

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DISTRICT OF COLUMBIA, STATE
OF NEW YORK, STATE OF
CALIFORNIA, STATE OF
CONNECTICUT, STATE OF
MARYLAND, COMMONWEALTH
OF MASSACHUSETTS, ATTORNEY
GENERAL DANA NESSEL ON
BEHALF OF THE PEOPLE OF
MICHIGAN, STATE OF
MINNESOTA, STATE OF NEVADA,
STATE OF NEW JERSEY, STATE
OF OREGON, COMMONWEALTH
OF PENNSYLVANIA, STATE OF
RHODE ISLAND, STATE OF
VERMONT, COMMONWEALTH OF
VIRGINIA, and CITY OF NEW
YORK,

Plaintiffs,

v.

U.S. DEPARTMENT OF
AGRICULTURE; GEORGE ERVIN
PERDUE III, in his official capacity as
Secretary of the U.S. Department of
Agriculture, and UNITED STATES
OF AMERICA,

Defendants.

Case No. 1:20-cv-00119

**DECLARATION OF STEVEN BANKS, J.D. IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

I, STEVEN BANKS, J.D., pursuant to 28 U.S.C. § 1746, declare under penalty of perjury
as follows:

1. I am the Commissioner of the New York City Department of Social Services (“DSS”), overseeing the Human Resources Administration (“HRA”) and the Department of Homeless Services (“DHS”). I respectfully submit this Declaration in support of Plaintiffs’ motion for a Preliminary Injunction in the above-captioned action. I make this declaration in my capacity as Commissioner in consultation with my staff. I am familiar with the matters set forth herein, based on my personal knowledge and observations, conversations with DSS staff, and review of documents provided to me.

2. I was appointed Commissioner of the New York City HRA in 2014. In 2016, I was appointed to lead both HRA and DHS under the joint management structure of DSS, with nearly 17,000 employees and an annual operating budget of \$12 billion. Prior to my appointment as Commissioner, I was Attorney-in-Chief of The Legal Aid Society for 10 years. I served as an attorney for Legal Aid for 33 years, helping New York City’s most vulnerable residents – including seniors, survivors of domestic violence, immigrants, people with HIV/AIDS and other children and adults living in poverty – navigate DSS’s programs and services. I received my law degree from New York University School of Law in 1981 and my B.A. in history from Brown University in 1978.

3. DSS is the largest local social services agency in the country. The agency is dedicated to fighting poverty and income inequality and does so by assisting over three million New Yorkers through the administration of more than twelve major public social services programs, including the Supplemental Nutrition Assistance Program (“SNAP”, formerly known as the Food Stamps program).

4. HRA administers SNAP benefits within New York City under the oversight of the New York State Office of Temporary and Disability Assistance (“NYS OTDA”).

5. Pursuant to 7 U.S.C. § 2015(o), able-bodied adults without dependents (ABAWDs) may only receive three months of SNAP benefits within a 36-month period, unless they fulfill certain work requirements. However, the same provision provides that States and areas within States, such as New York City, can receive a waiver of the three-month time limit by demonstrating an area with high unemployment or a lack of a sufficient number of jobs to provide employment for individuals in the areas.

6. New York City's current waiver expires on March 31, 2020.

7. There are approximately 70,000 ABAWDs in New York City. The vast majority reside in parts of New York City that are covered by the 2020 waiver.

8. States also receive exemptions, which allow ABAWDs who do not reside in an area with a waiver and who would otherwise be ineligible for SNAP benefits beyond three months to continue to receive SNAP benefits. States are allocated exemptions annually that permit the State to extend SNAP benefits each month to a percentage of the ABAWD population for that State that would otherwise be ineligible for SNAP benefits because of the 3-month time-limit. 7 U.S.C. § 2015(o)(6). Currently, if a State does not use all of its allocated exemptions, it can carry over the remaining exemptions to the following year. *See* 7 U.S.C. § 2015(o)(6)(G). NYS OTDA allocates a certain number of the New York State's exemptions to New York City each year and HRA is responsible for utilizing them to extend benefits to ABAWDs in New York City who do not live in an area with a waiver.

9. I am aware that the federal government recently issued the following final rule: *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents*, 84 Fed. Reg. 66,782 (Dec. 5, 2019) (to be codified at 7 C.F.R. Part 273) ("the Rule"). The Rule eliminates or restricts many of the criteria upon which states can rely when

applying for a waiver of the ABAWD time limit and eliminates a State's right to carry over all unused exemptions from year to year. The Rule will directly impact the administration of SNAP within New York City and will cause thousands of New York City residents to lose their SNAP benefits, resulting in increased food insecurity and harm to New York City's economy. I understand that the Plaintiffs in the above-captioned action challenge the Rule and I submit this Declaration in support of Plaintiffs' motion for a Preliminary Injunction.

The Final Rule Will Increase Food Insecurity

10. New York State requests and receives waivers from USDA on behalf of New York City on a calendar year basis.

11. In 2014, New York City accepted and began to operate under the time-limit waiver USDA approved for all of New York State. That waiver continued through all of 2015.

12. Since the beginning of 2016, New York City has received a waiver that covers most, but not all ABAWDs in New York City, relying on Bureau of Labor Statistics Local Area Unemployment Data showing areas within New York City that have experienced a 24-month average unemployment rate that is 20 percent above the national average for the same period (the "20 percent standard") in order to receive those waivers.

13. New York City's current waiver runs from January 1, 2020 through March 31, 2020 and covers ABAWDs who reside in three out of the five boroughs (counties) of New York City – the Bronx, Brooklyn, and Staten Island. The average unemployment rate across all three of these counties was 4.9% for the 24-month period from January 2017 to December 2018, which was 20 percent above the national average rate of 4.1% during the same 24-month period.

14. New York City's current waiver also covers ABAWDs who reside in four Community Districts¹ in a fourth borough, Manhattan. These four Community Districts cover a section of Upper Manhattan that, by many measures, is distinct and separate from the rest of Manhattan, and had a combined average unemployment rate of 6.3% for the 24-month period from January 2017 to December 2018, which was also more than 20 percent above the national average.

15. In addition, New York City's waiver also covers ABAWDs who reside in three Community District in New York City's fifth borough, Queens.² Each of these three Queens Community Districts qualified for a waiver with 24-month unemployment rates that were more than 20 percent above the national average.

16. There are approximately 64,500 ABAWDs residing in parts of New York City that are covered by the 2020 waiver and approximately 5,500 ABAWDs residing in parts of New York City that are not covered by the 2020 waiver.

17. As is the case across the country, ABAWDs in New York City face significant barriers to employment. ABAWDs in New York City are much more likely than the general U.S. labor force to be members of racial or ethnic minority groups. As of January 31, 2019, 40 percent of New York City's ABAWDs are African-American and 28 percent are Hispanic. Both nationally and in New York City, African-Americans and Hispanics face unemployment rates much higher than the average rate for the entire population. For example, based on the 2017 American Community Survey, the unemployment rate in New York City for adults aged 18-49 without a

¹ New York City's five Boroughs are sub-divided into Community Districts. The four Community Districts in Manhattan covered by the 2020 waiver are districts 9, 10, 11 and 12.

² The three Community Districts in Queens are districts 10, 12, and 14. Community Districts 10 and 14 each had an unemployment rate of 5.0% for the 24-month period from January 2017 to December 2018, while Community District 12 had an unemployment rate of 6% for the same period.

disability or children was 6.4%. However, during the same period, the rate for the same group of African-Americans was 10.8% and for Hispanics the rate was 7.9%. These higher rates are due in part to racial biases and discrimination in hiring practices: multiple studies have shown that, holding qualifications equal, white job applicants are much more likely to receive callbacks than African-American or Hispanic applicants.³

18. ABAWDs also tend to have lower levels of educational attainment than the general U.S. labor force and also often lack basic job skills such as reading and writing, resulting in a mismatch between available jobs and the skill set of ABAWDs.⁴ Based on the 2017 American Community Survey, while the unemployment rate in New York City for adults aged 18-49 without a disability or children was 6.4%, the rate was 14.1% for those without a high school diploma and 10.2% for those with a high school diploma but no college.

19. ABAWDs in New York City also face high rates of housing instability, which adds another barrier to seeking and retaining employment. As of January 2019, almost 30% of ABAWDs in New York City had no permanent address; and additional 4% were living in homeless shelters.

³ Bertrand, M and Mullainathan, S. (2003). *Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*. National Bureau of Economic Research, July, 2003:1-27. Bolen, E and Dean, S. (2018). *Waivers Add Key State Flexibility to SNAP's Three-Month Time Limit*. Center on Budget and Policy Priorities. Retrieved January 2, 2020 from <https://www.cbpp.org/research/food-assistance/waivers-add-key-state-flexibility-to-snaps-three-month-time-limit>. Pager, D and Western, B. (2012). *Identifying Discrimination at Work: the Use of Field Experiments*. *Journal of Social Issues*, 68(2): 221-237. Retrieved January 2, 2020 from http://scholar.harvard.edu/files/pager/files/identifying_discrimination_pager_western.pdf?m=1462807104. Quillian, L et al. (2017). *Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring Over Time*. Proceedings of the National Academy of Sciences of the United States of America, April 2017:1-6. Retrieved January 2, 2020 from <https://www.pnas.org/content/early/2017/09/11/1706255114>.

⁴ See n. 3 *supra*; U.S. General Accounting Office. (2003). *Food Stamp Employment and Training Program: Better Data Needed to Understand Who Is Served and What Program Achieves*. Retrieved January 6, 2020 from <https://www.gao.gov/assets/240/237571.pdf>.

20. Many ABAWDs in New York City also may have tenuous and unstable health as a result of conditions that may not be severe enough to exempt them for work requirements, such as post-traumatic stress disorder, back injuries, respiratory difficulties, and depression, but make it difficult to maintain consistent employment.

21. Several geographic areas within New York City do meet the 6 percent floor set by the Rule. As stated above, the Bronx had a 24-month average unemployment rate of 6.0% for period of January 2017 through December 2018. The four Community Districts in Upper Manhattan had a combined 24-month average unemployment rate of 6.3% for period of January 2017 through December 2018 and one Community District 12 in Queens had a 6.0% unemployment rate during the same period.

22. However, New York City cannot seek waivers for those areas under the Rule, which requires the unemployment rate in New York City's Labor Market Area (LMA) to be at or above 6% and the unemployment rate for its LMA is below 6.0%. New York City is part of an LMA that extends not only past New York City's borders into bordering counties in New York, but also pushes past the borders of New York State, including counties in New Jersey and Pennsylvania. The outer limits of the LMA, which includes 25 counties in three states, are over 100 miles from New York City.

23. The unemployment rate of a LMA that includes 25 counties over three states hardly reflects the economic reality facing the approximately 70,000 ABAWDs in New York City

24. New York City will not receive a waiver under the Rule despite the fact that it can credibly show that ABAWDs in New York City cannot meaningfully access jobs in large portions of the LMA, some of which may be up to 100 miles away and in areas that do not have reliable public transportation, if any at all.

25. New York City does not know how many exemptions it will receive from NYS OTDA under the Rule, but it is clear that the ABAWD time limits will apply to the vast majority of ABAWDs in New York City.

26. While the USDA stated in the proposed rule that the “application of waivers on a more limited basis would encourage more ABAWDs to take steps toward self-sufficiency,” the USDA cites no evidence to support its assertion and, in fact, the USDA itself assumes that approximately two-thirds of ABAWDs will lose SNAP benefits.⁵ Based on the USDA’s own estimate that two-thirds of ABAWDs will lose SNAP benefits a result of the Rule, New York City estimates approximately 50,000 ABAWDs in New York City will lose SNAP benefits shortly after the Rule goes into effect.

27. SNAP reduces food insecurity and the loss of SNAP benefits by 50,000 ABAWDs in New York City, without any greater prospects for long-term, stable employment or ability to obtain self-sufficiency, will undoubtedly lead to increased food insecurity.

The Rule Will Harm New York City’s Economic Activity

28. SNAP helps to stimulate state and local economies. When an ABAWD loses SNAP benefits, he or she has less money to spend on necessities, like clothes, toiletries and transportation. This loss translates into losses for the whole economy in the form of reduced spending, lower business revenue and losses in job creation. The economic gains from public benefits like SNAP are well-established and are known as the “multiplier” effect.

29. It is well-documented that the SNAP program has a direct economic multiplier effect: for every one dollar in SNAP benefits received, there is an approximate \$1.79 in increased economic

⁵ Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents, 84 Fed. Reg. 980, 981 (proposed February 1, 2019).

activity according to the USDA. As ABAWDs lose SNAP benefits, New York City in turn suffers loss in economic activity as a result of the multiplier effect.

30. The average monthly SNAP benefit for a single adult as of January 2019 is \$151. DSS estimates that the approximately 50,000 ABAWDs in New York City who will lose SNAP benefits as a result of the Rule will result in over \$90 million in lost SNAP benefits annually and, using the 1.79 multiplier, a loss of over \$161 million annually in economic activity in New York City.

The Final Rule Imposes Programmatic and Administrative Burdens and Costs on DSS

31. DSS will face increased administrative and programmatic costs as a result of the Rule. DSS will be required to redevelop relevant notices and forms, procedures, training curricula, provide training to employees regarding the Rule, in addition to developing and updating computer systems to track work requirements. DSS expects to see increased foot traffic at its SNAP centers across New York City and will have to adjust staffing to accommodate the additional traffic. It also expects to face an upsurge in case processing costs as ABAWDs who are terminated from benefits reapply, and potentially re-establish eligibility. Similarly, DSS expects to face an increase in the number of administrative hearing requests as clients receive notification of ineligibility for SNAP benefits and wish to challenge that determination.

32. The cost for the increase in administrative responsibility is estimated at approximately \$3 million in the initial year, of which at least 50% or more will be primarily borne by the City.

33. New York City currently offers work engagement opportunities through contracted vendors to the approximately 5,500 ABAWDs who do not reside in areas of New York City that currently receive a waiver. While ABAWDs can qualify for SNAP benefits by participating in these work engagement opportunities for a certain number of hours per month, New York City

currently does not have the capacity to provide such work engagement opportunities to all of the approximately 70,000 ABAWDs. As a result of the Rule, New York City will have to add funding to these contracts in order to meet the needs of the ABAWD population that will no longer be covered by a waiver.

34. DSS estimates that the programmatic cost to provide assessments and work engagement opportunities through these contracts to the ABAWD population will be approximately \$5.8 million in the initial year as ABAWDS who currently reside in waived areas will all require new assessments, and approximately \$4.3 million per year thereafter. The USDA only reimburses 50% of these administrative and programmatic costs; the remaining approximately 50% is funded by New York City. The federal government reimburses state ABAWD administrative and programmatic costs under the SNAP Employment and Training funding.

35. As a result of the Rule, DSS faces increased administrative and programmatic costs of approximately \$8.7 million in the initial year and approximately \$6 million per year thereafter.

CONCLUSION

36. For the reasons described above, DSS opposes implementation of the Rule. In addition to harming individual New Yorkers, it will harm DSS's work and the economy of New York City, and I respectfully request that this Court grant the plaintiffs' motion for a preliminary injunction.

I declare under penalty that the foregoing is true and correct and of my own personal knowledge.

DATED this 15th day of January 2020 at New York, New York.



STEVEN BANKS, J.D.