



1108 City Park Avenue, Suite 200
Columbus, OH 43206
614.827.0549
www.ohiopoverlylawcenter.org

**Graham Bowman
Staff Attorney
Ohio Poverty Law Center
Senate Bill 165
General Government and Agency Review Committee
Testimony in Opposition to Senate Bill 165**

Chair Schuring, Vice Chair Rulli, Ranking Member O'Brien, and members of the General Government and Agency Review Committee, my name is Graham Bowman. I am an attorney with the Ohio Poverty Law Center.

The Ohio Poverty Law Center's mission is to reduce poverty and increase justice by protecting and expanding the legal rights of Ohioans living, working, and raising their families in poverty. Drawing on the day-to-day experiences of the legal aid attorneys who provide civil legal services to low-income Ohioans in every county, we oppose Senate Bill 165.

We oppose SB 165 for three reasons:

First, it will cause enormous confusion for retailers and the customers that will lead to longer lines and conflict at the grocery store, which may force legal aid organizations to pursue legal remedies against retailers.

Second, it will require an enormous investment of time and resources to implement in accordance with federal law.

Third, it will not accomplish the proponent's primary goal of deterring selling of SNAP benefits for drugs.

These flaws are not unique to Ohio. At least 18 states have considered implementing SNAP photo EBT cards. The majority never moved forward due to concerns over cost, implementation, and effectiveness. Only four states implemented these requirements, Maine, Massachusetts, New York and Missouri. Three of those four, New York, Missouri, and Maine, abandoned the program. Massachusetts and Maine both received media attention for their failure to implement the requirement properly and the Food and Nutrition Services threatened to withhold SNAP funds from both states due to those problems.

Maine abandoned the program in April of this year after repeated warnings from the Trump administration that it was violating stringent rules governing the policy. The Maine Department of Health and Human Services described the program as an "ineffective policy that threatens eligible Mainers' access to assistance."¹

1. Confusion for Retailers and Customers

There are two central flaws for any SNAP photo EBT program that arise under federal law. First, any household member, or a chosen non-member, may use the card to purchase groceries. Cashiers must allow any individual to use an EBT card for which they know the PIN. Simply put, whose photo is on the card does not matter. Second, SNAP retailers are prohibited from treating customers who purchase food with a SNAP EBT card differently from other customers.

If SB 165 becomes law, thousands of authorized retailersⁱⁱ in Ohio will need to ensure on an ongoing basis that none of their cashiers or managers turn away individuals who attempt to use a photo EBT card and are not the person pictured on the card. If the business implements a policy of checking photo EBT cards at all, they must ensure that they also check the ID of all other customers who make purchases with traditional debit or credit cards.

Retailers, and ultimately the state, will need to remain diligent in training employees because the mere fact the EBT cards contain a photo seems to imply that only the photographed person may use the card, when in fact there could be any number of people who are unrelated to the photographed individual that may use the card. Why else would SNAP EBT cards have photos but not other types of debit cards? Furthermore, it is not intuitive that a cashier must begin checking the ID of all customers because they started checking photo EBT cards.

FNS shares these concerns. In the introduction to a new rule for photo EBT cards issued in December 2016, the agency stated:

“There have been significant issues with recent attempts to place photos on EBT cards, including confusion at stores where clients have been turned away because of misunderstanding/misapplication of policy [and] confusion among clients regarding who can use the card in the household because of the photo on the card...”ⁱⁱⁱ

Massachusetts began issuing photo EBT cards in 2013. FNS found that state workers, retailers, and recipients were poorly trained on the various rules of the SNAP program and retailers routinely improperly denied recipients use of their card for not being the photographed household member.^{iv} The *Boston Globe* covered the dysfunction in December 2014 and wrote about an instance where a 46-year-old mother of two was turned away by a Costco cashier and manager in front of a crowd of people because her husband’s photo was on the card.^v The issues were severe enough that FNS sent a letter to the state requesting that it halt all further implementation of the program and threatened to withhold federal funding for the program. Eventually retailers learned to completely ignore the photos, which cost the state approximately 4.4 million dollars a year to implement.

Similarly, Missouri conducted an audit of its photo EBT card program in 2001 and found it to be “useless” when it came to rooting out fraud in the SNAP program.^{vi} Retailers began training their staff to disregard the photos entirely to not violate federal law.^{vii} The state ended the program after less than two years.

Maine’s photo EBT card was voluntary. However, in November 2014 FNS threatened to cut federal SNAP funding after it determined that Maine was operating the program as if it were mandatory. The state ended the program entirely in April of this year.

If SB 165 becomes law, we anticipate that legal aid organizations throughout the state will experience an influx of SNAP cases where shoppers were improperly denied use of their SNAP benefits at retailers who misunderstood the rules of the SNAP program. This may result in legal aid organizations needing to file administrative complaints with FNS against retailers that may result in monetary penalties or disqualification from the SNAP program . This program would be a disaster for retailers.

2. Implementation and Financial Burdens on the State

In response to the problems in Massachusetts and Maine, FNS issued detailed rules in December 2016 for states attempting to implement SNAP photo EBT cards. FNS issued this warning:

“Implementation involves complex legal, operational, and civil rights considerations; if not well planned, it can inhibit benefit access for eligible participants which could violate federal law.”

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The rule requires the state to submit to FNS a pre-approval plan for the program that provides detail on all aspects of the program and how particular issues will be addressed. For example, the plan must:

1. Demonstrate that its existing SNAP program is meeting many performance metrics before it may add a photo ID requirement.
2. Provide details, including a timeline, of how ODJFS will meet many specific requirements to ensure SNAP recipients are not denied benefits because of the program.
3. Establish procedures to ensure that obtaining a photo from the household is not made a condition of eligibility.^{ix} This means that a case may not be denied because a SNAP recipient fails to have their photograph taken. The application and approval process may not be altered in any way to incorporate the photo requirement.^x
4. Be able to address, on a case-by-case basis, situations where an applicant faces a hardship to having their photo taken so benefits are not withheld. For example, individuals that lack transportation, cannot come into a JFS office due to work, are ill, or live in a rural area.^{xi}
5. Ensure that if a household member does not comply with the photo requirement, JFS must have a procedure to continue to provide benefits to the rest of the household at a reduced amount and allow the non-compliant member’s benefits to accrue until they comply with the photo requirement.^{xii} A newly compliant recipient must be issued benefits within two business days.^{xiii}

ODJFS must also submit a post-implementation assessment 120 days after implementation that addresses any problems that arose and how they were resolved, including the “degree to which staff, clients, and retailers properly understood and implemented the new provisions.”^{xiv} Among other data, the report must also include independently conducted surveys of clients and retailers. 80% of retailers must demonstrate full understanding of the policies related to the photo EBT card.^{xv}

If SB 165 becomes law, Ohio would be the first state to attempt to comply with these burdensome rules and would be attempting to do so while Jobs and Family Services is also

tasked with overhauling its eligibility and enrollment system, implementing a Medicaid work requirement, and imposing asset tests for SNAP as well. There are substantial risks that this additional burden can and will throw county Jobs and Family Services offices into disarray and that FNS could threaten to withhold federal dollars like they did to Massachusetts and Maine.

3. Ineffective for Addressing Fraud

OPLC is supportive of policy proposals that seek to strengthen the integrity of the SNAP program and reduce inefficiencies or fraud in the system. Low-income Ohioans do not benefit when there are legitimate doubts regarding whether taxpayer dollars are actually going to those who are most needy.

We do not dispute that there are SNAP recipients who are struggling with addiction that trade their SNAP EBT card to opportunistic individuals who are seeking to defraud the program. Addiction is a disease that leads individuals to engage in a variety of desperate acts, many times illegal, to maintain their addiction. But it is implausible precisely for this reason to assume that merely placing an individual's photo on their EBT card will serve as any kind of meaningful deterrent. A desperate person will not be deterred from selling an EBT card that is already traceable back to them before this policy is implemented.

The Congressional Research Office ("CRO") shares these concerns as well. In a September 2018 Report The CRO wrote that, "a number of states have considered or implemented photo EBT since 1996. States' evaluations of photo EBT have generally concluded that the option has or would have little to no effect on recipient trafficking."^{xvi}

It is important to remember that in any SNAP fraud scheme there is a complicit retailer. A stack of EBT cards is of no value to the person who buys them unless they can exchange them for cash. Unless, of course, they would prefer dozens of gallons of milk and loaves of bread. You have heard testimony regarding SNAP EBT cards being found in drug raids. In those rare instances, the next step for the drug dealers would have been to sell those cards to a retailer in exchange for cash. The Department of Jobs and Family Services already has sophisticated processes for monitoring suspicious patterns in SNAP transactions that were detailed in Ohio Auditor Yost's report on SNAP fraud. If this committee is interested in rooting out the rare instances where criminals are defrauding the SNAP program, we encourage it to look into those rare retailers rather than implementing a chaotic, confusing, and expensive photo requirement that will do little to deter the selling of SNAP benefits, which is already a relatively minor issue.

4. Conclusion

While we are opposed to SB 165, in no way do we condone or excuse activity that is intentionally fraudulent. Fraud jeopardizes the ability of programs to provide vital assistance to the overwhelming majority of low-income households who genuinely need assistance and are honest and play by the rules.

Instead, we oppose SB 165 because it would have the effect of reducing the number of households receiving SNAP benefits, despite their eligibility, due to increased administrative

barriers and misunderstanding of the purpose of the EBT photo. It would prove costly and ineffective at fighting fraud, while making it more difficult for low-income families to put food on the table. Thank you for the opportunity to testify and I am available to answer any questions.

Graham Bowman
Staff Attorney
Ohio Poverty Law Center

ⁱ MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES, News Release (April 26, 2019), <https://www.maine.gov/dhhs/press-release.shtml?id=1267811>

ⁱⁱ FOOD AND NUTRITION SERVICES, 2016 Year End Summary, <https://fns-prod.azureedge.net/sites/default/files/snap/2016-SNAP-Retailer-Management-Year-End-Summary.pdf>.

ⁱⁱⁱ 81 FR 89831-01 at 2-3.

^{iv} Gregory B. Mills and Christopher Lowenstein, URBAN INSTITUTE, *Assessing the Merits of Photo EBT Cards in Supplemental Nutrition Assistance Programs* (March 2015), <https://www.urban.org/sites/default/files/publication/44641/2000159-Assessing-the-Merits-of-Photo-EBT-Cards-in-the-Supplemental-Nutritional-Assistance-Program.pdf>.

^v Megan Woolhouse, *US orders Mass. To fix food stamps procedures*, BOSTON GLOBE, Dec. 8, 2014, <https://www.bostonglobe.com/business/2014/12/08/usda-says-photos-food-stamp-cards-blocking-some-families-from-benefits/W0JbAUE6J0rODLX7UboMMK/story.html>.

^{vi} OFFICE OF STATE AUDITOR CLAIRE MCCASKILL, Audit of Department of Social Services Electronic Benefit Security Card and Electronic Benefit Transfer Benefit Delivery System (August 3 2001) at 2, <https://app.auditor.mo.gov/repository/press/2001-58.pdf> at 2; “The state and federal government have split the \$1.8 million cost to place client photographs on the electronic benefit security cards . . . State officials expected the cards to help deter fraud, but federal regulations allow any family member to use the card, which renders the photographs useless for fraud or identification. Retailers, in fact, are trained to ignore the photograph, since transactions are valid if the purchaser has the card and the personal identification number.”

^{vii} *Id.*

^{viii} 81 FR 89831-01 at 2.

^{ix} 7 C.F.R 274.8(f)(2).

^x 7 C.F.R 274.8(f)(3).

^{xi} 7 C.F.R 274.8(f)(5).

^{xii} 7 C.F.R 274.8(f)(7).

^{xiii} 7 C.F.R 274.8(f)(8).

^{xiv} 7 C.F.R 274.8(f)(16).

^{xv} *Id.*

^{xvi} CONGRESSIONAL RESEARCH OFFICE, *Errors and Fraud in the Supplemental Nutrition Assistance Program (SNAP)*, (Sept. 28, 2018), <https://fas.org/sgp/crs/misc/R45147.pdf>