



Putting the 'Food' in Food Stamps: Food Eligibility in the Food Stamps Program from 1939 to 2012

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**Putting the 'Food' in Food Stamps:
Food Eligibility in the Food Stamps Program from 1939 to 2012**

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Abstract

Since its first operation in 1939, the Food Stamps Program has chosen a number of approaches to defining eligible foods. The changes in these definitions over the program's long history have much to reveal about the politics of nutrition and welfare in the United States. In Part I, this Article examines the history of the Food Stamps Program and the definitions of eligible foods throughout the program's existence. In Part II, this Article discusses three frames for understanding the Food Stamps Program—welfare, nutrition, and agricultural subsidy—and analyzes the tension between the political goals advanced by each frame. In Part III, this Article suggests two methods for increasing the nutritional focus of the Food Stamps Program: first, by changing other agricultural subsidies that distort the food environment and second, by creating food stamp bonuses for fruit and vegetable purchases. Understanding the history of food stamps and the program's three primary political frames creates the best method for understanding how the current program can effectively achieve its nutritional goals.

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I. Introduction: the Difficulties of Defining Food

What is food? The answer seems at once quite simple, yet rather difficult to articulate. When Congress faced the problem of defining food in 1938, it responded with the charmingly circular definition that food is “articles used for food or drink for [humans] or other animals.”¹ In other words, we know food when we see it. The task of defining food becomes even more difficult when the goal is determining which foods should count as food for nutritional assistance programs. Since its first operation in 1939, the Food Stamps Program (FSP)² has chosen a number of approaches to determining what types of food to subsidize. The changes in these food eligibility definitions reveal a great deal about the politics of nutrition and welfare in the United States. From 1939 to present, Food Stamps have shifted from being a program aimed at distributing specific agricultural crop surpluses to primarily a welfare program with few food restrictions. However, the program remains tied to its agricultural subsidy roots and continues to spark contentious debates over the proper role of food subsidies for promoting nutritious diets.

In Part I, this Article examines the history of the food stamp program, with a particular focus on eligible foods throughout the program’s existence. In Part II, this Article discusses three frames for understanding the Food Stamps Program—welfare, nutrition, and agricultural subsidy—and analyzes the tension between the political goals advanced by each frame. In Part III, this Article suggests two methods for increasing the nutrition focus of the Food Stamps Program: first, by changing other agricultural subsidies that distort the food environment and second, by creating food stamp bonuses for fruit and vegetable purchases. Nutrition has always been a key part of the Food Stamps Program, but the program can do more to encourage

¹ Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321 (2006).

² The Food Stamps Program was renamed the Supplemental Nutrition Assistance Program in 2008. Because this article primarily discusses the history of the program, it uses the name Food Stamps Program unless explicitly discussing the post-2008 program.

healthier diets. Understanding the history of the program and its three political frames creates the best method for understanding how the current program can achieve its nutritional goals.

II. History of the Food Stamps Programs, 1939 to 2012

Food Stamp programs in the United States have always served the dual goals of providing food to the poor while supporting the domestic agricultural economy. Although the first program explicitly focused on encouraging the consumption of surplus food items, the current iteration of Food Stamps, now called the Supplemental Nutrition Assistance Program (SNAP), places almost no limits on food purchases.³ Yet the tie between food stamps and agricultural policy remains strong—food stamps are still managed by the U.S. Department of Agriculture and are enacted approximately every five years as part of the omnibus Farm Bill.⁴ Political discussions surrounding food stamps have shifted from a focus on distributing surplus food supplies to a focus on general welfare and nutritional issues. Changes to the Food Stamp program throughout the years—particularly changes in the definition of eligible foods—demonstrate how the politics of welfare, nutrition, and agricultural subsidies continue to play a huge role in program operations.

A. 1939 to 1943: Crop Surpluses for the Hungry

The first Food Stamp program began on May 16, 1939 as an explicit effort to provide farm surpluses to undernourished people.⁵ The program's first administrator, Milo Perkins, described the program in terms of serving both goals: "We got a picture of a gorge, with farm surpluses on one cliff and under-nourished city folks with outstretched hands on the other. We

³ See 7 U.S.C. § 2012 (2006).

⁴ Renée Johnson & Jim Monke, *What Is the "Farm Bill"?*, CONG. RESEARCH SERV. REP. RS22131, 9 (2011) (summarizing the 2008 Farm Bill and potential legislative changes for the next Farm Bill), available at <http://www.nationalaglawcenter.org/assets/crs/RS22131.pdf>.

⁵ *Rochester to Get First Stamp Food*, N.Y. Times, Apr. 18, 1939.

set out to find a practical way to build a bridge across that chasm.”⁶ The program met this goal of providing surpluses to the malnourished through the use of literal orange and blue food stamps. Participants used relief funds to purchase orange food stamps—which could be used to buy any food item—and for every dollar in orange stamps they received an additional 50 cents in blue stamps that could only be used only for designated surplus foods. The purpose of the purchase requirement was to maintain the “dignity” of participants by making the stamps not seem like a hand-out.⁷ However, in some areas, relief funds were so low that program planners gave out blue stamps without requiring any purchase price at all.⁸

At the beginning of the program, the Federal Surplus Commodities Corporation designated 17 eligible surplus foods: butter, eggs, pork lard, dried beans, corn meal, wheat flour, graham flour,⁹ hominy grits, dried prunes, fancy rice, dried raisins, fresh apples, fresh grapefruit, fresh oranges, fresh pears, dry onions, and pork.¹⁰ Fresh fruits and vegetables were a large part of the food stamps program because of extensive domestic surpluses. Indeed, in July 1941, all fresh vegetables were placed on the eligible surplus list after an abundant harvest.¹¹ Produce also proved popular among participants: vegetables and fresh fruits accounted for 30% of blue stamp (surplus) purchases in May 1941, while 30% were used for eggs, 28% for pork products, and 14% for cereals.¹² At the same time it was adding more vegetables to the eligible foods list, the

⁶ RONALD JOEL DANIELS & M. J. TREBILCOCK, *RETHINKING THE WELFARE STATE: THE PROSPECTS FOR GOVERNMENT BY VOUCHER* 45 (2005).

⁷ Dennis Roth, *Food Stamps 1932-1977: From Provisional and Pilot Programs to Permanent Policy*, USDA NAT'L AGRIC. LIBRARY (2000), available at <http://www.nal.usda.gov/ric/ricpubs/foodstamps.htm>.

⁸ NORMAN L. GOLD, A.C. HOFFMAN, & F.V. WAUGH, *ECONOMIC ANALYSIS OF THE FOOD STAMP PROGRAM: A SPECIAL REPORT* 12 (USDA, Washington, D.C. 1940).

⁹ Graham flour was an American invention designed to preserve more whole grains during the grinding process and named after the dietary advocate, Dr. Sylvester Graham. HELEN WOODARD ATWATER, *BREAD AND THE PRINCIPLES OF BREAD MAKING* 11-12 (Gov't Printing Office, Washington, D.C. 1900).

¹⁰ *The Safety Net: A History of Food Stamps Use and Policy*, N.Y. Times, Feb. 11, 2010, available at <http://www.nytimes.com/interactive/2010/02/11/us/FOODSTAMPS.html>

¹¹ *Needy Get Food Dividend*, N.Y. Times, July 1, 1941.

¹² *Granger, Food Stamp Director, to Have Office in New York*, The Herald Statesman [Yonkers, N.Y.], Aug. 8, 1941, at A4.

agency also began to restrict use of orange stamps for “soft drinks, such as ginger ale, root beer, sarsaparilla, pop, and all artificial mineral water, whether carbonated or not.”¹³ The policy did not apply to “natural fruit juice.”¹⁴ Orange foods stamps had previously been allowed for all foods, so the new policy marked the first time that program officials had limited food eligibility for general stamps. Although the newspaper articles do not explain the reason for the change, the types of drinks banned suggest that the policy was adopted for nutritional reasons.

By 1943, food surpluses had turned into food shortages, leading the Department of Agriculture to suspend the food stamp program.¹⁵ The USDA lauded the program’s success, reporting that 20 to 25 million people had received \$245 million in food subsidies during the program’s four year span.¹⁶ The USDA claimed that food shortages and improvements in employment had reduced the need for the program, but Secretary of Agriculture Claude Wickard noted that because of the programs success, “undoubtedly we will wish to make use of it in the future.”¹⁷ His words proved ultimately true, although it would take 18 years for a much-changed Food Stamp Program to re-enter the national scene.

B. 1944 to 1964: Rebirth of the Food Stamp Program

Efforts to revive the food stamp program began almost immediately. In 1944, Senators Aiken of Vermont and La Follette, Jr. of Wisconsin proposed a National Food Allotment Plan to supply food allotment coupons sufficient for an adequate diet to every American household.¹⁸ As a wartime proposal, the bill described its main purpose as promoting national security and

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Food-Stamp Program Will Halt on March 1; Gave Help to 20,000,000 Wickard Says*, N.Y. Times, Jan. 1, 1943, at A14.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Nat’l Food Allotment Plan, S. 1331, 78th Cong. (1944). For a longer discussion of general efforts to revive the Food Stamp Program throughout the 1940s, see JANET POPPENDIECK, *BREADLINES KNEE-DEEP IN WHEAT: THE LEGACY OF NEW DEAL POLICY CHOICES* 242-43 (1986).

defense by securing the “health, efficiency, and morale of the civilian population.”¹⁹ In particular, Senator La Follette, Jr noted the significant number of civilians rejected for military service because of malnutrition.²⁰ To remedy the problem of hunger and malnutrition, the plan called for providing a “basic food allotment” of coupons to purchase the following foods or their nutritional equivalent per person per week (listed by quantity):²¹

Type of Food	Amount
Milk, cheese, evaporated milk or dry milk	5 quarts
Flour and cereals	4.4 pounds
Potatoes and sweet potatoes	4.0 pounds
Other vegetables and fruits	2.3 pounds
Tomatoes and citrus fruits	1.5 pounds
Leafy, green, or yellow vegetables	1.5 pounds
Meat, poultry, and fish	1.5 pounds
Fats and oils	0.9 pounds
Sugars, syrups, and preserves	0.8 pounds
Dry beans, peas, and nuts	0.5 pounds
Eggs	4 eggs

Senator Aiken described the chosen foods as “a pretty good diet... [that] has been worked out by the most efficient home economists.”²² The bill specifically included milks, fruits, vegetables, and eggs as a way of eliminating widespread nutritional deficiencies in vitamins, minerals, and proteins.²³ Although the bill shared many characteristics with the original Food Stamp plan, it did not focus on providing surplus foods, but instead selected foods based on their nutritional qualities. After several days of hearings, the bill died in committee.²⁴

Food stamp legislation was introduced in every subsequent Congress,²⁵ but did not finally pass until 1959, when Congress provided \$250 million for a two-year program to distribute

¹⁹ Nat’l Food Allotment Plan, S. 1331, 78th Cong. § 1 (1944).

²⁰ *Nat’l Food Allotment Plan: Hearing on S. 1331 Before the Subcomm. of the S. Comm. on Agric. & Forestry*, 78th Cong. 19 (1944) [hereinafter *1944 Hearings*] (statement of Senator Robert M. La Follette, Jr.).

²¹ Nat’l Food Allotment Plan, S. 1331, 78th Cong. § 2 (1944).

²² *1944 Hearings*, *supra* note 20, at 10 (statement of Senator George Aiken).

²³ *Id.* at 40 (1944) (statement of Dr. Howard R. Tolley, Chief, Bureau of Agric. Econ.).

²⁴ POPPENDIECK, *supra* note 18, at 243.

²⁵ *Id.*

surplus foods to poor families and individuals.²⁶ However, the Eisenhower administration chose not to administer the program because of its position that the primary goal of food assistance should be to create markets for surplus products, not to expand federal welfare programs.²⁷ During this time period the food commodity programs distributed surplus foods to people who lined up at specific, limited locations, generally welfare offices.²⁸ The program offered only five types of food in monthly packages—lard, rice, flour, butter, and cheese—and was widely criticized for not providing enough food.²⁹ Indeed, in 1960 the program provided monthly food packages worth only \$2.20 per month (\$16.85 in current dollars).³⁰

With a new administration came an immediate change of policy. In 1961, one day after his inauguration, President Kennedy issued an executive order directing the Secretary of Agriculture to create pilot food stamp programs.³¹ The pilot programs abandoned the two-color stamp system of the original program in favor of a single stamp, but continued to require recipients to pay part of the value of their stamps on a sliding scale based on income.³² As a result of purchase requirement, many poor households could not afford to participate in the program, a situation that the administrators attempted but failed to rectify.³³ The Food Stamp pilot programs therefore actually saw a drop in participation compared to the pre-existing surplus distribution programs.³⁴

Regulations for the new pilot programs defined eligible foods as “any food or food product for human consumption except: coffee, tea, cocoa (as such), alcoholic beverages,

²⁶ Pub. L. No. 86-341, 73 Stat. 606 (1959).

²⁷ MAURICE MACDONALD, *FOOD, STAMPS, AND INCOME MAINTENANCE* 6 (1977).

²⁸ JEFFREY M. BERRY, *FEEDING HUNGRY PEOPLE: RULEMAKING IN THE FOOD STAMP PROGRAM* 24 (1984).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Providing for an Expanded Program of Food Distribution to Needy Families*, Exec. Order No. 10914 (1961).

³² BERRY, *supra* note 28, at 25.

³³ *Id.* at 30-31.

³⁴ *Id.*

tobacco, and those products which are clearly identifiable from the package as being imported from foreign sources.”³⁵ The definition presumably excluded items that could be easily identified as imported as a way to promote greater consumption of domestic products without imposing a large administrative burden on food retailers. Although the system no longer focused on surplus goods, the administration predicted that increased overall demand would reduce surplus commodities and boost farm income.³⁶

As a result of the popularity of the pilot programs and a political deal with representatives who wanted cotton and wheat subsidies in exchange for a Food Stamps Program,³⁷ Congress enacted the Food Stamp Act of 1964.³⁸ The bill adopted nearly the same definition of eligible foods as the pilot program regulations. The act defined “food” as “any food or food product for human consumption except alcoholic beverages, tobacco, those foods which are identified on the package as being imported, and meat and meat products which are imported.”³⁹ This definition was not the only one considered by Congress—the original bill passed by the House excluded “soft drinks, luxury foods, luxury frozen foods as determined by the Secretary, and those foods which are identified on the package as being imported from foreign sources when they arrive at the retail store,” but the Senate rejected those exclusions because of administrative problems.

The Senate Report explained:

This exclusion presented insurmountable administrative problems. According to the dictionary definition soft drinks are those not containing spirituous liquor so that milk, orange juice, coffee, and other beverages would technically be excluded. At the same time cookies, cake, and candy would not be excluded. Luxury foods and luxury frozen foods are rather indefinite terms. Fruits and vegetables might be luxury or nonluxury foods, depending upon whether they were in season, or upon the price at which they might be sold by the particular

³⁵ 26 Fed. Reg. 4137 (May 10, 1961) (codified at 5 C.F.R. § 540.2).

³⁶ BERRY, *supra* note 28, at 25.

³⁷ *Id.* at 34.

³⁸ Food Stamp Act of 1964, Pub. L. No. 88-525, 78 Stat. 703-709 (1964).

³⁹ *Id.* at § 3(b).

store on a particular day. The task of making up any reasonable classification of all foods into luxury and nonluxury foods does not appear to be one that could be accomplished with any exactitude. Any such list would also appear to require constant changing from day to day, area to area, and possibly even store to store. The retailer and the consumer, attempting to comply with the program, as well as the Secretary, would be faced with a difficult and confusing situation. The committee therefore recommends deleting the exclusion of soft drinks and luxury foods from the bill.⁴⁰

Excluding soft drinks could be seen as an effort to promote healthier foods, but it may also have been motivated by a political desire to not pay for extravagant food purchases, regardless of their nutritional quality, especially in light of the exclusion of “luxury” food items.

The Senate’s version ultimately prevailed in the enacted law, leaving a wide variety of foods eligible for food stamp purchases. However, supporting domestic farmers remained an important political consideration for the bill, just as it had been for the earliest Food Stamp Program. The representative of the National Farmers Union who spoke in favor of the bill argued that “the food stamp program is upgrading diets of the needy at the same time it has made possible increased utilization of feed grains” as a result of increased meat consumption.⁴¹ His words echoed the rationale for creating the original 1939 program and articulated the tie between food stamps and agricultural subsidies that remains important to this day.

C. 1965 to 1980: Growing Pains and Continuing Hunger

With the passage of the 1964 Food Stamp Act, the Food Stamps program began its first official existence as a Congressionally-authorized program intended to serve the entire nation. However, it continued to take many years for the program to reach all areas of the country. By 1969, the program was serving 2.9 million people in half of the cities and counties of the United

⁴⁰ S. REP. NO. 88-1124, 88th Cong. (1964), *reprinted in* 1964 U.S.C.C.A.N. 3275, 3284.

⁴¹ *Food Stamp Plan: Hearings on H.R. 5733, Before the H. Comm. on Agric.*, 88th Cong. 98 (1963) (Statement of James G. Patton, President, National Farmers Union).

States at an annual cost of \$266 million (\$1.65 billion in 2012 dollars).⁴² As it grew, the program suffered from two major growing pains: first, program costs continued to rise exponentially, and second, despite those high costs, the program failed to reach many of the poorest individuals and families in the United States because of the purchase requirement.

Although the 1964 Act provided a broad definition of food, many needy people received no food assistance at all from the program because they were unable to pay even the lowest purchase price for food stamps.⁴³ For example, one man interviewed in *Newsweek* could have bought \$98 worth of food stamps for \$12, but ended up receiving no food stamps at all because he lacked \$12 in monthly income.⁴⁴ Conditions were particularly bad for black sharecroppers in the South: without any sort of monthly income, they had to rely on store credit, provided at a hefty premium, to pay the purchase requirement.⁴⁵ Therefore, even though the Food Stamp Act of 1964 included a broad definition of eligible foods, the reality was that many people had access to only a very limited range of foods—in other words, the Food Stamps Program was failing to address the critical issue of hunger among the very poorest Americans. The issue gained particular prominence in 1968 with the CBS television documentary, “Hunger in America,” detailing the extent of hunger and malnutrition in the United States.⁴⁶ The documentary shocked many when it reported that 30 million Americans were routinely undernourished and that a third received no federal aid whatsoever.⁴⁷

⁴² Joe Richardson, *A Concise History of the Food Stamps Program*, CONG. RESEARCH SERV. REP. NO. 79-244, 3-4 (1979).

⁴³ BERRY, *supra* note 28, at 43-45.

⁴⁴ *Id.* at 45.

⁴⁵ ARDITH L. MANEY, *STILL HUNGRY AFTER ALL THESE YEARS: FOOD ASSISTANCE POLICY FROM KENNEDY TO REAGAN 75* (Greenwood Press, 1989).

⁴⁶ BERRY, *supra* note 28, at 46.

⁴⁷ Jack Gould, *TV: Hunger Amid Plenty. 'C.B.S. Reports' Examines Recurring Picture of Starvation Across U.S.*, N.Y. Times, May 22, 1968.

As a result of public outcry and lobbying by antihunger advocates, Congress and the newly-elected President Nixon began to look for ways to increase Food Stamp Program participation.⁴⁸ In a 1969 message to Congress, President Nixon called on Congress to increase food stamp benefits and remove the purchase requirement for the poorest families.⁴⁹ He also ordered the creation of the Food and Nutrition Service (FNS) within the Department of Agriculture and gave the new agency control over the food stamp program.⁵⁰ Food stamps remain under the auspices of FNS to this day.⁵¹ In 1970, Congress enacted many of the changes requested by Nixon as part of the 1970 Food Stamp Amendments, removing the food purchase requirement for the poorest families, adjusting benefits based on increases in inflation, and providing \$1.75 billion dollars in appropriations to pay for the higher benefits.⁵²

In 1973, Congress liberalized the definition of food to include “any food or food product for home consumption except alcoholic beverages and tobacco and shall also include seeds and plants for use in gardens to produce food for the personal consumption of the eligible household.”⁵³ The main change from the 1964 Act definition was that imported foods were now eligible, but hot foods prepared for consumption on site were not. Food-producing seeds and plants continue to be eligible for food stamp benefits to this day,⁵⁴ but their eligibility is not widely known among food stamp participants and many participants lack access to the tools and garden-space to take advantage of growing their own food.⁵⁵

⁴⁸ MANEY, *supra* note 45, at 113.

⁴⁹ *Message from the President of the United States Relating to Programs to Deal with Hunger and Malnutrition*, H. DOC. NO. 91-115 (May 6, 1969).

⁵⁰ *Id.*

⁵¹ *FNS Supplemental Nutrition Assistance Program (SNAP)*, USDA (2011) <http://www.fns.usda.gov/snap/>.

⁵² Food Stamp Act Amendments of 1970, Pub. L. No. 91-671, 84 Stat. 2048, § 1 (1971).

⁵³ Agriculture and Consumer Protection Act of 1973, Pub. L. No. 93-86, 87 Stat 221, § 3(K)(1) (1973).

⁵⁴ 7 U.S.C. § 2012(g) (2006).

⁵⁵ Claire Thompson, *Oh, SNAP! Grow gardens with food stamps*, GRIST, Dec. 21, 2011, <http://grist.org/food/2011-12-20-oh-snap-grow-gardens-with-food-stamps/>.

During the 1970s, the food stamp program continued to grow in terms of both participation and costs.⁵⁶ By 1977, the program served a then-peak of 19.5 million people and had finally expanded to cover nearly the entire United States, with the exception of some Indian reservations.⁵⁷ In 1977, Congress passed a new Food Stamp Act with a number of liberalizations, the most important being the complete removal of the purchase requirement.⁵⁸ The new act also modified the basic food definition, now defining “food” as “any food or food product for home consumption except alcoholic beverages, tobacco, and hot foods or hot food products ready for immediate consumption other than those authorized for [the elderly, the disabled, and people in treatment programs].”⁵⁹ The Act continued to include food-producing seeds and plants within the definition of food,⁶⁰ as well as adding hunting equipment for remote households in Alaska.⁶¹ The basic food eligibility definition has remained the same since 1977, other than slight changes to home meal eligibility for the elderly, disabled, and those in treatment programs.

The broad food definition was adopted largely to increase administrative simplicity. As it drafted the 1977 bill, the House Committee on Agriculture considered and rejected an amendment to eliminate foods with negligible or little nutritional value, deciding that efforts to define and prohibit “junk food” were too complex. The Committee explained:

The Committee thought that such an amendment was a cure worse than the disease of so-called ‘junk food,’ since it was far too complex for the Secretary, let alone food stores to administer, given the uncertain state of nutritional science and the potential length of the banned foods list (which would itself fluctuate as manufacturers sprayed vitamins on foods to assure their purchasability) and would cause untold confusion at the grocery store checkout counter.⁶²

⁵⁶ Richardson, *supra* note 42, at 8-9.

⁵⁷ *Id.* at 9.

⁵⁸ Food Stamp Act of 1977, Pub. L. No. 108-269 (1977) (codified as amended at 7 U.S.C. § 2011 et seq).

⁵⁹ *Id.* at § 3(g).

⁶⁰ *Id.* at § 3(g)(2).

⁶¹ *Id.* at § 3(g)(6).

⁶² H. REP. NO. 95-464, at 242 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1978, 2268.

Although the Food Stamp program did not place many consumer restrictions on food purchases, FNS did limit the types of grocery stores that could participate in the program based on interpreting the Act's definition of "retail food store."⁶³ In 1978, FNS issued regulations limiting eligible stores to those that primarily sold staple food products.⁶⁴ The regulations defined staple food products as "those food items intended for home preparation and consumption, which include meat, poultry, fish, bread & breadstuffs, cereals, vegetable juices and dairy products."⁶⁵ The regulations further clarified that "[a]ccessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments and spices are not staple foods for the purpose of qualifying a firm to participate in the program as a retail food store."⁶⁶

One store that lost its ability to participate in the program because it primarily sold candy and soft drinks challenged the new regulations, but the Third Circuit upheld the requirements.⁶⁷ Noting that "the purposes of the program [are] to raise levels of nutrition and to eliminate hunger and malnutrition," the court concluded "the quality and character of the food sold in exchange for food stamp coupons is pertinent to the determination whether a participant furthers these ends."⁶⁸ Even though the Food Stamp Act of 1977 itself defined food very broadly, FNS was nonetheless able to limit grocery store participation in a manner that encouraged consumption of staple foods instead of "accessory food items." Eliminating certain stores from the program altogether also proved to be more administratively simple than attempting to create long lists of eligible and ineligible food items.

⁶³ Food Stamp Act of 1977, Pub. L. No. 108-269, § 3(k) (1977).

⁶⁴ Implementing the Food Stamp Act of 1977, 43 Fed. Reg. 43274 (1978) (codified at 7 C.F.R. § 271.2).

⁶⁵ 7 C.F.R. § 271.2 (1979).

⁶⁶ *Id.*

⁶⁷ *Webb v. Berglund*, 621 F.2d 594 (3d Cir. 1980).

⁶⁸ *Id.* at 595.

D. 1980 to 1996: Backlash Against Welfare

By 1980, Food Stamps were a full-fledged welfare program and received much of the same backlash directed at other welfare programs.⁶⁹ On the campaign trail, Reagan appealed to working class whites by describing how they had to wait in line at grocery stores while a “strapping young buck” purchased T-bone steaks with food stamps.⁷⁰ His grocery-line illustration relied on middle-class anger that the poor would spend food stamps on luxury foods, as well as racial animus, since the phrase “young buck” commonly referred to black men.⁷¹ As a result of the backlash against welfare programs, the 1980s and early 1990s produced a significant number of changes to income eligibility requirements and benefit levels (limiting eligibility and benefits in some cases while expanding them in others).⁷² However, somewhat surprisingly, these changes produced no efforts to remove “T-bone steaks” or other luxury foods from the definition of food. Congressional hearings on food stamps continued throughout this time frame,

⁶⁹ Public polls in the 1980s found that “Food Stamps” were viewed with nearly as much distrust as welfare programs on a whole. See Tom W. Smith, *That Which We Call Welfare by Any Other Name Would Smell Sweeter: an Analysis of the Impact of Question Wording on Response Patterns*, 51 *Pub. Opinion Quarterly* 75-83, 82 (1987).

⁷⁰ Jon Nordheimer, *Reagan is Picking His Florida Spots: His Campaign Aides Aim for New G.O.P. Voters in Strategic Areas*, *N.Y. Times*, Feb. 5, 1976.

⁷¹ *Id.*

⁷² The Food Stamps Program was significantly amended nine times in the fifteen year period from 1980-1995, but none of the amendments changed the definition of eligible food. See 1980 Amendments to the Food Stamp Act, Pub. L. No. 96-249, 94 Stat. 357-370 (1980) (created an income deduction for childcare and increased the deduction for medical care); Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357-933 (1981) (raised income eligibility limits to 130% of the poverty line); Food Stamp and Commodity Distribution Amendments of 1981, Pub. L. No. 97-98, 95 Stat. 1213-1358 (1981) (provided more information to state and federal law enforcement for detecting food stamp fraud); Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354-1660 (1985) (altered household work requirements and changed definition of disabled household members); Hunger Prevention Act of 1988, Pub. L. No. 100-435, 102 Stat. 1645-1677 (1988) (raised monthly benefit levels); Mickey Leland Memorial Domestic Hunger Relief Act, Pub. L. No. 101-624, 104 Stat. 3359-4078 (1990) (provided an exclusion for all educational income and increased fines for committing food stamp fraud); Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Pub. L. No. 102-237, 105 Stat. 1886 (1991) (expanded definition of inaccessible resources that did not count towards the asset limit); Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993) (simplified the household definition and removed student’s income from household income calculation); Food Stamp Program Improvements Act of 1994, Pub. L. No. 103-225, 108 Stat. 106 (1994) (provided funding for demonstration projects to identify food stamp trafficking).

mainly focusing on how income eligibility and benefit levels failed to address hunger and malnutrition,⁷³ particularly within vulnerable populations such as the elderly and the homeless.⁷⁴

Meanwhile, President Reagan focused his efforts on “removing from eligibility those who are not in real need or who are abusing the program.”⁷⁵ To address widespread worries about food stamp fraud during this time period, FNS enforced the limitations on eligible food by sending its agents as shoppers to stores that had unusually high reimbursement rates. If these “shoppers” discovered that the store had a practice of selling ineligible items (such as alcohol or household goods) in exchange for food stamps, the store would be charged a fine or removed from the program for a number of years.⁷⁶ One aggrieved food stamp recipient even attempted to challenge the exclusion on alcoholic beverages by arguing that a slightly looser state definition of alcohol should govern food stamp purchases.⁷⁷ Unsurprisingly—given the clear text of the 1977 Act—the court found his argument completely without merit.⁷⁸

The only change to Food Stamp Act definitions affecting food accessibility during the 1980s and 1990s actually increased access to food sold at non-grocery retail stores. In 1994, Congress defined “retail food store” to mean stores that sold foods in each of four specified categories of staple foods (including perishable foods in at least two of the categories) *or* stores that had over 50 percent of total sales in staple foods.⁷⁹ The 1994 amendments defined the four staple foods categories as “(A) Meat, poultry, or fish; (B) Bread or cereals; (C) Vegetables or

⁷³ *Hunger in the United States and Related Issues, Hearings before the Subcomm. on Domestic Marketing, Consumer Relations, & Nutrition of the H. Comm. on Agric.* 98th Cong. (March 2, 1984).

⁷⁴ *Hunger and the Elderly, Joint Hearing Before the Domestic Task Force of the Select Comm. on Hunger and the Select Comm. on Aging*, 99th Cong. (April 22, 1986); *Nutrition for the Homeless, Hearing Before the Subcomm. on Nutrition and Investigations of the S. Comm. on Agric., Nutrition, & Forestry* 100th Cong. (April 2, 1987).

⁷⁵ RONALD F. KING, BUDGETING ENTITLEMENTS: THE POLITICS OF FOOD STAMPS 15 (2000).

⁷⁶ *See, e.g., Barbosa v. U.S.*, 633 F. Supp. 16, 1986 U.S. Dist. LEXIS 27702 (E. D. Wis. 1986); *Ruszczzyk v. USDA*, 662 F. Supp. 295, 1986 U.S. Dist. LEXIS 28104 (W. D. N.Y. 1986).

⁷⁷ *Whitaker v. California*, 1995 U.S. Dist. LEXIS 17507, *11 (N. D. Cal. 1995).

⁷⁸ *Id.*

⁷⁹ Food Stamp Program Improvements Act of 1994, Pub. L. No. 103–225, 108 Stat 106, § 201 (1994).

fruits; (D) Dairy products” and clarified that “coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices” were not included within the definition of staple foods.⁸⁰ The effect of the new definition was to increase store eligibility since convenience stores would now be able to process food stamp benefits, even though staple food sales constituted less than 50% of their total food sales.

The sponsor of the legislation explained during a 1993 hearing on the issue of retail store eligibility that he was concerned about too many “small retail food stores” losing eligibility and leaving the program.⁸¹ Both convenience store representatives and antihunger groups spoke in favor of the legislation—the convenience stores because they feared losing customers if they were unable to accept food stamps⁸² and the antihunger groups because they feared that poor individuals without cars would have a much harder time accessing food without convenience stores given the lack of supermarkets in many neighborhoods.⁸³

The comments at the hearing revealed that nutrition was not a key factor in designing the new definition, even though it seemingly placed a greater emphasis on diet variety. Instead, the hearing revealed that convenience stores were losing eligibility because they were selling more soda and candy. Indeed, the Kwik Shop spokesman arguing in favor of the expanded definition explained that the industry’s “terrific job of promoting certain so-called denominator items like carbonated beverages” explained why staple food sales no longer made up more than half of total food sales.⁸⁴ In other words, his stores’ success at selling soda (which can be purchased with food stamps, but is considered an “accessory” food item under the previous definition of retail

⁸⁰ *Id.*

⁸¹ *Ensure Adequate Access to Retail Food Stores by Recipients of Food Stamps & to Maintain the Integrity of the Food Stamp Program, Hearing on H.R. 3436 Before the Subcomm. on Dep’t Operations & Nutrition, of the H. Comm. on Agric.*, 103rd Cong, 1 (1993) (Opening Statement of Rep. Charles W. Stenholm).

⁸² *Id.* at 59 (Statement of Gary Pfannenstiel, Vice President of Marketing, Kwik Shop).

⁸³ *Id.* at 44-45 (Statement of Ellen M. Vollinger, Legal Director, Food Research & Action Center).

⁸⁴ *Id.* at 61 (Statement of Gary Pfannenstiel, Vice President of Marketing, Kwik Shop).

food store) explained why his store was no longer eligible under the old definition and why it had to push for a new definition. The legislation passed and the retail stores retained their ability to stay in the Food Stamps Program.

In its implementing regulations, FNS further loosened the retail store criteria by including “frozen staple food items” within the definition of “perishable foods.”⁸⁵ FNS explained that it “included frozen foods in its definition of perishable foods, even though they are typically not considered to be fresh, because some small stores with limited customers may not be able to afford to offer fresh or refrigerated foods that will spoil within a few days or weeks.”⁸⁶ Although it is difficult to make a textual argument explaining how frozen foods can fit within the definition of perishable foods, this regulation is still in place and has never been challenged in court.⁸⁷

The Welfare Reform movement of the 1990s led to a number of changes that tightened eligibility requirements,⁸⁸ but nothing that fundamentally altered the Food Stamp program. Unlike other welfare programs, food stamps likely survived more exacting scrutiny because the program was narrowly tailored to providing food assistance, not cash assistance, and enjoyed strong support from nutritional and agricultural lobby groups.⁸⁹ As Republican Senator Richard Lugar of Indiana explained, “there must be a safety net, basically, for eating, for nutrition—a safety net against starvation in this country.”⁹⁰ In other words, the sentiment that had given birth to the food stamps program, the idea that no one should starve in a land of agricultural plenty, continued to hold sway.

⁸⁵ Food Stamp Program: Revisions to the Retail Food Store Definition and Program Authorization Guidance, 66 Fed. Reg. 2800 (Jan. 12, 2001) (codified at 7 C.F.R. §271.2).

⁸⁶ *Id.* at 2798.

⁸⁷ 7 C.F.R. § 278.1(b)(1)(ii)(B).

⁸⁸ Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (required able-bodied household members to prove work availability and permanently disqualified people convicted of trafficking food stamp benefits worth \$500 or more).

⁸⁹ KING, *supra* note 75, at 208-209.

⁹⁰ *Id.* at 207.

E. 1997 to 2012: Growing Focus on Nutrition

Beginning in the late 1990s, the greatest change to the Food Stamps program came not from Congress, but from technology. Electronic Benefit Transfers (EBT) provided a way to easily distribute Food Stamps in a debit card instead of relying on the traditional paper script.⁹¹ In 1996, only one state—Maryland—had a functioning EBT system serving the entire state,⁹² although a number of other states had experimented with pilot programs.⁹³ Within a few years, the EBT system had expanded rapidly. By 2002, 43 states had statewide EBT systems and the remaining 7 were making rapid progress in implementing their own systems.⁹⁴ One year later, all fifty states had fully operational systems.⁹⁵

The shift to electronic benefits created new challenges for the Food Stamps Program, particularly in allowing purchases at farmers' markets.⁹⁶ Farmers' markets have been explicitly included as eligible retail food stores under FNS regulations since 1981,⁹⁷ but they have never been a large part of the Food Stamps program because of administrative difficulties in documenting eligibility and redeeming vouchers. In 1990, there were 6,800 produce stands participating in the Food Stamps program, representing less than 2% of all participating retail stores.⁹⁸ In 1996, that number was 7,000 stores, but it rapidly dropped to 3,000 stores by 2000 because many farmers' markets lacked the technology to accept EBT cards.⁹⁹ In response to the

⁹¹ *Electronic Benefits Transfer (EBT)*, USDA FNS (2011), <http://www.fns.usda.gov/snap/ebt/>.

⁹² KING, *supra* note 75, at 207.

⁹³ *Electronic Benefits Transfer (EBT) Status Report*, USDA FNS (2011) http://www.fns.usda.gov/snap/ebt/ebt_status_report.htm.

⁹⁴ *A Report to Congress: Food Stamp Electronic Benefit Transfer Systems*, USDA FNS 6-7 (2003), available at http://www.fns.usda.gov/snap/ebt/pdfs/2003_congress.pdf [*hereinafter* 2003 EBT Report].

⁹⁵ EBT Status Report, *supra* note 93.

⁹⁶ 2003 EBT Report, *supra* note 94, at 11-12.

⁹⁷ Food Stamp Program; 1980 Amendments to the Food Stamp Act of 1977; Policy Interpretations, Miscellaneous Technical Amendments, 46 Fed. Reg. 4642 (January 16, 1981).

⁹⁸ *Review of the Use of Food Stamps in Farmers' Markets, Hearing before the Subcomm. on Domestic Marketing, Consumer Relations, and Nutrition of the H. Comm. on Agric.*, 100th Cong. 2 (1990) (Opening Statement of Rep. Bill Emerson).

⁹⁹ 2003 EBT Report, *supra* note 94, at 12.

sizable drop in participation, FNS worked to address technological issues at farmers' markets through various pilot projects.¹⁰⁰ Using EBT at farmers' markets continues to be an issue for the Food Stamp program, but one that FNS will not be able to address without more funding to provide EBT equipment for farmers' markets.¹⁰¹

With the transition to electronic benefits, for the first time in its decades-long existence the Food Stamps program no longer involved any sort of stamps, tokens, or other script. Food “stamps” were now an anachronism. As a result, in 2008, Congress renamed the program to the Supplemental Nutritional Assistance Program (SNAP).¹⁰² As FNS emphasized through its new branding and tagline—Putting Healthy Food Within Reach—the name is meant to reflect an increasing focus on food healthfulness and nutrition.¹⁰³ However, the definition of eligible foods remains the same and FNS has rejected efforts to restrict food stamp benefits for certain foods. The agency argues that “No clear standards exist to define foods as good or bad, or healthy or not healthy” and that attempting to impose food restrictions would create vast administrative difficulties for the 160,000 stores that participate in the program nationwide.¹⁰⁴

FNS has also rejected efforts to prohibit certain foods because these efforts fuel the stereotype that low-income families and individuals make bad food decisions.¹⁰⁵ In 2004, Minnesota became the first state to request a waiver from USDA to allow the state to remove “candy and soft drinks” from the definition of eligible foods.¹⁰⁶ USDA rejected the waiver, citing

¹⁰⁰ *Id.* at 12-15.

¹⁰¹ *Feasibility of Implementing Electronic Benefit Transfer Systems in Farmers' Markets*, USDA FNS, Report to Congress (2010), available at <http://www.fns.usda.gov/snap/ebt/pdfs/Kohl--Feasibility.pdf>.

¹⁰² The Food, Conservation, and Energy Act of 2008, Pub. L. 110-246 (2008).

¹⁰³ USDA SNAP Basics: SNAP Name Change, USDA FNS (2011), available at http://www.fns.usda.gov/snap/outreach/pdfs/toolkit/2011/Community/Basics/SNAP_name.pdf

¹⁰⁴ *Implications of Restricting the Use of Food Stamp Benefits*, USDA FNS (2007), available at <http://www.fns.usda.gov/ora/menu/Published/snap/FILES/ProgramOperations/FSPFoodRestrictions.pdf>.

¹⁰⁵ Letter from Ollice C. Holden, SNAP Regional Administrator, to Maria Gomez, Assistant Comm'r, Minn. Dep't of Human Services (May 4, 2004), available at <http://www.fns.usda.gov/snap/rules/Memo/2004/050404.htm>.

¹⁰⁶ *Id.*

administrative problems, the difficulty of using different definitions of food in different states and the risk of creating additional stigma for food stamp recipients.¹⁰⁷ In particular, USDA concluded that the Minnesota food definition would “stigmatize food stamp recipients” and lead to “confusion and embarrassment” in the checkout aisle.¹⁰⁸ Similarly, in 2010, New York City and State jointly proposed a two-year demonstration project to remove sugar-sweetened beverages from the list of eligible food stamp purchases as part of a larger effort to combat obesity and diabetes.¹⁰⁹ USDA ultimately rejected the proposed project after concluding it was “too large and complex” and would result in retailer confusion.¹¹⁰

Attempts to narrow the definition of eligible food by removing “luxury foods” or “junk food” have repeatedly failed, indicating that the broad definition of food established in 1977 is most likely here to stay. Nevertheless, Congress and FNS have partially limited food accessibility in the Food Stamps Program based on the criteria for eligible retail stores.¹¹¹ However, the greatest limitation on the types of foods that can be purchased in the Food Stamp program comes not from the legal definition of food, but from the limited monetary benefits which force recipients to make strategic food purchasing decisions and the limited accessibility of well-stocked grocery stores for many food stamp participants.¹¹² Addressing these issues will require more than a simple change in the legal definition of eligible foods. Solving these issues requires an understanding of the political history behind the Food Stamps Program and the way that political goals shape the program’s design and implementation.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Removing SNAP Subsidy for Sugar-Sweetened Beverages*, N.Y. City Dep’t of Health & Mental Hygiene, Human Res. Admin. (2010), available at <http://www.nyc.gov/html/doh/downloads/pdf/cdp/cdp-snap-faq.pdf>.

¹¹⁰ Letter from Jessica Shahin, Assoc. Adm’r, SNAP, to Elizabeth R. Berlin, Exec. Deputy Comm’r, N.Y. State Office of Temporary & Disability Assistance (Aug 19, 2011), available at <http://www.foodpolitics.com/wp-content/uploads/SNAP-Waiver-Request-Decision.pdf>.

¹¹¹ See 7 C.F.R. § 271.2.

¹¹² See Tess Feldman, *Re-Stocking the Shelves: Policies and Programs Growing in Food Deserts*, 16 Pub. Int. L. Rep. 38, 40-41 (2010).

III. Food Stamps as Welfare, Nutrition, and Agricultural Subsidy

The Food Stamps Program has changed greatly in scale and scope throughout the program's long history, but three political threads run consistently throughout, helping to explain why the program is what it is and why it has changed as it has over the years. Food stamps is not just one program, it is in effect three programs: a welfare program, a nutrition program, and an agricultural subsidy. Over time each of these aspects has waxed and waned in importance, but all are critical to understanding how food stamps operate. In its current iteration, SNAP is primarily a welfare program combined with nutritional education. Agricultural politics nevertheless play a key role in the program because its reauthorization in the omnibus Farm Bill depends on political horse-trading between farm interests and food stamp advocates. Of these three frames, nutrition currently plays the smallest role in the program's implementation and design, largely due to the administrative difficulties of distinguishing between types of food.

A. Welfare: Assistance for the Poor

Food Stamps have always been targeted at low-income families and individuals, making the program indisputably a welfare program. Indeed, the 1964 Food Stamp Act noted that its appropriations were to be considered welfare expenditures, not agricultural price supports.¹¹³ Because of political distaste for welfare programs, the Food Stamps program has tried to mask its welfare agenda. As one USDA official described in 1967, "The Food Stamp program operate[s] on a nervous compromise between those who insist it is not a welfare program and those who say it is."¹¹⁴ The purchase requirement lasted until 1977 as a political compromise to make food stamps less of a welfare program and more of an agricultural surplus distribution program.¹¹⁵

¹¹³ Pub. L. No. 88-525, 78 Stat. 703, § 16(d) (1964).

¹¹⁴ MANEY, *supra* note 45, at 89.

¹¹⁵ BERRY, *supra* note 28, at 30.

Throughout the 1970s, multiple studies attempted to quantify the poverty reduction effects of food stamps, generally concluding that food stamps reduced the number of Americans living below the poverty line by 8-16%.¹¹⁶ Food Stamps are a particularly important welfare program because they have a higher income eligibility limit than many other federal welfare programs.¹¹⁷ During the most recent recession, SNAP reached a record high participation level, with 45.8 million people receiving food stamps, a startling 15% of the American population.¹¹⁸ Furthermore, for 6 million of those individuals, food stamps provided their only source of income, because they were ineligible for other assistance programs.¹¹⁹ The soaring rates of food stamp use in recent years, particularly among formerly middle-class families, has greatly reduced stigma associated with the program.¹²⁰

Under the welfare analysis, food eligibility definitions are set based more on political palatability than on nutritional characteristics. The idea that food stamps should provide an adequate, but not luxurious, diet for poor families helps to explain why stores which primarily sell “accessory” food items such as coffee, tea, cocoa, soft drinks, candy, condiments, and spices are ineligible for the program. Coffee, tea, and spices do not spring immediately to mind when one thinks of unhealthy food items, but all three can easily be classified as non-necessary or luxury foods. The primary purpose of welfare is providing assistance to the poor, so the program is less concerned with creating lists of “healthy” foods (particularly given administrative difficulties in enforcing various prohibitions) than it is with simply distributing assistance in an efficient and politically-popular manner.

¹¹⁶ MACDONALD, *supra* note 27, at 85.

¹¹⁷ *Id.* at 89.

¹¹⁸ Blake Ellis, *Food stamp use rises to record 45.8 million*, CNN Money, August 4, 2011, available at http://money.cnn.com/2011/08/04/pf/food_stamps_record_high/index.htm.

¹¹⁹ Jason Deparle & Robert M. Gebeloff, *THE SAFETY NET; Living on Nothing but Food Stamps*, N.Y. Times, Jan. 3, 2010, at A1.

¹²⁰ Jason Deparle & Robert M. Gebeloff, *Food Stamp Use Soars and Stigma Fades*, N.Y. Times, Nov. 28, 2009.

B. Nutrition: Healthy Food for the Hungry

As the name suggests, food stamps have always provided a specific form of assistance to the poor: food assistance. In the early years, the primary concern was simply to deliver enough food, but anti-hunger advocates as early as the 1940s also recognized that food stamps should provide a healthy diet.¹²¹ Starvation and undernourishment remained serious concerns for many decades, but in recent years, public attention has turned to the issue of obesity.¹²² FNS addresses these issues through nutritional education programs run in conjunction with SNAP. Beginning in 1990, Congress authorized \$2 million in Food Stamp demonstration project funding for nutritional education programs.¹²³ Obesity is a growing focus for these programs: in 2010, Congress established the Nutrition Education and Obesity Prevention Grant Program for eligible low-income individuals participating in SNAP.¹²⁴ These nutrition education programs are now run by the states with matching federal funds¹²⁵ and in the most recent fiscal year, all fifty states participated in the program, spending \$375 million on nutrition education.¹²⁶

Nutrition education programs are important, but they exist as a supplement to the Food Stamps Program—not an inherent part of the program design itself. Although Congress has repeatedly considered prohibiting certain unhealthy foods from the program, these efforts have all been ultimately rejected, generally based on concerns about administrative difficulty.¹²⁷ The other major concern is that prohibitions on particular foods would not have an actual impact on

¹²¹ The purpose of the National Food Allotment Plan proposed in 1944 was to create a nutritionally-adequate diet for all Americans. Nat'l Food Allotment Plan, S. 1331, 78th Cong. § 1 (1944).

¹²² Jess Alderman, Jason A. Smith, Ellen J. Fried, & Richard A. Daynard, *Application of Law to the Childhood Obesity Epidemic*, 35 J. L. Med. & Ethics 90, 92 (2007).

¹²³ Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, 104 Stat. 3359-4078, § 1679 (1990) (establishing “pilot project to coordinate food and nutrition education programs”).

¹²⁴ The Healthy, Hunger-Free Act of 2010, Pub. L. No. 111-296, § 241 (2010).

¹²⁵ See 7 C.F.R. § 272.2(d)(2).

¹²⁶ *Nutrition Program Facts: Supplemental Nutrition Assistance Program Education (SNAP-Ed)*, FNS (2011), available at <http://www.nal.usda.gov/snap/SNAP-EdFactsheet2011.pdf>.

¹²⁷ See, e.g., S. REP. NO. 88-1124, 88th Cong. (1964), *reprinted in* 1964 U.S.C.C.A.N. 3275, 3284 (rejecting proposed exclusion on soft drinks because of administrative complexity); H. REP. NO. 95-464, at 242 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1978, 2268 (rejecting ban on junk food because of administrative difficulty).

food choices: very few families rely entirely on food stamps for their food budget, so they could simply use food stamps for eligible items and their own money for ineligible items.¹²⁸

Furthermore, there is little evidence that poor families spend more money on junk food than wealthier families. In 2004-2005, the average low-income household spent \$11 per month on sugars/sweets and \$30 per month on nonalcoholic beverages, compared to \$10 and \$31 respectively for the average middle-income household.¹²⁹ Given the lack of evidence that poor households make bad food decisions, FNS has consistently rejected proposed bans on the basis of their stigmatizing effects.¹³⁰ As a political matter, proposed bans are also unpopular among the companies producing those foods and retailers who fear losing customers.¹³¹

SNAP's name change and new branding in 2008 signaled an increasing political focus on nutrition,¹³² but has not yet resulted in any major changes to the program's implementation. Given the factors discussed above and the difficulty of even classifying foods as healthy or unhealthy,¹³³ more restricted definitions of eligible food seem highly unlikely for the foreseeable future. The Food Stamps Program is about providing food, but at the moment the actual food choices themselves are left to the individual. Numerous studies have attempted to quantify the

¹²⁸ Joanne F. Guthrie, Elizabeth Frazão, Margaret Andrews, & David Smallwood, *Improving Food Choices—Can Food Stamps Do More? An expanded focus on nutrition may steer food stamp participants to better diets*, AMBER WAVES 5(2): 22, 24-25(2007) available at <http://ers.usda.gov/AmberWaves/April07/PDF/Improving.pdf>.

¹²⁹ “Low-income” is defined as a household with an annual net income of \$10,000-\$29,999. “Middle-income” is defined as a household with a net income of \$30,000-49,999. *Id.* at 26.

¹³⁰ Letter from Ollice C. Holden, SNAP Regional Administrator, to Maria Gomez, Assistant Comm'r, Minn. Dep't of Human Serv. (May 4, 2004), available at <http://www.fns.usda.gov/snap/rules/Memo/2004/050404.htm> (rejecting proposed Minnesota ban on candy and soft drinks); Letter from Jessica Shahin, Assoc. Adm'r, SNAP, to Elizabeth R. Berlin, Exec. Deputy Comm'r, N.Y. State Office of Temporary & Disability Assistance (Aug 19, 2011), available at <http://www.foodpolitics.com/wp-content/uploads/SNAP-Waiver-Request-Decision.pdf> (rejecting proposed N.Y. ban on sugar-sweetened beverages).

¹³¹ See, e.g., Robert Pear, *Soft Drink Industry Fights Proposed Food Stamp Ban*, N.Y. Times, April 29, 2011; *American Beverage Association Statement on Food Stamp Purchases*, Press Release (Oct. 7, 2010), available at <http://www.ameribev.org/news--media/news-releases--statements/more/226/> (opposing N.Y.'s proposed ban on sugar-sweetened beverages).

¹³² USDA SNAP Basics: SNAP Name Change, USDA FNS (2011), available at http://www.fns.usda.gov/snap/outreach/pdfs/toolkit/2011/Community/Basics/SNAP_name.pdf.

¹³³ *Implications of Restricting the Use of Food Stamp Benefits*, USDA FNS 1-2 (2007), available at <http://www.fns.usda.gov/ora/menu/Published/snap/FILES/ProgramOperations/FSPFoodRestrictions.pdf>.

nutritional impacts of participation in the Food Stamps Program and have generally found that participants consume more vitamins than non-participants and that these nutritional effects are greatest among children.¹³⁴ However, these results have been relatively small,¹³⁵ leading to the conclusion that the Food Stamps Program is not primarily intended to be a nutrition program, but is rather a *welfare* program with a nutritional overlay.

C. Agricultural Subsidy: Demand for Domestic Crops

The Food Stamp program began as an off-shoot of earlier direct commodity distribution programs and despite many changes to the program over the years, it remains intimately connected to agricultural policy. The attempts to support domestic agriculture can be seen most clearly in the program's earliest years: the 1939-1943 program focused on distributing surplus foods, while the 1964 Act limited eligibility for imported goods. Although the Food Stamps Program has since shed these limitations, food stamps continue to indirectly help farmers by creating additional demand for their crops¹³⁶ and, to this day, one of the program's explicit goals is to "strengthen the Nation's agricultural economy."¹³⁷

Despite these vestiges of its agricultural roots, SNAP is far more of a welfare and nutritional program than an agricultural subsidy. The importance of agriculture politics lies in the Farm Bill reauthorization process: food stamps and agricultural subsidies are passed together in

¹³⁴ PETER H. ROSSI, FEEDING THE POOR: ASSESSING FEDERAL FOOD AID 38-41 (American Enterprise Institute, 1998) (summarizing decades of research on nutritional impacts of food stamps).

¹³⁵ *Id.*

¹³⁶ Government economists estimate that every additional dollar's worth of SNAP benefits generates 17 to 47 cents of new spending on food. Since most food sold in the U.S. is grown in the U.S., this increased spending indirectly benefits U.S. farmers. Kenneth Hanson, *The Food Assistance National Input-Output Multiplier (FANIOM) Model and Stimulus Effects of SNAP*, USDA Econ. Research Serv. (2010) available at <http://www.ers.usda.gov/Publications/ERR103/ERR103.pdf>. See also ROSSI, *supra* note 134, at 36.

¹³⁷ 7 U.S.C. § 2011 (2006).

an omnibus bill approximately every 5 years.¹³⁸ SNAP is the single largest expenditure of the Farm Bill, accounting for over 2/3rds of the bill's total cost.¹³⁹ Bringing these very disparate programs into one bill creates a complicated calculus of political support. Many representatives lack ties to the agricultural industry, so placing food stamps within the Farm Bill generates support from urban districts that would otherwise have little reason to support agricultural subsidies.¹⁴⁰ Meanwhile, the combination also gives agricultural representatives a reason to support an expensive welfare program and to attempt to cloak the program in the language of support for domestic agriculture. As with any bill born out of compromise, the political relationship is not always an easy one.¹⁴¹

As Congress begins work on the next Farm Bill,¹⁴² SNAP will likely remain at the center of the ensuing political discussion over agricultural subsidies and food assistance programs, with the major areas of contention being eligibility requirements and SNAP's total cost.¹⁴³ In other words, the debate will focus on the same budgetary issues that have repeatedly sparked political discussion over food stamps: benefit levels, income eligibility, food stamp fraud, and total cost.¹⁴⁴ However, the basic structure and goals of the program are no longer an issue. Food stamps may have started as a surplus crop distribution system, but SNAP is now its own fully-fledged program, albeit one tied to agricultural by dint of history and politics.

¹³⁸ Renée Johnson & Jim Monke, *What Is the "Farm Bill"?*, CONG. RESEARCH SERV. REP. RS22131, 9 (2011), available at <http://www.nationalaglawcenter.org/assets/crs/RS22131.pdf>.

¹³⁹ *Id.* at 3.

¹⁴⁰ MARGARET S. ANDREWS & KATHERINE L. CLANCY, *THE POLITICAL ECONOMY OF THE FOOD STAMP PROGRAM IN THE UNITED STATES* 68 (Int'l Food Policy Research Inst., 1993).

¹⁴¹ Eric Brown, *Ag producers pushing for separation from nutrition programs in farm bill*, THE FENCE POST, Mar. 14, 2012, available at <http://www.thefencepost.com/article/20120314/NEWS/120319949>.

¹⁴² See Rural Economic Farm and Ranch Sustainability and Hunger Act of 2011, S. 1658, 112th Cong. (2011).

¹⁴³ See Food Research & Action Center, *Farm Bill 2012* (2012), <http://frac.org/leg-act-center/farm-bill-2012/>.

¹⁴⁴ See KING, *supra* note 75, at 240-242.

IV. Methods for Increasing SNAP's Nutritional Focus

The new name of the Supplemental Nutrition Assistance Program indicates that future efforts to change the program will increasingly emphasize nutritional goals, particularly given national concerns about obesity. Yet the decades of program history also demonstrate that achieving this goal will not be simple. The easiest answer—nutrition education—is already part of the Supplemental Nutrition Assistance Program. All states run nutrition education programs in conjunction with SNAP and these programs have received augmented funding in recent years.¹⁴⁵ The other simple answer—restricting eligible food items—has been repeatedly rejected by both Congress and FNS. Having generally concluded that banning particular foods is neither politically feasible nor likely to result in large dietary changes, recent literature discussing the Food Stamps Program has progressively focused on structural changes or positive incentives as methods to alter participant food choices.¹⁴⁶ Neither change would be simple or politically easy, but both provide valuable methods for making SNAP a more effective nutrition program.

A. Change Agricultural Subsidies to Improve the Food Environment

Ironically, the first place to look for ways to improve food choices by SNAP participants is not within SNAP itself, but in the many agricultural subsidies of the Farm Bill. Participant food decisions occur in a food environment greatly shaped by large agricultural subsidies, so one way to shift food choices would be to shift existing agricultural subsidies away from currently subsidized crops (primarily corn, wheat, rice, cotton, and soybeans) and towards whichever food

¹⁴⁵ *Approved Federal Funds for Supplemental Nutrition Assistance Education by Fiscal Year*, USDA FNS (2009), available at <http://www.nal.usda.gov/fsn/SNAP-Ed%20Funding%202004-2009.pdf>.

¹⁴⁶ See, e.g., Lisa Mancino & Margaret Andrews, *Making Healthy Food Choices Easier: Ideas from Behavioral Economics*, Econ. Info. Bulletin No. 29-7 (2007); Guthrie et al., *supra* note 128.

products the program wants to support, such as fruits and vegetables.¹⁴⁷ Fruits and vegetables currently receive very few agricultural subsidies and are relegated to the sidelines of the Farm Bill as “specialty crops.”¹⁴⁸ In 2009, “commodity crops” (mainly corn, wheat, rice, cotton, and soybeans) received 16 times more dollars in subsidies than “specialty crops” (which includes all fruits and vegetables).¹⁴⁹ The subsidy disparity results from a political trade: in exchange for a lack of subsidy dollars, specialty crop producers enjoy essentially a non-compete guarantee from commodity crop producers.¹⁵⁰

Increasing subsidies for fruits and vegetables could have a substantial effect on participant diets because household spending on fruits and vegetables differs widely between low-income households and high-income households. Households with annual incomes of more than \$50,000 spend 30% more on fruits and vegetables than low-income households.¹⁵¹ Subsidies could help address this disparity since lower prices lead to higher consumption, particularly for fruits and vegetables.¹⁵² Shifting Farm Bill subsidies is a difficult task because of the entrenched and long-standing nature of current subsidies.¹⁵³ Nevertheless, SNAP’s position within the Farm Bill could potentially give food stamp advocates leverage to change other Farm Bill programs and subsidies. After all, there are fewer than 1 million full-time farmers in the

¹⁴⁷ See, e.g., Melissa D. Mortazavi, *Are Food Subsidies Making Our Kids Fat? Tensions Between the Healthy Hunger-Free Kids Act and the Farm Bill*, 68 Wash. & Lee L. Rev. 1699, 1728-1730 (2011) (recommending an end to agricultural price supports, decoupling of income supports from production, and subsidies for polyculture); Julie Foster, *Subsidizing Fat: How the 2012 Farm Bill Can Address America’s Obesity Epidemic*, 160 U. Penn. L. Rev. 256-261 (2011) (recommending decreased subsidies for traditionally-subsidized crops and increased subsidies for fruits and vegetables).

¹⁴⁸ USDA defines “specialty crops” as “fruits and vegetables, tree nuts, dried fruits, and horticulture and nursery crops (including floriculture).” 7 C.F.R. § 3430.202.

¹⁴⁹ Kari Hamerschlag, *Farm Subsidies in California: Skewed Priorities and Gross Inequities*, Env’tl. Working Group Report, at 5 (2010), available at <http://farm.ewg.org/pdf/california-farm.pdf>.

¹⁵⁰ With a few exceptions, farmers who plant specialty crops on their farms lose all future ability to receive direct commodity payments for those acres. See 7 U.S.C. § 8717(b) (2006).

¹⁵¹ Guthrie et al., *supra* note 128, at 26-27.

¹⁵² *Id.* at 27.

¹⁵³ See Mary Ann Hayes, *Getting What We Pay For (and Other Unintended Consequences): an Overview of Federal Agricultural Policy*, 20 Me. Policy Rev. 66, 69 (2011).

United States,¹⁵⁴ compared to 46.5 million SNAP recipients.¹⁵⁵ Food stamp program advocates have historically relied on political horse-trading with the agricultural lobby to secure support for nutritional assistance, but the political dependence runs both ways, especially as rural populations continue to decline. If SNAP is going to be part of the Farm Bill process, program proponents could use their political leverage to change other sections of the Farm Bill that hamper SNAP's nutritional effectiveness.

B. Provide Bonuses for Fruit and Vegetable Purchases

The model of the original 1939-1943 provides a simple method for encouraging consumption of specific food items: providing a “bonus” for purchasing certain foods. In 2008, Congress decided to test out this idea by providing \$20 million in funding for a pilot project to provide incentives for purchasing fruits, vegetables, and other healthful foods.¹⁵⁶ The project works by providing a 30% financial incentive for fruit and vegetable purchases: so a purchase of \$10 of eligible fruits and vegetables results in \$3 of extra SNAP spending.¹⁵⁷ FNS is currently researching the impact of the incentive on fruit and vegetable consumption,¹⁵⁸ but if the project is successful it should be expanded to more areas.

Many farmers' markets across the country are also testing financial incentives to encourage higher SNAP participation.¹⁵⁹ For example, in 2010, the State of New Mexico

¹⁵⁴ The 2010 Census reported 751,000 full-time farmers in the United States. U.S. Bureau of Labor Statistics, Statistical Abstract of the United States, Table 640 (2010), available at <http://www.census.gov/compendia/statab/>.

¹⁵⁵ USDA FNS, *SNAP Monthly Data* (2010), <http://www.fns.usda.gov/pd/34snapmonthly.htm>.

¹⁵⁶ Food Conservation and Energy Act of 2008, Pub. L. 110-246, § 4141 (2008).

¹⁵⁷ Letter from Kevin M. Concannon, Under Secretary, Food, Nutrition, and Consumer Services, to Senator Debbie Stabenow, Charwoman, Senate Comm. on Agric., Nutrition & Forestry (Dec. 19, 2011), available at http://www.fns.usda.gov/snap/hip/docs/2011_HIP_report.pdf.

¹⁵⁸ *Id.* at 7-8.

¹⁵⁹ Bonus Bucks at Farmer's Markets, 2012 Hunger Report (2012), available at <http://hungerreport.org/issues/healthy-food/farmers-market-dollars>.

provided double bonuses for purchases at 16 participating farmers' markets across the state.¹⁶⁰ FNS supports these projects, but lacks Congressional authorization or funding to provide financial support, so all current projects are funded by non-profit organizations, private foundations or local governments.¹⁶¹ Implementing financial incentives at farmers' markets offers an opportunity to not only potentially increase consumption of fresh produce, but also a chance to directly support farmers, one of the political goals of SNAP.

V. Conclusion: Creating Better Food Incentives

Understanding the Food Stamps Program means recognizing that the program serves multiple goals and exists as the result of a long history of political compromises. However, the program's long history can also provide a road-map for future changes by identifying the ideas that have been discarded or adopted in the past and the long process necessary to make these changes. As Congress begins work on the next Farm Bill, now is the time for developing new proposals for SNAP. In particular, recent pilot projects creating financial incentives for fruit and vegetable purchases at grocery stores and farmers' markets offer a helpful model for increasing the nutritional focus of SNAP. Finding ways to create better food incentives has long been an aspiration of the Food Stamps Program, albeit one that remains difficult to achieve. Reaching these nutritional goals will be a challenge, but the many improvements in the Food Stamps Program over the years prove that it is an effort worth making.

¹⁶⁰ *Two-for-One Bonus Dollars Available for EBT Customers*, New Mexico Farmers' Markets (2010), available at http://farmersmarketsnm.org/Detailed/News/Two-for-One_Bonus_Do..._437.html.

¹⁶¹ *Accepting SNAP Benefits at Farmers Markets – Responsibilities*, USDA FNS (2012), available at http://www.fns.usda.gov/snap/ebt/fm-scrip-Bonus_Incentives.htm.