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New Technologies, Old Rights: Litigating Public-Benefits Modernization

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ABSTRACT. This Essay explores public-benefits agencies' increasing reliance on technology and remote services and its impact on welfare-rights litigation. The Essay argues that technology is not necessarily a solution to resource constraints at benefits agencies, and that the lack of direct regulation of new uses of technology threatens benefits access by creating legal uncertainty about benefits agencies' obligations. However, creative impact litigation is a powerful tool for protecting program access and enforcing benefits recipients' rights.

INTRODUCTION

When Mary Holmes went to her local public-benefits office to apply for Supplemental Nutrition Assistance Program (SNAP) benefits,[1] a process that required an interview with an agency caseworker, she learned the staff were not conducting in-person interviews—instead, Ms. Holmes would have to wait for the agency's call center to contact her for a phone interview.[2] As of 2015, federal regulators had permitted her state, Missouri, to use call centers to interview SNAP applicants by phone on an unscheduled basis, instead of scheduling appointments for in-person interviews.[3] When Missouri closed its public-benefits offices during the 2020 COVID-19 pandemic, the call center took on an even more central role in SNAP's operations.[4] Ms. Holmes, who used a prepaid cell

1. *See generally* 7 U.S.C. §§ 2011-2036d (2018) (codifying the statutory authorization for the Supplemental Nutrition Assistance Program (SNAP)). SNAP benefits are also often referred to as food stamps.
2. Holmes v. Knodell, No. 22-CV-04026, 2024 WL 2097081, at *7 (W.D. Mo. May 9, 2024).
3. *Holmes*, 2024 WL 2097081, at *2-3.
4. First Amended Complaint at ¶¶ 95-97, *Holmes*, 2024 WL 2097081 (No. 22-CV-04026).

phone due to her limited income, would have preferred a scheduled, in-person interview. Nevertheless, she waited, as instructed, for the agency's call.[5] When she received that call a few days later, Ms. Holmes was placed in a hold queue and told that she was number 692 in line.[6]

Ms. Holmes waited on hold for four hours that day—paying by the minute the entire time—but was never connected to a representative.[7] Over the next month, she contacted the agency's call center at least thirteen times, attempting to complete her interview.[8] During some of those calls, she waited on hold for hours before she hung up (or ran out of minutes on her cell phone); on other occasions, the agency's phone system disconnected Ms. Holmes before she could even enter the hold queue because there were already too many people waiting.[9] A month after she submitted her application—a month during which she was hungry and had only her disability benefits to support her—the agency denied Ms. Holmes's application, citing her failure to complete an interview.[10]

The Kafkaesque path of Ms. Holmes's SNAP application would look familiar to many low-income Americans forced to navigate dysfunctional remote systems to obtain public benefits. But the legal system is only beginning to confront the access barriers caused by recent innovations in public-benefits administration like remote interviewing and online-application platforms.

The years since the COVID-19 pandemic have seen significant changes to American public-benefits programs. In the years leading up to the pandemic, public-benefits agencies were beginning to experiment with new systems and technologies such as online applications, electronic document-submission platforms, telephonic eligibility interviews, and remote hearings.[11] When the

5. *Id.* at ¶¶ 170, 184.

6. *Id.*

7. *Id.* at ¶ 188.

8. Plaintiffs' Suggestions in Support of Motion for Summary Judgment at 7, *Holmes*, 2024 WL 2097081 (No. 22-CV-04026), ECF No. 138.

9. *See Holmes*, 2024 WL 2097081, at *7-8; First Amended Complaint, *supra* note 4, at ¶¶ 189-99.

10. *Holmes*, 2024 WL 2097081, at *8; First Amended Complaint, *supra* note 4, at ¶¶ 164, 205-06.

11. *E.g.*, 7 C.F.R. §§ 273.2(c), 273.2(e)(2), 273.14(b)(3) (2024) (permitting state SNAP agencies to accept telephonic signatures and conduct eligibility interviews by telephone). *See generally* Gina Mannix, Marc Cohan & Greg Bass, *How to Protect Clients Receiving Public Benefits When Modernized Systems Fail: Apply Traditional Due Process in New Contexts*, CLEARINGHOUSE CMTY. 1, 5 (Jan. 6, 2016) [hereinafter *How to Protect Clients*], https://nclej.org/wp-content/uploads/2016/01/ClearinghouseCommunity_Mannixetal-Published-Article-with-Copyright.pdf [https://perma.cc/B3KZ-G8RL] (describing procedural due-process challenges to modernized benefit systems incorporating technology); Mary R. Mannix, Cary LaCheen, Henry A. Freedman & Marc Cohan, *Public Benefits Privatization and Modernization: Recent Developments and Advocacy*, 42 CLEARINGHOUSE REV. 1-2 (2008), https://nclej.org/wp-

pandemic necessitated the widespread closures of agencies' physical offices, the adoption of these new technologies accelerated the development of new practices for obtaining public benefits.[12] Although most public-benefits offices have now reopened, their day-to-day operations have not returned to prepandemic practices. Instead, the new practices are now firmly entrenched as the default mode of operation for public-benefits agencies.[13] These changes primarily consist not of substantive changes to benefits-eligibility rules, but rather of operational changes in how social-services agencies conduct their business, primarily at the state and local level. While these changes are related to process, not substance, they have major implications for benefits access and the enforcement of benefits applicants' and recipients' legal rights.

Importantly, benefits applicants and recipients are facing new types of access barriers. These barriers include malfunctioning or poorly designed electronic systems, such as labyrinthine phone menus for telephonic eligibility

content/uploads/2016/04/PublicBenefitsPrivatizationandModernization-2008.pdf [https://perma.cc/VUZ9-3GEL] (describing various technology enhancements that are part of "modernization" in public benefits administration).

12. *See* Jarrett Murphy, *Big Response, Huge Need: NYC's Welfare System Amid COVID-19*, CITY LIMITS (Nov. 23, 2020), https://citylimits.org/2020/11/23/big-response-huge-need-nycs-welfare-system-amid-covid-19 [https://perma.cc/UYW6-NNEC]; Amy Burroughs, *Counties Use Modern Tech to Improve Public Assistance Programs*, STATETECH (Sept. 24, 2020), https://statetechmagazine.com/article/2020/09/counties-use-modern-tech-improve-public-assistance-programs [https://perma.cc/5BEN-WGKW]; *Holmes*, 2024 WL 2097081, at *5 (noting that in-person Resource Centers were closed during the COVID-19 pandemic); *Holmes*, 2024 WL 2097081, at *19 ("The insufficiency of Defendant [Robert Knodell, Acting Director of the Missouri Department of Social Services]'s administration of the [SNAP] program first became most obvious and undeniable while the State faced COVID-19 issues resulting in the closure of several offices and the resulting increase in reliance on the telephone system. However, even after COVID-19 the system's failures persist.").

13. *See, e.g.*, Emma Whitford, *Scenes from Closing Day at a Bronx Benefits Center*, CITY LIMITS (Feb. 22, 2024), https://citylimits.org/2024/02/22/scenes-from-closing-day-at-a-bronx-benefits-center [https://perma.cc/B6FF-4MMU]; *SNAP Online: A Review of State Government SNAP Websites*, CTR. ON BUDGET & POL'Y PRIORITIES (Nov. 7, 2022), https://www.cbpp.org/research/snap-online-a-review-of-state-government-snap-websites [https://perma.cc/KU2L-4K8K].

interviews;[14] lost documents in malfunctioning computer systems;[15] and websites and call centers that lack accessibility features for people with disabilities or low English proficiency.[16] All of these barriers can cause application delays and denials. Other barriers arise from limitations inherent to particular technologies. In telephonic fair hearings to contest terminations or denials of benefits, hearing officers struggle to make accurate credibility determinations without the benefit of in-person testimony and pro se appellants default if their prepaid cell phone runs out of minutes.[17] People who lack technological literacy or internet access may find certain benefits websites and apps difficult to use.[18] Indeed, some online-application platforms function poorly on mobile devices, which are the only available means of accessing the internet for many low-income individuals.[19]

Statutory and regulatory text do not typically reflect these new practices. To the extent the new processes are documented, they are generally addressed in subregulatory guidance and waivers, which do not give rise to enforceable rights.[20] Since existing enforceable laws did not anticipate these new processes,

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14. *Holmes*, 2024 WL 2097081, at *7-13; Sean McDonnell & Zachary Smith, *Anything but a SNAP: Most Calls to Cuyahoga County for Help with Assistance Programs Never Get Answered*, CLEVELAND.COM (Mar. 6, 2023, 11:22 AM), https://www.cleveland.com/news/2023/03/anything-but-a-snap-most-calls-to-cuyahoga-county-for-help-with-assistance-programs-never-get-answered.html [https://perma.cc/SV7W-87ZR]; Isabelle Hanson, *Long Hold Times on the Phone to Get Approved for Food Stamps, Unemployment*, ABC 6 (July 20, 2023, 12:07 PM), https://abc6onyourside.com/news/local/long-hold-times-phone-approved-food-stamps-unemployment-franklin-county-department-jobs-family-services [https://perma.cc/34PV-Z9EE]; Hatten-Gonzales v. Scrase, No. CIV 88-0385, 2023 WL 5206911, at *3 (D.N.M. Aug. 14, 2023); SAIMA AKHTAR & SARA LUNDEN, A BRIEF LEGAL AND PRACTICAL OVERVIEW OF UNSCHEDULED SNAP INTERVIEW WAIVERS 2-3 (2024) (on file with author).

15. Class Action Complaint at ¶¶ 123, 148-49, Forest v. City of N.Y., No. 23-cv-00743, 2023 WL 5013319 (S.D.N.Y. Jan. 27, 2023).

16. AKHTAR & LUNDEN, *supra* note 14, at 4; Class Action Complaint, *supra* note 15, at ¶¶ 128-29.

17. Letter from New York public-benefits advocates to the New York State Office of Temporary and Disability Assistance and New York State Department of Health, Due Process Concerns with the Demonstration Project - Conducting Hearings by Telephone, Video, and Other Means of Communication (Aug. 4, 2021) (on file with author).

18. AKHTAR & LUNDEN, *supra* note 14, at 4; Class Action Complaint, *supra* note 15, at ¶¶ 128-29.

19. *Survey Says Ohioans Find SNAP, Medicaid Benefits Difficult to Apply for and Access*, NEWS 5 CLEV. (Nov. 16, 2020, 5:49 PM), https://www.news5cleveland.com/rebound/coronavirus-investigations/survey-says-ohioans-find-snap-medicaid-benefits-difficult-to-apply-for-and-access [https://perma.cc/E85R-A7VP].

20. *See, e.g.*, Memorandum from Samuel L. Spitzberg, Assoc. Deputy Comm'r, N.Y. Off. of Admin. Hearings, to N.Y. Off. of Admin. Hearings 1-2 (Mar. 6, 2024), https://otda.ny.gov/policy/gis/2024/24DC008.pdf [https://perma.cc/Y43R-64TV] (implementing a remote fair-hearing pilot project); Food & Nutrition Serv., *State SNAP Interview Toolkit*, U.S. DEP'T OF AGRIC. 13-15 (2023), https://fns-prod.azureedge.us/sites/default/files/resource-files/snap-

a key challenge in current public-benefits litigation is finding ways to align new practices with established rights. Legal scholarship on public-benefits litigation has yet to consider this issue substantially.[21] While scholarship has described the temporary expansions in public-benefits programs enacted in response to the pandemic[22] and analyzed how the pandemic revealed weaknesses in the American safety net,[23] law-review literature has not yet considered the more durable changes to U.S. public-benefits programs caused or accelerated by the pandemic.

As a *Yale Law Journal* Fellow at the National Center for Law and Economic Justice (NCLEJ), I worked on several lawsuits that either directly challenged new barriers to program inaccessibility, introducing novel legal theories to argue that access barriers caused by technological changes are unlawful, or contended with these changes in the process of determining how to remedy violations of more firmly established rights. This experience gave me a front-row seat to the current trends in public-benefits program administration and the litigation that disciplines it.

Focusing on SNAP,[24] this Essay argues that benefits agencies' new technologies and operational practices threaten to replicate longstanding problems in

state-interview-toolkit-031723.pdf [https://perma.cc/A47V-SRRK] (describing waivers permitting unscheduled "on-demand" telephonic eligibility interviews for SNAP).

21. The best recent analysis of public-benefits litigation is Andrew Hammond, *Litigating Welfare Rights: Medicaid, SNAP, and the Legacy of the New Property*, 115 NW. U. L. REV. 361 (2020). However, this article, published in 2020, did not discuss the impact of agencies' technological and operational changes on public-benefits litigation. An early discussion of the new types of legal strategies needed to address modernized agency operations is *How to Protect Clients*, *supra* note 11. Written by practitioners, this article argued that benefits litigators could use procedural-due-process principles to challenge new kinds of agency operations, *How to Protect Clients*, *supra* note 11, at 4, while recognizing that such challenges were "novel and difficult," *How to Protect Clients*, *supra* note 11, at 5.

22. *See* Andrew Hammond, Ariel Jurow Kleiman & Gabriel Scheffler, *How the Covid-19 Pandemic Has and Should Reshape the American Safety Net*, 105 MINN. L. REV. HEADNOTES 154, 177 (2020).

23. *See* Catherine R. Albiston & Catherine L. Fisk, *Precarious Work and Precarious Welfare: How the Pandemic Reveals Fundamental Flaws of the U.S. Social Safety Net*, 42 BERKELEY J. EMP. & LAB. L. 257, 260-61 (2021).

24. I focus on SNAP primarily because it is the program with which I am most familiar. I worked on several SNAP matters during my fellowship, some of which I discuss in detail in Part II, *infra*. SNAP is one of the most important components of the American safety net, as it is a national program that served an average of 42.1 million people — or 12.6% of all Americans — each month in fiscal year 2023. Econ. Rsch. Serv., *Key Statistics and Research*, U.S. DEP'T AGRIC. (July 31, 2024), https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/key-statistics-and-research [https://perma.cc/46HC-29WL]; *see also* Hammond, *supra* note 21, at 366-67 (describing SNAP litigation). SNAP is also a federal entitlement program with relatively robust statutory rights for recipients, which often makes it a more fruitful target for litigation than programs like Temporary Assistance for Needy Families that use a block-grant structure and allow more state-to-state variation. *See infra* Part I.

benefits program administration and that the law has not yet adapted to these changes. Part I briefly describes the history of public-benefits litigation in the decades since welfare reform and the sources of law that are most important for SNAP litigation today. Part II analyzes several recent lawsuits that illustrate the creative strategies benefits litigators are using to address novel access barriers, as well as the difficulties of litigating benefits issues that are not contemplated by older legal frameworks. This Part argues that technology is not necessarily a solution to a lack of resources and capacity in benefits agencies. In light of this problem, Part III offers policy recommendations.

I. BENEFITS LITIGATION, PAST AND PRESENT

Impact litigation on behalf of public-benefits recipients blossomed in the 1960s, when a well-organized, participant-led welfare-rights movement joined forces with ambitious, creative lawyers to advocate for welfare recipients.[25] These lawyers' efforts culminated in the landmark Supreme Court case *Goldberg v. Kelly*. *Goldberg* held that welfare benefits are a form of property protected by the Due Process Clause and thus cannot be cut off without a pretermination hearing.[26] But this *Goldberg* era was short-lived: the 1970s saw the beginning of a period of retrenchment at the Supreme Court, during which an increasingly conservative Court cabined its progressive decisions in benefits law and declined to adopt benefits advocates' more ambitious legal theories.[27] Concurrently, the welfare-rights movement began to fizzle out.[28] Welfare litigation nevertheless continued at a steady pace through the 1970s and 1980s.[29]

Goldberg-era benefits litigation focused on cash welfare, especially the Aid to Families with Dependent Children program (AFDC). In 1996, however, Congress replaced AFDC with the Temporary Assistance for Needy Families (TANF) block grant.[30] Whereas AFDC was an entitlement program with federally established eligibility standards and procedures, TANF provides states with a fixed

25. *See generally* MARTHA F. DAVIS, BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960-1973 (1993) (examining the history of the welfare-rights movement in the 1960s and early 1970s and emphasizing the powerful collaboration between politically organized welfare recipients and legal-aid attorneys).

26. 397 U.S. 254, 261 (1970).

27. *See* DAVIS, *supra* note 25, at 133-41.

28. *Id.*

29. *See History*, NAT'L CTR. FOR LAW & ECON. JUST., https://nclej.org/history [https://perma.cc/T5HA-3RZB] (documenting examples of welfare-rights litigation in the 1960s through the 2010s).

30. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 103, 110 Stat. 2105.

amount of funding and significant leeway on how to use it, including for purposes other than providing cash welfare directly to families.[31] Because TANF lacked the significant federally enforceable rights of its predecessor, many of the previous pathways for benefits litigation were cut off.[32]

But while the welfare-rights movement[33] and "welfare as we know it"[34] may be dead, welfare-rights litigation is not. After welfare reform in the 1990s, public-benefits litigators largely shifted their focus from cash welfare, which was no longer an entitlement at the federal level, to SNAP and Medicaid.[35] SNAP and Medicaid issues continue to be substantially litigated today in both federal and state courts. Additionally, some states continue to structure state-level cash-welfare programs as entitlements, which allows litigation of related issues in state courts or at the federal level via a pendent state-law claim or federal due-process claim.[36]

Perhaps the greatest current challenge to SNAP and Medicaid benefits litigation is legal-services attorneys' limited litigation capacity.[37] Beginning in the 1970s, Congress decreased overall federal funding levels for legal-services attorneys and imposed increasingly stringent limits on the activities of lawyers receiving federal funding through the Legal Services Corporation (LSC) to represent low-income litigants.[38] Most significantly for benefits litigators, Congress barred LSC-funded attorneys from bringing class-action lawsuits.[39] Class

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31. *Id.*

32. *See* 42 U.S.C. § 601(b) (2018) ("This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part.").

33. *See* DAVIS, *supra* note 25, at 3.

34. Alana Semuels, *The End of Welfare as We Know It*, ATLANTIC (Apr. 1, 2016), https://www.theatlantic.com/business/archive/2016/04/the-end-of-welfare-as-we-know-it/476322 [https://perma.cc/FMU8-ARKX]. President Bill Clinton famously campaigned on a promise to "end welfare as we know it," ending the federal entitlement to cash welfare and imposing time limits and work requirements. Peter Edelman, *The Worst Thing Bill Clinton Has Done*, ATLANTIC (Mar. 1997), https://www.theatlantic.com/magazine/archive/1997/03/the-worst-thing-bill-clinton-has-done/376797 [https://perma.cc/2W5W-KTHK]. Clinton made good on his promise when he signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly known as welfare reform, into law. Pub. L. No. 104-193, § 103, 110 Stat. 2105.

35. *See* Hammond, *supra* note 21, at 388-90.

36. *Id.* at 396-97.

37. *Id.* at 396-97.

38. *Id.*; *see also* Legal Servs. Corp. v. Velazquez, 531 U.S. 533, 536-38 (2001) (describing the development of limitations on attorney activities funded by the Legal Services Corporation (LSC)).

39. 45 C.F.R. § 1617.3 (2024) ("Recipients [of LSC funding] are prohibited from initiating or participating in any class action."); *see* 42 U.S.C. § 2996e(d)(5) (2018) ("No class action suit, class action appeal, or amicus curiae class action may be undertaken, directly or through others, by a staff attorney, except with the express approval of a project director of a recipient in

actions are a crucial pathway for systemic change in benefits programs because it is impractical for low-income benefits recipients and their often under-resourced nonprofit lawyers to bring large numbers of individual lawsuits.[40] Despite these restrictions, some LSC-funded organizations have devised ways to bring impact litigation, generally relying on organizational plaintiffs and doctrinal mootness exceptions to move their cases forward and secure systemic relief without the benefit of a class action.[41] However, many organizations receiving LSC funding—like most organizations that represent benefits recipients—now focus on providing direct services and do not bring impact litigation. As a result, enforcement of welfare recipients' rights depends heavily on the small number of organizations that do not rely on LSC funding and can therefore bring impact litigation with fewer constraints.

Current SNAP litigation generally relies on two primary sources of law: durable due-process principles first established during the heyday of the welfare-rights movement[42] and applied in new contexts today,[43] and statutory rights that continue to be fleshed out through litigation.[44]

SNAP benefits, like most public benefits, are provided through a cooperative-federalism model where the federal government establishes and funds benefits programs but delegates their administration to the states.[45] Some states further delegate operations to county-level benefits agencies.[46] The federal

accordance with policies established by the governing body of such recipient."); Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027, 2038-39 (2008).

40. Rhode, *supra* note 39, at 2038.

41. *See, e.g.*, Holmes v. Knodell, No. 22-CV-04026, 2024 WL 2097081, at *13-15, *18-20 (W.D. Mo. May 9, 2024), *appeal dismissed*, No. 24-2192 (8th Cir. July 19, 2024) (finding that the organizational plaintiff had standing, individual plaintiffs' claims satisfied the voluntary cessation exception to mootness, and plaintiffs' claims warranted systemic relief). Legal Services of Eastern Missouri, one of the organizations representing the *Holmes* plaintiffs, is LSC-restricted. *Financial Statements December 31, 2022*, LEGAL SERVS. OF E. MO. 13 (2022), https://lsem.org/wp-content/uploads/2024/02/Legal-Services-of-Eastern-Missouri-Inc.-2022-Audited-Financials.pdf [https://perma.cc/Z8LZ-DT68].

42. *See* DAVIS, *supra* note 25, at 85, 93-118.

43. *See* Mannix et al., *supra* note 11, at 5-14; *see also* Kristen Dama & Amy Hirsch, *Protecting Access to Benefits in Philadelphia's Modernized Benefits System*, CLEARINGHOUSE REV., Jan. 2016, at 7-8 (describing more recent innovation in legal approaches to vindicating due-process principles within modernized benefit systems).

44. *See infra* notes 56-59, 82-83, 92-101 and accompanying text.

45. Kenneth Finegold, *Food Stamps, Federalism, and Working Families*, URB. INST., Aug. 2008, at 1, https://www.urban.org/sites/default/files/publication/33141/411752-Food-Stamps-Federalism-and-Working-Families.PDF [https://perma.cc/3S9P-TLN3].

46. *See generally* Rachel Meeks Cahill, Jennifer Tracey & Andrew Cheyne, *Ten Degrees of Decentralization: Overview of SNAP Operations in County-Administered States*, CTR. L. & SOC. POL'Y (2018), https://www.clasp.org/sites/default/files/Ten%20Degrees%20of%20Decentra

government pays for one hundred percent of SNAP benefits and at least fifty percent of states' administrative costs, but state employees handle the day-to-day work of reviewing benefits applications, making eligibility determinations, and dispersing benefits.[47] States must comply with federal laws and regulations as a condition of receiving funding, but federal law typically allows states some flexibility in certain aspects of program administration.[48] The U.S. Department of Agriculture's Food and Nutrition Service (FNS) is the federal agency responsible for supervising state SNAP programs and promulgating regulations to implement SNAP's statutory requirements.[49]

SNAP recipients' due-process claims are enabled by the principle that some public benefits, including SNAP, are a form of "property" that may not be taken away without due process of law.[50] For a property interest to exist, the state or federal statutes and regulations that govern a benefits program must create an entitlement to benefits for all persons who meet objectively defined eligibility criteria.[51] When this feature is present, benefits applicants and recipients possess a protected property interest in those benefits.[52] As a result, benefits may not be denied or terminated without notice and an opportunity to be heard.[53] Due process also requires benefits programs to be administered fairly and nonarbitrarily, using ascertainable standards.[54]

The other key source of law for SNAP litigation is the federal statutory scheme that governs the program. Courts have ruled that several statutory

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lization%20-%20CAS%20Narrative%20Report%202018.pdf [https://perma.cc/2K4F-P5X6] (describing the operation of county-administered SNAP programs in California, Colorado, Minnesota, North Carolina, North Dakota, New Jersey, New York, Ohio, Virginia, and Wisconsin).

47. *See* Holmes v. Knodell, No. 22-CV-04026, 2024 WL 2097081, at *1-2 (W.D. Mo. May 9, 2024); Finegold, *supra* note 45, at 1.

48. Food & Nutrition Serv., *State Options Report*, U.S. DEP'T OF AGRIC. 5 (2024), https://fns-prod.azureedge.us/sites/default/files/resource-files/snap-16th-state-options-report-june24.pdf [https://perma.cc/D4MQ-RXRU].

49. 7 U.S.C. §§ 2012(p), 2013(a) (2018); *State/Local Agency*, FOOD & NUTRITION SERV., https://www.fns.usda.gov/snap/state [https://perma.cc/8MXN-VLWX].

50. *See* Goldberg v. Kelly, 397 U.S. 254, 262 n.8 (1970); Mathews v. Eldridge, 424 U.S. 319, 332 (1976); Atkins v. Parker, 472 U.S. 115, 128 (1985).

51. *See* Kapps v. Wing, 404 F.3d 105, 113 (2d Cir. 2005); *Goldberg*, 397 U.S. at 262.

52. *See Kapps*, 404 F.3d at 115-18 ("Every circuit to address the question . . . has concluded that applicants for benefits, no less than current benefits recipients, may possess a property interest in the receipt of public welfare entitlements.") (collecting cases).

53. *See Goldberg*, 397 U.S. at 267-68; *Mathews*, 424 U.S. at 333, 348.

54. *See* Holmes v. Knodell, No. 22-CV-04026, 2024 WL 2097081, at *15-16 (W.D. Mo. May 9, 2024); Mayer v. Wing, 922 F. Supp. 902, 911 (S.D.N.Y. 1996).

provisions are privately enforceable via 42 U.S.C. § 1983.[55] Numerous courts have found that 7 U.S.C. §§ 2020(e)(3) and (e)(9), which impose time limits for the processing of SNAP applications, are privately enforceable.[56] Other provisions found to be privately enforceable include 7 U.S.C. §§ 2014(a), which provides that all households who meet the eligibility requirements for SNAP must receive assistance;[57] 2020(e)(10), which requires fair hearings to be available to aggrieved households;[58] and 2020(e)(2)(B)(i), which requires agencies to provide "timely, accurate, and fair service" to SNAP applicants and recipients.[59] State SNAP agencies must comply with federal SNAP regulations as well as federal statutes. [60] But a statutory hook is generally required for litigation, as a regulation standing alone cannot confer a cause of action, though regulations may shed light on the proper construction of an otherwise enforceable statute.[61]

State law may also confer legal rights or a cause of action,[62] though state-run welfare programs and state implementation of federal programs vary widely.[63]

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55. *See generally* Health & Hosp. Corp. v. Talevski, 599 U.S. 166, 183-84, 186-88 (2023) (setting forth the test for determining private enforceability of federal statutes under 42 U.S.C. § 1983).

56. *See, e.g.*, Briggs v. Bremby, 792 F.3d 239, 241 (2d Cir. 2015); Gonzalez v. Pingree, 821 F.2d 1526, 1527 (11th Cir. 1987); Victorian v. Miller, 813 F.2d 718, 719-20 (5th Cir. 1987); Garnett v. Zeilinger, 323 F. Supp. 3d 58, 71-73 (D.D.C. 2018); M.K.B. v. Eggleston, 445 F. Supp. 2d 400, 428-29 (S.D.N.Y. 2006); Reynolds v. Giuliani, 35 F. Supp. 2d 331, 341 (S.D.N.Y. 1999), *modified in part on other grounds*, 43 F. Supp. 2d 492 (S.D.N.Y. 1999); Reynolds v. Giuliani, No. 98-cv-08877, 2005 WL 342106, at *16 (S.D.N.Y. Feb. 14, 2005); *see also* Haskins v. Stanton, 794 F.2d 1273, 1275 (7th Cir. 1986) (finding an implied right of action to enforce Food Stamp Act timeliness requirements under *Cort v. Ash*, 422 U.S. 66 (1975)).

57. *See* Barry v. Lyon, 834 F.3d 706, 716-17 (6th Cir. 2016); *Garnett*, 323 F. Supp. 3d at 71-74.

58. *See Barry*, 834 F.3d at 717.

59. *See Holmes*, 2024 WL 2097081, at *1, *12.

60. 7 C.F.R. § 271.1 *et seq.* (2024); 7 U.S.C. § 2013 *et seq.* (2018).

61. *See* Alexander v. Sandoval, 532 U.S. 275, 284, 291 (2001).

62. *See generally, e.g.*, Verified Petition and Class Action Complaint, Salem v. Guinn, No. 905551-24 (N.Y. Sup. Ct. June 12, 2024), https://empirejustice.org/wp-content/uploads/2024/06/Salem-v-Guinn-Petition-1.pdf [https://perma.cc/QFG5-YGSQ] (bringing an action to enforce state and federal fair hearing timeliness requirements via Article 78 of the New York Civil Practice Law and Rules, which provides a procedural device for review of administrative action in state court); Forest v. City of N.Y., No. CIV. 23-CV-00743, 2023 WL 4409937, at *2 (S.D.N.Y. June 27, 2023) (bringing claims for the violation of federal SNAP law and pendent state-law claims under the New York Social Services Law).

63. *State Temporary Assistance for Needy Families Programs Do Not Provide Adequate Safety Net for Poor Families*, CTR. ON BUDGET & POL'Y PRIORITIES, https://www.cbpp.org/state-temporary-assistance-for-needy-families-programs-do-not-provide-adequate-safety-net-for-poor [https://perma.cc/HW89-972Z]; Food & Nutrition Serv., *supra* note 48, at 8.

II. CASE STUDIES

Today, many of the most pressing issues for public-benefits recipients follow from benefits agencies' increasing reliance on technology to conduct business remotely. As a fellow at NCLEJ, I worked on several lawsuits that sought to protect benefits recipients' rights as agency practices evolved. In this Part, I analyze three such cases: *Holmes v. Knodell*, which challenged wrongful SNAP denials caused by Missouri's reliance on an overloaded and inaccessible call center;[64] *Reynolds v. Giuliani*, in which enforcement of a longstanding injunction protecting access to emergency benefits in New York City contended with legal uncertainty caused by major changes in agency operations;[65] and *Salem v. Guinn*, which confronted serious delays in New York State's system of administrative hearings for benefits recipients, delays that exist despite the state's recent move to remote hearings that are intended to be more efficient.[66] These cases reveal downsides to benefits agencies' increased reliance on technology and remote operations—pitfalls that sometimes parallel much older problems in benefits administration—and demonstrate the urgent need for more targeted, thoughtful regulation of these new practices. They also show, however, that litigants can still make headway in improving benefits programs by creatively leveraging the big-picture rights protected under existing law.

A. Holmes v. Knodell*: On-Demand Interviewing and Fundamental Fairness*

Today's benefits litigants face the major challenge of demonstrating how access barriers caused by new technologies and systems can give rise to cognizable legal claims under an outdated statutory and regulatory framework. The *Holmes v. Knodell* litigation, which I worked on during my fellowship, illustrates this issue.

Holmes challenged SNAP denials resulting from Missouri's reliance on a dysfunctional, understaffed call center to conduct SNAP eligibility interviews.[67] Federal regulations require SNAP applicants to complete an interview with a

64. See *infra* notes 67-93 and accompanying text.

65. See *infra* notes 94-116 and accompanying text.

66. See *infra* notes 117-126 and accompanying text.

67. Complaint at 2, *Holmes*, 2024 WL 2097081(No. 22-cv-04026); *see also Holmes*, 2024 WL 2097081, at *19 (granting summary judgment to plaintiffs on all claims and holding that the administrative process utilized by the defendant, Missouri Department of Social Services, fails to meet its obligations imposed by the SNAP program because the system does not timely, accurately, and fairly service applicant households).

state-agency caseworker before they can be deemed eligible to receive benefits.[68] The regulations require state SNAP agencies to schedule an interview appointment for each applicant household.[69] Interviews may be conducted by telephone, though telephone interviews still must be scheduled for a specific time.[70] The federal statutes governing SNAP do not require interviews or set forth standards or procedures for interviews; the interview requirement exists only in regulations.[71]

Although SNAP regulations provide detailed standards for interviews, FNS has granted numerous regulatory waivers that permit states to deviate from the customary interview procedures set out in the regulations.[72] Missouri has been granted one such waiver, formally called an "unscheduled interview waiver" but often referred to as an "on-demand waiver."[73] Missouri's waiver permits the state to operate a system of "on-demand interviews" where applicants are directed to call into a centralized call center at a time of their choice to complete an interview instead of being scheduled for an individual interview appointment.[74]

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68. 7 C.F.R. §§ 273.2(a)(2), (d)(1), (e)(1), (g)(3) (2024). SNAP recipients must recertify their eligibility periodically, and an interview is usually required at recertification as well. 7 CFR §§ 273.2(e)(1), 273.14(b)(3) (2024). Interviews may be conducted telephonically or in person, though all applicants have a right to receive a face-to-face interview upon request. 7 CFR §§ 273.2(e)(2), (e)(2)(i) (2024).

69. 7 C.F.R. § 273.2(e)(3) (2024). Specifically, this regulation provides that "[t]he State agency must schedule an interview for all applicant households who are not interviewed on the day they submit their applications," suggesting that the U.S. Department of Agriculture's Food and Nutrition Service (FNS) envisioned that many applicants would submit their application in person at a state agency's office and receive an in-office interview during the same visit.

70. 7 C.F.R. § 273.2(e)(2) (2024) ("The State agency may use a telephone interview instead of the face-to-face interview required in paragraph (e)(1) of this section for all applicant households" or for a subset of households, as specified in the state's plan of operation); 7 C.F.R. § 273.2(e)(3) (2024) (requiring interviews to be scheduled, without qualification as to the format of the interview).

71. 7 C.F.R. §§ 273.2(a)(2), (e)(1) (2024); *see* 7 U.S.C. §§ 2011-2036d (2018); *see also* 7 U.S.C. § 2014(b) (2018) (directing the Secretary of Agriculture to promulgate SNAP eligibility standards).

72. *Holmes*, 2024 WL 2097081, at *2-3; *see also* AKHTAR & LUNDEN, *supra* note 14, at 1-2 (describing unscheduled SNAP interview waivers). FNS has granted a variety of types of waivers. Food & Nutrition Serv., *SNAP Rule Waivers*, U.S. DEP'T AGRIC., https://www.fns.usda.gov/snap/waivers/rules [https://perma.cc/6BLS-FHZP] (detailing SNAP administrative certification waivers for state agencies in Excel file titled "Current Certification Waivers (as of 07/11/24)); Food & Nutrition Serv., *supra* note 20, at 13; Food & Nutrition Serv., *supra* note 48; *see generally* 7 C.F.R. § 272.3(c) (2024) (providing that "[t]he Administrator of the Food and Nutrition Service or Deputy Administrator for Family Nutrition Programs may authorize waivers to deviate from specific regulatory provisions").

73. *See Holmes*, 2024 WL 2097081, at *2-3.

74. *Id.*

Numerous other states have received some form of an on-demand waiver.[75] Indeed, FNS guidance explicitly encourages states to consider on-demand interviewing.[76] Nevertheless, FNS has failed to establish any performance standards for on-demand interviewing (such as limits on applicant hold times), either by regulation or in subregulatory guidance.[77]

While on-demand interviewing could, in theory, improve access to SNAP by giving prospective applicants the flexibility to complete an interview at a convenient time,[78] in practice, operational challenges undermine these potential benefits. For example, Missouri's SNAP call center is plagued by long wait times and often drops calls when call volume strains the call center's capacity.[79] The state agency's computer system is programmed to deny SNAP applications automatically on the thirtieth day after application submission if an interview has not been completed, without any procedure in place to verify whether the household has attempted to call for an interview.[80] As a result, huge numbers of SNAP applicants—including many who satisfy the program's substantive eligibility requirements—are denied for failure to interview, even if they have called numerous times and waited on hold for hours.[81]

Because federal SNAP statutes do not even address interviews and there are no binding standards for on-demand interviews, advocates faced the challenge of shaping the state's egregious failures into a legally cognizable claim.[82] Ultimately, the *Holmes* plaintiffs pegged their claims to two statutory provisions that establish fundamental principles for the administration of SNAP: 7 U.S.C. § 2014(a), which provides that assistance under SNAP "be furnished to all eligible households who make application for such participation," and 7 U.S.C. § 2020(e)(2)(B)(i), which requires state agencies to provide "accurate[] and fair

75. Food & Nutrition Serv., *supra* note 48, at 22.

76. Food & Nutrition Serv., *supra* note 20, at 13-15.

77. AKHTAR & LUNDEN, *supra* note 14, at 2-4.

78. *Id.* at 2; Food & Nutrition Serv., *supra* note 20, at 14.

79. *Holmes*, 2024 WL 2097081, at *7-11, *12-13.

80. *Id.* at *3, *13; *see also* Hatten-Gonzales v. Earnest, No. CV 88-385, 2016 WL 9779421, at *6 (D.N.M. Sept. 27, 2016) (describing a similar computer system formerly in use in New Mexico).

81. *Holmes*, 2024 WL 2097081, at *7-13.

82. In addition to the wrongful denial claims that I focus on here, *Holmes* brought claims alleging violations of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act as well as the SNAP Act requirement that households be permitted to file a SNAP application on their first day of contact with the state SNAP agency. First Amended Complaint, *supra* note 4, at ¶¶ 46-48.

service."[83] The plaintiffs argued that Missouri's practice of denying SNAP applications based solely on an applicant's inability to get through on the overloaded phone lines to complete an interview violated the state's obligations to provide benefits to all eligible applicants and to provide accurate and fair service.[84] The plaintiffs also argued that the state's practices violated the Due Process Clause, both because they created a substantial risk that eligible applicants would be erroneously deprived of benefits and because they led the state to make eligibility determinations based on the arbitrary criterion of whether an applicant could successfully get through to the call center.[85]

The plaintiffs ultimately won summary judgment on all claims in an order that substantially adopted their theories of liability.[86] The court wrote:

> Defendant's reliance on an inadequate automated system and understaffed offices to provide interviews . . . violates Defendant's obligation under SNAP and Defendant's on-demand waiver. Defendant's automatic denials of eligible applicants based on an automated system constitutes a wrongful denial of benefits. Defendant is required to provide benefits to all eligible applicants and must ensure that it has a system that allows for this to happen. Here, an alarming number of eligible applicants are denied based on Defendant's failure to make timely interviews available. When applicants who are otherwise eligible for benefits are denied those benefits for failure to interview, due to no fault of their own, Defendant has violated its obligations under the law.[87]

The court further held that the state had violated the plaintiffs' due-process rights, agreeing with the plaintiffs' arguments that the state's practices created

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83. Plaintiffs' Suggestions in Support of Motion for Summary Judgment, *supra* note 8, at 17; *accord* Plaintiffs' Suggestions in Support of Motion for Summary Judgment at 19-20, *Holmes*, 2024 WL 2097081 (No. 22-CV-04026), ECF No. 148 [hereinafter Plaintiffs' Suggestions in Opposition to Defendant's Motion for Summary Judgment]. The latter filing was mistakenly filed with the same document title as plaintiffs' opening brief for their own motion for summary judgement. The filing was meant to be styled as "Suggestions in Opposition," and the court treated it as such.

84. Plaintiffs' Suggestions in Support of Motion for Summary Judgment, *supra* note 8, at 17-19; Plaintiffs' Suggestions in Opposition to Defendant's Motion for Summary Judgment, *supra* note 83, at 19-23.

85. Plaintiffs' Suggestions in Support of Motion for Summary Judgment, *supra* note 8, at 21-26; Plaintiffs' Suggestions in Opposition to Defendant's Motion for Summary Judgment, *supra* note 83, at 23-26.

86. *See Holmes*, 2024 WL 2097081, at *18.

87. *Id.* at *13.

an unacceptably high risk of erroneous deprivation of their strong private interest in subsistence benefits and amounted to arbitrary agency action.[88]

Because of the lack of specific, enforceable standards for new policies like on-demand interviewing, *Holmes* relied on statutory and constitutional provisions that are more akin to rules of fundamental fairness.[89] The core principle at the heart of the *Holmes* decision is that the Due Process Clause and the Food Stamp Act require a fair process where each person is evaluated on the merits using the same rules. This requires a functional system that ensures applicants who fulfill their responsibilities can trust that the agency will do the same.[90] Litigation is ongoing to determine the proper scope of relief.[91]

Although the *Holmes* plaintiffs were successful, the absence of specific standards for on-demand interviewing led to significant legal uncertainty and forced the plaintiffs to rebut basic misunderstandings about the core issues at stake in the case. The state defendant repeatedly argued that it had no legal obligation to operate a call center or provide telephone interviews at all and that FNS regulators had not established a ceiling on wait times for on-demand interviews.[92] While both of these arguments were factually true, they reflected a fundamental misunderstanding of the plaintiffs' position. Plaintiffs were *not* seeking to create or enforce standards specific to telephone or on-demand interviews.[93] Rather,

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88. *Id.* at *15-16.

89. *See* Mannix et al., *supra* note 11, at 4 ("Courts have often declared that due process entails a foundation of fundamental fairness and rational decision making that serves as a buffer for recipients against arbitrary governmental action.").

90. *Holmes*, 2024 WL 2097081, at *1 ("These denials were not based on the merits of the applications but the failure of the system to offer a reasonable opportunity to interview."); *id.* at *12 ("Too many applicants are rejected based on the failure of the system, rather than substantive evaluation of the applications."); *id.* at *16 ("[A]pplicants are being denied benefits not based on the merits of their application but on the failure to obtain an interview. Further, the failure to interview is a direct result of Defendant's inability to provide an efficient and successful system that allows applicants to schedule and complete an interview within the required time frame.").

91. *See id.* at *20; Plaintiffs' Report at 1, *Holmes*, 2024 WL 2097081 (No. 22-CV-04026).

92. Memorandum of Law in Support of Defendant's Motion for Summary Judgment at 42-43, *Holmes*, 2024 WL 2097081 (No. 22-CV-04026) ("Neither FNS nor the waiver itself provide any requirement regarding wait times for calls. . . . The SNAP Act does not require that Defendant provide Plaintiffs, or anyone else, with an unscheduled telephone interview. And it does not provide Plaintiffs with any right to an interview conducted in that manner."); Suggestions in Opposition to Plaintiffs' Motion for Summary Judgment, *supra* note 83, at 98 ([N]othing in the SNAP Act or its implementing regulations provides a right for applicants to call a call center and complete their interview. . . . The [FNS] regulations do not establish a ceiling for wait times in the context of these optional telephone interviews.").

93. Plaintiff's Reply in Support of Motion for Summary Judgment at 7, *Holmes*, 2024 WL 2097081 (No. 22-CV-04026) ("Defendant . . . asserts that he has no duty to provide an interview immediately, or within a certain time frame, when a SNAP applicant calls the call center, and

their argument was grounded in the overarching principle that the state's obligation to provide benefits to all eligible applicants existed regardless of the system use for interviewing, and that the state's failure to fulfill that obligation was unlawful.

B. Reynolds v. Giuliani*: Emergency Benefits in 2005 and 2024*

Recent enforcement of a decades-old injunction also shows the challenges of addressing current SNAP access barriers with a much older legal framework. In late 2023, in *Reynolds v. Giuliani*, New York City benefits advocates filed a motion to hold the city in contempt of court for violating a longstanding injunction that, among other things, required the city to comply with federal requirements for the expedited processing of certain SNAP applications.[94] (NCLEJ is one of the organizations representing the plaintiff class, and I worked on this contempt motion and subsequent monitoring efforts during my fellowship.) For certain extremely low-income households, federal law mandates that SNAP benefits be provided within seven days of their application, as opposed to the standard processing deadline of thirty days; the seven-day deadline is referred to as "expedited service" or "expedited processing."[95] New York City monitoring data provided to *Reynolds* class counsel, per the requirements of the injunction, indicated that almost half of applications eligible for expedited service were not being processed in a timely manner.[96]

Reynolds was an old case, originally filed in 1998 in the wake of welfare reform.[97] The court ordered permanent injunctive relief in 2005.[98] On its face, the legal violation at issue — untimely application processing — had no relationship to public-benefits offices' new technology. Yet, the dramatic changes in the city's

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that Plaintiffs have no right to a phone interview on-demand. But Plaintiffs have never asserted that Defendant has such a duty or that they have such a right. Instead, Plaintiffs' claim is that Defendant violated the SNAP Act by wrongfully denying their SNAP applications." (internal citations omitted)).

94. Memorandum of Law in Support of Plaintiffs' Motion for Civil Contempt at 1, Reynolds v. Giuliani, No. 98-cv-08877, 2005 WL 3428213 (S.D.N.Y. Dec. 14, 2005), ECF No. 263; *Reynolds*, 2005 WL 3428213, at *1, *rev'd in part*, 506 F.3d 183 (2d Cir. 2007).

95. 7 U.S.C. §§ 2020(e)(3), (e)(9) (2018); 7 C.F.R. § 273.2(i)(3)(i) (2024). The *Reynolds* injunction required the city to "[p]rovide expedited food stamp service to class members eligible for expedited processing of their food stamp applications within seven (7) days after the date of the application . . . ." *Reynolds*, 2005 WL 3428213, at *1.

96. *Reynolds*, 2005 WL 3428213, at *3; Memorandum of Law in Support of Plaintiffs' Motion for Civil Contempt, *supra* note 94, at 9.

97. Reynolds v. Giuliani, No. 98 Civ.8877, 2005 WL 342106, at *1 (S.D.N.Y. Feb. 14, 2005).

98. *Id.* at *22. The Second Circuit later vacated the 2005 injunction as to New York State, but left it in place against New York City. *See* Reynolds v. Giuliani, 506 F.3d 183, 199 (2d Cir. 2007).

benefits operations and use of technology between 2005 and 2024 became a central focus as the litigation to enforce the injunction progressed.

Federal regulations for expedited SNAP processing were written in an era when benefits application processes worked very differently than they do today. The regulations direct state agencies to screen applicants for eligibility for expedited service "at the time the household requests assistance."[99] State agencies are instructed to designate an employee or volunteer who "shall be responsible for screening applications as they are filed or as individuals come in to apply."[100] Since both statute and regulation require benefits be provided within seven days of application to households eligible for expedited service,[101] the purpose of screening is presumably to enable agency staff to prioritize these applications when completing the other steps required to process applications, including scheduling an interview appointment.[102] The screening provision—which was promulgated in 1978 and whose text has not changed since[103]—seems to contemplate a program where most people would apply by "com[ing] in" to a brick-and-mortar office to submit a paper application form. An agency staff member would then read each application as it came in and sort it for processing.

Indeed, when *Reynolds* was filed in 1998, New York City's Human Resources Administration functioned in this way: most applicants went to an office, filled out an application onsite, and then completed an interview and received an eligibility determination that same day.[104] While this process might have required spending many hours at the benefits office, that drawback was counterbalanced by the fact that the applicant could be screened and receive benefits in a single visit.

Today's application process is more convoluted. Most prospective New York City benefits applicants begin their application online or through the agency's mobile application. After submitting their application, the prospective applicant

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99. 7 C.F.R. § 273.2(i)(2) (2024).

100. *Id.*

101. 7 U.S.C. § 2020(e)(9)(A) (2018); 7 C.F.R. § 273.2(i)(3)(i) (2024).

102. 7 C.F.R. § 273.2(e)(3) (2024). Although some requirements for gathering documentation of eligibility factors are relaxed for expedited SNAP applications, an interview must still take place before the agency may disperse benefits. *See* 7 C.F.R. § 273.2(i)(4)(i)(B) (2024).

103. Implementing the Food Stamp Act of 1977, 43 Fed. Reg. 47846, 47895-96 (Oct. 17, 1978) (codified at 7 C.F.R. § 273.2(i)(2)) ("The State agency's application procedures shall be designed to identify households eligible for expedited service at the time the household requests assistance. For example, a receptionist, volunteer, or other employee shall be responsible for screening applications as they are filed or as individuals come in to apply.").

104. Letter - Plaintiffs' Response to Defendants' Proposed Corrective Action Plan at 2, Reynolds v. Giuliani, No. 98-cv-08877, 2005 WL 3428213 (S.D.N.Y. Feb. 26, 2024), ECF No. 281 [hereinafter Plaintiffs' Letter].

receives a confirmation message instructing them to call a centralized telephone line to complete an on-demand interview.[105] The required screening for expedited applications under 7 C.F.R. § 273.2(i)(2) is no longer completed by a staff member. Instead, the online-application platform completes the screening automatically and then provides a different confirmation message to applicants whose answers indicate they are eligible for expedited service. Thus, most applicants do not have a chance to interact with agency staff until they call in to interview with a caseworker, nor do agency staff have reason to review applications before the interview (since they do not, for example, need to determine the correct department to send applicants to for an interview while they are waiting during an office visit).[106]

In addition, because New York City has an on-demand SNAP interview waiver,[107] the city is no longer required to schedule interview appointments within seven days of application submission for applicants eligible for expedited service. Instead, the interview can be completed whenever the applicant calls — and manages to get through — on the phone, which may be long after the seven-day period has expired.

These changes in New York City's SNAP benefit application process were at the heart of the *Reynolds* case. The parties did not agree on what the city's obligations were or how to measure the city's compliance in the new world of online applications and on-demand interviewing. The central issue was whether the city agency had any legal obligations to individuals whose applications indicated that they were eligible for expedited service but who had not yet completed an interview.[108] More specifically, as in *Holmes*, the parties disputed whether the agency's obligation to process applications within a set time frame included an

105. Memorandum of Law in Opposition to Civil Contempt at 6-7, *Reynolds*, 2005 WL 3428213 (No. 98-cv-08877), ECF No. 274; Declaration of Jill Berry at ¶ 10, *Reynolds*, 2005 WL 3428213 (No. 98-cv-08877), ECF No. 274-2; Plaintiffs' Letter, *supra* note 104, at 2-3; *see supra* notes 68-71and accompanying text (explaining on-demand interviewing). A recent survey found that every state except Idaho and Wyoming now offers an online SNAP application. CTR. ON BUDGET & POL'Y PRIORITIES, *supra* note 13. Every state makes printable application forms available online. CTR. ON BUDGET & POL'Y PRIORITIES, *supra* note 13.

106. Transcript of 2.28.24 Hearing at 6, 26, *Reynolds*, 2005 WL 3428213 (No. 98-cv-08877), ECF No. 286-3 ("once the screening for ESNAP eligibility is made," "[t]here's no processing that happens . . . until the interview happens.").

107. *See generally supra* notes 72-78 and accompanying text (explaining on-demand interview waivers).

108. Plaintiffs' Letter, *supra* note 104, at 2; Defendants' Letter Regarding Proposed Corrective Action Plan at 1-2, *Reynolds*, 2005 WL 3428213 (No. 98-cv-08877), ECF No. 280 [hereinafter Defendants' Feb. 23 Letter]; Defendants' Letter Regarding Proposed Corrective Action Plan at 2-3, *Reynolds*, 2005 WL 3428213 (No. 1:98-cv-08877), ECF No. 286 [hereinafter Defendants' Mar. 18 Letter]; Transcript of 2.28.24 Hearing, *supra* note 106, at 19-21, 25-26.

obligation to ensure that applicants had sufficient opportunity to complete an on-demand interview within that time frame.[109]

In 2005, these questions had been irrelevant. Nearly all applicants completed both their application and their interview in person during a single office visit. Access to interviews was taken for granted.[110] The expedited-service rules, written with office operations in mind, mapped easily onto the agency's practices. But in 2024, the process has been divided into discrete steps that applicants complete largely independently instead of with the guidance of office staff—an online application, followed by an on-demand interview where the onus is on the applicant to call in and wait for someone to pick up.[111]

In *Reynolds*, these changes mattered: the plaintiffs contended that long hold times prevented many applicants from completing an interview despite their diligent efforts, while other applicants did not know to call within the seven-day window because the online application did not clearly inform them that they could get benefits on an expedited basis.[112] The city insisted that applicants who were eligible for expedited service on the face of their applications but who did not interview within seven days should not be considered in determinations of the city's rate of timely performance.[113] The plaintiffs, on the other hand, argued that the city's obligation to provide expedited service included an obligation to ensure that applicants were able to access an interview within the seven-day processing time frame.[114] In order to evaluate the extent of existing barriers, they sought data on telephone wait times and the number of applicants who were eligible for expedited service but did not interview within seven days.[115]

The parties ultimately negotiated a corrective-action plan and settled the contempt motion,[116] forestalling the need for the court to rule on the proper interpretation of the expedited-service requirements. However, the interaction

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109. Plaintiffs' Letter, *supra* note 104, at 2; Defendants' Mar. 18 Letter, *supra* note 108, at 2; Transcript of 2.28.24 Hearing, *supra* note 106, at 14-15, 25-26.

110. The primary impetus for the original *Reynolds* suit was that the city was discouraging potential applicants from applying for benefits in an effort to "prune the welfare rolls" following welfare reform. Reynolds v. Giuliani, 35 F. Supp. 2d 331, 336 (S.D.N.Y. 1999), *modified in part*, 43 F. Supp. 2d 492 (S.D.N.Y. 1999).

111. *See* Plaintiffs' Letter, *supra* note 104, at 2; Transcript, *supra* note 106, at 14.

112. *See* Plaintiffs' Letter, *supra* note 104, at 2-3.

113. *See* Defendants' Feb. 23 Letter, *supra* note 108, at 1-2; Defendants' Mar. 18 Letter, *supra* note 108, at 2-3.

114. *See* Plaintiffs' Letter, *supra* note 104, at 2-3; Transcript of 2.28.24 Hearing, *supra* note 106, at 14-15, 19-23.

115. *See* Plaintiffs' Letter, *supra* note 104, at 2-3.

116. Stipulation of Settlement & Corrective Action Plan at 1, Reynolds v. Giuliani, No. 98-cv-08877, 2005 WL 3428213 (S.D.N.Y. Apr. 19, 2024), ECF No. 292.

between on-demand interviewing and expedited-service requirements was a consistent sticking point in several court appearances because of the lack of clarity as to the city's legal obligations in this new system.

C. Salem v. Guinn*: The False Promise of Efficiency*

The recently filed case of *Salem v. Guinn*, which I worked on developing and filing during my fellowship at NCLEJ, provides another illustration of why technology and remote operations should not be seen as a panacea for under-resourced benefits agencies. *Salem* challenges unlawful delays and inadequate notice in New York's statewide system of administrative "fair hearings" for aggrieved benefits applicants and recipients.[117] Despite unambiguous regulatory timelines requiring the prompt resolution of administrative fair hearings, New York had a backlog of over fifty thousand hearings overdue for decision when *Salem* was filed, including thousands of hearings with multiyear delays.[118] These delays deprive many individuals of benefits for extended periods of time and saddle others with unconscionable debts as a result of benefits received while waiting for a hearing that they ultimately lose.[119]

At the same time, New York operates its fair-hearing system under a "demonstration project" in which almost all hearings are conducted via telephone or video.[120] This policy began in March 2020 as a social-distancing measure[121] and has been extended at least through March 2025.[122] Ironically, the state agency has previously justified its continued use of the remote-hearing system by stating that the policy is expected to improve timeliness.[123] More recent agency communications have retreated from this justification somewhat, stating only that the demonstration project aims to evaluate whether remote hearings

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117. Petition at 1, Salem v. Guinn, No. 905551-24 (N.Y. Sup. Ct. June 12, 2024). *See generally* Goldberg v. Kelly, 397 US 254 (1970) (holding that due process requires a pretermination hearing before the discontinuance of welfare benefits).

118. Petition at 25, *Salem*, No. 905551-24.

119. *Id.* at 3, 14-15, 17, 19, 23.

120. Memorandum from Samuel L. Spitzberg, *supra* note 20, at 1-2.

121. Memorandum from Roy A. Esnard, Deputy Comm'r, N.Y. Off. of Temp. & Disability Assistance, to N.Y. Off. of Admin. 1 (Mar. 12, 2020), https://otda.ny.gov/policy/gis/2020/20DC014.pdf [https://perma.cc/WXP7-7869].

122. Memorandum from Samuel L. Spitzberg, *supra* note 20, at 1.

123. *See* Memorandum from Roy A. Esnard, Deputy Comm'r, N.Y. Off. of Temp. & Disability Assistance, to N.Y. Off. of Admin. Hearings 1 (Mar. 15, 2021), https://otda.ny.gov/policy/gis/2021/21DC013.pdf [https://perma.cc/7YF4-QZL8]; Memorandum from Roy A. Esnard, Deputy Comm'r, N.Y. Off. of Temp. & Disability Assistance, to N.Y. Off. of Admin. Hearings 1 (Mar. 11, 2022), https://otda.ny.gov/policy/gis/2022/22DC024.pdf [https://perma.cc/3VPS-6SWR].

do, in fact, improve timeliness.[124] Public-benefits advocates who represent appellants at these fair hearings have identified a number of due-process concerns arising from the state's near-exclusive reliance on remote hearings. These concerns include the difficulty of making credibility determinations over the phone and, for appellants with limited English proficiency, the challenge of understanding the presentation of documentary evidence without an interpreter in the room to point out and explain documents.[125]

Salem does not explicitly address concerns about remote hearings; the timeliness requirements it seeks to enforce are applicable to all hearings, regardless of format.[126] And the specific reasons for New York's fair-hearing delays are currently largely unknown. However, the confluence of these delays with the ongoing remote-hearing demonstration project shows that reliance on technology has not compensated for the resource constraints or performance issues causing the state's untimeliness. To be sure, it is possible that timeliness might be even worse if most hearings were taking place in person. But it is clear that the state's apparent hope that the move to remote hearings would ensure timely performance was unduly optimistic. Any efficiencies or cost savings to the state have not resulted in a better experience for appellants.

D. Implications

While *Holmes*, *Reynolds*, and *Salem* all contend with problems flowing from the adoption of new technological systems, administrative burdens and procedural barriers are longstanding issues for benefits applicants and recipients. In some ways, the new technological access barriers mirror the resource constraints and indifferent (or hostile) bureaucracy that have plagued benefits programs for decades.

For example, in a 2000 rulemaking, FNS received comments objecting to a practice in some states of using first-come, first-served SNAP eligibility interviews.[127] Under this system, a local agency would

> establish a "quota" for the number of applicants that staff can interview during established working hours. Potential applicants will begin to line

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124. *See* Memorandum from Samuel L. Spitzberg, *supra* note 20, at 1.

125. *See* Letter from Kelly Barrett Sarama, Supervising Att'y, Ctr. for Elder L. & Just., et al., to Howard A. Zucker, Comm'r, N.Y. State Dep't of Health, et al., at 3-4 (Aug. 4, 2021) (on file with author).

126. *See* Petition at 3, 10-11, Salem v. Guinn, No. 905551-24 (N.Y. Sup. Ct. June 12, 2024) (citing 7 C.F.R. § 273.15(c)(1); 18 N.Y.C.R.R. § 358-6.4(a)-(b)).

127. Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Pub. L. 104-193, 65 Fed. Reg. 70134, 70152 (Nov. 21, 2000).

> up in front of the office early in the morning in hopes of getting an interview that day. Once the number of applicants in line reaches the "quota", the local agency will accept no more individuals for an interview.[128]

This system forced some households to visit the agency's office multiple times, potentially enduring long waits each time, before they could secure an interview.[129] FNS expressed disapproval of this practice, citing the barriers to participation it created for groups such as working families who could not go to the office repeatedly. Accordingly, FNS revised the proposed interview regulation to require state agencies to "schedule an interview for each applicant that is not interviewed on the day he or she submits an application."[130]

Without sufficient staffing on telephone lines, the on-demand interviewing at issue in *Holmes* and *Reynolds* works in much the same way as the disfavored "quota" system. Just as applicants subject to a quota system were forced to wait for first-come, first-served interviews, applicants dealing with an on-demand interview system may have to call numerous times and endure protracted waits before they can complete an interview. While there may not be an announced interview quota, on-demand interviewing can result in a de facto quota due to the mismatch between the number of applicants instructed to call for interviews and the staff available to conduct them. Using a call center in lieu of a physical office does not make up for the resource constraints that have long plagued welfare agencies.[131] For applicants, the resulting experience remains largely the same — long waits and, for many, denials based on inaccessible procedures regardless of applicants' substantive eligibility.

Holmes, *Reynolds*, and *Salem* illustrate why technology is not the easy solution to understaffing and other operational constraints that benefits recipients and agencies might hope for. Online applications, on-demand interviewing, and telephonic fair hearings do not reduce administrative burdens — these technologies merely shift burdens from agency staff onto benefits applicants and recipients. Benefits applicants must submit their applications online on their own, without easy access to agency staff to answer questions about the application.[132] They must call the agency over and over to try to secure an interview, instead of the agency creating a schedule of interview appointments that accommodates every

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128. *Id.*

129. *Id.*

130. *Id.*

131. *See* AKHTAR & LUNDEN, *supra* note 14, at 2-3 (outlining the negative consequences of call-center technology problems and staffing shortages).

132. Class Action Complaint, *supra* note 15, at ¶¶ 7, 123, 129, 132, 134.

applicant.[133] They must find a private place and working telephone to complete a fair hearing.[134] And they must devise a way to share their hearing evidence with the agency electronically in advance, instead of relying on agency facilities for hearings.[135]

For benefits agencies, these changes may seem irresistibly efficient. Too often, however, any apparent efficiency is in fact a sign of barriers to program access. In Missouri, for example, the state's rate of timely application processing was artificially bolstered by its policy of automatically denying all applications thirty days after filing if the applicant had not managed to get through to complete an on-demand interview, when in fact many applicants had no way to complete the application requirements within thirty days due to the dysfunctional call center.[136] Technological changes may simply tempt agencies to hide dysfunction by blaming applicants for being insufficiently diligent in trying to access the system.[137]

Challenging these barriers is made all the more difficult by SNAP's statutory and regulatory framework, which was not designed for today's technology. And federal regulators have so far failed to step in to remediate problems like inaccessible call centers and fair-hearing backlogs. Some states have taken FNS's hands-off approach as permission to operate poorly. In *Holmes*, for example, Missouri argued that its call-center dysfunction was not unlawful because FNS had not expressed concern about its wait times or issued benchmarks for call-center performance.[138] Although a federal court ultimately held the state's practices unlawful,[139] the lack of performance standards and corrective action from the federal government allowed Missouri to operate an inaccessible system for years before it was finally targeted in a lawsuit. In that lawsuit, as well as in *Reynolds*, the mismatch between SNAP's legal framework and current agency operations created significant legal uncertainty about what the agency's obligations were. These kinds of rights violations are only beginning to become legible to

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133. AKHTAR & LUNDEN, *supra* note 14, at 2.

134. Letter from Kelly Barrett Sarama, *supra* note 125, at 2-3.

135. *Id* at 5.

136. Holmes v. Knodell, No. 22-CV-04026, 2024 WL 2097081, at *3, *13 (W.D. Mo. May 9, 2024) (auto-denial policy); *id.* at *3 (noting that over half of all SNAP denials were based on the lack of a timely interview).

137. *See, e.g.*, AKHTAR & LUNDEN, *supra* note 14, at 4 (describing how "[t]here is almost no way to identify state wrongdoing or readily fix call center problems where an unscheduled interview waiver has been granted").

138. Memorandum of Law in Support of Defendant's Motion for Summary Judgment, *supra* note 92, at 41-42; Suggestions in Opposition to Plaintiffs' Motion for Summary Judgment at 98-99, *Holmes*, 2024 WL 2097081 (No. 22-CV-04026), ECF No. 152.

139. *Holmes*, 2024 WL 2097081, at *19-20.

the legal system, even though benefits recipients can easily recognize that today's problems represent the same kind of disrespect and neglect that has long been endemic in American public-benefits bureaucracies.

III. RECOMMENDATIONS

To maintain the integrity of benefits programs, benefits agencies must look to technology not as a cost-cutting measure,[140] but as a tool to improve program access. While the flexibility of remote applications, interviews, and hearings can have real value for many applicants, these technologies can make it more difficult for others to navigate benefits programs. Those who struggle most are often those most in need — particularly vulnerable applicants who require additional application assistance, such as an applicant with a disability that affects their ability to process information or an unhoused applicant who cannot easily safeguard important documents. Tools like online applications and on-demand interviewing should be an additional option, not the *only* option. Policymakers should more deeply consider the implications of slicing up benefits-application processes into discrete steps that applicants may or must complete entirely from home.

Furthermore, even the most technologically savvy agency still needs sufficient staffing to ensure that applicants and recipients can get assistance when they need it and to reliably complete essential tasks that cannot legally be automated, such as interviewing.[141] Agencies must be thoughtful about their staffing needs and must not assume that technology is a solution to workforce problems.

On-demand interviewing deserves particular attention from federal regulators. On-demand interviews are likely here to stay, as they are popular among states[142] and have the potential to make interviews more convenient for some applicants. However, without clear performance standards and protections for applicants — such as maximum average hold times and a prohibition on automatic denials for failure to interview when there are indications of access barriers that make interviewing difficult — on-demand interviews frustrate program access. *Holmes* proved that litigation to challenge these problems is viable. But clear regulatory standards for on-demand interviewing would put benefits litigation and nonlitigation advocacy on firmer footing in a variety of ways. Such standards

140. *How to Protect Clients*, *supra* note 11, at 7 (describing the Pennsylvania Department of Human Services' effort to "do more with less" by closing offices and emphasizing use of an online portal and call center).

141. *See* AKHTAR & LUNDEN, *supra* note 14, at 3-4 (describing how inadequate staffing can burden applicants).

142. Food & Nutrition Serv., *supra* note 20.

would provide advocates with greater leverage in administrative advocacy with state agencies. Regulatory standards also often come with requirements for state agencies to collect and report data, which can help advocates monitor problems and potentially provide the factual showing needed for litigation. Individual benefits applicants and recipients could enforce the standards in fair hearings — for example, by arguing that their application should not have been denied for failure to interview because the agency's average hold time was above the regulatory maximum. And, although regulations are not directly privately enforceable in federal court, they can support viable legal claims by informing the scope of a statutory right or creating a property interest that triggers due-process protections. In light of capacity constraints among benefits litigators, however, clear regulatory standards should be coupled with strong administrative enforcement by FNS.

CONCLUSION

Despite the legal retrenchment since the height of the welfare-rights movement, benefits litigation remains a dynamic field that continues to evolve to protect benefits recipients' rights as agency practices change. Maintaining program access amid technological change has been one of the most important goals of benefits litigation in recent years. Practices like on-demand interviewing and remote hearings have created problems that are at once old and new. Procedural barriers to benefits access caused by a lack of investment in benefits programs and disregard for recipients' rights are longstanding issues, but agencies' newfound reliance on technology and remote operations have given these barriers a new form. Faced with the lack of action at the federal level to create specific, enforceable standards for the use of new technologies in benefits programs, benefits litigators have devised creative legal theories to show how technology-related access barriers violate central principles of benefits law. More policy action is needed to streamline such enforcement efforts, remove legal uncertainty, and open more pathways for nonlitigation advocacy. Nevertheless, in the face of this uncertainty, longstanding precedents in benefits law and core statutory protections retain their vitality, putting benefits litigators at the forefront of efforts to protect recipients' rights.

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