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# DE NOVO REVIEW UNDER THE FOOD STAMP ACT: INTERPRETING "ADMINISTRATIVE ACTION"

## I. Introduction

Congress passed the food stamp program in an effort to improve the diet of low income Americans.<sup>1</sup> Its express purpose is to alleviate hunger and malnutrition of the poor while strengthening the agricultural economy.<sup>2</sup> To insure easy participation, eligible households can purchase food at local markets.<sup>3</sup> The procedures for the certification of eligible households and the issuance of food coupons is left to the states,<sup>4</sup> but the Secretary of Agriculture retains the power to issue and enforce regulations.<sup>5</sup> Pursuant to this authorization,<sup>6</sup> the Secretary has issued regulations concerning the items which may be purchased with food stamps,<sup>7</sup> as well as the procedures for the dis-

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1. Food Stamp Act of 1964, Pub. L. No. 88-525, 78 Stat. 703 (codified at 7 U.S.C. 2011-25 (August 31, 1964)). In simplest terms, the Food Stamp Act allows low income families to purchase food coupons which can be exchanged for food. Eligibility and the amount of coupons which can be purchased are based on the income of the entire household.

2. 7 U.S.C. §§ 2011-12 (1964), *as amended by* Act of Jan. 11, 1971, Pub. L. No. 91-671 § 1, 84 Stat. § 2048 (1971).

It is hereby declared to be the policy of Congress, in order to promote the general welfare, that the Nation's abundance of food should be utilized cooperatively by the States, the Federal Government, local governmental units, and other agencies to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in more orderly marketing and distribution of food. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low income households to purchase a nutritionally adequate diet through normal channels of trade.

3. 7 C.F.R. § 272.2 (1977).

4. 7 U.S.C. § 2019(b) (1970).

5. 7 U.S.C. § 2013(c), §§ 2020-21 (1970).

6. *Id.*

7. 7 C.F.R. § 272.6 (s) (1977).

"Eligible food" means any food or food product for human consumption except alcoholic beverages and tobacco and also includes seeds and plants for use in garden to produce food for personal consumption of the eligible household. It shall also mean meals prepared and delivered by an authorized nonprofit meal delivery service or served by a communal dining facility for the elderly to elderly persons and their

qualification of violators.<sup>8</sup> As a safeguard, the statute provides a right of judicial review of these administrative actions.<sup>9</sup> This review is a trial de novo in the appropriate federal district court.<sup>10</sup>

## II. Federal Cases Under The Food Stamp Act

The language of the Food Stamp Act provides that the appropriate federal district court; "shall determine the validity of the questioned administrative action in issue."<sup>11</sup> In interpreting this lan-

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spouses and to households eligible under 271.3 (a)(2) or (a)(3) of this subchapter; and meals prepared and served by an authorized drug addiction and alcoholic treatment and rehabilitation program to houses eligible under § 271.3 (a)(4).

8. 7 C.F.R. § 272.6 (1977).

9. 7 U.S.C. § 2020(c) provides in part:

(c) All or part of any claim of a retail food store or wholesale food concern is denied under the provisions of section 12 of this Act ( § 2021 of this title), notice of such administrative action shall be issued to the retail food store or wholesale food concern involved. Such notice shall be delivered by certified mail or personal service. If such store or concern is aggrieved by such action, it may, in accordance with regulations promulgated under this chapter ( § 2011 and note § 2025 of this title), within ten days of the date of delivery of such notice, file a written request for an opportunity to submit information in support of its position to such person or persons as the regulations may designate. If such a request is not made or if such store or concern fails to submit information in support of its position after filing a request, the administrative determination shall be final. If such a request is made by such store or concern, such information as may be submitted by the store or concern, as well as such other information may be available, shall be reviewed by the person or persons designated, who shall, subject to the right of judicial review hereinafter provided, make a determination which shall be final and which shall take effect fifteen days after the date of the delivery or service of such final notice of determination. If the store or concern feels aggrieved by such a final determination he may obtain judicial review thereof by filing a complaint against the United States in the United States district court for the district in which he resides or is engaged in business, or in any court of record of the State having competent jurisdiction, within thirty days after the date of delivery or service of the final notice of determination upon him, requesting the court to set aside such determination. The copy of the summons and complaint required to be delivered to the official whose order is being attacked shall be sent to the Secretary or such person or persons as he may designate to receive service of process. The suit in the United States district court or State court shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action in issue. If the court determines that such administrative action is invalid it shall enter such judgment or order as it determines is in accordance with the law and the evidence. During the pendency of such judicial review, or any appeal therefrom, the administrative action under review shall be and remain in full force and effect, unless an application to the court on not less than ten days' notice, and after hearing thereon and a showing of irreparable injury, the court temporarily stays such administrative action pending disposition of such trial or appeal.

10. *Id.*

11. *Id.*

guage, the Circuit Courts of Appeal agree that district courts have the power to review, de novo, whether there was a violation.<sup>12</sup> They disagree on whether the de novo review provision permits the district court to pass on the appropriateness of the penalty imposed by the Secretary.<sup>13</sup> The issue in dispute is whether the court may modify a penalty at its discretion or whether the penalty imposed must be upheld in the absence of abuse of discretion by the Secretary.<sup>14</sup> This dispute turns on the interpretation of the phrase "administrative action" found in the statute.<sup>15</sup>

Some courts interpret this language narrowly, restricting review to the Secretary's initial determination of whether a violation occurred.<sup>16</sup> Other courts interpret the language broadly, indicating that they also must decide whether the penalty imposed by the Secretary was proper.<sup>17</sup>

### A. The Sixth and Seventh Circuits: The Restrictive Approach

The Courts of Appeal for the Sixth<sup>18</sup> and Seventh Circuits<sup>19</sup> inter-

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12. For an overview of the problem see *Kogan v. United States*, 426 F. Supp. 1064 (E.D. Miss. 1977). A grocer was caught selling non-eligible items. After repeated violations, the retailer was disqualified from participation for a period of six months. This is the basic fact pattern of all the cited cases. Generally, there were violations followed by warnings. Ultimately, a penalty was imposed and the retailer appealed to the courts. More specifically see *Cross v. United States*, 512 F.2d 1212 (4th Cir. 1975), *Goodman v. United States*, 518 F.2d 505 (5th Cir. 1975), *Martin v. United States*, 459 F.2d 300 (6th Cir.), cert. denied, 409 U.S. 878, (1972), *Save More of Gary Inc. v. United States*, 442 F.2d 36 (7th Cir.), cert. denied, 404 U.S. 987, (1971).

13. 7 U.S.C. § 2020(c)(1970).

14. See generally *Goodman v. United States*, 518 F.2d 505 (5th Cir. 1975), and *Save More of Gary Inc. v. United States*, 442 F.2d 36 (7th Cir.), cert. denied, 404 U.S. 987 (1971), for an overview of the issue.

15. See, *Goodman v. United States*, 518 F.2d 505 (5th Cir. 1975).

16. See generally, *Martin v. United States*, 459 F.2d 300 (6th Cir.), cert. denied, 409 U.S. 878 (1972) and *Save More of Gary Inc. v. United States*, 442 F.2d 36 (7th Cir.), cert. denied, 404 U.S. 987 (1971).

17. See generally *Cross v. United States*, 512 F.2d 1212 (4th Cir. 1975), and *Goodman v. United States*, 518 F.2d 505 (5th Cir. 1975).

18. *Martin v. United States*, 459 F.2d 300 (6th Cir.), cert. denied, 409 U.S. 878 (1972). In this case, defendant Martin was disqualified for a period of six months for repeated violations. Martin blamed employee turnover, but the court noted that Martin should have instructed his new employees.

19. *Save More of Gary Inc. v. United States*, 442 F.2d 36 (7th Cir.), cert. denied, 404 U.S. 987 (1971). The defendant in this case was disqualified for a period of thirty days after it had been determined that various violations had been committed. The district court granted the government summary judgment on the basis of documents showing that the defendant understood the rules and regulations contrary to the claim he presented. The defendant appealed.

pret the scope of the de novo proceeding narrowly. For example, in *Nowicki v. United States*,<sup>20</sup> the Seventh Circuit limited de novo review to a determination of whether a violation had occurred.<sup>21</sup> If the reviewing court found there was a violation, the imposed penalty would stand as long as it was within the guidelines set by the Secretary for the enforcement of Food Stamp regulations.<sup>22</sup> The Sixth Circuit reached the same conclusion in *Martin v. United States*.<sup>23</sup>

The rationale for this interpretation is found in *Butz v. Glover Livestock Commission Co.*<sup>24</sup> In that case, the Secretary suspended defendant's registration for thirty days for repeated violations of the weighing policy of the Packers and Stockyards Act. The United States Supreme Court upheld the sanctity of an administrative penalty unless the sanction was; "unwarranted in law or . . . without justification in fact."<sup>25</sup> Although this decision did not deal with de novo review, the Sixth<sup>26</sup> and Seventh Circuits<sup>27</sup> accepted it as indicating the strong preference given the Secretary's exercise of his judgment in setting a penalty. Both the Sixth Circuit in *Martin*<sup>28</sup> and the Seventh Circuit in *Nowicki*<sup>29</sup> concluded that the imposed penalty should stand provided it did not exceed legal guidelines.<sup>30</sup>

Several district courts, in other circuits, adhere to the viewpoint expressed by the Sixth and Seventh Circuits.<sup>31</sup> The United States

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20. 536 F.2d 1171 (7th Cir. 1976).

21. *Id.* at 1178.

22. *Id.*

· Having found that the Secretary here made an allowable judgment in his choice of remedy, that the sanction imposed bears a reasonable relationship to the goal the legislation was intended to accomplish, and that the sanction was within the limits of the applicable statute was valid, we are compelled to reverse that part of the judgment of the district court which reduced the sanction from one year to 120 days as an impermissible intrusion into the administrative domain under the circumstances present here.

*Id.*

23. 459 F.2d 300 (6th Cir.), *cert. denied*, 409 U.S. 878 (1972).

24. 411 U.S. 182 (1973).

25. *Id.* at 185-86, *quoting* *American Power and Light Co. v. S.E.C.*, 329 U.S. 90, 112-13 (1946).

26. 459 F.2d 300 (6th Cir. 1972).

27. 536 F.2d 1171 (7th Cir. 1976).

28. 459 F.2d 300.

29. 536 F.2d 1171.

30. 536 F.2d at 1178.

31. *Berger v. United States*, 407 F. Supp. 312 (D.R.I. 1976), *Marcus v. United States Dept. of Agriculture, Food and Nutrition Serv.* 364 F. Supp. 374 (E.D. Pa. 1973), *Eckstut v.*

District Court for the Eastern District of Pennsylvania, in *Marcus v. United States Department of Agriculture, Food and Nutrition Service*,<sup>32</sup> summarized the conclusions expressed in other district courts. Relying on *Butz*<sup>33</sup> and *Martin*,<sup>34</sup> the court stated that, "even if we believed that the sanction was excessive and unjustified, which we do not, we would be constrained to still uphold the sanction imposed . . . ." <sup>35</sup> The district courts accept the original penalty provided it is within the authorized limits.

### B. The Fifth Circuit: The Broad Approach

In *Goodman v. United States*,<sup>36</sup> the Court of Appeals for the Fifth Circuit concluded that the Sixth Circuit's interpretation unduly limited judicial review.<sup>37</sup> It stated that the judiciary and the Secretary of Agriculture are equal in their power to review the facts and set an appropriate penalty.<sup>38</sup> Noting that the authority of the Secretary included both a finding of a violation and the imposition of a penalty, the Fifth Circuit concluded that the term "administrative action" required the court to review de novo whether there was a violation as well as whether the penalty imposed was justified.<sup>39</sup> The decision of the Fifth Circuit is based on an interpretation of the statute and on the broad definition of trial de novo in *United States v. First City National Bank*.<sup>40</sup> The *Goodman* court stated that Congressional intent can be determined by examining the statute,<sup>41</sup> and took particular notice of the interrelation of the administrative procedure and judicial review.<sup>42</sup> The court stated;

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Hardin, 363 F. Supp. 701 E.D. Pa. 1973), *Great Atlantic and Pacific Tea Co. v. United States*, 342 F. Supp. 492 (S.D.N.Y. 1972), *Marbro Foods Inc. v. United States*, 293 F. Supp. 754 (N.D. Ill. 1968).

32. 364 F. Supp. 374 (E.D. Pa. 1973).

33. 411 U.S. 182 (1972).

34. 459 F.2d 300.

35. 364 F. Supp. at 375.

36. 518 F.2d 505 (5th Cir. 1975).

37. *Goodman v. United States*, 518 F.2d 505 (5th Cir. 1975). In this case, Goodman was disqualified for six months for violating the food stamp regulations on three occasions.

38. *Id.*

39. *Id.* at 509.

40. 386 U.S. 361, 368 (1967). The Supreme Court stated; "the court should make an independent determination of the issues."

41. Food Stamp Act of 1964, Pub. L. No. 88-525, 78 Stat. 703 (codified at 7 U.S.C. 2011-25 (August 31, 1964)).

42. 518 F.2d at 509.

By following the proper linguistic antecedents within the statute, one can see that the "questioned administrative action" refers to the "determination" by the agency review body, which in turn is a determination of the propriety of the section 2020 disqualification. As previously noted, the section 2020 disqualification included two components: first, the determination that a store has violated the law or the regulations; and second, a determination of a period during which the store will be disqualified. Both components are subject to the administrative review procedure. There is no indication in the Act that the courts were not to have co-extensive review power."<sup>43</sup>

Essentially, the court concluded that Congress would have written the statute differently had it intended the *de novo* proceeding to be limited to a review of the alleged violation.<sup>44</sup> The *Goodman* court stated; "[a] plain reading of [the statute] leads us to conclude that Congress granted the district courts full review of the agency's action when conducting a 'de novo' proceeding, including review of the imposed sanction."<sup>45</sup>

### C. The Fourth Circuit: A Modified Approach

The Court of Appeals for the Fourth Circuit initially aligned itself with the restrictive approach of the Sixth and Seventh Circuits.<sup>46</sup> In *Welch v. United States*,<sup>47</sup> the majority opinion concluded that administrative sanctions could not be revised once a violation had been proven or admitted.<sup>48</sup> The concurring opinion,<sup>49</sup> while agreeing with the result, favored the broad approach advocated by the majority in *Goodman*<sup>50</sup> and the dissent in *Martin*.<sup>51</sup> It favored complete review of administrative actions.<sup>52</sup> In an attempt to resolve the conflict, the Fourth Circuit sat en banc to decide *Cross v. United*

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43. *Id.*

44. *Id.* at 508.

45. *Id.*

46. *Welch v. United States*, 464 F.2d at 685 (4th Cir. 1972).

47. *Id.* at 682.

48. *Id.* at 684.

49. *Id.* at 685.

50. 518 F.2d 505.

51. 459 F.2d at 302 (Edwards, J., dissenting).

52. 464 F.2d at 685-86 (Butzner, J., concurring).

In sum, from the language of the Act and its legislative history, it appears unlikely that Congress authorized the Department to disqualify a merchant for any period not exceeding its own predetermined maximum without any hearing on the duration of the disqualification.

*Id.* at 686.

*States*,<sup>53</sup> which resulted in four opinions covering the entire controversy.<sup>54</sup>

The dissenting opinion<sup>55</sup> adhered to the view expressed in *Welch*<sup>56</sup> that de novo review does not extend to the imposed penalty.<sup>57</sup> For similar reasons, Judge Donald Russell, concurring with the dissent, aligned himself with this narrow interpretation.<sup>58</sup>

The opinion concurring with the majority followed the prevailing view of the Fifth Circuit, concluding that the language of the Act empowered the court to review all forms of administrative action:<sup>59</sup> the violation and the penalty. Relying on the dissent in *Stark v. Wickard*,<sup>60</sup> the concurring opinion accepted the broad definition of trial de novo implied in the dissenting opinion of Justice Felix Frankfurter:

The procedural provisions in more than a score of those regulatory measures prove that the manner in which Congress has distributed responsibility for the enforcement of its laws between courts and administrative agencies runs a gamut all the way from authorizing a judicial trial de novo of a claim

53. 512 F.2d 1212, 1214 (4th Cir. 1975).

54. 512 F.2d 1212. The final vote was four for the majority, one concurring with the majority, one dissent, and one concurring with the dissent. The opinions were written by: Harrison L. Winter (majority opinion at 1214), H. Emory Widener concurring opinion at 1219), John A. Field (dissenting opinion at 1221), and Donald Russell (concurring with the dissent at 1221).

55. 512 F.2d at 1221.

56. 464 F.2d 682.

57. 512 F.2d at 1221.

I adhere to the views expressed in my opinion in *Welch* and would note that the majority decision places this circuit at odds with every other federal court that has had occasion to consider this question.

*Id.*

58. *Id.* at 1226.

Contrary to the view of the majority, I think it abundantly clear that the sanction imposed in this case met fully and completely the Butz test and that the District Court was correct in dismissing the proceeding to review.

*Id.*

59. *Id.* at 1219.

Since the 'administrative action' must consist both of the finding of a violation and punishment of disqualification, I think the statute as it allows a review of the 'validity of the administrative action' and provides that if the administrative action is invalid the court shall enter such judgment as 'it determines' in accordance with the law and the evidence, may only be construed as granting a full right of review.

*Id.*

60. 321 U.S. 288,312 (1944).

determined by the administrative agency to denying judicial review and making administrative action definitive.<sup>61</sup>

This language was construed as indicating the broad powers of a court in a de novo proceeding.<sup>62</sup>

These three opinions followed the differing views expressed in other circuit courts. However, the majority in *Cross*<sup>63</sup> did not accept this reasoning. The majority proceeded to examine the nature of the penalty<sup>64</sup> and concluded that to deprive a storeowner of participation in the food stamp program was a deprivation of property.<sup>65</sup> Therefore, due process requirements demanded that the Act include a hearing before imposing a final sanction.<sup>66</sup> Noting that the de novo proceeding was the only authorized judicial review,<sup>67</sup> the court concluded that the de novo proceeding must review all facets of the administrative process, the violation and the penalty, to satisfy due process requirements.<sup>68</sup> The majority in the Fourth Circuit thus shifted the debate from statutory construction<sup>69</sup> to constitutional protections.<sup>70</sup>

The *Cross* majority did not grant the district court complete discretion when reviewing the imposed penalty.<sup>71</sup> It limited the review to a consideration of whether the Secretary of Agriculture abused his discretion.<sup>72</sup> Like the Seventh Circuit,<sup>73</sup> it relied on the rationale of *Butz v. Glover Livestock Commission Co.*<sup>74</sup> which restricted judi-

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61. 512 F.2d at 1220-21, citing *Stark v. Wickard* 321 U.S. at 312-13 (Frankfurter, J., dissenting).

62. 512 F.2d at 1220.

63. 512 F.2d 1212.

64. *Id.* at 1216-17.

The constitutional guarantee of due process of law applies to both: and we think it applies here, because in a very real sense plaintiff will be deprived of 'property' if he is disqualified from participation in the program for any period of time. Thus, we readily conclude that he may not be deprived of participation in the program, on the basis of alleged wrongdoing, without being afforded procedural due process.

*Id.* at 1217.

65. *Id.* at 1217.

66. *Id.* at 1216.

67. *Id.* at 1216-17.

68. *Id.* at 1217-18.

69. *Id.* at 1219.

70. *Id.* at 1218.

71. *Id.*

72. *Id.*

73. *Nowicki v. United States* 536 F.2d 1171 (7th Cir. 1976).

74. 411 U.S. 182.

cial modification of an administrative penalty to situations where the penalty was unwarranted and without justification.<sup>75</sup> Unlike the Seventh Circuit, the *Cross* court would not restrict review of the penalty to whether it fell within legal guidelines set by the Secretary.<sup>76</sup> This approach gives the court greater discretion since it could modify a penalty, which was within legal guidelines, if it found that the sanction was excessive.<sup>77</sup> The Fourth Circuit held that a sanction would be reasonable if, as a whole, the Secretary did not abuse his discretion.<sup>78</sup>

The Fourth Circuit concluded that this limited review would afford the retailer an adequate hearing, thereby satisfying due process requirements.<sup>79</sup> The retailer is protected from an unwarranted deprivation of property by having the court restrain the Secretary's discretion through comprehensive review of all administrative actions.<sup>80</sup>

### III. Conclusion

The intent of Congress concerning judicial review of the administrative proceeding under the Food Stamp Act is unclear. The legislative history provides little clarification of the issue.<sup>81</sup> The House<sup>82</sup> and Senate<sup>83</sup> debates focused on the proposed cost and benefits of the program.<sup>84</sup> The remarks of the late Senator Hubert Humphrey may provide some useful insight into Congress' intention when he said that, "due process principles will be observed" in providing for judicial review.<sup>85</sup> Apparently, Congress was anxious to avoid com-

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75. *Id.*

76. 512 F.2d 1212.

77. *Id.*

78. *Id.*

79. *Id.* at 1218.

80. 512 F.2d 1212.

81. H. R. Rep. No. 1228 and S. Rep. No. 1124, 88th Cong., 2d Sess. 2 *reprinted in* 1964 U. S. Code Cong. & Ad. News 3275.

82. 110 CONG. REC. 7124 (1964).

83. 110 CONG. REC. 15429 (1964).

84. 110 CONG. REC. 15442 (1964).

Senator Humphrey spoke of three benefits to be derived: the community benefits by increased purchases within the community, the farmer benefits due to the greater demand for his product, and the participating families benefit by an improved diet.

85. *Id.* Senator Humphrey stated:

The language of the bill, for example, makes it abundantly clear that participating grocers will not be arbitrarily suspended or disqualified for alleged violations; that 'due

plex constitutional litigation concerning this program and therefore authorized the de novo proceeding to review the violation and the penalty to avoid such problems.

As Justice Brandeis stated in *Ashwander v. Tennessee Valley Authority*,<sup>86</sup> a complex constitutional question should be avoided if another means of settling the dispute is available. Careful consideration indicates that the language of the statute is sufficient to determine the extent of judicial review authorized by Congress. The language of the statute refers to judicial review of "administrative action." Unless Congress specifies to the contrary, the term "action" should refer to a review both of the violation and the imposition of an appropriate penalty.

To accept the rationale of the Sixth<sup>87</sup> and Seventh Circuits,<sup>88</sup> that review is limited to the finding of a violation, is to invite the due process problems discussed by the Fourth Circuit majority in *Cross v. United States*.<sup>89</sup> By accepting the interpretation of the Fifth Circuit in *Goodman*,<sup>90</sup> due process problems are eliminated and the probable intent of Congress is met. Review by both the Secretary of Agriculture and the courts of both the violation and the penalty is the best method of insuring the rights of the retailer and the public are protected and justice is done in each case.

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process' principles will be observed, and that grocers will have access to both State and U.S. district courts if they want judicial review of the Department's administrative action.

86. 297 U.S. 288 (1936).

87. *Martin v. United States* 459 F.2d 300 (6th Cir.), cert. denied 409 U.S. 878 (1972).

88. *Save More of Gary Inc. v. United States*, 442 F.2d 36 (7th Cir.), cert. denied, 404 U.S. 987 (1971).

89. 512 F.2d 1212.

90. 518 F.2d 505.