Reformation of the Food Stamp Act: Abating Domestic Hunger Means Resisting "Legislative Junk Food"

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COMMENT

REFORMATION OF THE FOOD STAMP ACT: ABATING DOMESTIC HUNGER MEANS RESISTING "LEGISLATIVE JUNK FOOD"

The Food Stamp Act of 1964\(^1\) expanded and made permanent the Food Stamp Program, which was initiated as a pilot project by executive order under the Kennedy administration. The purpose of the Food Stamp Program was to increase the food purchasing power of low-income households that are financially unable to provide their members with a nutritionally adequate diet. Not surprisingly, the Act's passage in August of 1964 pitched mostly liberal northern Democrats against conservative Republicans who opposed transferring the non-administrative costs of state-operated food stamp programs to the federal government.\(^2\) Issues raised by the Food Stamp Act, such as eligibility requirements, cost apportionment restrictions on benefit usage, and sanctioning methods to discourage negligence and fraud, continue to be disputed.\(^3\) Unfortunately, disagreements over the substance and administration of the Food Stamp Program are frustrating its purpose;\(^4\) while the political battles continue, an increasing number of United States citizens are going hungry.\(^5\)

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3. See infra notes 129-34 and accompanying text (describing some of the grievances against Food Stamp Program policies and practices).
5. See Michael Lipsky & Marc A. Thibodeau, Domestic Food Policy in the United States, 15 J. HEALTH POL., POL’Y & L. 319, 320 (1990) (describing the resurgence of hunger as a consequence of defects in the operation of federal food assistance programs, the economic recession and budgetary cut-backs in human service programs); LORETTA SCHWARTZ-NOBEL, STARVING IN THE SHADOW OF PLENTY 26, 90 (1981). Schwartz-Nobel provides evidence of increasing hunger in the United States but acknowledges that most Americans are unaware of the problem of domestic hunger. Id. at 27.

The United States does not currently have a comprehensive nutrition surveillance system with which to quantify hunger or measure its effects on the health of low-income persons. PHYSICIAN TASK FORCE ON HUNGER IN AMERICA, HUNGER IN AMERICA: THE GROWING EPIDEMIC 97 (1985) [hereinafter GROWING EPIDEMIC]. What constitutes an adequate diet
The health and economic repercussions caused by the dramatic increase in the number of Americans suffering from hunger and under-nutrition are compelling legislators to take action to abate domestic hunger, especially among children. A large bi-partisan contingent is launching a legislative drive to remedy the current Food Stamp Act's deficiencies, arguing that the Federal Food Stamp Program authorized by the Act does not adequately address the nutritional needs of low-income households.

This Comment analyzes the adequacy of the Food Stamp Program as a means of abating domestic hunger and increasing self-sufficiency. This Comment begins by examining the history and current status of domestic hunger in the United States. This Comment then analyzes the content and administration of the federal government's most comprehensive legislative response to domestic hunger, the Food Stamp Act of 1977. Next, this Comment focuses on the virtues and defects of a current legislative effort to revise the Food Stamp Program, the Mickey Leland Childhood Hunger Relief Act. Finally, this Comment proposes administrative and ideological changes that would promote equitable and efficient food assistance programs and thereby decrease domestic hunger.

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6. See infra note 64 and accompanying text.
8. See infra notes 194-98 and accompanying text. Comprehensive reform of all welfare programs has become a priority in the wake of increased enrollment and state budget deficits. See Paul Taylor, Welfare Reformers Seek to Modify Budgets and Behavior, WASH. POST, Dec. 16, 1991, at A1, A9 (reporting that "the fiscal crisis in the states has provoked the most fundamental rethinking of welfare in decades"). Implemented and proposed reforms include decreasing benefit levels and behavior modification plans. See id.

While this Comment focuses on reformation of the Food Stamp Program, other actions must also be taken to decrease domestic hunger. See SCHWARTZ-NOBEL, supra note 5, at 156-58. Solving domestic hunger involves not only welfare reform but also environmental protection (specifically farmland), decreased dependency on foreign energy suppliers, id. at 156-59, 181-92, and improving the public education system, see Welfare Reform Proposals: Hearing Before the Subcomm. on Domestic Marketing, Consumer Relations, and Nutrition of the House Comm. on Agric., 100th Cong., 1st Sess. 6-7 (1987) [hereinafter Welfare Reform Hearing] (statement of Rep. Panetta).

I. DEVELOPMENT OF FEDERAL FOOD ASSISTANCE PROGRAMS: AMERICA'S HUNGRY—THEN AND NOW

A. Solving a Paradox: Hunger and Malnutrition Amidst an Overabundance of Agricultural Commodities

Prior to adoption of the first food stamp plan in May of 1939, the federal government provided food assistance by distributing surplus food. The Agriculture and Food Act of 1935 authorized the United States Department of Agriculture (USDA) to freely hand out food to schools, churches, charitable organizations, and households. USDA's commodity distribution programs, however, were not solely inspired by the desire to alleviate domestic hunger. Initially, the federal government's primary concern was to eliminate food surpluses that depressed the farm economy. Criticism that food distribution programs did not provide low-income families with sufficient variety and quantity of food eventually induced the federal government to begin using redeemable stamps to increase the poor's food purchasing power.

The Agriculture and Food Act of 1935 allowed USDA to adopt an experimental plan involving food stamps. A central goal of the food stamp plan, initially implemented in Rochester, New York, in 1939, was to increase domestic consumption of agricultural products without causing food expenditures to decrease, a risk inherent with distribution programs. When the

10. See History, supra note 2, at 4. The program enacted in 1935 set forth in Pub. L. No. 74-320, § 32, 49 Stat. 750 (1935), was established four years prior to its implementation.
14. See id. at 319-21.
15. America's hungry provided a depository for the surplus agricultural products the government had purchased to prevent farm prices from dropping due to excessive supply. Id. at 319. The law establishing the first Food Stamp Program reveals that it was the government's regard for the agriculture industry, rather than the millions of low-income citizens suffering from hunger and malnutrition, that inspired food assistance legislation. See History, supra note 2, at 4. Funds allocated to the first Food Stamp Program were intended to encourage agricultural exports, re-establish farmers' purchasing power and encourage the domestic consumption of agricultural commodities. Id. The tremendous surplus of dairy products that resulted from federal price supports prompted the Reagan Administration to re-implement a commodities program during the early 1980s. See Lipsky & Thibodeau, supra note 5, at 322.
17. Id.
first Food Stamp Program began, participants purchased food stamps at a rate equal to their normal food purchases. Participants then received additional stamps equalling half the amount purchased. The “bonus” stamps, however, could only be used to purchase surplus food items. This restriction was meant to prevent recipients from channeling “food funds” to pay rent, medical bills or other expenses. The early program, however, contained the same flaws as the commodity programs that preceded it. That is, the programs were nutritionally inadequate because of a scarcity of fruits, vegetables, and meat products.

Agricultural surpluses swelled again after the Korean War. Efforts were renewed to deplete these surpluses and provide low-income families with supplemental food purchasing power. During the mid to late 1950's, Congress introduced a number of bills to establish a food stamp program. Although President Eisenhower had the power to authorize implementation of a food stamp program, a program was never approved because the Administration thought it would be ineffective and costly.

Domestic hunger received renewed attention in the 1960's. John F. Kennedy used the problem as one of the foundations for his presidential platform in 1960. Shortly after being inaugurated, he declared that a food stamp program would begin, initially on a pilot program basis, in order to "provide additional nutrition to those in need [and thereby] pave the way for substantial improvement in [the] present method of distributing surplus food." The pilot Food Stamp Program of the 1960's, which retained the purchasing requirement of the earlier programs, reflected a primary and

18. Id. at 5-6.
19. Id. at 5.
20. Id. at 5-6.
21. Id. at 5.
22. Lipsky & Thibodeau, supra note 5, at 322. The Food Stamp Program, as conceived and implemented in the 1970s, was a reaction to the nutritional deficiencies inherent in the commodities program. Id. at 321.
23. Id.
24. HISTORY, supra note 2, at 8.
25. See id. at 9-14.
27. See id. at 15. The administration concluded that the food stamp provision would increase federal welfare expenditures but would not increase consumption of surplus commodities.
28. Id.
29. Id.
30. Id. at 16.
familiar goal: reduction in the level of commodity surpluses by increasing the food purchasing power of lower income families.31

According to some social policy analysts, domestic hunger became a national political issue in 1967.32 Senator Robert Kennedy's visit to the impoverished Mississippi Delta,33 the widely viewed CBS “Hunger in America” documentary,34 and a report entitled “Hunger, USA”35 generated public outcry.36 The needs of low-income citizens came to take precedence over maintaining agricultural prosperity.37 Consequently, advocates for the poor pressed for removal or, at minimum, a reduction of the purchasing requirement incorporated in the Food Stamp Program.38 Studies revealed that because some families lacked the necessary cash to purchase monthly food stamps, the purchasing requirement caused the most desperate households to receive less assistance than they did under a straight commodities program.39 The publicity and studies depicting the needs of low-income citizens led to amendment of the Food Stamp Act in 1970.40 These amendments eliminated the purchasing requirement for families with gross incomes of less than $30 per month, established federal eligibility standards, and in-

31. See id. at 16-17. During the 1960s, the Food Stamp Program generated tremendous debate between legislators who considered the Act to be a welfare program and those who considered it farm legislation. Id. at 19. For example, Rep. Page Belcher (R-OK) believed the purpose of the Food Stamp Program was to maintain agricultural prices by decreasing surplus commodities and, therefore, she saw no reason why a food stamp program was preferable to direct commodity distribution. Id. Conversely, Rep. Martha Griffiths (D-MI), during a 1964 debate over funding of the Food Stamp Program, stated that she “would not consider the primary purpose of [the] program to be to use up surpluses.” Id.


33. In 1967, a group of United States Senators, physicians, and psychiatrists visited the Mississippi Delta to observe the effects of racism and a depressed economy on low-income residents. What they discovered was widespread hunger, malnutrition, and ill-health that rivaled the suffering in some Third World countries. See generally Growing Epidemic, supra note 5, at 26-28 (describing the positive impacts that post-visit federal nutrition programs had on the residents of the area).

34. See George McGovern, Foreword to Kotz, supra note 32, at viii (1969).

35. See History, supra note 2, at 31. “Hunger, USA” was drafted by the Citizens Board of Inquiry into Hunger and Malnutrition in the United States and was released on April 22, 1969. The Board estimated that between 10 to 14.5 million Americans were underfed and characterized federal food assistance programs as highly inadequate. Id.

36. See id.

37. See Kotz, supra note 32, at viii.

38. See History, supra note 2, at 32.

39. Physician Task Force on Hunger in America, Increasing Hunger and Declining Help: Barriers to Participation in the Food Stamp Program 28 (1986) [hereinafter Barriers]. The purchasing requirement mandated that a family pay a minimum of $10.00 for its monthly food stamp allotment. The most desperate families, those without cash to pay the purchase price, were thus excluded from the program. Id.

40. See History, supra note 2, at 37-38
creased benefit levels. The last major changes to the Food Stamp Program included requiring state participation and eliminating the purchasing requirement. Provisions of the Food Stamp Program, such as benefit levels and eligibility standards, have since undergone minor adjustment. A greater demand on emergency food providers is now one factor inducing legislators to revise the program further.

B. Resurgence of the Hunger Crisis in the 1980's

During the early 1980's, the poverty rate in the United States increased 20.5%. A high inflation rate, increased unemployment, and the cost-saving provisions of the Omnibus Budget Reconciliation Act of 1981 (OBRA) precipitated this increase. Rising poverty in the early 1980's

41. Lipsky & Thibodeau, supra note 5, at 325. See generally HISTORY, supra note 2, at 40.
42. Lipsky & Thibodeau, supra note 5, at 325. Mandatory state participation does not require states to conduct a Food Stamp Program but rather orders participating states to abide by the Food Stamp Act and its regulations. All states, Washington, D.C., Guam and the Virgin Islands have a Food Stamp Program. DAVID A. SUPER, FOOD RESEARCH AND ACTION CENTER, FRAC'S GUIDE TO THE FOOD STAMP PROGRAM 8 n.2 (1988) [hereinafter FRAC'S GUIDE].
43. See Lipsky & Thibodeau, supra note 5, at 325.
44. See STAFF OF HOUSE COMM. ON WAYS & MEANS, 102D CONG., 1ST SESS. OVERVIEW OF ENTITLEMENT PROGRAMS 1388 (Comm. Print 1991) [hereinafter OVERVIEW]. The poverty threshold was first measured by multiplying the price (determined by the Department of Agriculture) of the cheapest nutritionally adequate diet by three and adjusting for various household characteristics such as size and demographics. Id. at 1132. Since 1969, the poverty threshold has been adjusted according to the Consumer Price Index. Id. at 1133. An individual's or household's pre-tax income is compared with the poverty threshold to determine whether they are "poor." It should be noted that inaccurate results may occur when comparing Census Bureau poverty levels for 1988 and 1989 because the methodology changed during those years. Id.
45. See GROWING EPIDEMIC, supra note 5, at 131-42.
46. Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L. No. 97-35, 95 Stat. 1645 (codified as amended in scattered sections of 7 U.S.C.). The provisions of OBRA were expected to reduce federal food stamp spending by $6 billion over three years. HISTORY, supra note 2, at 119. The Budget Act substantially changed the Food Stamp Program by pro-rating initial food stamp allotments from the date of application, changing the cost adjustment date of the Thrifty Food Plan from January 1 to October 1, delaying benefit increases, eliminating annual indexing, maintaining theeductibility threshold level for medical expenses, and prohibiting federal funding of outreach programs. See id. at 120-21. The Physician Task Force on Hunger in America, citing a study conducted in July of 1984 by the Congressional Research Service, found that the 1981 federal budget cuts caused an additional 560,000 Americans to fall below the poverty level. GROWING EPIDEMIC, supra note 5, at 147. The Congressional Budget Office estimated that federal expenditures for human services decreased by an estimated $110 billion during the early to mid 1980s. Id. at 146 (citing CONGRESSIONAL
translated into increased hunger and malnutrition. The Physician Task Force on Hunger found that hunger, after a respite during the mid to late 1970's, was a national problem of epidemic proportions. The Task Force predicted that without drastic policy changes, hunger and malnutrition would increase, and the already bad situation would worsen as a result of increased unemployment and cut-backs in federal social services.

A year before the Physician Task Force's investigation, the Reagan Administration responded to the problem by creating its own thirteen member Task Force on Food Assistance. The President's Task Force recommended that existing federal welfare programs, including the Food Stamp

BUDGET OFFICE, U.S. CONGRESS, MAJOR LEGISLATIVE CHANGES IN HUMAN RESOURCE PROGRAMS SINCE JANUARY, 1981 (1983)).

47. Fifteen studies, conducted from 1982 to 1985 by a variety of agencies and organizations (including the USDA, the United States Conference of Mayors, the Food Research and Action Center (FRAC), and the Harvard School of Public Health), documented the claim that there was a "dramatic increase in hunger" in America and that the problem was worsening. GROWING EPIDEMIC, supra note 5, at 12-17. A technique frequently used to measure hunger is to survey local emergency food providers to determine whether the number of households requesting food has increased. Id. at 14-17. For example, in 1983, the Center for Budget and Policy Priorities surveyed 181 emergency food programs and found that in one third of the programs, food requests doubled in one year and a "significant portion" of agencies reported an increase of 200%. Id. at 14. The testimonial evidence compiled and analyzed by the Physician Task Force on Hunger in America has been held reliable and highly persuasive by legislators, public health officials, and community service organizations interested in hunger and malnutrition.

Poverty, however, is not the only cause of hunger. See SCHWARTZ-NOBEL, supra note 5, at 27. Other factors include: abuse of natural resources, which diminishes the supply of food, high energy costs, policy decisions that cater to corporate interests, and a deteriorating food distribution system. See id. at 27-31.

48. The Physician Task Force on Hunger in America came into existence in 1984. Its members include physicians and academicians who are experts in nutrition, pediatrics, and public health. Id. at 6. The goals of the Task Force have been articulated as follows:

Document to the extent possible the nature and scope of the problem of hunger, particularly how widespread hunger is and what groups of Americans are hungry;

Analyze any regional variations in the problem of hunger, and identify any common threads in the picture of hunger across the regions of the nation;

Assess the health effects of hunger, especially among high-risk groups such as children, pregnant women, and the elderly;

Determine why hunger is a problem, and make recommendations to remedy the problem and, if possible, prevent it from recurring. Id.

49. Id. at 25; see SCHWARTZ-NOBEL, supra note 5, at 90 (quoting a food stamp supervisor who observed that an increasing number of middle income households are applying for food stamp benefits).

50. See id. at 8-10.

51. See HISTORY, supra note 2, at 149. The President's Task Force, created by executive order on September 8, 1983, evaluated the effectiveness of federal food assistance programs, which included the Food Stamp Program and the School Breakfast and Lunch programs. Id. at 149-50.
Few of the President's Task Force's recommendations were ever acted upon,\textsuperscript{53} although Congress did propose incremental increases in benefit levels.\textsuperscript{54}

Concurrently, Congress made eliminating ineligible recipients and eradicating over-issuance a legislative priority.\textsuperscript{55} It adopted rigorous income verification provisions, requiring applicants to supply Social Security numbers to program administrators who then had to verify income amounts with the Internal Revenue Service, the Social Security Administration, and the applicant's employer. States that exceeded the national error rate for providing benefits to ineligibles had to reimburse the federal government.\textsuperscript{56} State penalties increased when the federal government reduced the acceptable level of error during the Reagan era. States reacted by implementing more burdensome verification requirements,\textsuperscript{57} which discouraged eligible households from participating in the program.\textsuperscript{58}

The certification process has, as a re-

\textsuperscript{52}. \textit{Id.} at 152-53. Three of the President's Task Force's nine recommendations included easing eligibility requirements by raising the asset limit and automobile exemption, insuring the eligibility of homeless individuals, and facilitating participation by simplifying the food stamp application.

\textsuperscript{53}. \textit{Id.} at 153. Only one of the President's Task Force recommendation was enacted. In 1984, food stamp allotment was raised from 99\% of the cost of the Thrifty Food Plan to 100\%. \textit{Id.} at 152. Although the House passed a bill that incorporated the bulk of the President's Task Force's proposals, the Senate declined to enact the measure because it would have increased program costs. \textit{Id.}

\textsuperscript{54}. See \textit{id.} at 155-61; David B. Neumeyer, \textit{Developments in Food Program Legislation and Case Law in 1986}, 20 \textit{CLEARINGHOUSE REV.} 1267, 1268-69 (1986). This statement, describing the legislative efforts during the later half of the 1980s, is a generalization to which there are exceptions. For example, the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986), extended eligibility to a particularly desperate group by permitting individuals living in emergency shelters to receive food stamps even though the facility provided them with meals. \textit{Id.} at 1269.

\textsuperscript{55}. \textit{HISTORY}, supra note 2, at 277.

\textsuperscript{56}. See \textit{id.} at 277-79 (describing the purpose and operation of quality control and the error rate sanction system). Under a quality control system, the Food and Nutrition Service (FNS) monitors welfare agencies. By reviewing a statistically valid number of cases, the FNS determines the amount of erroneously issued food stamp benefits. The federal government then sanctions states that have excessive error rates. \textit{See id.}

\textsuperscript{57}. Lipsky & Thibodeau, supra note 5, at 329-30.

\textsuperscript{58}. See \textit{id.} at 330-31. To avoid the higher penalties exacted by the federal government for over-issuance, states have implemented complex application procedures. Persons who cannot provide the required documentation regarding household income, assets, and expenses are excluded from the program. In addition, a complicated application process makes the program more expensive to administer. \textit{See id.} In terms of complexity, the food stamp certification process has been equated with the federal income tax long form. \textit{BARRIERS}, supra note 39, at 135. Some policy analysts question whether such an extensive verification process is cost-effective in preventing the erroneous disbursement of benefits. Lipsky & Thibodeau, supra note 5, at 331.
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sult, become a “bureaucratic maze.”\textsuperscript{59} The admonitions and advice expounded by the Physician Task Force\textsuperscript{60} have not yet been followed and evidence shows that the problem of domestic hunger and under-nutrition is worsening.\textsuperscript{61}

1. Evidence of Domestic Hunger Among Low Income Families with Dependant Children

Unemployment, ill-health, and extreme poverty render three classes, children, the elderly and the homeless\textsuperscript{62} particularly vulnerable to hunger.\textsuperscript{63} Childhood hunger and under-nutrition in particular is generating great attention in Congress.\textsuperscript{64} Advocates for the poor, who are lobbying for food stamp reform, characterize the Food Stamp Program as an agenda to im-

\textsuperscript{59} BARRIERS, supra note 39, at 134-35; see also infra text accompanying notes 125-28 (describing the error rate sanction system as a “barrier to participation” because it effectually limits access to the Food Stamp Program).

\textsuperscript{60} GROWING EPIDEMIC, supra note 5, at 177-79. The recommendations of the Physician Task Force include: improving the Food Stamp Program (e.g., increase food stamp benefits, modify asset and deduction restrictions, end administrative policies that prevent eligible persons from participating in the program); creating an independent monitoring group that would provide current data regarding the nutritional status of the population, particularly the health of pregnant women, children, and the elderly; and establishing a congressional commission that would study the causes of hunger and recommend further legislative changes.

\textsuperscript{61} See FOOD RESEARCH AND ACTION CENTER, EXECUTIVE SUMMARY COMMUNITY CHILDHOOD HUNGER IDENTIFICATION PROJECT (1991) [hereinafter CCHIP SUMMARY] (reporting the conclusions of CCHIP hunger surveys conducted in seven American cities). See generally SCHWARTZ-NOBEL, supra note 5, at 26-28, 103-09. Schwartz-Nobel describes the spread of hunger in the United States and declares that the general public remains ignorant because of policymakers’ “short-term solutions, gimmicks, and unrealistic promises.” Id. at 30.

\textsuperscript{62} See generally LYNN PARKER AND STUART HIRSCHFELD, FOOD RESEARCH AND ACTION CENTER, FOOD STAMP FACTS 4-6 (1991) [hereinafter FRAC’s FACTS] (profiling a food stamp recipient).

\textsuperscript{63} See BARRIERS, supra note 39, at 20-22 (correlating Food Stamp Program eligibility with hunger and concluding that those with few economic resources are most likely to suffer from a food shortage).

\textsuperscript{64} See Hearing on Childhood Hunger Before the Subcomm. on Domestic Marketing, Consumer Relations and Nutrition of the House Comm. on Agric., 102d Cong., 1st Sess. 3 (1991) [hereinafter FRAC Childhood Hunger Testimony] (testimony of Robert J. Fersh, Executive Director, Food Research and Action Center). FRAC estimates that over 90% of the assistance provided in the Mickey Leland Childhood Hunger Relief Act is for low-income families with children. Id. Other legislative measures currently pending in Congress and directed at improving infant and childhood food assistance programs include: the Childhood Hunger Prevention Act of 1991 (S. 602), the WIC Infant Feeding Initiative Act of 1991 (S. 657 and H.R. 1441), the World Summit for Children Implementation Act of 1991 (H.R. 1633, S. 878), and the Freedom from Want Act (H.R. 2258). See Hearing on Hunger in America Before the Subcomm. on Domestic Marketing, Consumer Relations and Nutrition of the House Comm. on Agric., 102d Cong., 1st Sess. 14 (1991) [hereinafter National PTA Hunger Testimony] (testimony of Arlene Zielke, Vice President for Legislative Activity, National PTA).
prove child nutrition. These individuals support their position by citing the statistic that, in the United States, an estimated 5.5 million prepubescent children are hungry and an additional six million are at risk of hunger. Further, they contend that today, one in four American children under the age of twelve is hungry or at risk of hunger.

65. See, e.g., FRAC Childhood Hunger Testimony, supra note 64, at 3. Widely quoted data shows that children comprise the largest class of food stamp recipients, over 50%, and that nationally over 83% of food stamp recipients are households with dependent children. Id.

66. See id. at 2. FRAC continues to coordinate the Community Childhood Hunger Identification Project (CCHIP), a study devised by nutrition and epidemiology experts that is meant to "provide[] a sound basis for estimating the number of children under age 12 who are hungry or at risk of hunger nationally." Id. at 1-2. "Hunger" results from not ingesting an adequate amount of calories, protein or other nutrients needed to resist disease, develop physically and mentally, and function productively. See Hearing on Childhood Hunger in America Before the Subcomm. on Domestic Marketing, Consumer Relations and Nutrition of the House Comm. on Agric., 102d Cong., 1st Sess. 1 (1991) [hereinafter AAP Childhood Hunger Testimony] (testimony by Dr. Ronald Kleinman, American Academy of Pediatrics). But see Robert Rector, Food Fight: How Hungry Are America's Children?, POL'Y REV., Fall 1991, at 38.

In a recent article, Robert Rector attacks FRAC's CCHIP survey results as being unsound, stating that the survey lacks a scientific basis because low-income families were questioned about their food intake. No actual measurement of food or nutrient consumption was taken. See id. Rector declares that studies conducted by USDA and Health and Human Services do not demonstrate widespread hunger and under-nutrition. See id. at 43. The Center for Disease Control study Rector relies on, the National Health and Nutrition Examination Survey II (NHANES II), is also referenced by the Physician Task Force on Hunger in America. See GROWING EPIDEMIC, supra note 5, at 103-07. Contrary to Rector's interpretation, however, the Physician Task Force states that NHANES II showed that a greater percentage of low-income individuals consume inadequate calories, vitamin C, and iron. Id. at 104. Furthermore, the Physician Task Force cited a USDA study, Nationwide Food Consumption Survey (NFCS), for the finding that only 12% of households participating in the Food Stamp Program were able to meet the Recommended Daily Allowances established by the National Academy of Sciences. Id. at 105. Asserting that "[t]he poor do not suffer from food shortages," Rector, supra, at 43, Rector does not acknowledge the numerous studies and compelling testimonial evidence compiled by federal, state and city governments, universities, religious organizations, and advocacy groups demonstrating that domestic hunger and under-nutrition is a current and profound problem. See GROWING EPIDEMIC, supra note 5, at 12-13, 25. Interestingly, Rector does not advocate extinguishing the Food Stamp Program but instead proposes utilizing the program to provide low-income women and children with mineral supplements. See Rector, supra, at 43.

2. Effects of Hunger: Why Domestic Hunger is a National Crisis

Ample evidence of widespread hunger and under-nutrition among children in the United States justifies identifying domestic hunger as one of the most deleterious problems facing our nation. Opponents of social welfare programs have long argued that federal and state welfare programs are fraught with fraud and are ultimately harmful. These opponents also contend that federal assistance deprives low-income citizens of their independence. These arguments, however, are particularly unsound with respect...

68. See United States Conference of Mayors, A Status Report on Hunger and Homelessness in America’s Cities: 1991 at 7 (1991) (stating that the demand for emergency food assistance by families with children increased by an estimated 26 percent during 1991 and that an estimated 17 percent of all requests were not met).

69. Domestic hunger is a problem distinct from the issue of world hunger. The United States’ past and future efforts to abate global hunger, particularly with regard to military or ideological opponents, are much debated. See Paul Simon, The Glass House: Politics & Morality in the Nation’s Capital 63 (1984). During recessionary periods, some United States legislators have responded to their constituents’ economic fears by admonishing the federal government for sending tax payers’ dollars overseas. See id. at 63-64.

Advocates for United States’ involvement in international hunger problems present cautious proposals. For example, with regard to the former Soviet Union, it has been advised that the United States provide a “reform agenda” as opposed to simply giving money or food. Robert J. Samuelson, Now, Let’s Aid the Soviets, Wash. Post, Oct. 12, 1991, at A25. Advocates argue that without some semblance of a market economy and an organized, non-corrupt trading system, farmers will not be encouraged to produce more and, as a result, hoarding and spoilage will continue. Id. But see Desperate need, desperate deed, Economist, Aug. 15, 1992, at 14, for the argument that Somalia should be provided with food assistance regardless of the fact that much of it will be stolen by the warlords and bandits.

70. See History, supra note 2, at 29. In 1968, congressional opponents of the Food Stamp Program argued against extending authorization, alleging that “hippies” and married college students supported by their parents received food stamp benefits. See Robert Rector & Michael McLaughlin, A Conservative’s Guide to State-Level Welfare Reform (available from the Heritage Foundation, Washington, D.C.). Rector and McLaughlin assert that welfare programs “erode[] the essential moral fabric.” Id. at 1. They contend that most public assistance programs are formulated to reduce “material” poverty but have the effect of increasing “behavioral” poverty, which they define as the deterioration of social norms and ethics. Id. at 5, 11-12. But see infra note 111 and accompanying text (describing misconceptions regarding the Food Stamp Program and the inaccurate stereotype of food stamp recipients). Moreover, recent studies of the Food Stamp Program reveal no evidence that fraud is a substantial problem. Errors by applicants, recipients and case workers are shown to be largely unintentional. See FRAC’s Facts, supra note 62, at 33.

71. See Charles Murray, Losing Ground 227-29 (1984). Mr. Murray suggests that “scraping the entire federal welfare and income-support structure,” id. at 227, would cause it to become “highly dysfunctional for a person to be dependent.” Id. at 229. He concludes that “[n]on-economic rewards [would then] reinforce the economic rewards of being a good parent and provider.” Id. Theoretically, the proposed plan would improve the lives of working-age persons. Admittedly, however, the plan would not benefit those who are unable to enter the workforce. See id. at 233. The proposal places tremendous reliance on philanthropy, exhorting that the federal government should simply “let a hundred flowers bloom.” See id. at 232. The notion that philanthropy alone can provide the level of assistance needed to abate
to children, the largest recipient class of food stamps. Children participate in the work force at a level limited by the law and therefore are, by definition, a class unable to assert economic independence.\textsuperscript{72}

Aside from the humanitarian rationale for ending domestic hunger, economic pragmatism reveals that domestic hunger should be a national priority. For example, performance studies of children suffering from hunger\textsuperscript{73} indicate that such children do not excel academically because they cannot concentrate and are often absent as a result of hunger-related illnesses.\textsuperscript{74} The Committee for Economic Development found that almost 40\% of preschoolers face serious risk of academic failure due, in part, to an inadequate diet.\textsuperscript{75} The American Academy of Pediatrics recently found that malnutrition during childhood permanently diminishes intellectual abilities, produces sociopathic behavior, and causes a weakened physical condition.\textsuperscript{76} Further, these afflictions occur in children who have an inadequate diet for only a short time.\textsuperscript{77} Implementing an effective food assistance program is likely to improve the mental and physical abilities of children from low-income families and is therefore as much a strategy for maintaining national security and competitiveness as it is an expression of humanitarianism.

\section*{II. \textbf{ANALYSIS OF THE FOOD STAMP PROGRAM}}

\subsection*{A. Overview of the Current Provisions and Goals of the Food Stamp Program}

The Food Stamp Act of 1964, by expanding and making the Food Stamp Program permanent, increased the nutrition of low-income persons and im-

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\textsuperscript{72} Domestic hunger is disputed by data showing that public and privately funded food assistance programs are unable to keep up with demand. See \textit{United States Conference of Mayors}, supra note 68, at 20-23 (1991). In Norfolk, Virginia, for example, it was reported that “[s]upply has not kept pace with demand. There has been a volunteer shortage in staffing food pantries and soup kitchens.” Id.

\textsuperscript{73} See generally 137 \textsc{Cong. Rec.} H5808-12 (daily ed. July 24, 1991) (statements of Reps. Bacchus, Emerson, and Towns) (articulating the particular depravity of permitting children to suffer from hunger).

\textsuperscript{74} See \textit{National PTA Hunger Testimony}, supra note 64, at 4-5.

\textsuperscript{75} Id.

\textsuperscript{76} Hearing on Nutrition for Children Before the Subcomm. on Domestic Marketing, Consumer Relations and Nutrition of the House Comm. on Agric., 102d Cong., 1st Sess. 5 (1991) [hereinafter \textit{CED's Nutrition Testimony}] (testimony by Nathaniel M. Semple, Vice President and Secretary, Committee for Economic Development). The 40\% of the nation's children who CED characterizes as being “at serious risk of education failure” include children who are deprived of either pre-natal care, immunizations, pre-school education, or a nutritionally balanced diet.

\textsuperscript{77} \textit{AAP Childhood Hunger Testimony}, supra note 66, at 4-7.

\textsuperscript{77} Id. at 7.
proved the surplus food distribution system. The Food Stamp Act of 1977 and its subsequent amendments established the Food Stamp Program as it exists today. As the federal government's most developed strategy for battling our hunger problem, the purpose of the Food Stamp Program is to "increase the food purchasing power" of low-income households, thereby abating domestic hunger and promoting the nation's general health and welfare.

The Food Stamp Program is presently the federal government's most extensive vehicle for providing food assistance to persons with low-incomes. The Program furnishes coupons that can be exchanged for food to those who qualify for cash assistance, as well as to some low-income households that

78. See History, supra note 2, at 21. Under the 1964 Act, the Federal Government established benefit levels and paid the entire cost of food stamp benefits including all federal administrative costs. State and local governments set eligibility standards and paid approximately 70% of the program's non-federal administrative costs. Id. at 21.
80. See generally History, supra note 2 at 78-89 (summarizing events surrounding repeal of the 1964 Food Stamp Act and enactment of a revised Food Stamp Act as part of the 1977 farm bill).
81. See generally id. (describing the goals and drastic revisions to the 1964 Act).
83. Joe Richardson, Congressional Research Service, How the Food Stamp Program Works 1-3 (11th ed. 1989) [hereinafter CRS, Food Stamp Program Report]. The Food and Nutrition Service (FNS), part of the United States Department of Agriculture, administers the Food Stamp Program. The federal government funds all food stamp benefits and a portion of the program's administrative costs. See Overview, supra note 44, at 1387. All fifty states have chosen to offer the program. States are responsible for administering the program and providing approximately 50% of the administrative costs, but must comply with federal rules. See id. at 1385-86. States are also responsible for ensuring that program participants are truly eligible and receive an accurate amount of benefits. States conduct federally mandated quality control reviews to determine and reduce error rates. Sanctions are levied against states whose rate of over-issuance exceeds the nationally established maximum. See History, supra note 2, at 277-79. Several provisions of the Hunger Prevention Act of 1988, Pub. L. No. 100-435, 102 Stat. 1645 (1988) (codified as amended in scattered sections of 7 U.S.C.), revised the sanction system, reducing the amount of sanctions issued.
84. See generally Issac Shapiro, Center on Budget and Policy Priorities et al., The States and the Poor: How Budget Decisions in 1991 Affected Low Income People 7 (1991) (distinguishing cash and non-cash assistance programs). Federal and state governments provide low-income persons with cash and non-cash assistance. Cash assistance programs include: Aid to Families with Dependent Children (AFDC), which assists families with young children; the Supplemental Security Income program (SSI), the main cash assistance program for low-income elderly and disabled persons; and General Assistance, which serves poor persons who are not eligible to receive AFDC or SSI. Id. States also supply needy individuals with short-term monetary aid through Emergency Assistance programs. Id.

Two non-cash, health-related assistance programs include the Food Stamp Program and the Special Supplemental Food Program for Women, Infants, and Children (WIC). WIC targets low-income pregnant and post-partum women, infants and children under age five who are at risk nutritionally. Id. at 31. WIC participants receive checks that may be reimbursed for
do not meet the eligibility requirements of cash welfare programs.\textsuperscript{85} For the working poor, food stamps are the main source of federal aid.\textsuperscript{86}

Federal funding of the Food Stamp Program in 1991 totaled $19.6 billion.\textsuperscript{87} A household’s gross income determines eligibility.\textsuperscript{88} With the exception of households having one or more elderly or disabled members, participants’ gross income cannot exceed 130\% of the poverty line\textsuperscript{89} and their assets cannot exceed $2,000.\textsuperscript{90} If the household has one or more elderly members, the asset limit increases to $3,000.\textsuperscript{91} Unless exempted, participants must either work or register for employment,\textsuperscript{92} with employment-training programs mandatory for some participants.\textsuperscript{93}

\textbf{B. Meritorious Features of the Food Stamp Program}

Food Research and Action Center, a research and advocacy organization that analyzes public policies affecting domestic hunger and malnutrition, observes that “[t]he Food Stamp Program has been very successful in reaching specific types and quantities of foods (such as dairy products) and are counseled on proper nutrition.\textsuperscript{Id. at 42.}

\textsuperscript{85} E.g., Defense Fund Hunger Testimony, supra note 67, at 8 (stating that food stamps are especially important to poor working families and have narrowed the “nutritional gap”).

\textsuperscript{86} Id. Two-parent households in which at least one parent is working are unlikely to qualify for AFDC. See id.

\textsuperscript{87} FRAC’s FACTS, supra note 62, at 2. After reductions made by the Omnibus Budget Reconciliation Act of 1981, federal funding of the Food Stamp Program has increased gradually. In 1982, the federal government funded the program at a level of $11.12 billion. The estimated federal funding in 1990 was $16.52 billion. Adjusting these figures for inflation, the Food Stamp Program has received a net increase of $1.65 billion of federal dollars during this period. Food stamp expenditures currently comprise approximately 1.4\% of the total federal budget.\textsuperscript{Id. at 2-3; see also OVERVIEW, supra note 44, at 1388.}

\textsuperscript{88} OVERVIEW, supra note 44, at 1390. “Gross income” includes all monetary income except income received for the care of a person outside the household, income earned by schoolchildren and excludes education-related expenses.\textsuperscript{Id. Households receiving AFDC or SSI are, in almost all cases, automatically eligible. The amount of benefits received is based on the household’s monthly cash income.\textsuperscript{Id.}

\textsuperscript{89} Id. at 1392. Based on this formula, the gross monthly income eligibility limit for one person residing in any one of the 48 contiguous states, the District of Columbia, Guam or the Virgin Islands equalled $681 for the period of October 1990 through September 1991. For a food stamp household consisting of two persons, the limit was $913.\textsuperscript{Id.}

\textsuperscript{90} “Assets” used for food stamp eligibility determination include cash, bank accounts, stocks and bonds, inheritances, individual retirement accounts, Keogh plans, insurance settlement payments, income tax refunds, and the market value of a car in excess of $4,500. CRS, FOOD STAMP PROGRAM, supra note 83, at 40.

\textsuperscript{91} FRAC’s FACTS, supra note 62, at 7.

\textsuperscript{92} Id. at 13. A food stamp recipient is exempt from work requirements if over the age of 60, under the age of 18, or disabled. Some students, residents of drug or alcohol treatment centers, and people who care for one or more children under school age are also exempt. Twenty-one percent of all participants are not exempt from the work requirements.\textsuperscript{Id.}

\textsuperscript{93} Id.
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many of the poorest Americans and in making a significant difference in the nutritional adequacy of their diets.994 Government research demonstrates the program’s positive impact on the nutritional status of low-income citizens.95 The USDA reported in 1990 that the diet of a household, after entering the Food Stamp Program, contains a greater amount of the Recommended Daily Allowances (RDA)96 of nutrients.97

Data also indicates that the Food Stamp Program is economically efficient to the degree that it provides assistance to those with the greatest need.98 During fiscal years 1987 through 1990, 83 to 85% of federal monies designated for the Food Stamp Program were applied toward actual benefits as opposed to administrative costs.99 Regulations barring strikers, aliens, college students, and persons who have left their jobs without “good cause” minimize program costs.100 The program contains a stringent review system

94. FRAC’s FACTS, supra note 62, at ii. FRAC, however, ardently advocates Food Stamp Program reform and cites insufficient benefit levels and barriers to participation as factors that contribute to the nation’s failure to abate domestic hunger. See CHIP SUMMARY, supra note 61, at Introduction. FRAC is an active proponent of the Mickey Leland Childhood Hunger Relief Act. See, e.g., Finance and Ways and Means Committee Key to Fate of Childhood Hunger Relief Legislation, Oct. 25, 1991 [hereinafter “FRAC Leland Bill Release”] (available from FRAC, Washington, D.C.).


96. Recommended Daily Allowances are the Food and Nutrition Board’s recommendations concerning daily intake of specific nutrients. The Board is part of the National Academy of Sciences. See GROWING EPIDEMIC, supra note 5, at 215.

97. FRAC’s FACTS, supra note 62, at 18. But see HISTORY, supra note 2, at 323 (discussing Congressional Budget Office studies that are inconclusive as to whether increased food purchases result in the purchasing household obtaining a more nutritious diet). The Senate Agriculture Committee has questioned the underlying assumption that nutritional status and income level are consistently causally related—a premise that strikes at the heart of the Food Stamp Act. Id. at 331. The Committee concedes, however, that the nutrition level of a household increases after participation in the Food Stamp Program begins. Id. at 331-32. The nutrient level of a household, upon entry into the program, increases by 7 to 29%. FRAC’s FACTS, supra note 62, at 18.

98. See OVERVIEW, supra note 44, at 1392-95 (outlining eligibility requirements).

99. See OVERVIEW, supra note 44, at 1388 (table 3, “Recent Food Stamp Expenditures”); see also FRAC’s FACTS, supra note 62, at 18.

100. See 7 C.F.R. §§ 273.1-273.7 (1990). The regulations include exceptions that allow some members of these classes to receive food stamps. Some of the exceptions are: college students who attend school under the Job Training Partnership Act and meet all other requirements, id. at § 273.5(b)(vi); legal aliens who have been granted permanent residence, id. at § 273.4(2); and strikers who have been locked-out, id. at § 273.1(g)(2). Note, however, that a striker’s entire family is affected if the striking member does not qualify under one of the exceptions. Id.; see Lyng v. UAW, 485 U.S. 360, 371 (1988) (holding that Congress’ denial of food stamps to the households of striking workers was rationally related to the legitimate government interest of avoiding favoritism with regard to labor disputes). But see Gerald R. Weber, Jr., Note, The Striker Amendment to the Food Stamp Act: Politics Chipping Away at the Union, Family, and Social Welfare, 22 GA. L. REV. 741 (1988) (asserting that the striker
and rigorous application and reporting requirements to insure that only eligible households receive benefits.\textsuperscript{101}

While states cannot enact food stamp rules or procedures that conflict with federal laws,\textsuperscript{102} the Food Stamp Program is flexible when dealing with state-run nutrition programs. The Act permits states to grant child support deductions and conduct demonstration projects, employment programs, and outreach programs.\textsuperscript{103} Supplying states with these elective provisions encourages the development of effective innovations to help low-income families supplement their diets.\textsuperscript{104}

\textbf{C. Defects in the Food Stamp Program} \textsuperscript{105}

1. \textit{Barriers to Participation: "Bureaucratic Disentitlement"}

Low participation rates\textsuperscript{106} have plagued the Food Stamp Program since its inception.\textsuperscript{107} A household's characteristics effect the likelihood of partic-

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  \item[101.] See FRAC's FACTS, supra note 62, at 35-36.
  \item[102.] See Harrington v. Blum, 483 F. Supp. 1015 (S.D.N.Y. 1979), aff'd, 693 F.2d 768 (2d Cir. 1980). In Harrington, the court held that when a state implements an optional policy it may not issue companion regulations that in any way conflict with federal law. Id. at 1019.
  \item[103.] See Overview, supra note 44, at 1387. For example, a state that elects to invoke the child support payment option calculates the income of the recipient-parent by disregarding the first $50 in child support that a parent receives.
  \item[104.] See id.
  \item[105.] A substantial flaw in the Food Stamp Program is the use of the Thrifty Food Plan (TFP) to determine maximum food stamp benefit levels. See Mary Ellen Natale & David A. Super, \textit{The Case Against the Thrifty Food Plan as the Basis for Food Component of the AFDC Standard of Need}, 25 CLEARINGHOUSE REV. 86, 88 (1991). The TFP is USDA's estimate of the cost needed to sustain a family of four, presuming that the household spends 30% of its income on food. Food stamp benefits are currently set at 103% of the TFP. 7 U.S.C. § 2012(o) (1988). At this level, a participating household receives, on average, benefits of $.71 per person per meal. See Overview, supra note 44, at 1395. The benefit levels derived from the TFP are widely criticized as nutritionally deficient and economically inaccurate. See Natale & Super, supra at 89; see also Lipsky & Thibodeau, supra note 5, at 325-26 (describing the minimal adjustments made to benefit levels since 1965).
  \item[106.] "Participation rate" is the number of households participating in the Food Stamp Program divided by the number of eligible households. GAO, \textit{Food Stamp Program: A Demographic Analysis of Participation and Nonparticipation} 11 n.1 (1990) [hereinafter GAO, Participation Analysis].
  \item[107.] Lipsky & Thibodeau, supra note 5, at 326. See generally Christian K. Ranney & John E. Kushman, Giannini Found. of Agric. Econ., A Study of Interdependent
The Government Accounting Office reports that only 43.8% of eligible households participate in the Food Stamp Program. Furthermore, although poverty has increased in recent years, participation rates have declined. Many factors explain this phenomenon. Factors that in-
hibit full participation include inadequate or inaccurate information,\textsuperscript{112} inaccessibility of food stamp offices (the location where application process occurs),\textsuperscript{113} and hostility towards applicants and participants.\textsuperscript{114} A particularly vexing barrier, however, is the phenomenon of “bureaucratic disentitle-

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\textsuperscript{112} Data compiled by PSID shows that both a lack of information and misinformation about the Food Stamp Program and its eligibility requirements pose the greatest barrier to participation. Coe, \textit{supra} note 105, at 1038-39. PSID’s study showed that approximately 40\% of eligible persons did not participate in the program because they did not know they were eligible. An additional 11\% of eligible non-participants knew about the program but were incorrectly informed by welfare officials that they were ineligible. \textit{Id.} For this reason, Professor Coe concludes that poor information concerning eligibility and the application process is “one of the principle barriers to food stamp participation.” \textit{Barriers, supra note} 39, at 62.

\textsuperscript{113} See Coe, \textit{supra} note 105, at 1037.

\textsuperscript{114} \textit{Id.} at 1037-38. For purposes of his analysis, Coe organizes the explanations for low participation into five categories: “(1) Informational Problems; (2) Problems with Program Parameters; (3) Administrative Problems; (4) Physical Access Problems; and (5) Attitudinal Factors.” \textit{Id.} at 1037. Very few eligible persons elect not to receive food stamps assessing the value of the benefits to be inadequate. \textit{Id.} at 1039-40.
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ment." Regulatory changes, their substance as well as their number, constitute bureaucratic disentitlement.

Monthly Reporting and Retrospective Budgeting (MRRB) is an example of how the federal government, under the pretense of increasing the effectiveness of the Food Stamp Program, actually prevents eligible recipients from receiving benefits. During the period a recipient is certified to re-

115. Bureaucratic disentitlement is caused by federal administrative requirements and local discretionary policies that require applicants and recipients to furnish more information or documentary proof than federal law requires. Bureaucratic disentitlements also take the form of harsher sanctions for unintentional errors and omissions. See Lipsky & Thibodeau, supra note 5, at 330.

116. See id. Errors by state food stamp officials that result in eligible households being excluded from the Food Stamp Program have been largely attributed to overly complicated federal regulations. BARRIERS, supra note 39, at 111. Noting that over two hundred regulatory changes to the Food Stamp Act were introduced during the past decade, Lipsky and Thibodeau imply that such legislative revisions exacerbate error rates rather than disburse benefits more equitably and efficiently. Lipsky & Thibodeau, supra note 5, at 330.

117. Lipsky & Thibodeau, supra note 5, at 330.

118. The Omnibus Budget Reconciliation Act of 1981 made monthly reporting a mandatory feature of the Food Stamp Program in August of 1981. See ROBERT GREENSTEIN & MARION E. NICHOLS, CENTER ON BUDGET AND POLICY PRIORITIES, MONTHLY REPORTING: A REVIEW OF THE RESEARCH FINDINGS 8 (1989) [hereinafter REVIEW OF MONTHLY REPORTING] (analyzing MRRB and summarizing the findings from federally funded monthly reporting demonstration projects conducted in Colorado, Illinois, Massachusetts, Michigan, and New York). The alleged goal of the monthly reporting provision was to curtail over-issuance. HISTORY, supra note 2, at 147. Senator Jesse Helms (R-NC), advocating the implementation of mandatory monthly reporting, stated that "households with income and those most likely to have income, should be targeted for more timely and accurate reporting of their income." Id. The Hunger Prevention Act of 1988, Pub. L. No. 100-435, 102 Stat. 1645 (codified as amended in scattered sections of 7 U.S.C.), permitted states to implement MRRB on an optional rather than mandatory basis. See REVIEW OF MONTHLY REPORTING, supra, at 1, 9. Retrospective budgeting, rather than prospective budgeting, is used in conjunction with monthly reporting as a means of lowering program costs. See id. at 17-18. Utilizing retrospective budgeting, case workers evaluate a household's monthly eligibility and benefit level based on income, assets and circumstances associated with the previous month. See CRS, FOOD STAMP PROGRAM REPORT, supra note 83, at 14.

119. An evaluation of MRRB demonstration programs was held to "indicate that the system fails to reduce error rates and costs. . . . MRRB is associated with increased costs in several of the states evaluated, and increased errors in still others." BARRIERS, supra note 39, at 100 (emphasis added). USDA Regional Food and Nutrition Service and state officials have contended that basing eligibility and benefit amounts on a household's average monthly income, rather than on actual monthly income provided by monthly reporting, "reduces program costs . . . [by] mak[ing] the program easier to administer," GAO, Food Stamp Program: Administrative Hindrances to Participation, 36 (Oct. 1988) [hereinafter GAO, Administrative Hindrances], and provides "food stamp recipients a standard monthly benefit which allows them to budget their resources better." Id. at 37. Monthly reporting has been described as "extremely burdensome to households [and a requirement that] consumes an unreasonable amount of State agencies' time" and fiscal budget. FRAC Childhood Hunger Testimony, supra note 64, at 8. See generally Lipsky & Thibodeau, supra note 5, at 330-31 (questioning the need for intense verification methods with regard to the Food Stamp Program).
ceive benefits, administrators use the MRRB system to determine whether a household continues to meet eligibility requirements. Policy analysts have concluded that MRRB is ineffective in reducing program costs or error rates. In fact, when first implemented in Illinois, benefit costs and error rates sharply increased. Surveys show that monthly reporting increases termination rates but does not necessarily result in program cost savings. Households having to comply with MRRB are sometimes cut from the Food Stamp Program for purely technical violations caused by the length and complexity of many states’ monthly reporting forms. Bureaucratic disin- titlement is exemplified when administrators terminate a household’s benefits despite the fact that its needs and eligibility remain unchanged.

Another provision that purports to improve the integrity of the Food Stamp Program is the federal government’s error rate sanction system. This system imposes monetary penalties on states that frequently overissue benefits or mistakenly characterize an ineligible household as eligible. Before enactment of the Hunger Prevention Act of 1988, many state officials and welfare analysts vehemently maintained that sanctioning did not promote efficiency and instead forced Program officials to resort to “verification extremism” in an attempt to avoid monetary penalties and meet feder-

120. REVIEW OF MONTHLY REPORTING, supra note 118, at ix. Households required to comply with MRRB must, on a monthly basis, provide state welfare departments with information regarding income, assets and household size, regardless of whether any changes have occurred. Id. at 1. Today, the purpose of MRRB is to reduce program costs by accelerating the transfer of information from the food stamp recipient to the food stamp office, thereby enabling program administrators to identify non-eligible participants and instances of over-issuance more efficiently. Id.

121. See id. at 16-18. Analysts state that results of demonstration projects show that “[m]onthly reporting fail[s] to produce statistically significant savings” and that “retrospective budgeting produce[s] no appreciable reduction in benefit costs.” Id.

122. Id. at 13. Illinois’ MRRB system did not produce program savings even after the state’s computer problems were resolved. Id.

123. See id. at 31-34 (discussing the phenomenon of “churning,” whereby an eligible food stamp household must reapply to the program after being closed out as a result of technical noncompliance with MRRB).

124. See id. at 33-35. The Center for Budget and Policies Priorities concluded in its 1989 report on MRRB that “monthly reporting adds to administrative costs, . . . can lead to termination of benefits for recipients who are otherwise eligible, and . . . results in a substantial amount of case closures followed by case reopenings (or ‘churning’).” Id. at 35.

125. See CRS, FOOD STAMP PROGRAM REPORT, supra note 83, at 23.

126. See id.

ally mandated target rates.\textsuperscript{128} To keep ineligibles out of the Program, states require food stamp applicants to complete lengthy and complex forms.\textsuperscript{129} This complicated application process prevents some eligible households from participating in the Food Stamp Program. While provisions of the 1988 Act reduced federal sanctioning, zealous federal quality control programs continue to overburden the states. Monetary penalties prompt states to invoke administrative practices that prevent participation and have not proven to substantially increase program integrity.\textsuperscript{130} While state food stamp officials berate Congress for imposing numerous complex and rigorous regulations,\textsuperscript{131} many of the practices and procedures implemented by state and local offices are also quite complicated and discourage or prevent eligible households from participating in the Food Stamp Program.\textsuperscript{132} These administrative policies conflict with the intent of the Food Stamp Act, yet Con-

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\item[128.] See Lipsky & Thibodeau, \textit{supra} note 5, at 330; BARRIERS, \textit{supra} note 39, at 110-12. \textit{See generally} HISTORY, \textit{supra} note 2, at 279 (explaining calculation methods used to determine penalty amounts).
\item[129.] See FRAC'S FACTS, \textit{supra} note 62, at 9 (describing applying for the Food Stamp Program as, in some cases, an "arduous and time-consuming process"). Policy analysts have advocated simplifying the Program's income eligibility limits and deduction system for over 15 years with little success. \textit{See} AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH, \textit{FOOD STAMP REFORM} 19 (May 24, 1977). Application forms have no page limits and, in some states, exceed forty pages. FRAC'S FACTS, \textit{supra} note 62, at 9. Some food stamp applications require sixty pieces of information be provided regarding the household's composition, income, assets, and expenses. GAO, \textit{Administrative Hindrances, supra} note 119, at 9. Although the applicant is primarily responsible for obtaining the required documentation, federal regulation requires caseworkers to assist. \textit{Id.} at 23. GAO has identified failure by food stamp caseworkers to identify required documentation properly or assist applicants in the compilation of documentary proof as a significant barrier to participation. \textit{Id.} at 22-24.
\item[130.] See Lipsky & Thibodeau, \textit{supra} note 5, at 329-31. It has been observed that "not every program should have the same degree of administrative effort dedicated to fiscal integrity and quality control because programs differ in the stakes involved and in the likelihood of transgressions, and because the tighter controls, the greater the deterrence to participation." \textit{Id.} at 330-31.
\item[131.] See, e.g., BARRIERS, \textit{supra} note 39, at 112-114 (declaring that some state program administrators believe that the federal bureaucracy is used to "harass the states" and thereby "kill the program"); SCHWARTZ-NOBEL, \textit{supra} note 5, at 97 (describing pressure the federal government exerts on states to decrease food stamp disbursements).
\item[132.] See GAO, \textit{Administrative Hindrances, supra} note 119, \textit{passim}. GAO reported the existence of the following administrative hindrances: abbreviated office hours and unnecessary screening interviews which limit access to food stamp applications and interviews, \textit{id.} at 14-17; failure to encourage applicants to file promptly, \textit{id.} at 17-18; lack of assistance in assembling required verification documents, \textit{id.} at 22-25; premature denial of applications, \textit{id.} at 21-22; improper terminations caused by administrative error or based on unverified allegations, \textit{id.} at 26-29; and untimely or improper response to expedited benefit requests, a practice which is particularly evident among homeless applicants. \textit{Id.} at 19-21. \textit{See also} SCHWARTZ-NOBEL, \textit{supra} note 5, at 92-96 (providing testimonial evidence of non-compliance with federal food stamp regulations and the hostility and prejudice of some welfare department employees).
gress has not revised them.\textsuperscript{133} Efforts undertaken by community organizations, such as on-site and telephone monitoring, have provided considerable data, but the data have not been utilized by local social service offices to improve the system.\textsuperscript{134}

Federal and state legislators and program administrators continue to revise the program by implementing new regulations or modifying existing ones.\textsuperscript{135} As a result, bureaucratic disentitlements promise to continue to plague the Food Stamp Program.\textsuperscript{136} In fact, the impending proposed amendment involving child support sanctioning\textsuperscript{137} demonstrates that Con-

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\textsuperscript{133} GAO recommended that the Food and Nutrition Service (FNS) Administrator “[i]dentify administrative hindrances to food stamp participation . . . focusing on hindrances identified in [GAO’s 1988] report, and assist states in overcoming these hindrances by sharing this information with all states.” \textit{Id.} at 41.
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\textsuperscript{134} See, e.g., Alabama Coalition Against Hunger, “Standing in the Welfare Lines,” \textit{The Alabama Food Stamp Program} (March, 1989) (available from ACAH, Auburn, AL); John Colgan et al., Illinois Hunger Coalition, \textit{Hunger in Illinois: The Work and Struggle for Food Security} (June 1990) (available from IHC, Springfield, IL); D.C. Hunger Action, \textit{The D.C. Food Stamp System}, supra note 112; D.C. Hunger Action, \textit{Monitoring of D.C. Food Stamp Offices – a Tabulation} (June 1991) (available from D.C. Hunger Action, Washington, D.C.); Shirley Powell & Richard A. Jones, Southeastern Michigan Food Coalition, \textit{Food Stamp Monitoring Project} (May, 1987) (detailing a study of the operation of the Food Stamp Program in Wayne County, Michigan) (available from SMFC, Detroit, MI). Recommendations include: conducting additional and more thorough training of all employees who communicate food stamp information; providing food stamp office staff with informational and psychological support; developing or re-implementing outreach programs; and responding more quickly to urgent requests (e.g., petitions from displaced persons, individuals with medical problems or disabilities).
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\textsuperscript{135} See Lipsky & Thibodeau, supra note 5, at 330 n.27 (citing the statistic that, during a thirty month period, ninety “major regulatory changes” affecting the Food Stamp Program were promulgated by the Food and Nutrition Service).
\textsuperscript{136} See supra notes 57-59 and accompanying text (describing state procedures to police enrollment and participation).
\textsuperscript{137} See infra note 218 and accompanying text. Testifying before the House Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition, John M. Bouman, an attorney with the Legal Assistance Foundation of Chicago, ardently spoke against the proposal to expand child support enforcement procedures to the Food Stamp Program. Mr. Bouman stated that “sanctioning focuses the aggressiveness [sic] of the state agency on the recipient rather than on the absent parent and often results in unnecessary humiliation of recipients; . . . sanctioning has had no beneficial relationship at all to the rate of actual child support collections.” \textit{Formulation of the 1990 Farm Bill, Part 3 (Food Stamp and Commodity Distribution Programs): Hearings Before the Subcomm. on Domestic Marketing, Consumer Relations, and Nutrition of the House Comm. on Agric.,} 101st Cong., 1st Sess. 1187-88, 1197 (Feb. 28, 1990) (testimony of John M. Bouman). The latter is due, in part, to the fact that child support enforcement programs are presently overwhelmed. Relying on stipulated facts in Doston v. Duffy, 732 F. Supp. 857 (N.D. Ill. 1988), a class action suit alleging wrongful reduction of AFDC benefits, Bouman described the following as “inherent problems with implementing sanctioning systems” in the Food Stamp Program. \textit{Id.} at 1193. First, social service workers who hold negative biases toward members of lower socio-economic classes may treat applicants and recipients unfairly. Second, the cost of locating absentee parents who are financially unable to
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gress is far from recognizing that such policies do not increase efficiency. The child support sanctioning amendment would require states to transfer resources that could be used to increase staff sizes or improve training towards activities that discourage or prevent participation.\footnote{138}

2. *From Fair Hearings to Lawsuits: Often Inadequate or Inefficient Remedies*

When seeking to resolve a dispute with the food stamp office, applicants and recipients must request a fair hearing.\footnote{139} Regulations promulgated by USDA provide that an impartial hearing official must conduct fair hearings within forty-five to sixty days of receipt of the request,\footnote{140} and the hearing process should be designed so that "the household feel[s] . . . at ease."\footnote{141}

support their children exceeds any benefit the child might ultimately receive. *Id.* at 1196-98. Mr. Bouman concluded by stating that "[a]dding a food stamps sanction for non-cooperation with child support enforcement will inevitably lead to fewer eligible people applying for food stamps. And it will . . . keep some recipients away from the program who could benefit from it, while . . . burden[ing] the already overburdened [child support enforcement program]." *Id.* at 1199.

138. The tactics the federal government employs to compel states to decrease the national welfare caseload paradoxically inflates the already serious budgetary strain states are experiencing. As budget problems multiply, states are less able to operate effective assistance programs. *See generally United States Conference on Mayors, supra* note 68, at 20-23 (reporting the level of unmet need for food assistance in surveyed cities). For example, states that fail by 1995 to have 20\% of their welfare recipients enrolled in an employment and training program will lose federal funding. In some cases federal dollars comprise 50\% of the program's budget. *Welfare Paradox, Wash. Post,* July 29, 1991, at A10.

139. 7 C.F.R. § 273.15(a) (1991). FRAC advises persons to request a fair hearing if a case worker is unable or unwilling to solve a problem concerning food stamp benefits. FRAC's GUIDE, *supra* note 42, at 45. Citing case law and a 1979 USDA policy memorandum, FRAC states that "[h]ouseholds have the right to a hearing on anything the food stamp office does that has a significant effect on its application for or receipt of benefits or other services the office provides." *Id.* at 45 n.133; *see also* 7 C.F.R. § 273.15(a).

140. The hearing official is defined as one who "[d]oes not have any personal stake or involvement in the case; was not directly involved in the initial determination of the action which is being contested; and was not the immediate supervisor of the eligibility worker who took the action." 7 C.F.R. § 273.15(m) (1991). State level hearings are to be held within sixty days of receipt of a fair hearing request while local level hearings are to be conducted within forty-five days. *Id.* at § 273.15(p)(1)(1),(2).

141. *Id.* at § 273.15(p) (1991). A request for a fair hearing can be oral or written by a representative or member of the household. *Id.* at § 274.15(h). The request must be made within 90 days of the alleged wrongful action unless the dispute relates to an on-going policy and the household is presently certified. *Id.* at § 273.15(g). Section 273.15(p) provides, in part, that households have the right to:

(1) Examine all documents and records to be used at the hearing . . . .

(2) Present the case or have it presented by a legal counsel or other person.

(3) Bring witnesses.

(4) Advance arguments without undue interference.
In theory, the fair hearing process provides households with an effective means of resolving conflicts over food stamp benefits and services. As implemented, however, the process is unsatisfactory. For example, state welfare offices habitually fail to process applications and issue benefits in a timely manner. \textit{Haskins v. Stanton} involved a claim brought by indigent persons against state and county Food Stamp Program administrators for failure to process their applications within the legal deadline. \textit{Haskins} presented the United States Court of Appeals for the Seventh Circuit with the issue of whether the administrative remedies (i.e. fair hearings) provided by the Act were the sole conduit for relief or whether complainants had a private right of action. The court held for the plaintiffs, finding that “administrative hearings do nothing to redress violations of the [Food Stamp] Act that prevent applicants from obtaining a timely decision on their initial food stamp application.” The court’s finding points to the inadequacy of the administrative hearing process. Persons who are eligible but wrongly precluded from participating in the Food Stamp Program are unlikely to be informed about their rights under the Food Stamp Act. Such individuals are also apt to lack the resources needed to acquire the necessary information and assistance.

Furthermore, while a fair hearing in some instances resolves an individual’s claim, the process does not correct state or local administrative practices that conflict with federal requirements. Applicants and recipients

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(6) Submit evidence to establish all pertinent facts and circumstances in the case.


143. Investigations show that food stamp case workers frequently do not process applications in a timely manner, use incorrect eligibility standards, and neglect to screen applicants to determine whether they qualify for expedited service. \textit{See Neumeyer, supra} note 54, at 1271. Parties provided the United States District Court for the Eastern District of Pennsylvania in Harley v. Lyng, 653 F. Supp. 266 (E.D. Pa. 1986), with over 400 undisputed illustrations of violative action on the part of the state or USDA. \textit{Id.; see also} Alabama Coalition Against Hunger, \textit{supra} note 134, at 12-24; Colgan et al., \textit{supra} note 134, 49-50, 81 (recounting the testimony of persons eligible for food stamps and employees of charitable organizations who experienced or documented gross errors and violations in the delivery of food stamps); D.C. Hunger Action, \textit{supra} note 134, \textit{passim} (providing statistical and testimonial evidence of actions carried out by food stamp office staff that violate federal law).

144. 794 F.2d 1273 (7th Cir. 1986).

145. \textit{Id.} at 1276.

146. \textit{See id.}

147. \textit{See Leonard Weiser-Varon, Note, Injunctive Relief From State Violations of Federal Funding Conditions, 82 COLUM. L. REV. 1236, 1243 (1982).} Fair hearings have the limited purpose of determining whether the eligibility status of an individual has been properly evaluated, not to correct state policies and laws that conflict with federal regulations.
must therefore rely on the federal government to police the administration of
the program at the local level. Unfortunately, individual beneficiaries are
excluded from this procedure. Consequently, an increasing number of
food stamp disputes are now brought in federal court.

Several lower courts have addressed claims brought by participants who
fail to receive food stamp benefits in a timely manner. These cases indicate
that judicial remedies under the present law are often inadequate or in
some instances unavailable. The issue of federal jurisdiction is one imped-
iment to judicial relief. While federal courts have exercised jurisdiction over
disputes involving food stamp benefits when prospective injunctive relief is
sought, the Supreme Court has not directly addressed the issue of whether
the Eleventh Amendment provides a state with immunity from food stamp
litigation. Proponents arguing against state immunity contend that, be-
cause food stamp benefits are completely funded by the federal government

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148. See id. at 1242-43. The Secretary of Agriculture is required by statute to discontinue
federal funding of a state’s food stamp program if the state continues to violate federal pro-
gram conditions after receiving notice of its non-compliance and an opportunity to respond. 7
U.S.C. § 2020(g) (1988). Federal administrative agencies, however, rarely terminate federal
funding of noncomplying state programs. Weiser-Varon, supra note 147, at 1242-43. And,
while the agency may decline to use its prosecutorial authority for altruistic reasons (i.e., a
greater number of beneficiaries would suffer from this action), the result is that federal agencies
are largely impotent with respect to policing state compliance with the Food Stamp Act. See
id.

149. Weiser-Varon, supra note 147, at 1243. See generally FRAC’s GUIDE, supra note 42,
at i n.1 (introducing the many cases the Guide cites that present disputes involving food stamp
issues).

150. See, e.g., Lidie v. California, 478 F.2d 552 (9th Cir. 1973) (holding that plaintiffs’
claims involving the 30 day rule were deflated by the subsequent passage of new regulations
and that plaintiffs could be denied restitution if the delay was determined to be justified); Hess
v. Hughes, 500 F. Supp. 1054 (D. Md. 1980) (characterizing the state’s application process as
in conflict with the spirit of the Food Stamp Act’s regulations and acknowledging that the
parties’ consent decree merely required defendant to comply with federal law).

Federal law requires that newly certified households be provided with coupons or authoriza-
dtion documents within 30 calendar days from the date their application is filed. 7 C.F.R.
§ 274.2 (b)(1) (1991). Generally, households that qualify for expedited service are to receive
coupons or authorization documents within 5 calendar days. See id. at § 273.2 (i). During the
last decade, the judiciary has not been particularly receptive to the predicaments of low-in-
come households. See Atkins v. Parker, 472 U.S. 115 (1985). In Atkins, the Court casually
acknowledged that eligible applicants often fail to receive statutory entitlements due to “inad-
vertent errors . . . that can occur in the administration of any large welfare program.” Id. at
127.

151. See infra, notes 152-69 and accompanying text.

(White, J. dissenting); see also Valerie McWilliams, Retroactive Relief in Food Stamp Litiga-
tion: Why the Eleventh Amendment Is Not a Bar, 22 CLEARINGHOUSE REV. 113, 114 (1988)
(proposing three arguments advocates should make to counter a state’s claim of Eleventh
Amendment immunity).
and states are required to pay only a portion of the program's administrative costs, a state's treasury is not impacted to a degree significant enough to trigger the Eleventh Amendment. However, the stringent language used by the Supreme Court in Atascadero State Hospital v. Scanlon, suggests that food stamp litigants seeking retroactive relief may well be stymied by a state's successful invocation of Eleventh Amendment immunity.

Food stamp litigants who rely on constitutional claims also must wage a difficult battle. The position of strength that the Supreme Court, in Atascadero, 473 U.S. 234 (1985), involved a discrimination suit for retroactive monetary relief under the Rehabilitation Act of 1973, 29 U.S.C. § 794 (1988). The Court in Atascadero held that once the Eleventh Amendment immunity attaches, waiver of this immunity can only be accomplished by an "unequivocal waiver specifically applicable to federal-court jurisdiction." Id. at 241 (emphasis added). The court also rejected plaintiff's argument that by participating and receiving federal funds under a federal statute that contains provisions aimed at the state, a state necessarily consents to suit in federal court. Id. at 246-47; cf. Cotton v. Mansour, 863 F.2d 1241 (6th Cir. 1988), cert. denied, 110 S. Ct. 835 (1990) (ruling that plaintiff's claim for retroactive benefits was barred by the Eleventh Amendment). The court in Cotton explained that:

[the purpose of the food stamp program is to enable families to obtain a nutritionally adequate diet. As a practical matter, that goal may not be fulfilled retroactively. Therefore an award of relief for past errors would be compensatory rather than remedial in nature. Policy considerations strongly suggest that the distribution of limited resources to those presently in need of food stamp assistance better serves the purposes of the Act than an award to persons whose circumstances may have been improved in this interim period.

Id. at 1247; cf. Colbeth v. O'Rourke, 707 F.2d 57 (2d. Cir. 1983) (affirming district court's conclusion that a suit for retroactive payment of food stamp benefits was barred by the Eleventh Amendment). But see McWilliams, supra note 152, at 118 (asserting that because the Food Stamp Act requires the restoration of wrongfully withheld benefits, Congress has expressly abrogated a state's Eleventh Amendment immunity).

157. See, e.g., Atkins v. Parker, 472 U.S. 115 (1984) (holding that plaintiffs, who received only general notice of a mass change involving food stamp eligibility and benefit levels, were provided with adequate due process given the availability of a fair hearing); West v. Bowen, 879 F.2d 1122 (3d Cir. 1989) (ruling that a food stamp recipient's due process rights were not violated regardless of the length of time taken to determine applicant's eligibility to receive disability benefits); Biggs v. Lyng, 823 F.2d 15 (2d Cir. 1987) (holding that the Secretary of Agriculture's definitions were reasonable and therefore not violative of plaintiff's equal protec-
Reformation of the Food Stamp Act

kins v. Parker,\textsuperscript{158} appears to place such individuals in is deceptive. In Atkins, food stamp recipients attacked the adequacy of the notice informing them that their benefits may be reduced or terminated.\textsuperscript{159} The Court began its analysis by affirmatively recognizing that eligible food stamp applicants possess a constitutionally protected property interest, declaring that "[f]ood stamp benefits, like the welfare benefits at issue in Goldberg v. Kelly, 'are a matter of statutory entitlement for persons qualified to receive them.' Such entitlements are appropriately treated as a form of 'property' protected by the Due Process Clause."\textsuperscript{160}

The Court's ruling in Atkins, however, attaches a lethal qualifier to this declaration of rights. The Court reversed the court of appeals' decision, finding that the mass notifications were lawful under the Due Process Clause.\textsuperscript{161} In so doing, the majority dismissed food stamp deprivations caused by erroneous calculations performed by the food stamp office, which resulted from a change in the law.\textsuperscript{162} It also ruled that individual notification regarding benefit changes would impinge on the power of Congress to change public benefit laws.\textsuperscript{163} Based on Atkins, the property interest possessed by food stamp recipients is highly transitory, subject to the impulses of the federal legislature and state administrators.\textsuperscript{164} Justice Brennan, dissenting in Atkins, asserted that the repercussion of the majority's analysis is

\begin{itemize}
  \item \textsuperscript{158} See id. at 120-23. The United States Court of Appeals for the First Circuit had affirmed the district court's holding that the notice was constitutionally deficient. Fogg's v. Block, 722 F.2d 933, 939-40 (1st Cir. 1983), rev'd, Atkins v. Parker, 472 U.S. 115 (1985). Notice was ruled inadequate by the lower courts because food stamp recipients were not informed how the regulation change would affect their benefits or how recipients could determine the accuracy of the food stamp office's calculations. In short, the lower courts found that recipients were not provided with the information they needed in order to decide whether to request a fair hearing. See id. at 939.
  \item \textsuperscript{159} Atkins, 472 U.S. at 128 (citations omitted).
  \item \textsuperscript{160} Id. at 129-31.
  \item \textsuperscript{161} See id. at 128.
  \item \textsuperscript{162} Id. at 129.
  \item \textsuperscript{163} See id. at 129-31. In his dissent, Justice Brennan argued that the majority incorrectly characterized plaintiff's claim as one against Congress, when in fact plaintiffs alleged that it was the state agency's application of the changed law that violated their right to due process. See id. at 153 (Brennan, J., dissenting).
\end{itemize}
for the Constitution to provide public assistance recipients with no protec-

tion from administrative errors, which deny valid property interests.165

The Sixth Circuit's ruling in Banks v. Block also illustrates the limitations

of a food stamp litigant's constitutional argument. In Banks, food stamp

recipients, whose certification period had ended, argued that dismissal from

the program before a fair hearing was conducted on the issue of whether

they were eligible for recertification, deprived them of due process.166 The

court rejected plaintiffs' argument, reasoning that a food stamp recipient's

property interest in receiving benefits is circumscribed by the length of the

specific certification period.167 This holding limits the ability of food stamp

recipients who have been wrongly denied recertification to argue their case

based on a denial of adequate due process.

Distinguishing a recipient's statutory right to food stamp benefits from the

property interest held by the plaintiffs in Goldberg v. Kelly, the Banks court

analogized a food stamp beneficiary's property interest with the unsuccessful

claim brought by the plaintiff in Board of Regents v. Roth.168 The analogy is

disturbing as is the court's conclusion that a household undergoing recerti-

fication has an "interest no greater than that of an initial applicant."169 This

conclusion disregards the fact that food stamp benefits are a source of secur-


165. See id. at 149 (Brennan, J., dissenting). Justice Brennan wrote that unless protection

against administrative errors is afforded, "the development of . . . [the] Court's "new property"

jurisprudence over the past 15 years represents a somewhat hollow victory." Id.

166. Banks v. Block, 700 F.2d 292, 293 (6th Cir. 1982).

167. Id. The court held that "a household has no protectable property interest in the con-

tinuous entitlement to food stamps beyond the expiration of . . . [this] period." Id. at 297.

The Banks court differentiated food stamp benefits from "continuous" cash welfare pay-

ments, such as those disputed in Goldberg v. Kelly, 397 U.S. 254 (1970). Id. at 297-98. The

court's reasoning appears sound as it relied on the House Agriculture Committee's statement

congerning certification periods and the Food Stamp Program. Id. at 297. The Committee's

report stated: "[t]his reinforces the limited nature of the property interest conferred by certifi-

ication — an entitlement for one certification period and one certification period only." Id.


2219).

168. 408 U.S. 564 (1972); see Banks, 700 F.2d at 296-97 (comparing the Banks plaintiffs

with the plaintiff in Roth). The Supreme Court in Roth held that a state university was not

required to afford an untenured assistant professor a hearing prior to its decision not to renew

his contract. Roth, 408 U.S. at 578. Justice Stewart, writing for the majority, stated that "[t]o

have a property interest in a benefit, a person clearly must have more than an abstract need or
desire for it." Id. at 577 (emphasis added). Food stamp benefits, dispersed in coupon form,

resemble currency but may not be freely utilized to fulfill an "abstract need or desire." See 7

U.S.C. § 2012(g) (1988); 7 C.F.R. § 271.2 (1991). With few exceptions (such as seeds and

plants used to grow food), food stamps may only be used to buy food. The category of eligible

items does not include soap, toothpaste, pet food, or prepared foods sold in a grocery store.

See id.; FRAC GUIDE, supra note 42, at 13.

169. See Banks, 700 F.2d at 298.
ity and not luxuries or gratuities.\textsuperscript{170} Instead, recertifying households should be viewed in a manner similar to the plaintiffs in \textit{Goldberg}: the court must consider the importance of the benefit to the individual.\textsuperscript{171} Low-income households receiving food stamps have “brutal need” for those benefits.\textsuperscript{172} Such persons are not comparable to the plaintiff in \textit{Roth}, whom the Court described as “having an abstract concern in being rehired” but remained free to seek another job.\textsuperscript{173} Food stamp benefits often constitute a recipient household’s entire food budget or a significant portion thereof. The benefits are a source of sustenance rather than a nonessential.\textsuperscript{174}

\textsuperscript{170} See id. at 297; Charles Reich, \textit{Individual Rights and Social Welfare: The Emerging Legal Issues}, 74 YALE L.J. 1245, 1255-56 (1965); \textit{Goldberg}, 397 U.S. at 264; \textit{Atkins}, 472 U.S. at 150 (Brennan, J., dissenting). Dissenting in \textit{Atkins}, Justice Brennan stated: “[t]he importance of the correct level of food stamp benefits to eligible households cannot be overstated . . . the \textit{F}ood \textit{S}tamp \textit{P}rogram by definition provides benefits only to those persons who are unable to afford even a minimally adequate diet on their own.”\textit{ Id.}

The Food Stamp Act recognizes and accommodates a household’s expectation to continue to receive food stamp benefits if their financial situation has not changed during the certification period. The Act states that “[i]f a household reapplies for benefits before the fifteenth day of the last month of its certification period, an eligibility determination must be made in sufficient time so that, if found eligible, there will be no interruption in benefits between the old and new certification periods.” 7 U.S.C. § 2020(e)(4) (1988).

\textsuperscript{171} See \textit{Goldberg}, 397 U.S. at 262-64. The Court stated that “[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be ‘condemned to suffer grievous loss,’ and depends on whether the recipient’s interest in avoiding that loss outweighs the governmental interest in summary adjudication.”\textit{ Id.} at 262-63 (quoting Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168 (1951)).

\textsuperscript{172} See id. at 261 (quoting Kelly v. Wyman, 294 F. Supp. 893, 899-900 (S.D.N.Y. 1968)). The Court recognized that welfare recipients are uniquely desperate because of their lack of independent resources.

\textsuperscript{173} \textit{Roth}, 408 U.S. 564, 578 (1972). As the Court in \textit{Goldberg} acknowledged, welfare entitlements are “sources of security . . . [and] . . . are no longer regarded as luxuries or gratuities [but rather] essentials . . . in no sense a form of charity.” \textit{Goldberg}, 397 U.S. at 262 n.8 (citing Reich, \textit{supra} note 170, at 1255).

A lapse in a household’s certification for food stamps sometimes occurs because the food stamp office fails to provide the household with proper notification that recertification is due. In light of this fact, the language in \textit{Goldberg} appears applicable to the predicament of food stamp recipients, though their entitlement is statutorily limited. The Court in \textit{Goldberg} believed it relevant “that termination of aid pending resolution of a controversy over eligibility may deprive an \textit{eligible} recipient of the very means by which to live while he waits . . . . His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from welfare bureaucracy.” \textit{Goldberg}, 397 U.S. at 264 (citing Comment, \textit{Due Process and the Right to A Prior Hearing in Welfare Cases}, 37 FORDHAM L. REVIEW 604, 610-11 (1969)).

\textsuperscript{174} See generally FRAC’s FACTS, \textit{supra} note 62, at 20 (discussing the positive effect food stamp benefits have on a household’s economic status). The indispensable nature of food stamp benefits is supported by the fact that the food-related needs of a household are often not fulfilled through its participation in the Food Stamp Program. See Colgan et. al., \textit{supra} note 134, at 80. USDA studies reveal that low-income households do not necessarily have cash income to purchase food. \textit{Id.} The gap between economic resources and required expenditures
Provisions of the Food Stamp Act or state policies that operate as "bureaucratic disentitlements"\textsuperscript{175} may, however, be vulnerable to a challenge under the Fourteenth Amendment.\textsuperscript{176} The anticipated child support sanctioning amendment\textsuperscript{177} is susceptible to such an attack. Such a challenge has two foundations: child support sanctioning, a system that requires a custodial parent to cooperate with the Child Support Enforcement Agency to be eligible for welfare benefits, arguably presents either a denial of equal protection or deprivation of a liberty interest without due process.\textsuperscript{178} In framing an equal protection argument, the first query is whether a parent applying for or receiving food stamps, whose former partner is delinquent with respect to child support, is a member of a "suspect class." If an eligible custodial parent belongs to a suspect class, the proposed sanctioning amendment receives strict judicial scrutiny.\textsuperscript{179} While "poverty, standing alone, is not a suspect classification,"\textsuperscript{180} single parents and their children who receive food stamps are perhaps a more "discrete and insular minorit[y]\textsuperscript{181} than the poor at large. Persons eligible to receive food stamps are particularly desperate. Not only do they have few assets and minimal income,\textsuperscript{182} but they are likely to suffer from under-nutrition, a mentally and physically weakening

\textsuperscript{175} See supra note 61, at “Relationships between Income, Shelter Costs, Employment and Hunger.”
\textsuperscript{176} U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment, based on its language, does not apply to the federal government; however, an array of cases have held that equal protection claims against the federal government are considered under the Fifth Amendment’s Due Process Clause prohibition against unjustifiable discrimination in the same manner as Fourteenth Amendment equal protection challenges against a state. See Bolling v. Sharpe, 347 U.S. 497 (1954).
\textsuperscript{177} See infra note 218 and accompanying text (describing an anticipated child support sanctioning amendment that would require custodial parents to prove they have cooperated with the Child Support Enforcement Agency in order to be eligible for food stamps).
\textsuperscript{178} See Laurence H. Tribe, American Constitutional Law § 5-14, at 265 (1978).
\textsuperscript{179} See id. § 16-6, at 1000, § 16-13, at 1012, § 11-4, at 573. Legislation that impinges on an individual’s fundamental rights or "suggest[s] prejudice against racial or other minorities" must receive a stiffer level of judicial review than mere rationality. Id. § 16-6, at 1000. Professor Tribe points out that legislation which impairs fundamental rights rarely survives strict scrutiny. Id.
\textsuperscript{180} Harris v. McRae, 448 U.S. 297 (1980). But see Frank I. Michelman, On Protecting the Poor Through the Fourteenth Amendment, 83 Harv. L. Rev. 7, 21 (1969) (asserting that the classification of being poor is a “badge of inferiority” equatable to being cataloged as a racial minority).
\textsuperscript{181} United States v. Carolene Products Co., 304 U.S. 144, 153, n.4 (1938). Justice Stone’s statement regarding prejudice against discrete and insular minorities is often cited to justify judicial review of legislation involving individual rights. See Tribe, supra note 178, § 8-7, at 581-82. The clause describes persons who lack political power and therefore cannot exert their will through the legislative process. Id. § 16-6, at 1453-54.
\textsuperscript{182} See supra notes 89-91 and accompanying text.
Arguably, the proposed child support sanctioning amendment fails even the "traditional approach" because it is a grossly inadequate measure for achieving the government's purpose of wanting to compel economically capable persons to pay legally mandated child support. A second method of attacking the constitutionality of a child support sanctioning amendment involves an individual's rights to privacy or liberty under the Fourteenth Amendment. A line of Supreme Court decisions supports the assertion that requiring a custodial parent to take affirmative action to track down a defaulting absentee parent in order to receive food stamp benefits violates that parent's right to privacy or liberty interests. For example, in Meyer v. Nebraska, the Court declared that "[w]ithout doubt, [the Fourteenth Amendment's guarantee of liberty interests] denotes not merely freedom from bodily restraint but also the right of the individual to . . . establish a home and bring up children." This decision and others confirm the high regard with which the Court views family autonomy. While the family is not beyond regulation, a law that compels former spouses and estranged couples to communicate with one another appears an invalid intrusion. Encroachment on the rights of a custodial parent is particularly vexing considering the potential risk of psychological or physical harm and the minimal effectiveness of child support sanctioning laws.

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183. See Growing Epidemic, supra note 5, at 98, 119. Poor nutrition can cause mental lethargy, weakness and can impair an individual's immune system.

184. See New Orleans v. Dukes, 427 U.S. 297, 306 (1976). The Court in Dukes held that an ordinance that serves a legitimate purpose must only meet the less stringent rationality requirement, such that the ordinance has a strong presumption of constitutionality. Id. at 303.

185. See supra note 137 and accompanying text. This argument is also applicable to current provisions of the Food Stamp Act that function as bureaucratic disentitlements. See supra notes 115-17 and accompanying text.

186. The Supreme Court, in Griswold v. Connecticut, 381 U.S. 479 (1965), stated that while the right to privacy is not specifically guaranteed by the Constitution, the Bill of Rights "has penumbras" that give "life and substance" to the specific guarantees; one such ramification of this is the creation of a "zone of privacy." Id. at 484.

187. See, e.g., Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (illustrating the Supreme Court's definition of "liberty interests" that afford individuals procedural protection).

188. 262 U.S. 390 (1923).

189. Id. at 399.

190. See, e.g., Moore v. East Cleveland, 431 U.S. 494 (1977) (invalidating a city ordinance that prevented a grandmother from having her two grandchildren live with her); Roe v. Wade, 410 U.S. 113 (1973) (recognizing an individual's right to privacy in matters concerning procreation); Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925) (limiting the government's ability to infiltrate the family by declaring that a child is not a "mere creature of the State"); see also Lyng v. Castillo, 477 U.S. 635 (1986). The Court in Castillo held that strict scrutiny must be applied to legislation that "directly and substantially interfere[s] with a family living arrangements and thereby burden[s] a fundamental right." Id. at 638 (citation omitted).

191. See Moore, 431 U.S. at 499. Affirming the special protection that the family unit is to be afforded, the Supreme Court in Hodgson v. Minnesota, 110 S. Ct. 2926 (1990), ruled that
Revising the Food Stamp Program through litigation presents a difficult task due to courts' resistance to fully recognize the constitutional rights of food stamp recipients.\(^1\) Even more fundamental, however, is the unfortunate fact that eligible households, because of their fear of government retaliation, are often unwilling to pursue their claim.\(^1\)

III. CURRENT PROPOSALS FOR REFORMING THE FOOD STAMP ACT

A. Express and Anticipated Provisions of the Mickey Leland Childhood Hunger Relief Act

On February 28, 1991, members of the 102d Congress introduced the Mickey Leland Childhood Hunger Relief Act\(^1\) (hereinafter “Leland bill”), a bill to amend the Food Stamp Act of 1977.\(^1\) The Committee on Agricul-

"[t]he State has no legitimate interest in conforming family life to a state-designed ideal by requiring family members to talk together." Id. at 2946. Hodgson involved the question of whether a Minnesota law requiring two-parent notification by a minor wishing to undergo an abortion violated the Constitution. The Court found that such forced communication is, in some instances, detrimental to rather than protective of the integrity of the family. Id. at 2945, 2955.

192. See generally Mathews v. Eldridge, 424 U.S. 319 (1976) (holding that the potential hardships incurred by recipients of social security benefits did not warrant a pre-termination hearing); Kathleen M. Sullivan, Unconstitutional Conditions, 102 Harv. L. Rev. 1415, 1437-39 (1989) (asserting that the Supreme Court rejects constitutional challenges by finding that the regulation or policy only has a deterrent effect and is not a coercive penalty).


194. H.R. 1202, 102d Cong., 1st Sess. (1991). The bill was introduced by House Budget Committee Chairman Leon E. Panetta (D-CA), Rep. Bill Emerson (R-MO), House Agriculture Committee Chairman Kika de la Garza (D-TX), and Rep. Robin Tallon (D-SC), Chairman of the Agriculture Committee’s Nutrition Subcommittee. Chairman of the Senate Agriculture Committee Patrick Leahy (D-VT) and Chairman of the Senate Budget Committee Jim Sasser (D-TN) introduced the companion bill, S. 757, 102d Cong., 1st Sess. (1991), in the Senate on March 21, 1991.

195. The bills’ synopses state that the goals of the bills are:

- to ensure an adequate diet for low-income people who are homeless or at risk of homelessness because of the shortage of affordable housing;
- to attack the causes of hunger among all Americans;
- to promote self-sufficiency among food stamp recipients;
- to simplify food assistance programs’ administration, and for other purposes.


Title I’s provisions include: eventual removal of the cap on shelter cost deductions claimed by families with children; increasing food stamp benefits by reformulating the estimated increased cost of the Thrifty Food Plan; prohibiting benefit pro-rating with regard to recipients whose eligibility is briefly suspended during the recertification process; exclusion of third-party housing payments made to homeless individuals residing in transitional housing; increasing funding for the Nutrition Assistance Program in Puerto Rico; and allowing individuals receiving general assistance payments for items other than rent or mortgage to exclude such pay-
ture amended the bill and, on October 16, 1991, recommended it for passage.\footnote{196} Ostensibly, the bill would decrease the incidence of domestic hunger, particularly among children, by making the Food Stamp Program a more effective and efficient vehicle for providing low-income households with food assistance.\footnote{197} The major provisions of the Leland bill, as amended, include: adjustments to benefit levels and deduction amounts in order to ensure adequate assistance; the promotion of self-sufficiency by granting additional or larger deductions and improving employment and


Title II, Promoting Self-Sufficiency, provides that parents receiving child support payments are permitted to exclude the first $50 from their monthly income estimates; permits absent parents who pay child support to deduct the payments when calculating their income for food stamp eligibility and benefit level; indexes the current limit on the fair market value of vehicles owned by food stamp recipients and grants an exemption for vehicles needed to transport water or fuel; raises the amount of reimbursements paid to food stamp recipients participating in employment and training (E&T) program for dependant child care costs and other work-related costs. H.R. 1202 §§ 201-205(c), 102d Cong., 1st Sess. (1991); S. 757 §§ 201-205(c), 102d Cong., 1st Sess. (1991).

Title III, Simplifying the Provision of Food Assistance, alters the definition of a “household” for food stamp eligibility by basing the meaning almost solely on whether food is purchased and prepared jointly or separately, and raises the resource limit for households that include a disabled person to $3,000, the limit assigned to households with one or more elderly persons. Section 303, entitled “Assuring Adequate Funding for the Food Stamp Program”, permanently authorizes the Food Stamp Program, eliminating funding caps and reduction procedures that could require benefits to cease if program funding was insufficient. H.R. 1202 §§ 301-303, 102d Cong., 1st Sess. (1991); S. 757 §§ 301-303, 102d Cong., 1st Sess. (1991); see also CRS Leland Bill Memorandum, \textit{supra}, at 5; Leland Analysis, \textit{supra}, at 6-7.

196. H.R. REP. No. 396, 102d Cong., 1st Sess. (1991). The amendments made by the Agricultural Committee include: a technical change involving the addition of a subsection to section 101 entitled “(c) Conforming Amendment”; an additional section under Title I entitled “Helping Low-Income High School Students” (this change would allow the income of all high school students, regardless of age, to be excluded from the calculation of eligibility and benefit levels); and an additional title, “Commodity Distribution to Needy Families,” which authorizes increased spending for the purchase, processing, and distribution of agricultural commodities. The final change instituted by the Agricultural Committee was the addition of § 502, which is entitled “Budget Neutrality Requirement.” This section stipulates that none of the provisions of the bill will go into effect unless the costs are fully offset through fiscal year 1996. The offset must come in the form of a tax increase or a reduction in program spending. \textit{See id.} § 502, at 5, 17. Section 502 fulfills the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, which mandates that the Food Stamp Program operate on a pay-as-you-go basis.

197. \textit{See} H.R. 1202; S. 757; \textit{see also infra} note 234 (outlining the estimate federal fiscal outlays for the Leland bill for 1992-1996).
training activities; the revision of definitions in order to simplify administration; and increasing federal funding of commodity distribution programs.198

1. Express Provisions

The essence of the Leland bill is to promote self-sufficiency and improve nutrition among low-income families by providing higher levels of food stamp benefits.199 Section 101 of the Leland bill removes the $186 shelter cost cap imposed on non-elderly and disabled households. The shelter deduction cap, which was originally imposed to prevent high-income households from participating in the program, is now viewed as illegitimately penalizing needy families with children.200 Section 102 increases food stamp benefit levels.201 This section requires the benefit level to be gradually raised each year, until a level of 105% of the Thrifty Food Plan is reached.202 Current benefit levels have long been viewed as inadequate.203 Under section 104 of the bill, homeless individuals and families are permitted to exclude vendor payments204 for "transitional housing" (temporary housing facilities).205 This provision makes the treatment of vendor payments for transitional housing uniform throughout the states.206 Sections 201 and 202 involve the payment and receipt of child support payments.207 Together, these two amendments act as incentives to encourage payors and payees to obey child support laws.208 Section 205 raises the limits under employment and training (E&T) programs for dependent-care deductions and work-re-

199. See id. at 6-7.
200. See id. at 7.
201. Id. at 3.
202. Id.; see also supra note 105 (regarding the methodology of the Thrifty Food Plan in establishing benefit levels).
203. See supra note 105; see also Thrifty Food Plan Benefit Levels, 45 FED. REG. 22, 876 (1980) (stating that a diet based on the TFP provides only two-thirds of the Recommended Daily Allowances).
204. Vendor payments are monies paid by a non-household member to a third party service provider. See FRAC’S GUIDE, supra note 42, at 6. Vendor payments currently counted as income include, for example, money legally owed to a food stamp recipient that is being diverted to pay off a debt that person owes, and some types of welfare benefits, such as AFDC and General Assistance. 7 C.F.R. § 273.9(c)(1)(iv) (1990); see FRAC’S GUIDE, supra note 42, at 73-74. Vendor payments rules were designed, in part, to prevent recipients of both AFDC and food stamps from converting all their AFDC benefits into vendor payments and thereby excluding them from income calculations. See Leland Analysis, supra note 195, at 3.
206. See id. at 14.
207. Id. at 4, 15.
208. See Leland Analysis, supra note 195, at 4.
lated costs. Such provisions promote self-sufficiency by heightening the likelihood that participants will become more active in the workforce.

Section 301 of the Leland bill purports to simplify the definition of "household" for households with children and others. Under current law, a household is generally defined as an individual or persons who live together and habitually purchase food and prepare their meals together. Unless they qualify under one of the exceptions, spouses, parents, children and siblings are considered to be in the same household, regardless of their purchasing and food preparation customs. Section 301 modifies the definition of household to exclude relatives, regardless of age or disability, who live together but buy and prepare their meals separately. Section 302 raises the resource limit claimable by households with at least one disabled member from $2,000 to $3,000. The provision endeavors to allow a greater number of households that meet this profile to participate in the Food Stamp Program.

209. Id. at 6.
210. See generally CRS, FOOD STAMP PROGRAM REPORT, supra note 83, at 42-43 (describing the operation and purpose of food stamp employment and training programs).
211. See H.R. REP. NO. 396, 102d Cong., 1st Sess. 5, 16 (1991). Eligibility and benefit amounts are evaluated based on the size and characteristics of the "household" applying. See 7 C.F.R. § 273.1(g)(1) (1991). A single individual or unrelated persons may constitute a "household" for food stamp purposes. Id. at § 273.1(a)(1)(i), (iii). Having no fixed address (i.e., homelessness) will not prevent a person from receiving food stamps. Id. at §§ 273.1(c)(v), 273.3.
213. Id. at § 273.1(a)(2)(i). Exceptions exist for the following individuals: parents with one or more minor children can qualify as a separate household, as can elderly or disabled persons and their spouses, provided they purchase and cook their food separately. Id. Persons who, due to age or disability, are unable to prepare their own meals can form a distinct household from relatives whom they live with if the relatives' income is less than 165% of the poverty level. Id.
215. "Elderly or disabled" is defined at 7 C.F.R. § 271.2(l)-(11) (1991). The Food Stamp Act defines persons 60 years of age and older as "elderly." Persons are considered "disabled" under the Food Stamp Act if theyreceive SSI, Social Security blindness or disability benefits, state SSI payments, certain types of public disability retirement pensions, railroad retirement disability payments, or veteran disability payments. Id.
216. See H.R. REP. NO. 396, 102d Cong., 1st Sess. 5, 1 (1991). Households containing one or more elderly members are currently held to the $3,000 resource limit. 7 C.F.R. § 273.8(b) (1991); See generally 7 C.F.R. § 273.8 (regarding resource limits and excluded resources such as a person's home, life insurance policies, and equipment or livestock that are related to employment).
2. Proposed Additional Amendments

It appears likely that the Administration will propose an amendment requiring parents who receive child support payments to cooperate with child support enforcement agencies.\textsuperscript{218} Aid to Families with Dependant Children (AFDC),\textsuperscript{219} a federal-state program that provides cash grants to low-income families with dependant children,\textsuperscript{220} contains a child support sanctioning clause.\textsuperscript{221} This supports the likelihood that a similar amendment will be proposed as part of the Leland bill.\textsuperscript{222} Regardless of its validity, the rationale behind the AFDC child support cooperation requirement, that it increases collection of child support payments, could be consistently applied to all public assistance program, including the Food Stamp Program.

\textsuperscript{218} Interview with Joe Richardson, Specialist in Education and Public Welfare Division, Congressional Research Service, in Washington, D.C. (Aug. 29, 1991); see also CRS Leland Bill Memorandum, supra note 195, at 4.

Under such an amendment, parents of dependent children receiving food stamps who do not assist enforcement agencies in their efforts to locate or secure payment from persons required to pay child support would be subject to sanctions. See Proposal to Require Cooperation with Child Support Enforcement Agencies, Food & Nutrition Service, USDA (1991) [hereinafter FNS Proposal]; David A. Super, Summary Concerns with the Administration's Child Support Proposal (1991) (on file with author). FNS' proposal states that a custodial parent who, without good cause, fails to adequately cooperate with the Child Support Enforcement agency will be rendered ineligible to participate in the Food Stamp Program. FNS Proposal, supra, at 1. The proposal defines "cooperation" and "good cause" and summarizes the new administrative responsibilities assigned to food stamp offices as a result of the policy. Id. at 1-2.


\textsuperscript{222} Telephone interview with Amie Berenson, Staff Attorney at Women's Legal Defense Fund (August, 1991); see FNS Proposal, supra note 218.

Under AFDC regulations, a parent caring for one or more dependent children must, upon application, assign any rights to monetary support that the parent or the child possesses. Cooperation with enforcement agencies is required and includes establishing paternity, actively pursuing the delinquent party, participating in court proceedings involving the non-paying party, and declaring any and all payments received by the absentee parent. Only custodial parents who can prove "good cause" are exempt from compliance. 45 C.F.R. § 232.12(b) (1991); see also Blong & Casey, supra note 220, at 810. "The standards for good cause for refusal to comply are stringent, 45 C.F.R. § 232.40-232.49, but states sometimes apply them even more narrowly than permitted and/or provide scant notice of the right to claim good cause." Id.
B. Congressional Support for the Mickey Leland Childhood Hunger Relief Act

In late July and early August of 1991, several Representatives made passionate statements supporting the Leland bill (H.R. 1202).\(^{223}\) Congressional leaders asserted that domestic hunger is a very real and destructive problem and that the current Food Stamp Program is ineffective.\(^{224}\) While applauding the Leland bill as a palpable method for improving access and increasing food stamp benefits, several Congresspersons voiced concern that the bill will not be enacted because of inadequate financing.\(^{225}\) Congresspersons praised the bill for protecting the children of low-income families from the harmful effects of under-nutrition.\(^{226}\) Rep. Dan Rostenkowski, however, focused on the need to raise adequate revenues to fund the benefit increases mandated by the bill.\(^{227}\)

On July 31, 1991, the House Agriculture Subcommittee on Domestic Marketing, Consumer Relations and Nutrition approved the Leland bill.\(^{228}\)

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\(^{223}\) See id.

\(^{224}\) See, e.g., id (statement by Rep. Robin Tallon (D-SC) warning that during times of budgetary constraints “there is a tendency to pay only lip-service to the pressing needs of the day”).

\(^{225}\) See id (statement by Rep. Robin Tallon (D-SC) warning that during times of budgetary constraints “there is a tendency to pay only lip-service to the pressing needs of the day”).

\(^{226}\) See id (statement by Rep. Robin Tallon (D-SC) warning that during times of budgetary constraints “there is a tendency to pay only lip-service to the pressing needs of the day”).

\(^{227}\) Rep. Rostenkowski (D-IL) stated, in part:

I rise in support of the Leland hunger bill with a combination of pride and trepidation.

...I fear that this bill will turn into nothing more than legislative junk food, despite our good intentions, unless we are ready to back up our rhetoric with votes for a proper funding mechanism. I worry that we may be misleading the hungry and creating even deeper voter cynicism by over-promising—and then failing to deliver.

\(^{228}\) See House Comm. on Agriculture, 102d Cong., 1st Sess., News Release, “Childhood Hunger Relief Act Approved by Agriculture Subcommittee” (July 31, 1991) (available from House Agriculture Committee, Subcommittee on Domestic Marketing, Consumer Relations and Nutrition). Quoting Rep. Robin Tallon, Subcommittee Chairman, the news release stated, in part:

The Leland bill is an urgently needed reform of food stamp benefit levels. Currently, the food stamp program does not adequately address the needs of high housing costs, food costs or the realities of working families in America. This bill will enable the food stamp program to respond to the economic realities of the 1990s.
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The House Agriculture Committee successfully reported it out on October 16, 1991. As of December 13, 1991, H.R. 1202 had a total of 108 co-sponsors (ninety-seven Democrats, eleven Republicans). In the Senate, as of October 15, 1991, seven Democratic Senators had embraced the Senate version of the Leland bill (S. 757).

C. Mickey Leland Bill’s Chances of Passage

A large bipartisan contingent passionately supports the goal of ending domestic hunger and approves the Leland bill’s Food Stamp Program reforms. Funding, however, continues to be uncertain and presents a debilitating obstacle. Before enactment, the Leland bill must be fully financed through tax increases or reductions in program spending.

Efforts to abate domestic hunger have appeared in earlier legislation. Draft versions of the Food, Agriculture, Conservation, and Trade Act of 1990 (the Farm bill) contained many of the provisions now offered by the Leland bill. However, recommendations that would have increased bene-

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Id.


232. See supra notes 223-27 and accompanying text.

233. See "FRAC Leland Bill Release," supra note 94 (asking FRAC members to urge Senate Finance Committee and House Ways and Means Committee members to finance the Leland bill). But cf. Ann Devroy, Bush Considers New Defense Cuts, WASH. POST, Jan. 3, 1992, at A1. President Bush has intimated that the Administration may be open to altering the provisions of the 1990 Budget Enforcement Agreement. The agreement, which set defense and domestic spending ceilings, requires any additional cuts in defense to be put towards the federal budget deficit rather than domestic programs. Defense budget reductions and a renegotiation of the budget agreement could provide funding for the Leland bill.


[n]one of the provisions of this Act shall become effective unless the costs are fully offset in each fiscal year through fiscal year 1996. No agriculture price or income support program administered through the Commodity Credit Corporation under the Agricultural Act of 1949 may be reduced to achieve such offset.

Id.


236. See CRS Leland Bill Memorandum, supra note 195, at 4-5.
fits and participation were deleted from the nutrition title of the 1990 Farm bill as a result of the Senate Finance Committee's failure to authorize funding.\footnote{237} Responding to the collapse of the Food Stamp Program reforms after the 1990 Budget Summit, Democratic Senator Patrick Leahy of Vermont stated, "I do not want the summit negotiators to assume that I or other members of this Committee are willing to just settle for extending these programs. Instead, we need to improve and save them."\footnote{238} Likewise, congressional advocates of the Leland bill are now stridently petitioning their colleagues to prevent the bill from being defeated because of budgetary challenges.\footnote{239}

IV. MAKING THE FOOD STAMP PROGRAM WORK: THE NEED TO BOLSTER PRESENT DAY LEGISLATIVE REFORMS

Benevolence and economic pragmatism justify placing domestic hunger at the top of our political agenda.\footnote{240} Because societal decency is measured by the manner in which independent members treat dependent members, humanitarianism compels us to abate the hunger crisis. Moreover, because healthy, motivated children are needed to maintain economic vitality,\footnote{241} all children should be provided with a nutritionally adequate diet. Food assistance programs must exist to insure that low-income families and their children receive sufficient nutrition.\footnote{242}

The Food Stamp Act is a well-intentioned and potentially forceful law aimed at abating domestic hunger.\footnote{243} The Act mandates the federal and state governments to render food assistance to households that lack the resources to provide its members with sufficient nourishment.\footnote{244} The law does not envision food stamp benefits as a household's sole means of purchasing

\footnote{237} S. REP. NO. 357, 101st Cong., 2d Sess. 1261 (1990) (additional views of Sen. Leahy); see also OVERVIEW, supra note 44, at 1402-03. During the budget summit, the majority ruled that the cost of the Food Stamp Program reforms, estimated at $6.5 billion, was excessive and therefore declined to enact these provisions. See H.R. REP. NO. 396, 102d Cong., 1st Sess. 24-25 (1991).

\footnote{238} S. REP. NO. 357, 101 Cong., 2d Sess. 1261 (1990) (additional views of Sen. Leahy). Indeed, Senator Leahy appears to be following through with his promise to "continue [the] fight for adequate funding." Id. at 1262.

\footnote{239} See, e.g., supra note 225, 227 and accompanying text.

\footnote{240} See supra notes 67, 68, 72-77 and accompanying text.

\footnote{241} See CED's Nutrition Testimony, supra note 75, at 2.

\footnote{242} See, e.g., 137 CONG. REC. H5812 (daily ed. July 24, 1991) (statement by Rep. Towns) ("the lives of our Nation's children and this country's ability to compete worldwide depend on our support for preventative measures to help children grow up smart and healthy.").

\footnote{243} See supra notes 94-104 and accompanying text.

\footnote{244} See supra notes 82-83 and accompanying text.
Unfortunately, the Act and the Food Stamp Program it established are not achieving the purpose they were enacted to serve.

A. Beefing Up the Leland Bill

The Mickey Leland Childhood Hunger Relief Act receives strong congressional support and is promoted by organizations concerned with the problems of poverty, hunger and under-nutrition. Provisions of the bill address some of the defects in the Food Stamp Act. Unfortunately, however, the bill in its current form will not correct the most serious failings of the Food Stamp Program.

The revisions to the Food Stamp Program effectuated by Title I of the Leland bill are neither drastic nor innovative. For example, section 101 removes the $186 shelter cost cap imposed on non-elderly and non-disabled households. The shelter deduction cap, which was imposed to prevent high-income households from participating in the program, became obsolete with the invocation of gross income limits. Similarly, section 102 requires the benefit level to be gradually raised each year until it reaches 105 percent of the Thrifty Food Plan. Current benefit levels have long been viewed as inadequate, and therefore, this amendment, while necessary, does not demonstrate inspiration or courageous reform.

The assistance provided to homeless families under section 104, which permits the exclusion of vendor payments for "transitional housing," is minimized by the fact that the

245. See Overview, supra note 44, at 1385. The law contemplates that a participating household will spend thirty percent of its income (less permitted deductions) on food purchases. Id.


247. See supra notes 195-96 and accompanying text.

248. See 137 CONG. REC. H5809 (daily ed. July 24, 1991) (statement by Rep. Emerson). Rep. Bill Emerson characterized the ills of federal food assistance programs, stating that we have from time to time amended, patched, created, and eliminated within our assistance apparatus. But it has left us with a monstrous and costly structure we all too often seem afraid to discipline.

... [t]he time has come to get on to the tough job of overhauling our public assistance programs into an integrated and powerful package.

Id. The Leland bill is a legislative measure that amends approximately eighteen sections of the Food Stamp Act: it is not "an integrated and powerful [reform] package." See id.

249. See Leland Analysis, supra note 195, at 1.

250. Id.; see also supra note 105 (regarding the methodology of the Thrifty Food Plan in establishing benefit levels).

251. See supra note 105; see also Thrifty Food Plan Benefit Levels, 45 Fed. Reg. 22876 (1980) (stating that a diet based on the TFP provides only two-thirds of the Recommended Daily Allowances).
homeless, as a class, are substantially harmed by the explicit and implicit barriers to participation.\textsuperscript{252} These problems must be resolved in order for section 104 to operate effectively.

Sections 201 and 202 grant partial exemptions to the payors and recipients of child support.\textsuperscript{253} These provisions make the proposed child support sanctioning amendment superfluous by providing custodial and absentee parents with incentive to cooperate with child support agencies.\textsuperscript{254}

By and large, section 301’s modification of the definition of “household” is a positive change.\textsuperscript{255} A drawback, however, is the likelihood that it will initially increase the number of errors made by caseworkers when determining eligibility and benefit levels.\textsuperscript{256} Section 302 purports to increase assistance for households containing one or more disabled persons by raising their resource limit. The effect of this provision, like that of section 104, is tempered by the phenomenon of participation barriers.\textsuperscript{257} While households headed by a disabled person are shown to participate at a higher level than households headed by able-bodied persons, access problems pose a significant barrier to participation.\textsuperscript{258} The Food Stamp Act currently contains special provisions targeting elderly and disabled participants in order to make it less onerous for members of these classes to apply and participate.\textsuperscript{259} Unfortunately, state food stamp offices are often either financially or philo-

\begin{itemize}
  \item \textsuperscript{252} See United States Conference of Mayors, supra note 68, at 59-60. Forty-eight percent of the cities surveyed reported evidence of increasing hostility towards the homeless. See generally supra notes 112-15, 132 and accompanying text (discussing the barriers to participation that affect homeless persons).
  \item \textsuperscript{253} See supra notes 207-08 and accompanying text.
  \item \textsuperscript{254} See id.
  \item \textsuperscript{255} See supra notes 211-14 and accompanying text.
  \item \textsuperscript{256} See GAO, Food Stamp Program: The Household Definition Is Not a Major Source of Caseworker Errors 5 (1990). GAO’s study concluded that household definition errors amounted to two to six percent of the total number of issuance errors and were therefore insignificant. Id. GAO’s report also stated that a majority of food stamp officials prefer the definition to remain unchanged as alterations cause increased errors. Id.
  \item \textsuperscript{257} See supra notes 112-15 and accompanying text.
  \item \textsuperscript{258} See Coe, supra note 105, at 1048. Coe also found that welfare officials provide assistance more readily to able-bodied persons than disabled persons, due in part to the belief that applicants incorrectly classified themselves. Id. at 1048-49.
  \item \textsuperscript{259} See, e.g., 7 C.F.R. § 273.2(e)(2)(i) (1991) (stating that food stamp offices, under certain circumstances, are required to permit elderly or disabled households to have the interview conducted by telephone or outside the food stamp offices); id. § 273.9(d)(3) (outlining income deductions available to elderly or disabled households); id. § 273.21(b)(3) (excluding elderly and disabled households from state MRRB systems); § 274.2(a) (declaring that “[s]tate agencies shall assist [households comprised of elderly or disabled members] by arranging for the mail issuance of coupons to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means”).
\end{itemize}
sophically precluded from providing such services to elderly or disabled individuals. 260

By removing caps, allowing greater deductions, raising the asset limit, and altering the benefits formula, the Leland bill provides households with a more economically realistic level of aid. 261 Putting aside the aspirational goals stated in the bill's titles, however, the main provisions of the bill invoke precise, and in some cases, incremental changes rather than effectuating the needed radical overhaul. 262

The Leland bill does little to dismantle the regulations and administrative practices that bar participation. 263 The bill's provisions do not make enrolling in the Food Stamp Program simpler nor do they increase the likelihood that a certified household will actually receive its benefits in a timely manner. A major source of litigation involves claims that food stamp offices do not evaluate applications or issue benefits within the thirty day federal time limit. 264 The Leland bill does not address these systemic problems, nor does it have a mechanism that will inspire states to improve evaluation or issuance performance. 265

260. See supra note 143. Section 274.2 is a prime example of the "legislative junk food" that Rep. Rostenkowski cautioned against during his remarks concerning the Leland bill. See supra note 227. This section is hollow verbiage: actual operating food stamp offices are often disinclined or incapable of providing elderly and disabled with the necessary assistance. See supra note 114 and accompanying text. The provisions of the Leland bill should not duplicate the lofty but ineffective allowances stated in the current regulations. See also Murray, supra note 71; infra note 288 (describing the phenomenon of "escapism").


262. See supra note 248 and accompanying text.

263. For example, the District of Columbia began drafting a new all-in-one welfare application form at the same time it implemented court-ordered program changes. (Note that the District was essentially directed, under the terms of a settlement agreement with a coalition of homeless individuals, to comply with federal law. The central charge of the class action suit was that District food stamp offices were violating the Food Stamp Act by not providing homeless individuals with expedited food stamps within five days of filing an application). If the draft is accepted, which appears likely, a thirty page application will replace the current five page food stamp application. The rationale for the all-in-one application is that it will consolidate requests from households that qualify for more than one type of government assistance and thereby improve efficiency. There is no provision within the Food Stamp Act, its regulations, or the Leland bill limiting the length of a food stamp application. See Food Stamp Lawsuit, FOOD STAMP UPDATE (D.C. Hunger Action, Wash., D.C.), April 23, 1991; Courts Uphold Food Stamp Delivery Deadlines, FOODLINES, supra note 246, at 5; see also District of Columbia, Income Maintenance, Draft Application (1991) (on file with D.C. Hunger Action, Washington, D.C.).

264. See supra note 150 and accompanying text.

265. See generally supra notes 200-17 and accompanying text (summarizing the provisions of the Leland bill).
The bill also fails to reduce the burdensome impact that frequent regulatory changes have on state public assistance agencies. Williams v. Atkins involved a dispute between a state's welfare department and persons who had previously been awarded the right, under a consent decree, to receive immediate food assistance. An amendment to the Food Stamp Act in 1982 conflicted with the consent decree, causing the state commissioner to vacate it. On appeal, the commissioner prevailed. The court in Williams held that the USDA had authority to change the Food Stamp Program procedures regardless of the deleterious effects that such revisions may have upon the states. This decision, and the many federal regulatory changes, make administration of the Food Stamp Program a complicated task. State Food Stamp Program officials have charged that the numerous and sometimes complex regulatory changes are a conscious and purposeful effort by the federal government to limit food stamp expenditures.

B. Proposals for Change: Increasing the Effectiveness of the Food Stamp Program

Today there are numerous disputes between individuals eligible to receive food stamps and state welfare agencies. Surveys and monitoring reports compiled by advocacy groups and community legal aid organizations show that in many localities the Food Stamp Program is ineffectively administered. Congress has not addressed these systemic problems. Federal policy makers are perhaps unaware of the haphazard administration of the programs. It is more likely, however, that legislators are conscious of the program flaws but are reluctant to eliminate the illicit practices because it requires swallowing a bitter pill—either budgetary increases or tightening eligibility.

Solving all of the administrative problems of the Food Stamp Program is perhaps an insurmountable task. The program is governed by a complex and sometimes unwieldy array of laws. That fact, however, is neither sur-
prising nor likely to change. Federal and local governments are, for better or worse, multifarious, bureaucratic systems. Advocates of welfare reform cannot allow the size of the task to discourage them. Decriers of welfare programs propose to reform the system by imposing moral and social standards on benefit recipients. The recommendations of welfare opponents are unacceptable because they are based on flawed assumptions. One faulty assumption is that persons requesting public assistance do so largely because they are "passive" and lack "middle-class values," which prevents them from seizing employment opportunities. Government and private studies refute these contentions. For example, a recently released report by the United States Conference of Mayors identified the causes of hunger and homelessness, conditions which often compel households to seek public assistance, as being: unemployment because of recessionary firings about thirty 'cross-cutting' and administrative conditions, plus whatever programmatic standards the particular program carries." Id. at 391.

274. Id. at 377. The "law of federal grants" is the mechanism which provides billions of dollars of assistance to state government and independent sector public service agencies and organizations. Grants may experience some "belt-tightening," but will remain a permanent component of the Federal Government because they have a large public and congressional constituency. Id. at 377-78. But cf S. Prakash Sethi, The National Food Stamp Program: Potential for Improving Operational Efficiency and Program Integrity through the Application of Private Sector Strategies and Management Techniques, 37-40 (1979) (evaluating the applicability of marketing principles and practices to the operation of the Food Stamp Program).

275. See supra notes 70-71 and accompanying text; see also Taylor, supra note 8, at A1, A8 (describing the views of Lawrence Mead, a framer of the behavior modification model of welfare reform).

276. See Rector & McLaughlin, supra note 70, at 12-13. Rector and McLaughlin propose six "principles of conservative welfare" which they suggest should be followed as a means of formulating a new and improved welfare system. These principles involve: 1) recognizing that welfare causes an increase in "behavioral poverty;" 2) accepting that some low-income persons do not need nor deserve government aid; 3) preventing "one-way handouts;" 4) providing incentives for the maintenance of traditional families and rewarding independence; 5) eliminating programs that reward "self-destructive" behavior; 6) and emphasizing policies, distinct from welfare programs, that will improve the economy, reducing crime, and enrich the education system. Id. at 12.

277. See Taylor, supra note 8, at A1-A8 (describing Lawrence Mead's thesis). Mead's behavior modification model rests on the notion that money should be given to the poor in a way that "conveys a moral message." Id. at A8. The Food Stamp Program has with a degree of success implemented provisions, such as employment and training programs, that impose social obligations upon some recipients. See CRS, Food Stamp Program Report, supra note 83, at 42-45 (describing the work registration and employment and training program requirements of the Food Stamp Program). Such requirements are, however, a far cry from the behavior modification proposals suggested by welfare opponents. Critics of behavior modification argue that the theory is overly harsh and untested. See Taylor, supra note 8, at A8.

278. See, e.g., supra note 111 (regarding the myths surrounding the Food Stamp Program and the misconceptions of a typical recipient).
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and lay-offs, low wages, lack of adequate health care, and high housing costs. Furthermore, the profile of the typical food stamp recipient contradicts the assertions of welfare opponents.

Another erroneous belief fueling conservative welfare policy is that strategies of their opposition involve concealing "the truth" about welfare programs. On the contrary, liberal welfare reformists attest that lack of information and misconceptions regarding public assistance is one of the greatest obstacles to providing low-income households with meaningful assistance. Reformers from this side of the debate advocate re-introducing outreach programs and other information networks in order to educate the public. Finally, conservative welfare policy is fatally flawed because it opposes comprehensive reform. Modest, technical adjustments to the Food Stamp Program have not corrected its defects. Comprehensive, forceful provisions must be invoked and enforced.

To abate domestic hunger, the Leland bill should be enacted, the barriers to participation eliminated, and most importantly, state compliance must be made achievable and a priority. Federal legislators currently do not adequately consider the effect newly enacted regulations have on state and local agencies' ability to disburse benefits effectively and fairly.

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279. See United States Conference of Mayors, supra note 68, at 8, 35-36, 63.
280. See supra note 111.
281. See Rector & McLaughlin, supra note 70, at 13 (stating that "the first line of defense for the liberal welfare system is disinformation"). Two assertions described as untruths the American public mistakenly believes are that welfare benefits are low and that poor people do not work because they are unable to obtain employment. Id.
282. See supra note 112 and accompanying text (describing poor information as the greatest barrier to participation in the Food Stamp Program); see also supra note 111 (outlining the myths and misconceptions of the Food Stamp Program and its beneficiaries).
283. See id.
284. See Rector & McLaughlin, supra note 70, at 13 (asserting that the sweeping reforms proposed by liberals are "trojan horses" that merely extend benefits to undeserving individuals). See generally Thomas Moss, The Rhetoric of Poverty: Their Immorality, Our Helplessness, 79 Geo. L.J. 1499 (1991) (discussing how the American justice system supports the general public's desire to avoid the burden of intervention by adopting the rhetoric of helplessness). Thomas observes that when the holders of wealth realize that eliminating poverty means actual sacrifice, they revert back to the position that poverty is caused by moral weakness and is therefore not a problem that can be solved through the political or judicial process. Id. at 1506. Further, Thomas argues that poverty is not a natural phenomenon but instead a social product that continues to exist, in part, because of our lack of political imagination. Id. at 1509, 1543.
285. See Welfare Reform Hearing, supra note 8, at 61-68 (testimony of Robert J. Fersh) (advocating reforms that would help recipients acquire valuable job skills); id. at 85-92 (testimony of Randale Valenti) (outlining ways of simplifying the Food Stamp Program); id. at 93 (testimony of Robert Greenstein) (encouraging improvement in the area of education and other reforms).
286. See supra notes 58, 131, 266 and accompanying text; Cappalli, supra note 273, at 391.
welfare agencies circumvent or even disregard federal standards in order to accomplish what they see as the main objective of the program. More-over, the federal government's response when proof of non-compliance surfaces is to focus on the technical provisions of the program, rather than to determine if the state's Food Stamp Program is effective and, if not, why.

The strategy for curing state non-compliance must use carrots rather than the "stick" method of sanctioning because sanctions deter participation. Innovative plans to deliver benefits more efficiently, such as implementing private sector marketing principles and practices should be tested. Example of possible marketing techniques include: providing managers with coherent performance criteria and goals based on the general philosophy of customer satisfaction; encouraging workers and administrators to propose program revisions and allowing states to retain any savings that results from improved operations; motivating recipient households to promote program integrity. A provision should be added to the Food Stamp Act mandating

In this context, the United States federal government suffers from the same ills as Poland's new democratic bureaucracy, which has been described as less responsive than the prior Communist system. Cf. Mary Battiata, In Poland, Red Tape Knows No Ideology, WASH. POST, Feb. 23, 1992, at A22. The new Polish government is characterized by one former public official, Ewa Letowska, as a "saboteur of progress and change." Id. Letowska's report recounts "an epidemic of buck-passing," stating that "[v]arious ministries tend to put off decisions for years, while covering up their inaction with words . . . like, 'The case is being examined.'" Id. Letowska also charges that "[t]he effect of these [new] laws on real people and real life is not considered. This is destroying people's trust and confidence in the state." Id. Further, Letowska argues that lack of financial resources is not the obstacle but that "[i]t's a problem of action and creativity. People are afraid of taking risks . . . The final reaction of decision-makers is not to solve the problem, but to send a letter." Id. The bureaucracies of the United States and Poland are, in this sense, startlingly similar.

Charles Murray, a conservative social policy analyst, coined the phrase "escapism" to describe legislators' response to social problems. See Murray, supra note 71, at 235. Murray observed that "those who legislate and administer and write about social policy can tolerate any increase in actual suffering as long as the system in place does not explicitly permit it." Id. Murray advised that rather than "try[ing] to take care of 100 percent of the problem and making matters worse . . . we [should] solve 75 percent of the problem." Id. (emphasis added).

Professor Sethi acknowledges that public sector programs, which exist for political rather than economic purposes, are qualitatively different from private sector projects. Id. at 37. Nonetheless, Professor Sethi concludes that these differences can be accommodated so that marketing concepts can be used to improve administration of the Food Stamp Program. Id.

See id. at 2-3, 37-40.
that an assembly of non-governmental organizations specializing in food stamp law be authorized to monitor state compliance. The number of households eligible to receive food stamps in a particular locale should be forecasted based on the area’s poverty level and the demands placed on local food providers. These estimated figures should then be compared with the number of participating households to determine how well the welfare agency is servicing needy households. Food Stamp Program administrators and case workers should be given incentives to maintain high participation rates.

V. CONCLUSION

The Food Stamp Act rejects the severe notion that a flourishing society is one that allows only the physically strong and mentally sound to survive. Over $19 billion will be spent this year on the Food Stamp Program. The expectation behind the law is that most if not all members of the population will be provided with minimal nutrition. Comprehensive investigation and analysis reveal however that the current strategy for abating domestic hunger is not effective and that tinkering with legislation as vast as the Food Stamp Act is a feigned remedy.

Eradicating the problem of domestic hunger requires a pragmatic determination of how many people can be provided with meaningful assistance. The objective of state food stamp administrators must be to provide those individuals with food stamps in an efficient and nonprejudicial manner. Federal legislators must reconcile their public loaves and fishes portrayal of food stamp benefits with the regulations and unofficial procedures that preclude eligible persons from participating in the Food Stamp Program. Procedures that present administrative encumbrances must be aborted. Regulations should be invoked that hold individuals accountable for ineffective program

292. Hunger coalitions in several cities across the nation have monitored food stamp offices. See supra note 134. Areas of inquiry include: whether applicants are provided with accurate information; whether requests for benefits are processed in a timely manner; whether decisions regarding eligibility and benefit levels are fairly and correctly calculated; and whether eligible households receive food stamp benefits within the 5 or 30 day deadline.

293. As part of an incentive package, salary levels could be directly tied to participation rates. Under such a system, employees of a food stamp office that showed a participation rate of 50% would earn half of a set salary. As a result, public assistance administrators and workers would be motivated to certify all eligible households within their jurisdiction. See SCHWARTZ-NOBEL supra note 5, at 99. Small monetary bonuses or public recognition could be awarded to individual case workers who competently processed the greatest number of food stamp applications.
management. Policies that inspire legislators and welfare administrators to increase participation in the Food Stamp Program should be implemented.

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