024); Press Release, U.S. Dep't of Just., U.S. Att'y's Off., Dist. of Minn., Five Defendants Found Guilty for Their Roles in \$250 Million Fraud Scheme (June 7, 2024), <https://www.justice.gov/usao-mn/pr/five-defendants-found-guilty-their-roles-250-million-fraud-scheme> [<https://perma.cc/Y39R-738C>].

73. Superseding Indictment, *United States v. Farah*, 2022 WL 4386810 (D. Minn. Sept. 13, 2022) (No. 22-124). See *infra* Part II for a discussion of 18 U.S.C. § 666 and federal programs bribery.

74. *Id.* at ¶¶ 27, 47, 135–51.

75. *Id.* at ¶ 45 (alleging the defendants made "extravagant purchases for their personal use" including real estate in Minnesota, Ohio, and Kenya, multiple vehicles, and trips to Dubai, Kenya, and Turkey).

Before a jury reached a guilty verdict for five of the *Farah* defendants,⁷⁶ prosecutors called over thirty witnesses to testify at trial, exposing the extent of fraud within FOF and its network.⁷⁷ Defense attorneys portrayed their clients as the founders of growing businesses with informal bookkeeping, claiming they gave real food to real children.⁷⁸ By December 2025, five years after the fraud occurred, fifty-four people had either pleaded guilty or been convicted through a trial,⁷⁹ and six had been sentenced.⁸⁰

Some of the defendants were community leaders—the exact people whose social networks make them the perfect candidates to administer federal programs on a local level.⁸¹ The scheme’s reach into seemingly

76. Ernesto Londoño & David A. Fahrenthold, *5 Convicted in Federal Fraud Trial Imperiled by a Gift Bag of Cash*, N.Y. TIMES (June 7, 2024), <https://www.nytimes.com/2024/06/07/us/federal-fraud-trial-minnesota.html> [https://perma.cc/Q2VA-MYUC].

77. Kelly Smith, *‘There Was Money Everywhere’: Feeding Our Future Employee Testifies He Took Kickbacks, Didn’t Check Meal Sites*, MINN. STAR TRIB. (May 8, 2024), <https://www.startribune.com/feeding-our-future-employee-testifies-he-took-kickbacks-didnt-check-meal-sites-in-get-rich-scheme/600364571> [https://perma.cc/LC3A-4GDR]. Hadith Ahmed, an assistant to Bock, FOF’s executive director, testified that “[e]veryone wanted to get involved with Feeding Our Future” because “[i]t was booming.” *Id.* Ahmed started a consulting company to conceal the kickbacks he received from sites and made \$2 million in less than a year. *Id.* “People were submitting whatever they wanted We were not visiting sites We were all taking kickbacks at that time.” *Id.*

78. Kelly Smith, *Prosecutors in Feeding Our Future Trial to Rest Their Case This Week After Calling More than 30 Witnesses*, MINN. STAR TRIB. (May 26, 2024), <https://www.startribune.com/prosecutors-in-feeding-our-future-trial-rest-their-case-this-week-after-calling-more-than-30-witnesses-in-brazen-fraud-scheme/600368798> [https://perma.cc/6HBQ-CJXZ]. Defendants also attacked prosecutors for their “lack of knowledge of East African business culture.” *Id.*

79. Joey Peters, *Here’s a List of Everyone Who Has Been Convicted in the Feeding Our Future Case*, SAHAN J. (Dec. 1, 2025), <https://sahanjournal.com/public-safety/feeding-our-future-food-aid-fraud-investigation-guilty-pleas/> [https://perma.cc/QL9G-QGH4].

80. Katrina Pross, *Here’s Everyone Who’s Been Sentenced in the Feeding Our Future Fraud*, SAHAN J. (Dec. 1, 2025), <https://sahanjournal.com/public-safety/who-has-been-sentenced-feeding-our-future/> [https://perma.cc/XQ3V-QSA3]. In an unexpected twist, the court in *Farah* dismissed a juror after an individual dropped \$120,000 in cash at the juror’s home with a note asking them to find the defendants not guilty on all counts. Indictment, *United States v. Farah*, No. 24-cr-00173 (D. Minn. June 25, 2024) (charging five individuals with conspiracy to bribe a juror); Stephen Montemayor & Kelly Smith, *New Charges: Feeding Our Future Juror Was Followed for Days, Given List of Instructions with \$120k in Cash to Acquit*, MINN. STAR TRIB. (June 26, 2024), <https://www.startribune.com/new-charges-feeding-our-future-juror-was-followed-for-days-given-list-of-instructions-with-120k-in-cash-to-acquit/600376357> [https://perma.cc/SRV9-UW7F]. Prosecutors allege the defendants recruited a woman to fly from Seattle to follow a juror from the courthouse with the cash she then left at the juror’s home. Kelly Smith & Stephen Montemayor, *Feeding Our Future Attempted Bribery Case Could Affect Other Trials in Minnesota*, MINN. STAR TRIB. (June 28, 2024), <https://www.startribune.com/feeding-our-future-attempted-bribery-case-could-affect-other-trials-in-minnesota/600377015> [https://perma.cc/ULK6-BY4Q]. Some fear this incident could increase the challenge of finding jurors for the remaining FOF trials because many residents likely formed opinions on the case. *Id.*

81. Indictment, *United States v. Abukar*, No. 23-CR-00080 (D. Minn. Mar. 7, 2023). Just two years before her indictment, Abukar won an “outstanding refugee award” for her work founding health care clinics for Minnesota’s East African community. Deena Winter, *Prominent Bloomington Woman’s*

service-minded individuals and organizations creates an uncertain environment and raises difficult questions about CACFP's future. What sponsors can state agencies trust? What sites can sponsors trust? And what is the role of the law in ensuring that federal dollars designated to feed children in need are not being used to purchase lakefront homes, foreign real estate, luxury cars, and personal international travel?⁸²

C. FOF Fallout: State and Federal Responses to the Oversight Failure

Alongside the federal criminal charges, leaders at both the state and federal level responded to the fraud through legislation, investigation, and administrative rulemaking. In June 2024, Minnesota's Office of the Legislative Auditor, at the request of public officials, released a special review of MDE's performance in carrying out its responsibility to oversee FOF.⁸³ The report concluded that "MDE's inadequate oversight of Feeding Our Future created opportunities for fraud"⁸⁴ and recommended both legislative changes and internal MDE policy changes to enhance oversight and deter future misconduct.⁸⁵

In December 2025, Minnesota Governor Tim Walz, in response to political pressure,⁸⁶ subsequent fraud allegations in other state-run

Nonprofit Claimed to Feed 6,400 Children Per Day, MINN. REFORMER (Oct. 31, 2022), <https://minnesotareformer.com/2022/10/31/prominent-bloomington-womans-nonprofit-claimed-to-feed-6400-children-per-day/> [https://perma.cc/B66V-W9JP]. She founded the nonprofit Action for East African People, which ran several distribution sites sponsored by FOF. *Id.* But her indictment alleges that she sent kickbacks of over \$330,000 to an FOF employee to maintain her sites' sponsored status. Press Release, U.S. Dep't of Just., U.S. Att'y's Off., Dist. of Minn., U.S. Attorney Announces Federal Charges Against 10 Additional Defendants in \$250 Million Feeding Our Future Fraud Scheme (Mar. 13, 2023), <https://www.justice.gov/usao-mn/pr/us-attorney-announces-federal-charges-against-10-additional-defendants-250-million> [https://perma.cc/D55W-V8DU]. Abukar pleaded guilty to one count of conspiracy to commit wire fraud in January 2025. Press Release, U.S. Dep't of Just., U.S. Att'y's Off., Dist. of Minn., Savage Woman Pleads Guilty for Her Role in \$250 Million Feeding Our Future Fraud Scheme (Jan. 24, 2025), <https://www.justice.gov/usao-mn/pr/savage-woman-pleads-guilty-her-role-250-million-feeding-our-future-fraud-scheme> [https://perma.cc/LZH8-FP28].

82. Superseding Indictment, *supra* note 73, at ¶ 45.

83. OFF. OF THE LEGIS. AUDITOR, *supra* note 50. A State Senate committee also released a report, concluding: "MDE practiced questionable business practices that would seldom survive in a work environment that provided real accountability." MINN. SENATE EDUC. FIN. AND POL'Y COMM., INTERIM FINDINGS (2022).

84. OFF. OF THE LEGIS. AUDITOR, *supra* note 50, at 4 (finding MDE did not act on warning signs and failed to exercise its authority to enforce CACFP program requirements).

85. *Id.* at 77 (recommending legislative criteria for MDE to consider when approving CACFP organizations and "more active follow-up to ensure sponsors and sites fully implement corrective action plans that result from serious deficiency processes").

86. Ryan Faircloth, *Fraud Fight Brewing in 2026 Campaigns as Investigations Stack Up*, MINN. STAR TRIB. (Oct. 20, 2025), <https://www.startribune.com/fraud-fight-brewing-in-2026-campaigns-as-investigations-stack-up/601496060> [https://perma.cc/MM3Y-JSPH]. Facing national pressure in

programs,⁸⁷ and inflammatory comments from President Trump,⁸⁸ appointed a new Director of Program Integrity to address statewide fraud.⁸⁹

At a national level, to support struggling state agencies, like MDE and others across the country, USDA promulgated a new final rule on Child Nutrition Program Integrity, implementing “statutory requirements and policy improvements to strengthen administrative oversight and operational performance of the child nutrition programs.”⁹⁰ The rule updates fines for program violations, prohibits terminated entities from future participation, expands the “serious deficiency process,”⁹¹ requires more frequent review of sites with “serious management problems,” and imposes stricter reporting and recordkeeping requirements on sponsors.⁹²

Congress members, interested in protecting the funds they allocate, also responded. In May 2024, Representative Angie Craig of Minnesota introduced a bill increasing penalties for bribery in federal programs under § 666(a) and amending the National School Lunch Act to require annual

relation to fraud within several social services programs, Walz dropped his reelection campaign in January 2026. Press Release, Off. of Governor Tim Walz, Governor Walz Statement Announcing He Will Not Seek Reelection (Jan. 5, 2026), <https://mn.gov/governor/newsroom/press-releases/?id=1055-718148> [<https://perma.cc/B85X-G3CV>].

87. Since 2020, and within multiple social services programs, federal prosecutors have convicted fifty-nine people in schemes totaling over \$1 billion in public funds. Ernesto Londoño, *How Fraud Swamped Minnesota’s Social Services on Tim Walz’s Watch*, N.Y. TIMES (Jan. 7, 2026), <https://www.nytimes.com/2025/11/29/us/fraud-minnesota-somali.html> [<https://perma.cc/8F4B-6AZM>].

88. Referring to Somalia, where many of the convicted individuals, or their families, are from, President Trump said: “When they come from hell and they complain and do nothing but bitch, we don’t want them in our country. Let them go back to where they came from and fix it.” Zolan Kanno-Youngs & Shawn McCreesh, *Trump Calls Somalis ‘Garbage’ He Doesn’t Want in the Country*, N.Y. TIMES (Dec. 2, 2025), <https://www.nytimes.com/2025/12/02/us/politics/trump-somalia.html> [<https://perma.cc/YDX8-M82S>]. Notably, President Trump did not mention that Aimee Bock, the convicted “mastermind” of the FOF scheme, is white. See U.S. Att’y’s Off., Dist. Of Minn., *supra* note 71.

89. Tim O’Malley, the man selected for the position, is a former FBI agent, and served under Minnesota’s former Republican governor as superintendent of the state’s Bureau of Criminal Apprehension. Press Release, Off. of Governor Tim Walz, Governor Walz Announces Tim O’Malley to Serve as Director of Program Integrity (Dec. 12, 2025), <https://mn.gov/governor/newsroom/press-releases/?id=1055-716178> [<https://perma.cc/9ZV5-JKZ8>].

90. Child Nutrition Program Integrity, 7 C.F.R. pts. 210, 215, 220, 225, 226, 235 (2026).

91. 7 C.F.R. § 226.6(c)(2)(ii)(A)–(I) (2026). The state agency may deny the application of a new institution, or the renewal of an existing one, for the submission of false information, fraud, a sponsor’s failure to train or monitor sponsored sites, or to perform its financial and administrative responsibilities. *Id.*

92. 7 C.F.R. § 226.15(e) (2026) (outlining recordkeeping requirements). In response to fraud allegations within several of Minnesota’s social services programs in December 2025, the U.S. Department of Health and Human Services announced it would freeze aid to the state’s child care centers. Tim Balk & Ernesto Londoño, *Health Dept. Pauses Child Care Funding to Minnesota, Citing State’s Fraud Scandal*, N.Y. TIMES (Dec. 30, 2025), <https://www.nytimes.com/2025/12/30/us/politics/hhs-minnesota-funds-day-care-fraud.html> [<https://perma.cc/Q4BC-K5G3>].

audits for Summer Food Program organizations.⁹³ Representative Craig's bill, the Stop Fraud in Federal Programs Act, represents a proactive approach to anticorruption enforcement, based on the theory that increasing penalties and the probability of detection will deter fraud by making it more costly for would-be criminals.⁹⁴

Like the USDA rules and State Auditor report, the proposed legislation indicates governmental interest in stricter enforcement of federal rules to deter sponsors from conspiring with sites to commit fraud.

But increased rules for CACFP institutions can also serve as barriers to participation and undermine the program's underlying goals.⁹⁵ While Congress seeks to ensure program integrity, federal over-regulation can cause state-level inefficiencies by imposing administrative costs on state, local, and nonprofit institutions.⁹⁶ Complex regulations, such as audit and recordkeeping requirements, take time and money to implement—two resources that overworked nonprofit employees have in short supply.⁹⁷ This

93. Stop Fraud in Federal Programs Act of 2024, H.R. 8584, 118th Cong. (2024). The proposed bill would raise the maximum prison time to twenty years and raise fines to the greater of \$250,000 or two times the value of the property fraudulently obtained. *Id.* at 2.

94. Press Release, Congresswoman Angie Craig, Nearly One Year After Feeding Our Future Crimes Uncovered, Rep. Angie Craig Introduces Bill to Crack Down on Future Fraud (Aug. 7, 2023), <https://craig.house.gov/media/press-releases/nearly-one-year-after-feeding-our-future-crimes-uncovered-rep-angie-craig> [https://perma.cc/JB22-JG7S]. Representative Craig summarized the purpose of the bill: “[w]e need to do more to discourage future criminals and increase our efforts to protect taxpayer dollars.” *Id.*; see also Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169 (1968) (discussing the economic approach to criminal punishment and enforcement based on, among other factors, the cost of punishment and social harm from the offense). In determining the optimal punishment, Becker's theory recognizes that an offender with significant resources may rationally turn to bribery to avoid prison time. *Id.* at 195. Deterring corruption would require increased punishment and enforcement to ensure that bribery is likely to be caught and is therefore not worth the cost. *Id.*

95. Bethany Jana, Kaitlyn Loefstedt, Maihan Vu, Dianne Ward & Temitope Erinosh, “*It Has a Lot to Do with the Cumbersome Paperwork*”: Barriers and Facilitators of Center-Based Early Care and Education Program Participation in the Child and Adult Care Food Program, 123 J. ACAD. NUTRITION & DIETETICS 1173, 1176 (2023) (finding CACFP's “cumbersome paperwork, eligibility requirements, [and] penalties for noncompliance” slowed participation in the program). Researchers interviewed sponsors, who discussed their fear of punitive rules for noncompliance and the “intimidating” application process. *Id.*; see also Temitope Erinosh, Bethany Jana, Kaitlyn Loefstedt, Maihan Vu & Dianne Ward, *Facilitators and Barriers to Family Child Care Home Participation in the U.S. Child and Adult Care Food Program (CACFP)*, 30 PREVENTATIVE MED. REPS., Oct. 2022, art. no. 102022, at 6 (adding that the perception of time-consuming paperwork requirements prevents understaffed organizations from participating).

96. BRITTANY WALSH, LINDA SMITH & KATHERINE MERCADO, BIPARTISAN POL'Y CTR., INTEGRATED EFFICIENT EARLY CARE AND EDUCATION SYSTEMS 4 (2023) (“Congress claimed that more children and families could be served if the states used federal funds more efficiently, and state officials complained that the federal government was the source of inefficiencies because of over-regulation.”).

97. Nonprofit sponsors must implement federal regulations under financial distress and with imperfect information on how to best implement federal policy. See NAT'L COUNCIL OF NONPROFITS, NONPROFIT IMPACT MATTERS: HOW AMERICA'S CHARITABLE NONPROFITS STRENGTHEN

begs the question—who benefits from enhanced regulations and how do they further CACFP’s mission of feeding children in need?

Nonprofits play a critical role in the country’s social safety net, supporting individuals that may otherwise rely on state and federal welfare programs.⁹⁸ Therefore, regulations that bog down the nonprofits diligently documenting their compliance can undermine the government’s goals. Ensuring the effectiveness and integrity of federal programs requires a difficult balance. Policymakers must require regulatory oversight to deter fraud, while easing regulatory requirements to encourage the creation of new sites and expand access to much needed aid.

Instead of proactively improving regulations in response to the FOF cases, a U.S. House Committee sought to deter fraud by investigating Minnesota’s political leadership. In September 2024, the Committee issued a subpoena to Governor Walz, who was running for vice president at the time, for documents related to his oversight of MDE.⁹⁹ Instead of regulating sponsors and sites, the people directly implicated in the fraud, the Committee directed their investigation toward elected officials, warning them that they may be accountable for misconduct occurring on their watch. While this approach could encourage more diligent state oversight, it fails to deter or punish the offenders themselves.

In 2026, politically motivated federal action continues to impact, and is likely to set back, the FOF prosecutions and investigations. In January 2026, six federal prosecutors in Minnesota, including the lead prosecutor on the FOF cases, resigned in disagreement with instructions from senior DOJ officials.¹⁰⁰ Before the resignations, DOJ leadership had pressured

COMMUNITIES AND IMPROVE LIVES 24 (2019) (finding 65 percent of nonprofits that serve low income communities struggle to meet demand). For an analogous discussion of regulatory inefficiencies in the financial sector, see Michael Morelli, *Managing Relative Regulatory Inefficiencies in Complex Financial Systems*, 25 U. PA. J. BUS. L. 705 (2023). In the financial sector, information asymmetry between regulators, financial institutions, and the public creates inefficiencies as firms “lack the information needed to design, implement, and monitor new regulatory requirements effectively and efficiently.” *Id.* at 755.

98. JT Alston, Note, *The Nonprofit Sector’s Uncertain Future in a Post-TCJA America*, 2018 BYU L. REV. 859, 863 (arguing that charities solve social problems and “fill gaps the government cannot fill,” thereby relieving the federal government of costs).

99. Letter from Virginia Foxx, Chairwoman, H. Comm. on Educ. and the Workforce, to Tim Walz, Governor, State of Minn. (Sept. 4, 2024) (“[T]he actions taken by you [Governor Walz] and other executive officers were insufficient to address the massive fraud.”). Committee members requested documents and communications between Governor Walz’s office and MDE regarding FOF, and documents and communications regarding the Refugee Award he presented to subsequent defendant Ayan Abukar in 2021. *Id.*; see *supra* note 81 and accompanying text.

100. Ernesto Londoño, *Six Prosecutors Quit Over Push to Investigate ICE Shooting Victim’s Widow*, N.Y. TIMES (Jan. 15, 2026), <https://www.nytimes.com/2026/01/13/us/prosecutors-doj-resignati>

prosecutors to investigate the wife of Renee Good, who was shot and killed by a federal immigration agent, and refused to include state officials in the investigation of Good's shooting.¹⁰¹

The DOJ can bring criminal bribery charges against a range of offenders, including low level administrators of federal programs,¹⁰² nonprofit directors,¹⁰³ private individuals seeking to bribe local officials,¹⁰⁴ and local elected officials themselves.¹⁰⁵ The criminal cases against those involved in the FOF scheme represent another key application of anti-bribery law—protecting massive federal programs.

III. FEDERAL ANTI-BRIBERY ENFORCEMENT

The fight against public corruption is rooted in Western moral and legal culture¹⁰⁶ and was prioritized by the Framers, who included anti-bribery provisions in the Constitution¹⁰⁷ and in the country's first federal criminal

on-ice-shooting.html [https://perma.cc/7FQA-VMHV]. In addition to Joe Thompson, the lead FOF prosecutor, the resignations included senior attorneys leading the prosecution of an individual charged with killing a state representative in summer 2025 and the lead investigator in racketeering cases against gang members. Jeff Day, Sarah Nelson & Jeffrey Meitrodt, *Mass Resignation at Minnesota's U.S. Attorney's Office Stems from Renee Good Shooting, Investigation*, MINN. STAR TRIB. (Jan. 13, 2026), <https://www.startribune.com/joe-thompson-us-attorney-who-uncovered-massive-fraud-in-minnesota-resigns-from-office/601563206> [https://perma.cc/9TFF-EGBN].

101. Londoño, *supra* note 100. Minneapolis police chief Brian O'Hara recognized the hypocrisy in the decisions from DOJ leadership that led to these resignations: "When you lose the leader responsible for making the fraud cases, it tells you [increased immigration enforcement among Minnesota's Somali community] isn't really about prosecuting fraud." *Id.*

102. *United States v. Levine*, 129 F.2d 745, 748 (2d Cir. 1942) (affirming federal bribery conviction against low level official in a federal Milk Marketing program).

103. *Dixson v. United States*, 465 U.S. 482, 501 (1984) (affirming federal bribery conviction against executive director of a nonprofit under 18 U.S.C. § 201).

104. *Sabri v. United States*, 541 U.S. 600, 608 (2004) (upholding the constitutionality of the federal programs bribery statute as a valid exercise of congressional authority). Prosecutors indicted Sabri under § 666 for bribing a city councilman to gain regulatory approval for construction projects. *Id.* at 603.

105. *See, e.g., United States v. Burke*, No. 19-CR-322, 2024 WL 3090277, at *23 (N.D. Ill. June 21, 2024) (upholding jury verdict against former Chicago alderman under § 666 for, among other offenses, accepting legal work valued at over \$5,000 in exchange for granting a pole sign permit).

106. *See* 3 EDWARD COKE, *INSTITUTES OF THE LAWS OF ENGLAND* 145 (London, M. Fleisher 1644) ("[A] great [misprision] . . . when any man in [judicial] place takes any fee . . . that hath to do before him any way, for doing his office . . ."); 4 WILLIAM BLACKSTONE, *COMMENTARIES* *78–79 (1769) (describing bribery as "when a judge, or other person concerned in the administration of justice, takes any undue reward to influence his behavior in his office"). Blackstone also proscribes embracery, the attempt to bribe a juror, recommending its punishment as "perpetual infamy, imprisonment for a year, and forfeiture of the tenfold value." *Id.*; *see, e.g., Montemayor & Smith, supra* note 80 (investigating charges for attempted bribery of a juror in the FOF trial).

107. U.S. CONST. art II, § 4. The Framers recognized two discrete crimes as grounds for impeachment, bribery and treason, along with the more ambiguous "other high Crimes and Misdemeanors." *Id.*

code.¹⁰⁸ Today, federal prosecutors utilize two criminal statutes to combat fraud and bribery by public officials and in federal programs—§ 201 and § 666.¹⁰⁹

While both statutes seek to prevent public corruption,¹¹⁰ the gaps between the statutes present risks. Millions of individuals involved with federal programs are subject to federal jurisdiction under § 666, but prosecutions are limited to individuals committing bribery and fraud with the corrupt intent to influence an official act. Individuals who give and receive gratuities, value provided *after* an official act, evade the statute.¹¹¹ And while § 201 criminalizes both bribery *and* illegal gratuities, only federal employees are subject to the statute, allowing local government officials and individuals working for federally funded programs to evade enforcement.¹¹² These gaps open the door for opportunistic criminals to take advantage of weak state and local controls over the recipients of federal funds.

A. Prosecuting “Public Officials”

Enforcement of § 201 is textually limited to value received by, or given to, a “public official.”¹¹³ This includes members of Congress and individuals acting on behalf of the United States in a “department, agency, or branch of

108. Crimes Act of 1790, ch. 9, § 21, 1 Stat. 112, 117. The First Congress prohibited bribery of federal judges, issuing punishments of fines, prison time, and disqualification from office for the judge. *Id.* Congress later extended the prohibition to other federal officials. An Act to Prevent Frauds upon the Treasury of the United States, ch. 81, § 6, 10 Stat. 170 (1853); *see also* G. ROBERT BLAKEY & RONALD GOLDSTOCK, *THE INVESTIGATION AND PROSECUTION OF ORGANIZED CRIME AND CORRUPT ACTIVITIES* 47 n.136 (G. Robert Blakey ed. 1977).

109. 18 U.S.C. §§ 201, 666.

110. S. REP. NO. 98-225, at 369–70 (1984) (Congress enacted § 666 to “protect the integrity of the vast sums of money distributed through federal programs . . .”); *Dixson v. United States*, 465 U.S. 482, 491 (1984) (Congress enacted § 201 “as part of an effort to reformulate and rationalize all federal criminal statutes dealing with the integrity of government”).

111. 18 U.S.C. § 666(a)(2) (“[C]orruptly gives, offers, or agrees to give anything of value to any person, with intent to influence . . .”).

112. Like § 666, § 201(b), which criminalizes bribery, requires corrupt intent. U.S. DEP’T OF JUST., *CRIM. RES. MANUAL* § 2041 (2019). However, § 201(c), which prohibits illegal gratuities, requires only general intent. *Id.* While the prosecutorial burden for gratuities is lower, the associated punishment is also less severe. 18 U.S.C. § 201(b)–(c) (punishing gratuities with fines and up to two years imprisonment; individuals convicted of bribery under the statute are subject to fines, up to fifteen years imprisonment, and disqualification from office).

113. 18 U.S.C. § 201(a).

government.”¹¹⁴ The DOJ has applied the statute expansively to non-elected or appointed officials as well.¹¹⁵

In *Dixon v. United States*, the Supreme Court accepted an expansive construction of § 201.¹¹⁶ It affirmed the conviction of a nonprofit executive under the statute, extending federal jurisdiction to individuals with “some degree of official responsibility” for administering federal programs—those in positions of “public trust.”¹¹⁷ The defendant, who directed a nonprofit administering U.S. Department of Housing and Urban Development block grants, was convicted for using his position to obtain roughly \$42,000 in kickbacks from the contractors he hired to build housing projects.¹¹⁸ The Court held that he was a public official because the Housing and Community Development Act “vests in local administrators . . . the power to allocate federal fiscal resources for the purpose of achieving congressionally-established goals.”¹¹⁹

Unlike in *Dixon*, the defendants in *Farah* and in subsequent FOF cases were further removed from the federal government; they were not elected officials nor employees of a state or federal agency.¹²⁰ Therefore, they could not have been subject to § 201 prosecution, despite allegations of offering and accepting bribes in exchange for access to federal funds.¹²¹ Instead, a string of relationships—between the sites, their sponsors, state and federal agencies, and federal funds—gave prosecutors a jurisdictional hook to bring charges under a different statute: § 666.

B. Expanding Prosecution to Federal Programs

Within a year of the *Dixon* decision, Congress enacted § 666 to “augment the ability of the United States to vindicate significant acts of theft, fraud, and bribery involving Federal monies” and to “protect the

114. *Id.*; see, e.g., *United States v. McDade*, 827 F. Supp. 1153 (E.D. Pa. 1993) (charging a member of Congress); *United States v. Espy*, 23 F. Supp. 2d 1 (D.D.C. 1998) (charging a federal agency head).

115. See *United States v. Levine*, 129 F.2d 745 (2d Cir. 1942) (extending a 1909 anti-bribery statute to prosecute a low-level federal program official). Debating § 201, the House Judiciary Committee cited *Levine* “as an example of how the judiciary had in the past properly construed the federal bribery laws.” *Dixon v. United States*, 465 U.S. 482, 494–95 (1984) (quoting H.R. REP. NO. 748, at 18 (1961)).

116. *Dixon*, 465 U.S. at 501.

117. *Id.* at 499–500.

118. *Id.* at 484–85.

119. *Id.* at 500. “By accepting the responsibility for distributing these federal fiscal resources, petitioners assumed the quintessentially official role of administering a social service program established by the United States Congress.” *Id.* at 497.

120. See *supra* Section I.B. Defendants owned and operated meal distribution sites, funded by the USDA and sponsored by FOF. *Id.*

121. Superseding Indictment, *supra* note 73.

integrity of the vast sums of money distributed through Federal programs.”¹²² § 666 empowers federal prosecutors to prosecute state and local officials as well as the administrators of any program receiving over \$10,000 in federal funds.¹²³

Distinct from § 201, which even post-*Dixson* is textually constrained to public officials, § 666 eliminates the public official requirement completely.¹²⁴ Federal jurisdiction is based on the relationship between a private, nonprofit, state, or local entity and the federal government—not an individual defendant’s relation to the federal government.¹²⁵ In *Farah*, for example, defendants ran nonprofits several levels removed from the federal government. The federal government, through USDA and FNS, oversaw the state agency, which oversaw the sponsor, which supervised the nonprofits.¹²⁶

To convict an individual of federal programs fraud under § 666, prosecutors must establish that the defendant is an agent of a covered entity, and that they stole, embezzled, or obtained by fraud, property worth over \$5,000 that was under the control of the entity.¹²⁷ And to convict an individual for federal programs bribery under § 666, prosecutors must establish that the defendant:

[C]orruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of an organization or of a State, local or Indian tribal government, or any agency thereof, in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of \$5,000 or more.¹²⁸

122. S. REP. NO. 98-225, at 369–70 (1984); see also Richard W. Garnett, *The New Federalism, the Spending Power, and Federal Criminal Law*, 89 CORNELL L. REV. 1, 40–46 (2003). *Dixson* initially settled the circuit split as to whether § 201 applied to local officials. The enactment of § 666 cemented this expansion of federal bribery law. *United States v. Hamilton*, 46 F.4th 389, 394 (5th Cir. 2022) (explaining the circuit split and subsequent legislation expanding federal enforcement).

123. 18 U.S.C. § 666(b). Given the \$1.3 trillion the federal government disbursed to state and local governments in 2021, this threshold covers every state official and a significant number of local ones. *Which States Rely the Most on Federal Aid?*, USA FACTS (Aug. 1, 2024), <https://usafacts.org/articles/which-states-rely-the-most-on-federal-aid/> [https://perma.cc/6RHK-YNVW].

124. 18 U.S.C. § 666(b); see also Garnett, *supra* note 122, at 67 (describing the “jurisdictional hook” of § 666 as “the flow of federal dollars in pursuit of the general welfare”).

125. See Daniel N. Rosenstein, Note, *Section 666: The Beast in the Federal Criminal Arsenal*, 39 CATH. U. L. REV. 673, 687–89 (1990).

126. See *supra* Section I.B.

127. 18 U.S.C. § 666(a)(1).

128. *Id.* at (a)(2).

Expansive jurisdiction presents risks. As Justice Kavanaugh recognized in *Snyder v. United States*, “a county official could meticulously comply with her county’s local gratuities rules . . . but still face up to 10 years in federal prison”¹²⁹ One commentator described § 666 as “The Beast in the Federal Criminal Arsenal” and a “federal criminal statute of potentially limitless scope and effect.”¹³⁰

In 2010, the Eleventh Circuit in *United States v. McNair* compounded these risks, lowering the government’s prosecutorial burden by holding that a § 666 conviction does not require a quid pro quo, or a clear line between payments provided and official acts.¹³¹ This would punish both gratuities after the act, and bribes before the act. Under *McNair*, the government would only need to prove “an intent to corruptly influence or to be influenced ‘in connection with any business’ or ‘transaction.’”¹³² This government-favored approach was not universally accepted. The Fifth Circuit limited § 666 to quid pro quo bribery, holding in *United States v. Hamilton* that the statute does not criminalize gratuities.¹³³

The Supreme Court settled the circuit split in *Snyder v. United States*.¹³⁴ In *Snyder*, the former mayor of Portage, Indiana was convicted under § 666, for accepting \$13,000 from a trucking company after awarding them a city contract.¹³⁵ Defending a broad interpretation of the statute, the United States argued that § 666 includes gratuities, like the one received by the defendant after his official act, because the statute includes the term “rewarded” along with “influenced.”¹³⁶ But the Court held that when “rewarded” is paired with the word “corruptly,” as in § 666, the term does not include gratuities.¹³⁷ It reversed the mayor’s conviction, pointing to the fact that the text of § 666 more closely aligns to § 201(b) proscribing bribery, and not § 201(c) on illegal gratuities.¹³⁸

129. 603 U.S. 1, 14 (2024).

130. Rosenstein, *supra* note 125, at 673–74.

131. 605 F.3d 1152, 1184–88 (11th Cir. 2010) (“[T]he government is not required to tie or directly link a benefit or payment to a specific official act by that County employee.”). In *McNair*, the court affirmed the convictions of public officials, and the owners of corporate contractors, when the indictment “list[ed] the items of value received or given by the defendants” without alleging a quid pro quo. *Id.* at 1185–86, 1188.

132. *Id.* at 1188 (quoting 18 U.S.C. § 666(a)(2)).

133. 46 F.4th 389, 397 (5th Cir. 2022) (“[B]oth § 201(b) and § 666(a) cover only quid pro quo bribery.”).

134. 603 U.S. 1 (2024).

135. *Id.* at 9.

136. *Id.* at 18. In dissent, Justice Jackson discusses the historic definition of the term “rewarded,” which she argues should “encompass payment in recognition of an action that an official has already taken or committed to taking.” *Id.* at 25 (Jackson, J., dissenting).

137. *Id.* at 18–19 (majority opinion).

138. *Id.* at 18–20.

Even without the ability to prosecute gratuities, § 666 is a powerful tool that prosecutors can use to punish and deter fraud and bribery in federal programs. Cases like *Farah* provide a useful example, as prosecutors used the statute to convict non-public officials for fraud against the federal government.¹³⁹ However, it is not difficult to imagine similar schemes involving federal programs, where the individuals engaged in the fraud provide gratuities instead of a quid pro quo bribe and avoid § 666 enforcement. In this way, the *Snyder* decision limits the federal government's ability to protect the integrity of the state-run programs that it funds. Therefore, alternative methods of enforcement are necessary to supplement the criminal statute.

IV. ENFORCEMENT ALTERNATIVES: PROMOTING SOCIAL GOALS WHILE PUNISHING CORRUPTION

An effective enforcement system must balance competing goals: deterring and punishing corruption while preserving the autonomy of private and nonprofit organizations to distribute aid at a community level.¹⁴⁰ In addition to targeted criminal enforcement under § 666, False Claims Act *qui tam* actions and enhanced administrative enforcement can contribute to these goals. Applying these alternative methods can harness the networks and community trust of local organizations while empowering individuals and state agencies to root out fraud before it rises to the level of criminality.

As national emergencies necessitate massive federal disbursements, the government must be prepared to track its funds when the next wave of aid is required.¹⁴¹ But in 2024, as agencies strengthened regulations in response to pandemic-related fraud, the Supreme Court weakened federal law enforcement by limiting the reach of § 666.¹⁴² Still, the *Snyder* majority's concerns regarding federal overreach into state and local policy decisions

139. See *supra* Section I.B.

140. See Nestor M. Davidson, *Relational Contracts in the Privatization of Social Welfare: The Case of Housing*, 24 YALE L. & POL'Y REV. 263, 263 (2006) (discussing the tension between the "experience, efficiency, and diversity of the private sector" and the public norms, values, and accountability of public entities).

141. In addition to Covid-era social programs, see, for example, HURRICANE KATRINA FRAUD TASK FORCE, U.S. DEP'T OF JUST., FIFTH ANNIVERSARY REPORT TO THE ATTORNEY GENERAL (2010) (summarizing, among other incidents, federal bribery charges against a city councilman and construction contractor involving federal reconstruction funds), <https://www.justice.gov/sites/default/files/criminal-disasters/legacy/2012/07/30/09-13-10katrinaprogress-report.pdf> [<https://perma.cc/7TX4-76TF>].

142. *Snyder v. United States*, 603 U.S. 1, 20 (2024) (limiting § 666 to bribery, not illegal gratuities); see also *supra* Section II.B (discussing the case).

must inform alternative enforcement mechanisms.¹⁴³ To address these concerns, prosecutorial and administrative decisions should encourage all levels of administrators of federal programs to “meticulously comply with . . . local gratuities rules” as well as federal regulations and criminal law.¹⁴⁴

Taking Justice Kavanaugh’s assertions in his *Snyder* majority too far and stripping the federal government of its ability to prosecute local corruption would open the door for opportunistic criminals—like the FOF defendants—to take advantage of weak government controls.¹⁴⁵ Crimes on the scale of FOF force the government’s hand, necessitating criminal prosecutions instead of preemptive social policy and administrative enforcement. The state-level failure to prevent the FOF scheme undermines Justice Kavanaugh’s argument against federal enforcement—in Minnesota, federal enforcement was not a trap for the “unwary” official,¹⁴⁶ but the last line of defense after rampant misconduct evaded state regulators.¹⁴⁷

When governments at all levels fail to contain public corruption, the nonprofit industry and its beneficiaries suffer.¹⁴⁸ Donations and volunteerism are key to the nonprofit sector and provide a unique non-partisan path to address social problems.¹⁴⁹ Even after prosecutors exposed, and MDE shut down, the fraudulent organizations in FOF’s network, Minnesota’s nonprofits saw a decline in both donations and volunteer engagement.¹⁵⁰ This exemplifies the stakes involved in issuing anti-fraud rules, and the public interest in their enforcement; without effective prosecution and deterrence, donor confidence falls and communities suffer.

Despite the risk of fraud, the Biden administration in 2024 touted its support for the local organizations tasked with administering social

143. *Snyder*, 603 U.S. at 14 (asserting that the variety of state and local approaches to enforcement “reflect nuanced state and local policy judgments about when gifts expressing appreciation to public officials for their past acts cross the line from the innocuous to the problematic”).

144. *See id.* In his majority opinion, Justice Kavanaugh is concerned that under an expansive construction of § 666, a meticulously compliant public official could be prosecuted despite following state and local gratuities laws. *Id.*

145. For an analogous discussion of deregulation in the financial sector, see Lynn A. Stout, *Derivatives and the Legal Origin of the 2008 Credit Crisis*, 1 HARV. BUS. L. REV. 1, 22–23 (2011) (arguing that the deregulation of certain financial derivatives in 2000 contributed to the 2008 financial crisis).

146. *Snyder*, 603 U.S. at 15.

147. *See supra* Section I.B.

148. Alston, *supra* note 98, at 888–90 (describing how stories about nonprofit fraud create skepticism in Congress and therefore less favorable tax policies for nonprofits).

149. James Clotfelter, *Enabling Public Service*, 62 L. & CONTEMP. PROBS. 257, 263 (1999).

150. Kelly Smith, *More Minnesota Nonprofits Are Facing Financial Crisis than Any Year Since 2020*, MINN. STAR TRIB. (Sept. 19, 2024), <https://www.startribune.com/more-minnesota-nonprofits-are-facing-financial-crisis-than-any-year-since-2020/601147438> [https://perma.cc/VHY8-53S2]; Kelly Smith, *Feeding Our Future Fraud Investigation Casts Scrutiny on Minnesota Nonprofits*, MINN. STAR TRIB. (Dec. 27, 2022), <https://www.startribune.com/feeding-our-future-fraud-investigation-casts-scrutiny-on-minnesota-nonprofits/600238797> [https://perma.cc/R3KZ-CWWZ].

programs.¹⁵¹ While the White House communicated these goals, federal agencies continued to strictly regulate funding recipients, amplifying Justice Kavanaugh’s concerns about federal overreach.¹⁵² Kavanaugh questions the ability of the federal government to “override state and local governments on such core matters of state and local governance” by enforcing § 666 against local officials.¹⁵³ Allowing the federal government to enforce § 666 against gratuities, he writes, would subject nineteen million state and local officials to federal regulation on top of local and state rules.¹⁵⁴

While Kavanaugh’s concerns have merit, they ignore the problem underlying scandals like FOF—that state and local regulators can fail, allowing opportunistic criminals to take advantage of weak federal oversight.¹⁵⁵ When state agencies do not protect federally allocated dollars, federal programs will not achieve their intended congressional impact. While federal regulations and prosecutions are necessary, administrative expansion may fall victim to Supreme Court skepticism,¹⁵⁶ and prosecutions only begin after the fraud has occurred. Therefore, to balance judicial skepticism, federalism, and the public interest in ensuring the effectiveness of federal programs, anti-fraud policy should incentivize private actors and state agencies to root out fraud before federal entities are required to intervene.

A. *Qui Tam* Actions Under the False Claims Act (FCA)

The FCA¹⁵⁷ provides a unique enforcement model that could benefit federal programs—*qui tam* claims, where private citizens sue on behalf of

151. *FACT SHEET: The President’s Budget Creates Opportunity, Advances Equity*, WHITE HOUSE (Mar. 11, 2024), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/03/11/fact-sheet-the-presidents-budget-creates-opportunity-advances-equity/> [https://perma.cc/D76S-KV9Q] (reiterating President Biden’s commitment to “Public Participation and Community Engagement in Government Decision Making” and its goal of ensuring underserved communities help “inform and shape the design and delivery of Federal programs, policies, and services”).

152. These rules also invoke Justice Kavanaugh’s fair notice concern. *See Snyder v. United States*, 603 U.S. 1, 15–16 (2024). Just as a mayor may lack knowledge of federal law, low-level nonprofit staff may not understand program regulations but could still be punished for seemingly innocuous errors.

153. *Id.* at 15.

154. *Id.* at 14. Assuming Justice Kavanaugh did not include nonprofit employees administering federal programs in his count of state and local officials, nineteen million “local officials” may undercount the number of people subject to § 666 enforcement.

155. While state agencies cannot be expected to prevent all crime, which occurs even in well-regulated industries, MDE failed to act on known warning signs. OFF. OF THE LEGIS. AUDITOR, *supra* note 50, at 4.

156. *Snyder*, 603 U.S. at 40 (Jackson, J., dissenting) (“[I]t appears that the real bone the majority has to pick with § 666 is its concern about overregulation . . .”).

157. 31 U.S.C. § 3729.

the United States.¹⁵⁸ To incentivize private litigants (called relators), the FCA entitles them to a portion of the reward after a successful claim.¹⁵⁹ The first three provisions of the statute subject to enforcement anyone who:

- (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- (C) conspires to commit a violation of subparagraph (A), (B), [or subsequent provisions].¹⁶⁰

The history of private enforcement supports its application to fraud and bribery in federal programs. Since the country's founding, Congress has used private enforcement as an efficient method to protect the money it distributes.¹⁶¹ Over time, the law has developed to address self-interested opportunism during national crises, as individuals sought personal gain from federal distributions.¹⁶² Just as Civil War fraud spurred the FCA's enactment,¹⁶³ pandemic-era cases create an opportunity to apply *qui tam* enforcement to protect the integrity federal funds during the next national crisis.¹⁶⁴

In 1986, the same year Congress narrowed § 666 by adding the “corruptly” requirement,¹⁶⁵ it amended the FCA, extending eligibility to bring *qui tam* claims to many federal employees.¹⁶⁶ Civil FCA penalties can

158. 31 U.S.C. § 3730(b)(1) (“A person may bring a civil action for a violation of section 3729 for the person and for the United States Government.”).

159. 31 U.S.C. § 3730(d). The relator is entitled to 15–25 percent of proceeds if the government intervenes, and 25–30 percent of proceeds if the government does not. *Id.*

160. 31 U.S.C. § 3729(a)(1). The conspiracy provision is relevant to schemes like FOF, as it subjects to enforcement individuals who conspired with those who submitted false claims.

161. John C. Kunich, *Qui Tam: White Knight or Trojan Horse*, 33 A.F. L. REV. 31 (1990). Ten of the country's first fourteen federal statutes with penalties included *qui tam* provisions. *Id.* at 31; see, e.g., Act of Mar. 1, 1790, ch. 2, § 3, 1 Stat. 101, 102 (creating a cause of action for an “informer” against marshals for improper census taking).

162. Kunich, *supra* note 161, at 31–32, 32 n.6. President Lincoln signed the FCA into law in 1863 to address “war profiteering” by federal contractors who cheated the Union Army out of resources. Act of Mar. 2, 1863, ch. 67, 12 Stat. 696.

163. Kunich, *supra* note 160, at 31–32, 32 n.6.

164. See HURRICANE KATRINA FRAUD TASK FORCE, *supra* note 141 (discussing fraud after Hurricane Katrina).

165. Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 59(a), 100 Stat. 3592, 3612–13.

166. False Claims Amendments Act of 1986, Pub. L. No. 99-562, § 2, 100 Stat. 3153, 3153–54 (permitting *qui tam* actions based on information in the hands of the United States). Still, suits are limited by the public disclosure exception. 31 U.S.C. § 3730(e)(4) (prohibiting *qui tam* suits based on public allegations unless the relator is the direct or independent source of the information and voluntarily gives it to the United States).

be massive,¹⁶⁷ and effective private enforcement can increase the certainty of punishment as potential violators are closely watched by their own employees.¹⁶⁸ In theory, this would deter fraud.¹⁶⁹

Defendants in the FOF cases were convicted for several federal crimes, but not for false claims, despite prosecutors alleging the submission of documents falsely claiming to distribute meals.¹⁷⁰ This was an exercise of prosecutorial discretion; federal prosecutors charged the defendants with federal crimes, instead of civil FCA violations, likely based on their evidence, resources, and the egregiousness of the misconduct.¹⁷¹

Despite the severity of the eventual criminal charges, DOJ only brought them after millions of dollars were stolen from the nutrition program Congress sought to fund.¹⁷² Instead of criminal charges, could an earlier whistleblower report and subsequent FCA claim have stopped the bleeding before more federal dollars were stolen? Multiple employees testified against the defendants at trial—employees with knowledge of the fraudulent conduct and likely sufficient evidence to bring *qui tam* claims.¹⁷³

To incentivize FCA claims before the need for a witness to testify at a criminal trial, federal agencies should inform their employees, contractors, and funding recipients of their whistleblower protections¹⁷⁴ and of their

167. 31 U.S.C. § 3729(a)(1) (imposing a civil penalty between \$5,000 and \$10,000, “plus 3 times the amount of damages which the Government sustains”); *see, e.g.*, Press Release, U.S. Dep’t of Just., Off. of Pub. Affs., GlaxoSmithKline to Plead Guilty and Pay \$3 Billion to Resolve Fraud Allegations and Failure to Report Safety Data (July 2, 2012), <https://www.justice.gov/archives/opa/pr/glaxosmith-kline-plead-guilty-and-pay-3-billion-resolve-fraud-allegations-and-failure-report> [https://perma.cc/54PC-8X7K].

168. *See* Kunich, *supra* note 161, at 45 (“Congress envisioned a vastly increased number of eyes and ears ever-vigilant for fraudulent conduct.”).

169. According to classical deterrence theory, a punishment’s certainty, swiftness, and proportionality deters lawbreaking. Kelli D. Tomlinson, *An Examination of Deterrence Theory: Where Do We Stand?*, FED. PROBATION, Dec. 2016, at 33, 33. Still, there are many factors motivating crime and the empirical evidence on the classical theory is “murky.” *Id.* at 35.

170. *See, e.g.*, Superseding Indictment, *supra* note 73 (alleging wire fraud, federal programs fraud and bribery, and money laundering).

171. Prosecutors characterized the scheme as an “egregious plot to steal public funds meant to care for children in need,” indicating their interest in pursuing criminal penalties. U.S. Dep’t of Just., *supra* note 5. Prosecutors seemingly could have alleged FCA violations, given the allegations that, among other things, the defendants submitted false attendance rosters to their sponsor, who then submitted reimbursement claims to MDE. *Id.* (prosecutors alleged one site submitted an attendance roster using names from “www.listofrandomnames.com”).

172. *See* Fahrenthold, *supra* note 2; *supra* text accompanying notes 65–71 (explaining that MDE raised suspicions about FOF in 2020—two years before DOJ brought charges).

173. Smith, *supra* note 78.

174. 31 U.S.C. § 3730(h) (protecting employees, contractors, or agents from retaliation for lawful acts done to further an FCA claim). Most relators are current or former employees with “an insider’s perspective on the wrongdoing,” making protections necessary to stop employers from silencing those with

potential payout for bringing a successful claim.¹⁷⁵ The infrastructure for private enforcement already exists; law firms specialize in representing whistleblowers in cases alleging bid rigging, bribery, and kickbacks to obtain government contracts.¹⁷⁶ Just as relators bring FCA claims to ensure the Government does not overpay on military contracts, similar claims can ensure federal funds are not siphoned away by self-interested program staff.¹⁷⁷

A well-informed workforce could prevent the need for criminal charges, and further the FCA's intent to "encourage any individual knowing of Government fraud to bring that information forward."¹⁷⁸ The USDA OIG already accepts fraud reports through a hotline and could supplement its existing role by providing training materials to state agencies, who communicate with sponsors and subsequently sites.¹⁷⁹ When federal funds are disbursed to small day care homes, *qui tam* claims from on-the-ground informers could be less costly for the federal government than criminal charges.¹⁸⁰

However, over-incentivizing suits can impose an administrative and investigative burden on prosecutors, who must investigate a *qui tam* suit within sixty days of the complaint to decide whether to intervene.¹⁸¹ When a relator files the complaint instead of the Government, DOJ loses its ability

knowledge of fraud. Bryan Lemons, *An Overview of "Qui Tam" Actions*, FED. L. ENF'T TRAINING CTRS. Congress added these protections in 1986 with two goals: (1) "halt companies and individuals from using the threat of economic retaliation to silence 'whistleblowers'" and (2) "assure those who may be considering exposing fraud that they are legally protected from retaliatory acts." S. REP. NO. 99-345, at 34 (1986).

175. Relators earned \$400 million in 2024. Press Release, U.S. Dep't of Just., Off. of Pub. Affs., False Claims Act Settlements and Judgments Exceed \$2.9B in Fiscal Year 2024 (Jan. 15, 2025), <https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024> [<https://perma.cc/58KY-8FGT>].

176. See, e.g., *Bribery, Kickbacks & Bid Rigging*, WHISTLEBLOWER L. COLLABORATIVE, <https://www.whistleblowerllc.com/what-we-do/government-program-fraud/bribes-kickbacks-bid-rigging/> [<https://perma.cc/ZY4E-FPFR>].

177. See discussion *supra* Section I.B.

178. S. REP. NO. 99-345, at 2 (1986).

179. U.S. DEP'T OF AGRIC., OFFICE OF INSPECTOR GENERAL ORGANIZATION AND PROCEDURES, DR 1700-002, at 5-6 (Jan. 13, 2023) (outlining reporting channels and procedures).

180. See *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 541 n.5 (1943) ("[O]ne of the least expensive and most effective means of preventing frauds on the Treasury is to make the perpetrators of them liable to actions by private persons acting . . . under the strong stimulus of personal ill will or the hope of gain" (quoting *United States v. Griswold*, 24 F. 361, 366 (D. Or. 1885))); see also *United States ex rel. Harman v. Trinity Indus., Inc.*, 872 F.3d 645, 669 (5th Cir. 2017) (explaining the purpose of *qui tam* suits: "drawing upon private litigation to protect public coffers"); S. REP. NO. 99-345, at 2 (1986) ("[O]nly a coordinated effort of both the Government and the citizenry will decrease this wave of defrauding public funds.").

181. But see Lemons, *supra* note 174, at 2 ("[A]s a practical matter, extensions are often liberally granted."); 31 U.S.C. § 3730(b)(3) ("The Government may, for good cause shown, move the court for extensions of the time.").

to dictate the timing and forum of enforcement.¹⁸² Therefore, while educating employees and contractors, DOJ must diligently uphold the statutory limits on opportunistic relators¹⁸³ and protect its right to exert some control over a *qui tam* case.¹⁸⁴

Training and guidance, for both prosecutors and potential relators, should include information on the FCA's conspiracy provision¹⁸⁵ and its "causes to be made" language,¹⁸⁶ which subject to liability individuals who confer bribes or gratuities onto another in exchange for their submission of false claims to the federal government.¹⁸⁷ DOJ can issue guidance to prosecutors, and agency OIGs to potential relators, that providing something of value in exchange for the submission of a false claim can satisfy the FCA's causation requirement.¹⁸⁸

In addition to expanded FCA enforcement, Congress could amend § 666, adding a *qui tam* provision to allow relators to bring private criminal suits for bribery and fraud. Instead of tipping off the FBI, insiders at federal programs would be incentivized to sue, and the DOJ would have the opportunity to investigate and intervene. This is supported by the statute's purpose, "to ensure that 'taxpayer dollars . . . are in fact spent for the general welfare, and not frittered away in graft.'"¹⁸⁹ These suits would also ease the

182. See Kunich, *supra* note 161, at 44 ("[A] *qui tam* action may surface at a suboptimal point in time from the Government's perspective. When unfettered by private enforcement actions, the DOJ is generally free to choose the most advantageous moment to initiate proceedings.").

183. 31 U.S.C. § 3730(e)(4) (requiring a relator basing their suit on public allegations to be the direct or independent source of the information and to voluntarily provide it to the U.S.).

184. 31 U.S.C. § 3730(c)(2)(A)–(C) (empowering the DOJ to limit the relator's participation when it would "interfere with or unduly delay the Government's prosecution of the case"). DOJ may also dismiss a case after a hearing and may agree to a "fair, adequate, and reasonable" settlement over the relator's objections. *Id.* Finally, the Government can limit the witnesses, length of testimony, cross-examinations, and "otherwise limit[] the [relator's] participation . . . in the litigation." *Id.* § 3730(c)(2)(C)(i)–(iii); Kunich, *supra* note 161, at 50 ("[I]f the statutory safeguards against frivolous actions work as planned, *qui tam* suits may be the ultimate pro-government claim.").

185. 31 U.S.C. § 3729(a)(1)(C).

186. *Id.* § 3729(a)(1)(B). In the FOF cases, prosecutors could argue the sponsor's failure to identify false meal counts caused the submission of false claims to a federal agency. See *supra* Section I.B. Establishing this causal link would be a lower burden than establishing criminal conspiracy, which requires an agreement and a wrongful act violating the FCA. See *United States ex rel. Westmoreland v. Amgen, Inc.*, 738 F. Supp. 2d 267, 280 (D. Mass. 2010) (applying "general civil conspiracy principles" to the FCA).

187. This includes claims made to "a contractor, grantee, or other recipient" who is reimbursed by the federal government to spend the money "on the Government's behalf or to advance a Government program or interest." 31 U.S.C. § 3729(b)(2)(A)(ii).

188. See *United States ex rel. Greenfield v. Medco Health Solutions, Inc.*, 880 F.3d 89, 100 (3d Cir. 2018) (holding a *qui tam* plaintiff must show "some connection between a kickback and a subsequent reimbursement claim," rejecting a defendant-friendly but-for causation standard).

189. *United States v. Snyder*, 603 U.S. 1, 23 (Jackson, J., dissenting) (quoting *Sabri v. United States*, 541 U.S. 600, 605 (2004)).

DOJ's enforcement burden, as they would allocate resources toward investigating FCA claims instead of closely monitoring local organizations across the country.¹⁹⁰

While there is some efficiency value in adding this provision, *qui tam* actions are traditionally limited to civil suits because the DOJ has prosecutorial discretion over criminal suits.¹⁹¹ For example, the interests of a private relator may contradict the public interest in retributive justice, depending on the immorality of the crime. This tension makes it unlikely a *qui tam* provision would be added to § 666.

B. Administrative Rulemaking to Expose Corruption Before Criminality

The *Snyder* constraints on criminal enforcement of § 666,¹⁹² and the state agency's failure to prevent the FOF scheme,¹⁹³ leave a hole in fraud enforcement. Enhanced federal administrative rules can fill this hole and, alongside well-funded enforcement, effectively prevent and punish federal programs fraud and bribery.

Agencies like FNS, tasked with implementing federal programs, are authorized to promulgate rules to ensure the funds they distribute achieve Congress's policy goals.¹⁹⁴ FNS issued the Program Integrity Rule in 2023, enhancing the enforcement of anti-fraud mechanisms within the federal programs it oversees.¹⁹⁵ The final rule expands the state agency review requirements to expose fraudulent conduct before it becomes criminal.¹⁹⁶

190. While FCA investigations can be extensive and may involve subpoenas, witness interviews, and oral testimony, this would allow DOJ to target its resources on legitimate claims. Memorandum from the U.S. Dep't of Just., Government Intervention in Qui Tam (Whistleblower) Suits (June 13, 2012), https://www.justice.gov/sites/default/files/usao-edpa/legacy/2011/04/18/fcaprocess2_0.pdf [https://perma.cc/S8TR-CYJR].

191. See Roger A. Fairfax, Jr., *Delegation of the Criminal Prosecution Function to Private Actors*, 43 U.C. DAVIS L. REV. 411, 427–32 (2009) (describing prosecutorial discretion as a “Non-Delegable Sovereign Act. . . unsuitable for delegation to private hands” (citing Austin Sarat & Conor Clarke, *Beyond Discretion: Prosecution, the Logic of Sovereignty, and the Limits of Law*, 33 LAW & SOC. INQUIRY 387, 390 (2008))). For a discussion on the constitutionality of *qui tam* claims generally, see United States ex rel. Polansky v. Exec. Health Res., Inc., 599 U.S. 419, 442–52 (2023) (Thomas, J., dissenting).

192. See *supra* Section II.B.

193. See *supra* Section I.B.

194. See, e.g., 42 U.S.C. § 1766(a)(1)(B) (“The Secretary may carry out a program to assist States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children in institutions providing child care.”).

195. Child Nutrition Program Integrity, 88 Fed. Reg. 57792 (proposed Aug. 23, 2023) (codified at 7 C.F.R. pts. 210, 215, 220, 225, 226, 235 (2026)) (“FNS cannot accomplish its mission to provide access to food, a healthful diet, and nutrition education . . . without a strong and sustained effort to ensure that integrity is always a priority.”).

196. See *supra* Section I.A (discussing CACFP's structure); *supra* text accompanying notes 18–27 (discussing the federal rules regulating CACFP institutions and state agencies).

While state agencies review institutions' facilities and finances, they may only impose fines against a sponsor that is a school food authority—this means nonprofit sponsors, like FOF, are not subject to fines.¹⁹⁷ Instead, nonprofit sponsors are subject to the serious deficiency process¹⁹⁸ and may be disqualified for failure to take corrective action.¹⁹⁹ Given the failure of the serious deficiency process to stop the FOF fraud, FNS should expand fines to include nonprofit sponsors.²⁰⁰ By taking advantage of the existing sponsorship system and avoiding direct entanglement with local distribution sites, FNS can protect federal funds by making it more costly for sponsors to fail at their duty to oversee sites.²⁰¹

Expanded fines will only be effective, however, when the state agency actively exercises its authority under the federal rules.²⁰² Therefore, in addition to state agencies penalizing noncompliant sponsors, FNS should more actively police state agencies by imposing fines against them to ensure federal programs are not at risk.²⁰³ Each state agency must uphold its responsibility to ensure federal funds are used to feed children and not lost to corruption.

These proposals—expanded fines against state agencies and nonprofit sponsors—align with the position of the USDA OIG regarding the integrity

197. For the situations triggering fines, see 7 C.F.R. § 225.18(k)(1) (2026) and *supra* text accompanying note 27. See also 7 C.F.R. § 210.2 (2026) (defining a School Food Authority as a “governing body which is responsible for the administration of one or more schools”).

198. 7 C.F.R. § 226.6(c)(2)(ii)(A)–(I) (2026).

199. *Id.* § 226.6(c)(1)(iii)(A)(5) (“[F]ailure to fully and permanently correct the serious deficiency(ies) within the allotted time will result in denial of the institution’s application and the disqualification of the institution and the responsible principals and responsible individuals.”).

200. Smaller, well-enforced, penalties can hold organizations accountable without financially crippling their effectiveness. Cf. R.M. Brown, *Administrative and Criminal Penalties in the Enforcement of Occupational Health and Safety Legislation*, 30 OSGOODE HALL L.J. 691, 733 (1992) (arguing that administrative penalties in the occupational safety field are faster, cheaper, and more effective at achieving compliance than criminal punishment because of the lower standard of proof and ease in identifying offenders).

201. Consistent enforcement should incentivize voluntary compliance, as nonprofits will seek to avoid fines and uphold their community reputation by closely overseeing their employees’ conduct. See Joel Mayer, *Nonprofit Doesn’t Equal Noncompliance*, N.J. LAW. MAG., Apr. 2010, at 24, 27 (encouraging nonprofits to preemptively comply with federal corporate law because “[v]oluntary adoption . . . enhances the trust of various stakeholders,” including “donors whose continued generosity is in greater need in the more-challenging economic environment”).

202. Brown, *supra* note 200, at 710 (“[D]eterrence research strongly suggests that more certain punishment leads to greater compliance.”).

203. MDE, for example, failed to “exercise its authority to deny applications.” OFF. OF THE LEGIS. AUDITOR, *supra* note 50, at 22. Knowing that other state agencies had been fined for their failures to oversee sponsors, a rational state agency would act more diligently to ensure the integrity of the institutions under their watch. Irrational state agencies and sponsors, while not incentivized by fear of financial penalties, may still be subject to criminal punishment.

of CACFP funds.²⁰⁴ But while many individuals will comply to avoid the cost of violations, some may be willing to pay to avoid enforcement,²⁰⁵ and others may be afraid to seek federal funds at all.²⁰⁶ Therefore, even with stronger administrative tools, two complementary actions are necessary: (1) federal prosecutors must continue to enforce § 666 when state agencies fail to catch misconduct, and (2) state agencies must continue providing technical assistance to local CACFP sites and sponsors to ease the administrative burden of participation.

C. Supplement Administrative Rules with Strategic Prosecutorial Discretion

Given the potential for regulatory failure, criminal prosecutions are a necessary component in the web of law protecting the integrity of federal programs.²⁰⁷ However, with a statute as far-reaching as § 666, prosecutors need guidance to avoid disrupting socially beneficial federal programs, as well as state and local governments.²⁰⁸ Updated in 2020, before the *Snyder* decision, the DOJ instructs its prosecutors to find a “substantial and identifiable Federal interest” before bringing § 666 charges.²⁰⁹ Regarding

204. OFF. OF THE INSPECTOR GEN., U.S. DEP’T OF AGRIC., FY 2025 ANNUAL PLAN 5 (2024). The OIG seeks to “assess the adequacy of FNS’ CACFP meal reimbursement claims process for childcare centers” and “validate meal claims at selected sites . . .” *Id.*

205. For example, by bribing a sponsor to overlook false meal counts. *See supra* Section I.B.

206. The fear of financial penalties for mistakes by a single nonprofit employee could deter potential sites and sponsors from joining the program. Hailey Heinz et al., *New Mexico Sponsors Identify Time and Money as Factors Affecting Home-Based Provider Child and Adult Care Food Program Engagement*, 54 J. NUTRITION EDUC. & BEHAV. 947, 951 (2022) (describing how the “nervous or nerve-wracking” feeling of state agency visits can deter CACFP participation).

207. For an insightful interview with the lead prosecutor in the FOF cases, Joe Thompson, discussing Minnesota’s failure to prevent fraud, see Deena Winter, *Who Is Joe Thompson, the Federal Prosecutor Who Says Minnesota ‘Left the Door Wide Open’ to Fraud?*, MINN. STAR TRIB. (July 29, 2025), <https://www.startribune.com/joe-thompson-prosecutor-feeding-our-future/601442597> [<https://perma.cc/DG8X-A25W>]. Thompson explains that while criminal defendants must take responsibility for their conduct, the state “left the door wide open” to fraud. *Id.* He points to: “Politicians who turned a blind eye. Agencies that failed to act. Prosecutors and law enforcement who didn’t push hard enough. Reporters who ignored the story. Community leaders who stayed silent. And a public that wanted to believe it couldn’t happen here.” *Id.*

208. *See Snyder v. United States*, 603 U.S. 1, 16 (2024) (critiquing the lack of guidance the Government provides in defining a “wrongful” gratuity). Under the Government’s “wrongfulness” standard, Justice Kavanaugh asks: “Is a \$100 Dunkin’ Donuts gift card for a trash collector wrongful? What about a \$200 Nike gift card for a county commissioner who voted to fund new school athletic facilities?” *Id.*

209. U.S. DEP’T OF JUST., JUST. MANUAL § 9-46.000 (2020), <https://www.justice.gov/jm/jm-9-46000-program-fraud-and-bribery> [<https://perma.cc/M4KK-9WFK>] (“The statute was not intended to reach every Federal contract or every Federal disbursement” and enforcement should be “limited to cases in which the Federal assistance is given pursuant to a specific statutory scheme that authorizes assistance to promote or achieve policy objectives.”). This guidance supports Justice Jackson’s

federal programs, the interests of the public and DOJ align—both want to ensure taxpayer dollars are properly spent.²¹⁰ As the *Snyder* Court recognized, standardless enforcement would “turn § 666 into a vague and unfair trap.”²¹¹

Rejecting the Government’s proposed standard²¹² for criminalizing gratuities under § 666, the Court pointed to regulatory guidance on § 201(c), which expressly punishes gratuities given to or accepted by public officials.²¹³ In addition to the ethics rules cited in *Snyder*, agencies publish their own guidance to ensure their employees avoid § 201 charges.²¹⁴ To clarify the criteria for § 666, and address concerns about federal overreach and lack of fair notice,²¹⁵ agencies implementing federal programs should issue rules regarding the application of § 666 to both their employees and anyone involved in the program’s implementation.²¹⁶

Although agency guidelines do not bind prosecutorial discretion,²¹⁷ many agencies already have rules regarding bribery, fraud,²¹⁸ and

dissenting position, that § 666 is sufficiently limited and does not threaten “common gift giving”—conduct that does not implicate a substantial federal interest. *Snyder*, 603 U.S. at 35, 42 (Jackson, J., dissenting) (“§ 666 was not designed to apply to teachers accepting fruit baskets, soccer coaches getting gift cards, or newspaper delivery guys who get a tip at Christmas . . . [its] limits are clear on the face of the statute.”).

210. See WHITE HOUSE, UNITED STATES STRATEGY ON COUNTERING CORRUPTION 4 (2021) (“Corruption robs citizens of equal access to vital services . . .”).

211. *Snyder*, 603 U.S. at 19.

212. Transcript of Oral Argument at 46–47, *Snyder v. United States*, 603 U.S. 1 (2024) (No. 23-108). The Government argued that a gratuity was illegal under § 666 when the prosecutor proved the defendant’s “consciousness of wrongdoing” and that jury instructions may “isolate what is actually wrongful” which is the appearance that “the government is for sale.” *Id.*

213. *Snyder*, 603 U.S. at 7–8 (discussing gratuities rules and exceptions promulgated by the Office of Government Ethics guiding compliance with § 201, but not § 666); see also *infra* note 214.

214. See, e.g., *Ethics Advisor’s Desk Reference*, U.S. DEP’T OF AGRIC., at pt. II.A., <https://www.usda.gov/oe/rules-road/overview/ethics-advisors-desk-reference> [<https://perma.cc/57JQ-QR7R>]. The USDA notes that for the purpose of § 201, “public officials” includes both federal employees and individuals “acting for or on behalf of” a federal agency. *Id.* at pt. I.B.2.

215. *Snyder*, 603 U.S. at 15–16 (“The Government’s interpretation of the statute would create traps for unwary state and local officials” because it “does not identify any remotely clear lines separating an innocuous . . . gratuity from a criminal gratuity.”).

216. The President can issue ethics guidance to executive branch personnel as well. See, e.g., Exec. Order No. 13490, 74 Fed. Reg. 4673 (Jan. 26, 2009) (requiring all appointees to executive agencies to sign an ethics pledge, which includes a ban on accepting gifts from lobbyists and standards to address conflicts of interest).

217. U.S. DEP’T OF JUST., JUST. MANUAL § 9-27.001 (2023), <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution> [<https://perma.cc/8YL7-B3EF>]. The DOJ’s prosecutorial discretion flows from the Constitution, which empowers the President, and thereby the executive branch, to ensure that the laws are “faithfully executed.” U.S. CONST. art. II, § 3.

218. See, e.g., U.S. DEP’T OF AGRIC., *supra* note 179. The USDA requires agency staff who are “offered a bribe or who believe[] that a bribe was offered to, solicited by, or accepted by another employee

whistleblower protections.²¹⁹ Using the existing training infrastructure within the federal agencies implementing local programs,²²⁰ agencies can expand guidance on § 666 enforcement to local organizations to clarify who is subject to the law and inform potential whistleblowers of the conduct they can report.

While these guidelines address federal programs, they would not address corruption by elected officials who are not working under a federal agency. The jurisdiction of the Office of Government Ethics, which issues rules implementing § 201, is limited to executive branch officers and employees.²²¹ To address § 666 bribery outside federal agencies, the DOJ should expand its existing guidelines by issuing standard guidance on the conduct and individuals subject to the statute and the whistleblower reporting process.²²² Distinguishing misconduct involving elected officials from misconduct within federal agencies will save investigative resources, provide fair notice, and empower potential whistleblowers.

D. Eliminate Federal Programs to Shift Aid and Enforcement Costs to States

Instead of pouring resources into anti-corruption efforts through extensive rulemaking and federal prosecutions, some researchers suggest Congress could eliminate federal programs altogether. By ending food subsidies, including programs like CACFP, Congress would cut \$145.6

[to] immediately report that information directly . . . to OIG . . .” *Id.* at 5; see also OFF. OF INSPECTOR GEN., U.S. DEP’T OF AGRIC., SEMIANNUAL REPORT TO CONGRESS 1 (2024) (showing that during a six-month period in 2024, OIG processed six bribery complaints and 4,704 cases of “participant fraud”).

219. Whistleblower Protection Coordinator, U.S. DEP’T OF AGRIC., OFF. OF INSPECTOR GEN., <https://usdaoig.oversight.gov/resources/whistleblower-protection-coordinator> [<https://perma.cc/Y79F-MM9X>].

220. FNS collaborates with nonprofits to create publicly available training materials for sponsors and sites and provides technical assistance to state agencies. See *CACFP Training Tools*, USDA FOOD & NUTRITION SERV. (May 1, 2025), <https://www.fns.usda.gov/tn/cacfp/trainers-tools> [<https://perma.cc/8C6F-VXW7>]; *CACFP Training: Institute of Child Nutrition*, NAT’L CACFP ASS’N (Aug. 4, 2022), <https://www.cacfp.org/2022/08/04/cacfp-training/> [<https://perma.cc/2N6N-45CY>]; *Training: CACFP Centers*, MINN. DEP’T OF EDUC., <https://education.mn.gov/MDE/dse/FNS/prog/CACFPen/Train/index.htm> [<https://perma.cc/NQP7-GLCP>].

221. 5 U.S.C. § 7353(b) (authorizing the Office of Government Ethics to issue rules implementing federal prohibitions on bribery and illegal gratuities for executive branch officers and employees). The Office does not have jurisdiction over non-federal employees, meaning they cannot guide § 666 prosecutions.

222. Just as federal agencies issue ethics guidance to officers and employees, DOJ should issue guidance to state and local officials—all of whom are potential subjects of § 666 prosecution. These guidelines will set a baseline for criminal conduct, allowing state and local jurisdictions to criminalize more conduct based on their policy goals. The reporting process, through the FBI and state or local OIG, will serve as a safety valve on prosecutions. These authorities will only refer cases to the DOJ after investigating and determining whether the case merits federal prosecution.

billion from the federal budget.²²³ Without federal subsidies, state and local governments, as well as private and nonprofit institutions, would be left to fill the gap for people in need.²²⁴

With a better understanding of community needs and stronger trust among beneficiaries, these institutions may more effectively distribute aid and remove the barriers that limit access to federal programs.²²⁵ State-run programs can be shaped by the needs of the community, whose constituents will have a stronger voice in policymaking than they do at the federal level. Regarding nutrition programs, community input may result in differing eligibility requirements, nutrition standards, and application processes for institutions seeking to participate.²²⁶ While federal prosecutors would lose jurisdiction to intervene in criminal cases, state governments can pass more stringent anti-fraud standards to enforce the laws they enact.²²⁷

But variation among states is not necessarily beneficial. For example, states without effective distribution strategies and enforcement mechanisms would be even worse off than they were when subject to federal regulations. This would be especially worrisome in lower income states, which may not have the resources to distribute food aid statewide through local governments, nonprofits, and private institutions. Without \$145 billion in federal aid, how would underserved states and localities incentivize donors and grantors to contribute to their needs?²²⁸

223. Chris Edwards, *Cutting Federal Spending*, in CATO HANDBOOK FOR POLICYMAKERS 1, 5 (9th ed. 2022), <https://www.cato.org/cato-handbook-policy-makers/cato-handbook-policy-makers-9th-edition-2022/cutting-federal-spending#spending-cut-plan> [<https://perma.cc/L9A9-RUP4>].

224. *Id.* at 4 (“If the activities that are cut are useful to society, then state governments or private organizations should fund them.”).

225. Tatiana Andreyeva, Timothy E. Moore, Lucas da Cunha Godoy & Erica L. Kenney, *Federal Nutrition Assistance for Young Children: Underutilized and Unequally Accessed*, 66 AM. J. PREVENTATIVE MED. 18, 19 (2024). Despite CACFP’s association with “reduced food insecurity and improved nutrition,” only 36.5 percent of licensed childcare providers participate in the program. *Id.* at 19–20. And while the participation rate is higher in low income areas (57.5 percent), the benefits of the program could be more widespread. *Id.* at 21–24. State policymakers could reduce the compliance costs for institutions and incentivize the participation of sponsors whose local expertise would reduce the administrative burden on small distribution sites. See Jana et al., *supra* note 95 (discussing the administrative burden on institutions seeking to participate in CACFP).

226. Andreyeva et al., *supra* note 225, at 24 (“The large variation in CACFP participation rates across states, after accounting for income differences, suggests some states developed effective strategies to reduce program barriers and increase participation.”).

227. See Michelle Griffith, *Gov. Walz Proposes Stiffer Penalties, Using AI to Fight Fraud in Minnesota Programs*, MINN. REFORMER (Jan. 3, 2025), <https://minnesotareformer.com/2025/01/03/gov-walz-proposes-stiffer-penalties-using-ai-to-fight-fraud-in-minnesota-programs/> [<https://perma.cc/TJ4Z-5GJT>] (proposing a new fraud investigation unit, increased state agency authority to stop payments upon the suspicion of fraud, and the use of AI models to flag suspicious spending patterns, and criminal kickbacks).

228. Haider & Roque, *supra* note 44 (describing disparities in food insecurity by race).

Despite the persistent risk of fraud given the size, scope, and complexity of programs such as CACFP, federal programs' ability to reach dispersed communities in need make them a necessary, yet imperfect, part of the country's social safety net.

CONCLUSION

In a country with diverse state and local needs, federal programs administered by state agencies and local nonprofits play a crucial role in addressing social problems and unexpected crises. Yet burdensome federal rules hamstringing the organizations on the ground, preventing participation in an attempt to deter fraud. In CACFP's case, children deserve better.

Effective policy must simultaneously protect the integrity of federal funds and ensure program stability—encouraging participation without cutting regulation so much as to incentivize opportunism. By empowering insiders to bring *qui tam* FCA claims, enforcing administrative penalties before misconduct reaches criminality, and providing prosecutorial guidelines to target conduct that evades civil and administrative enforcement, the U.S. can move in the right direction—toward accessible aid and trustworthy administrators.

*Ethan Kadet**

* J.D. Candidate, Washington University School of Law (2026); B.A., Washington University in St. Louis (2022). I would like to thank the editors of the *Washington University Law Review* for providing feedback throughout the writing and publication process, specifically my Notes Editor Elizabeth Gluck for helping me develop my thoughts and research. I would also like to thank my parents, especially for being longtime subscribers to the Minnesota Star Tribune, which inspired many of the questions that I wanted to raise in this Note. Any errors are my own.