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J. AMY DILLARD*

Sloppy Joe, Slop, Sloppy Joe: How USDA Commodities Dumping Ruined the National School Lunch Program[1]

Just as our nation's children are tipping further into obesity,[2] the social movement for providing locally grown, healthy,

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[1] *See Saturday Night Live* (NBC television broadcast Jan. 15, 1994) (containing the skit *Lunch Lady Land*, featuring Adam Sandler and Chris Farley); LyricsDomain, Lunch Lady Land Lyrics, *available at* http://www.lyricsdomain.com/1/adam_sandler/lunch_lady_land.html (last visited Nov. 24, 2008) (in relevant part, "Served some re-heated salisbury steak/With a little slice of love./Got no clue what the chicken pot pie/Is made of./Just know everything's doing fine/Down here in Lunch Lady Land," the refrain of which is "Sloppy Joe/Slop, Sloppy Joe").

[2] Most of this introduction is adapted from an Op-Ed. by the author. Amy Dillard & Lisa Holmes, Op-Ed., *Rethinking School Lunch*, S.F. CHRON., May 10, 2007, at B7.

organic food for America's schoolchildren is reaching a tipping point.[3] This is welcome news to Alice Waters[4] and others who have long promoted the health and lifestyle benefits of consuming whole, organic, locally grown, and locally produced food.[5] Change is under way in many school districts around the country; one of the most promising is the Berkeley Unified School District ("BUSD"), which has undergone a complete overhaul of its school lunch program under the leadership of the "Renegade Lunch Lady," Chef Ann Cooper.[6] With much-needed supplemental funding from Waters's Chez Panisse Foundation, Cooper has set herself to the task of providing healthy and delicious food to 4000 schoolchildren every day.[7] Her work is not easy, and Cooper frequently has to fight the federal government to achieve her goal.

Cooper knows that, under her tutelage, kids will quickly clamor for freshly roasted red potatoes over high-fat processed tater tots, but first she has to get healthy options on their plates.[8] Recent studies show that when offered a healthy-food option, like a piece of fresh fruit or vegetable, ninety percent of children accepted the healthy option and eighty percent actually ate it.[9] But Cooper has to purchase fresh fruits or vegetables before she can offer healthy options to children, and she has neither funds nor permission to place an order at the local farmers' market. Currently the nation's schoolchildren are fed mainly by the

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3 *See generally* MALCOLM GLADWELL, THE TIPPING POINT 7, 9 (2000) ("Ideas and products and messages and behaviors spread just like viruses do. . . . The name given to that one dramatic moment in an epidemic when everything can change all at once is the Tipping Point.").

4 *See generally* DAVID KAMP, THE UNITED STATES OF ARUGULA 122–65 (2006); THOMAS MCNAMEE, ALICE WATERS AND CHEZ PANISSE (2007) (detailing how Alice Waters and her Chez Panisse Restaurant in Berkeley, California, are responsible for the food revolution in the United States toward simple, local, whole foods).

5 *See generally* MCNAMEE, *supra* note 4; MICHAEL POLLAN, IN DEFENSE OF FOOD: AN EATER'S MANIFESTO (2008); Kim Severson, *Lunch With a Food Revolutionary: Don't Worry, She'll Bring the Capers*, N.Y. TIMES, Sept. 19, 2007, at F1.

6 Burkhard Bilger, *The Lunchroom Rebellion*, NEW YORKER, Sept. 4, 2006, at 72, 72.

7 *See id.*

8 *See generally id.*

9 *See* Sally Squires, *Give Kids a Chance to Eat Wisely*, WASH. POST, Apr. 24, 2007, at F5 (explaining a report from a pilot food study performed in Guilford, Connecticut).

overproduced agricultural commodities that are promised a market by the Federal Farm Bill.[10] The U.S. Department of Agriculture's ("USDA") commodities policy, which Congress revisited this year when it passed the new Farm Bill, puts the USDA in a conflict of interest between supporting agribusiness and promoting the good health of American schoolchildren.[11]

The USDA supports industries that produce foods contributing to obesity, heart disease, and cancer.[12] Worse yet, "[t]he USDA buys hundreds of millions of pounds of excess beef, pork, milk, and other high-fat meat and dairy products to bolster [or normalize] dropping prices."[13] It then dumps those commodities into the National School Lunch Program ("NSLP").[14] Medical journals empirically demonstrate the coronary health benefits of near-vegetarian meals,[15] yet most schools offer meals based primarily on a combination of meat and dairy products, which are high in fat and low in nutritional quality.[16] Newer studies link lactose intolerance to children of African American descent, yet most schools still do not offer nondairy alternatives like soy milk on their menus.[17] The USDA seems to resolve its conflict of interest in favor of the dairy lobby over the community of lactose-intolerant children. Powerful agricultural lobbies will always win so long as the USDA has oversight of the NSLP and continues to ignore this conflict of interest.

Congress enacted the NSLP in 1946 with the dual policy "to safeguard the health and well-being of the Nation's children" and "encourage the domestic consumption of nutritious

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10 *See* Food, Conservation, and Energy Act of 2008, H.R. 2419, 110th Cong. (2008).

11 *See, e.g., id.* tits. I & IV.

12 *See* Ron Haskins, *The School Lunch Lobby*, EDUC. NEXT, Summer 2005, at 11.

13 PHYSICIANS COMM. FOR RESPONSIBLE MED., SCHOOL LUNCH REPORT CARD 3 (2006), *available at* http://www.pcrm.org/health/reports/pdfs/schoollunch_report2006.pdf [hereinafter PCRM REPORT CARD].

14 *See id.* at 1, 3.

15 *See* MICHAEL POLLAN, THE BOTANY OF DESIRE xix (2002); *see, e.g.*, Dean Ornish et al., *Can Lifestyle Changes Reverse Coronary Heart Disease? The Lifestyle Heart Trial*, 336 LANCET 129 (1990).

16 *See* PCRM REPORT CARD, *supra* note 13, at 3.

17 *See* MARION NESTLE, FOOD POLITICS 73 (2002); Emily J. Schaffer, *Is the Fox Guarding the Henhouse? Who Makes the Rules in American Nutrition Policy?*, 57 FOOD & DRUG L.J. 371, 373–74 (2002).

agricultural commodities and other food."[18] Today the dual policy creates a conflict of interest as the USDA acts as a broker between farmers and school kitchens. As agribusiness and megafarms have increasingly taken over a larger share of the agricultural market, the beneficiaries of commodity subsidies are no longer the family farmers that the Farm Bill was originally intended to assist.[19] Big business has used its powerful pocketbook to buy the USDA to the detriment of the nation's schoolchildren.

Commodities processing intensifies the conflict of interest within the USDA. The National Processing Agreement ("NPA"), which Congress designed to reduce paperwork and costs, allows the USDA to maintain agreements with agribusiness to turn commodities into processed foods that can be heated easily in school kitchens.[20] Two-thirds of the listed commodities being processed are meat and dairy.[21] The remaining third covers everything from oil and fruit (in the same proportion) to flour and vegetables.[22] The only vegetable listed with any specificity is the potato, which is processed into french fries and tater tots. The few fruits on the list are processed with flour and shortening to become high-fat muffins and fruit pastries.[23] Of course, the most popular processed food on school lunch menus is high-fat pizza. While the approved processors vary in size and capital, it will surprise no one to learn that ConAgra Foods,[24] one of the largest food-processing companies

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18 National School Lunch Act, Pub. L. No. 79-396, § 2, 60 Stat. 230, 230 (1946) (codified as amended at 42 U.S.C. § 1751 (2008)).

19 *See generally* MICHAEL POLLAN, THE OMNIVORE'S DILEMMA 32–56 (2006).

20 *See* ANN COOPER & LISA M. HOLMES, LUNCH LESSONS 80 (2006) (noting that most schools lack stoves for actual cooking); U.S. DEP'T OF AGRIC., APPROVED USDA NPA COMMODITY PROCESSORS FOR SY0708 AS OF MAY 10, 2008 (2008), *available at* http://www.fns.usda.gov/fdd/processing/national/SY2008/NPA_ApprovedProcessors_SY08.pdf [hereinafter USDA-APPROVED PROCESSORS].

21 *See* USDA-APPROVED PROCESSORS, *supra* note 20.

22 *See id.*

23 *See id.*

24 *See id.* at 1. After receiving bad press in *Fast Food Nation*, it would be easy to pick on ConAgra as a corporate evildoer, but other companies like Cargill, Tyson, Hormel, Pilgrim's Pride, Perdue, and Land O'Lakes all hold commodity-processing agreements with the USDA and are among the top three producers in various agricultural markets. *See* MARY HENDRICKSON & WILLIAM HEFFERNAN, CONCENTRATION OF AGRICULTURAL MARKETS 1–4 (2007), *available at*

in North America, is on the list. ConAgra and other corporate giants profit from turning cheap government-subsidized commodities into foods for the NSLP that are making schoolchildren obese.

To ensure the NSLP is a healthy part of our educational system, Congress should give children an independent broker who will not bow to the powerful agribusiness lobby. Chefs like Ann Cooper need a voice within an appropriate agency, such as Health and Human Services or Education, which can put the health and well-being of America's children first. The first step should be recognizing in the next Farm Bill that the NSLP is neither an agricultural program nor an appropriate dumping ground for a glut of unhealthy commodities. From there, Congress should view schoolchildren's nutrition as a social justice and educational issue and should employ innovative approaches to funding and staffing by offering loan repayment for chefs who work in school lunchrooms.

In Part I, this Article will offer a comprehensive overview of the NSLP with an examination of its historical foundations, its sources and methods for funding, and its current form. Part II examines the abject lack of cash subsidies for the NSLP and the USDA's failure to focus on the chronic health problems associated with obesity in children.[25] Part III will analyze how the Farm Bill subsidizes the commodities dumped into the NSLP kitchens, most often in the form of processed, ready-to-heat, high-fat foods. In conclusion, this Article will suggest policy changes and practical solutions that would begin to address the most immediate problems.

I

A HISTORY OF THE NATIONAL SCHOOL LUNCH PROGRAM

Congress enacted the NSLP in 1946 with the dual policy of feeding children and creating a market for domestic

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http://www.nfu.org/wp-content/2007-heffernanreport.pdf; *see generally* ERIC SCHLOSSER, FAST FOOD NATION (2001).

[25] *See, e.g.*, Jonathan Sorof & Stephen Daniels, *Obesity Hypertension in Children: A Problem of Epidemic Proportions*, 40 HYPERTENSION 441, 441–42 (2002). Being overweight increases the risk for high blood pressure, high cholesterol, heart disease, stroke, diabetes, cancer, and arthritis.

commodities.[26] Those dual policy goals create a conflict for the USDA when it acts as a broker between farmers and school kitchens.[27] Moreover, as agribusiness and megafarms now take a substantial share of the agricultural market, the beneficiaries of commodity subsidies are no longer the family farmers that the Farm Bill was originally intended to assist.[28]

A. Early Efforts at School Lunch Programs

School feeding programs first emerged in large cities in the United States in the early twentieth century.[29] New York City had the first well-documented school feeding program, the "three cent lunch," established in response to doctors' observation of malnutrition in school-age children.[30] In rural areas, teachers prepared shared lunches from food each child brought from home to be cooked in a common pot on the school's heating stove.[31] By 1937, several states had passed laws and funded local school boards to operate lunchrooms, usually with a focus on needy children in large cities.[32]

The federal government first became involved with the school feeding industry when it began to pay farmers for agricultural surpluses and distributed the food to the hungry schoolchildren during the Great Depression.[33] Through the Work Projects Administration ("WPA") the government hired unemployed women to prepare the redistributed food surplus, and state

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26 National School Lunch Act, Pub. L. No. 79-396, § 2, 60 Stat. 230, 230 (1946) (codified as amended at 42 U.S.C. § 1751 (2008)).

27 *See generally* POLLAN, *supra* note 19, at 32–56 (explaining how the federal government has used agricultural policy to centralize production of commodity crops to the benefit of the big businesses that use the crops, which has resulted in the demise of the diversified family farm).

28 *Id.*

29 *See* GORDON W. GUNDERSON, THE NATIONAL SCHOOL LUNCH PROGRAM: BACKGROUND AND DEVELOPMENT 7–17 (2003) (offering a detailed historical overview of the early development of child feeding programs in the United States).

30 ANTONIA DEMAS, HOT LUNCH: A HISTORY OF THE SCHOOL LUNCH PROGRAM 5–7 (2000).

31 *See id.* at 10.

32 *See* GUNDERSON, *supra* note 29, at 19 (noting that Indiana, Vermont, Missouri, and Wisconsin were among the fifteen states authorizing some form of government-sponsored school lunch).

33 *See* DEMAS, *supra* note 30, at 13.

governments provided administrative support.[34] By the early 1940s every state had some kind of school lunch program operated primarily by the federal government through the WPA.[35] Even at this very early stage the government's primary objective was to support farmers by creating a guaranteed market for surplus foods[36] and to create jobs through the WPA.[37] The WPA developed lunch programs by putting "unemployed, needy women" to work preparing and serving school lunch.[38] Each state created a supervisory staff of employees who had special knowledge of food service. The staff improved the overall quality of the meals served by developing menus, recipes, and manuals for local cooks and by increasing equipment, sanitation, and safety standards.[39] In the earliest processing ventures, some local schools engaged in canning projects to preserve fresh commodities for use during the winter months.[40] But because the policy goal of early school lunch programs was never primarily to feed malnourished school children, programs were significantly dismantled in the 1940s when WPA workers abandoned schools for defense industries, and when soldiers fighting in World War II ate the agricultural surpluses.[41]

Interest in feeding children emerged as a specific goal as the issue of malnutrition came to the forefront when the war ended and military leaders reported that malnutrition had disqualified one-third of the men who entered the draft during the war.[42] Moreover, the military blamed malnutrition for 155,000

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34 *See id.* at 14.

35 *See* GUNDERSON, *supra* note 29, at 25.

36 *See* H.R. RPT. NO. 94-68, at 3 (1975) ("Prior to the enactment of the School Lunch Program, some schools, as early as 1932, received Federal loans and agricultural surpluses for lunch programs. In 1935, the USDA initiated a direct purchase and distribution program to provide donated farm surpluses to school lunch programs in an effort to dispose of these commodities and aid schools in providing nutritious, low-cost meals to *all* students. This and later expansions of USDA assistance to school lunch programs (in 1939 and 1943) used special discretionary authority granted in a 1935 amendment to the Agricultural Adjustment Act (Section 32).").

37 *See* DEMAS, *supra* note 30, at 14.

38 *Id.* at 24.

39 *See id.*

40 *See id.* at 25.

41 *See* GUNDERSON, *supra* note 29, at 25–26.

42 *See* DEMAS, *supra* note 30, at 28.

casualties.[43] This attention to malnutrition as a national security issue converged with the renewed need to find consumers for surplus foods.[44] The 79th Congress enacted the National School Lunch Act ("NSLA") in 1946[45] and recognized a need to establish a permanent basis for a school lunch program with designated funding rather than sole dependence on agricultural surpluses.[46] Congress stated that the policy behind the NSLA was to "safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food."[47]

At least in its language, Congress seemed to express a shared, equal purpose in creating a consumer group for surplus foods and keeping schoolchildren healthy and well-fed. Congress recognized the educational features of a good diet, and through the school lunch program it saw an opportunity to teach the benefits of a good diet directly to the schoolchild and indirectly to the parents and family.[48]

B. How New Deal Commodities Policy for Domestic Agricultural Production Still Drives the Policy Within the NSLP

Congress has maintained the dual purpose of the NSLP since its inception in 1946. While the NSLP has been identified as a low- or no-cost-to-consumer feeding program,[49] encouraging domestic consumption of the nation's agricultural commodities has always been the clear economic goal of the program, even in its earliest iteration of food redistribution, the Agricultural Adjustment Act of 1935.[50] The NSLP never primarily focused on the welfare of needy children; in fact, school districts were not directed to consider children's needs when they allocated

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43 *Id.* at 15.

44 *See* Susan Lynn Roberts, *School Food: Does the Future Call for New Food Policy or Can the Old Still Hold True?*, 7 DRAKE J. AGRIC. L. 587, 593–94 (2002).

45 National School Lunch Act, Pub. L. No. 79-396, 60 Stat. 230 (1946) (codified as amended at 42 U.S.C. §§ 1751–1769h (2008)).

46 *See* GUNDERSON, *supra* note 29, at 29.

47 National School Lunch Act, § 2.

48 *See* GUNDERSON, *supra* note 29, at 30.

49 *See, e.g.*, Sargent v. Block, 576 F. Supp. 882, 885 (D.D.C. 1983).

50 *See* DEMAS, *supra* note 30, at 13.

school lunches.[51] The goals of avoiding waste of surplus crops and getting those crops to schoolchildren have kept the NSLP's dual purpose in synchronicity.[52] Even today, Congress continues to maintain that the NSLP is "a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities."[53]

In 1946, the 79th Congress made a permanent appropriation to the NSLP with a specific mandate that the Secretary of Agriculture reimburse the states for not less than seventy-five percent of the amount expended in food purchases.[54] Congress expected each state to set up and maintain a lunch program in schools, and further required the states to match the federal funds, to serve meals that met nutritional standards, and to assure that local schools served free meals to poor children.[55] Congress specifically prescribed that the states must use most of the appropriation for purchasing food and authorized each state to use no more than 3.5% of the annual appropriation for administrative expenses; moreover, Congress approved only $10 million to be divided among all of the states for nonfood assistance such as purchasing equipment.[56] Through year-to-year allotments, Congress offered cash subsidies to cover operating expenses, such as equipment purchasing.[57] With the enactment of the National School Lunch Act in 1946, Congress transferred jurisdiction over school lunch from the Committee on Agriculture to the Committee on Labor and Public Welfare, but the Senate parliamentarian continued to refer all school lunch legislation to the Committee on Agriculture since the

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51 *See* Ayala v. Dist. 60 Sch. Bd., 327 F. Supp. 980, 984–85 (D. Colo. 1971); Briggs v. Kerrigan, 307 F. Supp. 295, 301–02 (D. Mass. 1969); Roberts, *supra* note 44, at 594.

52 *See, e.g.*, Graves Bros. Co. v. Comm'r, 17 T.C. 1499, 1511 (1952) (showing that the government redistributed surplus citrus crops to school lunch programs).

53 42 U.S.C. § 1751 (2008).

54 GUNDERSON, *supra* note 29, at 29–30.

55 THE UNITED STATES SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY 1825–1998, MEMBERS, JURISDICTION, AND HISTORY, S. DOC. NO. 105-24, at ch.5 (1999), *available at* http://www.access.gpo.gov/congress/senate/sen_agriculture/.

56 GUNDERSON, *supra* note 29, at 30.

57 *Id.*

program had originated as a market for agricultural commodities.[58]

All schools participating in the NSLP receive donated commodities and free bonus commodities for each meal served.[59] To qualify for the additional commodities, schools must serve lunches that meet the federal nutrition requirements.[60] The guidelines for the administration of the NSLP detail that lunch programs must be operated on a nonprofit basis, foods designated as abundant by the Secretary of Agriculture must be donated to schools, schools must use the donated commodities, and every school must maintain and report detailed summaries of expenditures.[61] The surplus milk program[62] is the best example of the use of surplus products in school feeding programs. Cow's milk is overproduced every year, and through the surplus milk program Congress allows any agency that offers childcare, including summer camps and after-school programs, to accept free, donated milk. In exchange for the free milk, the agencies must agree to use the milk and to maintain a record of the accepted commodity and of its use.[63]

The Department of Agriculture still donates commodities to school lunch programs under the authority of section 32 of the Agricultural Adjustment Act Amendment of 1935.[64] The Agricultural Adjustment Act ("AAA") was part of Roosevelt's New Deal program,[65] and the original intent behind the AAA was to reduce the number of crops that farmers produced and the number of livestock sent to slaughter.[66] Fewer crops and slaughtered animals would prompt higher prices for agricultural

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58 *Id.*

59 *See* PCRM REPORT CARD, *supra* note 13, at 1.

60 *See id.* at 1, 3.

61 *See* COOPER & HOLMES, *supra* note 20, at 36.

62 Special Milk Program for Children, 7 C.F.R. § 215 (2008).

63 *See* GUNDERSON, *supra* note 29, at 63–65.

64 *See* S. REP. NO. 94-259, at 10 (1975).

65 Agricultural Adjustment Act, Pub. L. No. 73-10, 48 Stat. 31 (1933) (codified at 7 U.S.C. § 602 (2008)). Congress amended the Agricultural Adjustment Act in 1935. *See* Act of Aug. 24, 1935, Pub. L. No. 74-320, 49 Stat. 750. This amendment gave the President authority to impose quotas when imports interfered with agricultural adjustment programs. *Id.* § 31. Section 32 of the amendment also permanently appropriated thirty percent of all customs receipts to expand exports and domestic usage of surplus commodities. *Id.* § 32.

66 *See* Agricultural Adjustment Act § 2.

products, increasing farmers' abilities to pay off debts and enhancing their purchasing power.[67] To convince farmers to reduce production, the AAA authorized the federal government to pay subsidies to farmers who grew fewer crops and raised fewer animals.[68] The AAA controlled the supply of seven "basic" crops—corn, wheat, cotton, rice, hogs, tobacco, and milk.[69] Through the Federal Surplus Commodities Corporation ("FSCC"), established in 1933, the federal government distributed surplus pork, dairy, and wheat from farms to school lunchrooms, with as many as 3839 schools receiving commodities by 1937.[70] The FSCC sponsored a representative in each state to work with school authorities and parent organizations to expand existing school lunch programs.[71] In 1941, before the start of the war, the FSCC distributed 454 million pounds of food commodities valued at more than $21 million for schools to use in lunch programs.[72]

Though the United States Supreme Court declared the AAA's production control and processing taxes unconstitutional in 1936,[73] Congress reinstated most of the Act's provisions in 1937, including section 32 of the AAA.[74] Section 32 authorizes a permanent appropriation, equal to thirty percent of annual U.S. Customs receipts, to the Secretary of Agriculture.[75] This money was first made available during the Great Depression to assist farmers suffering from price-depressing surpluses. Use of section 32 funds is limited to three purposes: (1) to reduce agricultural surpluses by encouraging exportation of those surpluses, (2) to encourage domestic consumption of surplus commodities by diverting them to persons in need, and (3) to

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67 *See id.*

68 *See id.* § 8.

69 *Id.* § 11.

70 GUNDERSON, *supra* note 29, at 22.

71 *See id.*

72 *Id.* at 22–23.

73 *See* United States v. Butler, 297 U.S. 1, 68 (1936) (holding that government coercion of farmers to reduce crop and livestock production by means of payments violated the Tenth Amendment); *see generally* Comment, *Constitutional Law—Agricultural Adjustment Act—The General Welfare Clause and the Tenth Amendment*, 34 MICH. L. REV. 366 (1936).

74 *See* Agricultural Marketing Agreement Act of 1937, Pub. L. No. 75-137, 50 Stat. 246.

75 *See* Act of Aug. 24, 1935, § 32, 49 Stat. at 774–75.

pay farmers for the normal production of a domestic use commodity.[76]

From 1935 to 1944, commodities purchases under section 32 were the mainstay of local efforts to provide meals at schools, with substantial increases in the number of schools receiving commodities and in student participation.[77] Though by 1944, the distributed commodities had dropped to 93 million pounds because the war effort consumed the majority of surplus agricultural products.[78] The Secretary of Agriculture encouraged the domestic consumption of certain agricultural commodities (usually those in surplus supply) by diverting them from the normal channels of trade and commerce.[79] The object of section 32 was for the government to purchase price-depressing surplus foods from the flooded marketplace and dispose of the surplus commodities through exports and domestic donations to consumers in such a way as not to interfere with normal sales.[80]

In the Agricultural Act of 1949, Congress offered further commodities assistance to the NSLP by authorizing the Commodity Credit Corporation ("CCC") to donate commodities acquired under its price-support programs to school lunch programs.[81] The donated commodities supplemented those provided by section 32 of the AAA.[82]

Needy families and school lunch programs became constructive outlets for the commodities purchased by the USDA, the agency charged with overseeing agricultural programs, under the terms of the CCC and section 32 of the AAA.[83] Many poor schoolchildren could not afford to pay for lunches and were sorely in need of the nutrition offered from the supplementary foods,[84] and commodities helped stimulate early growth of school lunch programs.[85] These programs used

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76 *See* 7 U.S.C. § 612c (2008).

77 *See* GUNDERSON, *supra* note 29, at 22.

78 *Id.* at 25–26.

79 7 U.S.C. § 612c.

80 *See id.*

81 *See* GUNDERSON, *supra* note 29, at 33.

82 *See id.*

83 *See* S. REP. NO. 94-259, at 9–10 (1975); H.R. REP. NO. 94-68, at 3 (1975).

84 *See* S. REP. NO. 94-259, at 9; H.R. REP. NO. 94-68, at 2.

85 *See* DEMAS, *supra* note 30, at 13.

redistributed foods that would not otherwise be purchased in the marketplace and thus helped farmers dispose of their products at a reasonable price in the form of a USDA subsidy.[86] Moreover, Congress set the school lunch policy based on which commodities it had in surplus; for example, in 1975, the House Committee on Education and Labor reported that the USDA had a substantial surplus of beef, and recognizing the economic and nutritional value, stated its expectation that the Secretary would distribute the beef to the NSLP and continue to acquire beef for future distribution.[87]

Even in its early stages, the distribution of commodities to schools was highly regulated.[88] Any school that received commodities entered into a written agreement with the government distributing agent.[89] Additionally, three significant agreements regulated each school's use of the commodities. First, schools agreed that commodities would be used only for preparation of school lunches served on school premises and that the commodities would not be sold or exchanged.[90] Second, schools agreed to continue purchasing foods not obtained through commodities distribution and to provide proper warehousing and accounting for all commodities received.[91] Finally, in the earliest form of government-endorsed social justice in school feeding programs, schools agreed to not operate lunch programs for profit and to integrate poor children, who receive free lunches, with their paying peers.[92] To encourage the integration of poor and paying students, the NSLA allotted commodities based on the number of children served rather than the number of poor children served.[93]

Congress has renewed the Act many times since 1946.[94] The most recent renewal in 2004 will be effective until 2009.[95]

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86 *See* S. REP. NO. 94-259, at 9; H.R. REP. NO. 94-68, at 3.

87 H.R. REP. NO. 94-68, at 13 (1975). *But see* Ornish et al., *supra* note 15, at 129.

88 *See* DEMAS, *supra* note 30, at 13.

89 *See id.*

90 *See* GUNDERSON, *supra* note 29, at 23.

91 *See id.*

92 *See id.*

93 *See id.*

94 *See* GUNDERSON, *supra* note 29, at 29–37.

95 *See* Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108-265, §§ 101–129, 118 Stat. 729, 730–68 (2004).

Through its many renewals, the detailed, historical, highly regulated method for handling and transferring commodities to schools has remained in place, satisfying the policy objective of encouraging domestic consumption of commodities. Efforts at addressing and modernizing the policies that support the health and well-being of children have been scattershot at best, though in its 2004 renewal of the NSLA, Congress stated an interest in addressing several health concerns.[96] Congress failed to offer any sweeping policy with regard to how the NSLP affects children's health, though Congress did try to tackle some small issues, like the ill effects of dairy. On September 12, 2008, the USDA's Food and Nutrition Service published a final rule addressing substitutions for fluid milk in school lunch programs.[97] The National Milk Producers Federation has concluded that the new rule on substitutions does not alter federal policy that uses cow's milk as the gold standard to which all substitute beverages must conform.[98] Schools should offer a milk alternative to any student presenting a doctor's note explaining a disability exacerbated by the consumption of cow's milk.[99] Since most federal "funding" is generally limited to reimbursements for direct food purchases, many of which are offset by donated commodities, and for cash subsidies to administer lunch programs,[100] the USDA has, essentially, failed to fund its new milk-substitute rule.

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96 *See id.* §§ 102, 120, 118 Stat. at 731–32, 756–58.

97 Fluid Milk Substitutions in the School Nutrition Programs, 73 Fed. Reg. 52,903, 52,903-08 (Sept. 12, 2008) (to be codified at 7 C.F.R. pts. 210, 220).

98 *See* USDA's Food and Nutrition Service Publishes Final Rule on Fluid Milk Substitutions in School Nutrition Programs, at http://www.nmpf.org/files/file/Fluid_Milk_Substitutes_Final_Rule_091208.pdf (noting that any substitute beverage must include "specific levels of calcium, protein, vitamins A and D, magnesium, phosphorus, potassium, riboflavin and vitamin B-12" that are equal to the nutritional value of cow's milk) (last visited Nov. 24, 2008).

99 *See* Child Nutrition and WIC Reauthorization Act, § 102 (codified as amended at 42 U.S.C. § 1758(a)(2) (2008)).

100 *See* National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates, 67 Fed. Reg. 44,584 (July 3, 2002); *see also* GUNDERSON, *supra* note 29, at 31–32; Kathryn L. Plemmons, *The National School Lunch Program and USDA Dietary Guidelines: Is There Room for Reconciliation?*, 33 J.L. & EDUC. 181, 187 (2004).

II

THE FAILURE OF NSLP: THE LACK OF CLEAR CHILD-CENTERED POLICY AND THE PROBLEM OF UNDERFUNDING

Congress has never redefined the policy objective of the NSLP to focus exclusively on the healthful feeding of children. Congress has a rich history of pointedly examining the NSLP to determine whether it satisfies the needs of schoolchildren, but these examinations have been small and discrete rather than defining and setting any comprehensive child-centered policy.

A. Early Failures at Implementing Nutritional Requirements for the NSLP

In the original NSLA, Congress set minimum nutritional requirements that relied on state and local laws governing sanitation and butterfat requirements.[101] By 1966, Congress recognized that poorer children had a higher need for more comprehensive feeding programs, and with the Child Nutrition Act of 1966[102] Congress responded to those needs by implementing a breakfast program and nutritional education for children with working mothers.[103] In 1970, Congress approved the Special Milk Program for Children, which redistributed surplus milk to schools and nonprofit agencies that did not participate in the NSLP.[104] Though Congress added funding and programs to the NSLP from the Act's inception through the era of the Great Society, a USDA study showed that even "one-third of . . . households with incomes of $10,000 or more" had deficient diets.[105] A House report determined that the NSLP

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101 *See* GUNDERSON, *supra* note 29, at 32. Minimum nutritional requirements were met by serving one-half pint of whole milk; two ounces of protein-rich meat, cheese, poultry, or fish; one-half cup of beans; four tablespoons of peanut butter; one egg; three-quarters cup of fruit or vegetables; one portion of bread; and two tablespoons of butter or fortified margarine. *Id.*

102 Pub. L. No. 89-642, 80 Stat. 885 (codified as amended at 42 U.S.C. §§ 1751–1770 (2008)).

103 *See id.*

104 7 C.F.R. § 215.1 (2008) (detailing that the Special Milk Program was designed to encourage the consumption of milk by children in daycare centers and summer camps when meals were not provided under the NSLP).

105 GUNDERSON, *supra* note 29, at 52.

had not "instill[ed] good nutritional habits in the youngsters who were participating in the program."[106]

B. The Effects of Childhood Obesity and Failed Congressional Efforts to Address the Problem

In the past twenty-five years, medical experts have increasingly researched and documented the connection between poor diet and death from chronic diseases such as obesity, cancer, and diabetes.[107] Although there is no single cause for obesity, which leads to the development of chronic and life-threatening diseases, scientists nevertheless study the effect that existing laws have on childhood obesity.[108] As determined by a National Health and Nutrition Examination Study, physical inactivity is a significant contributing factor for the nearly twenty percent of school-age children who are overweight.[109] While most children still consume the majority of their calories outside of school,[110] public interest advocates still strive to persuade government to act in the interest of public health over industry.[111] Beyond the development of chronic illnesses from poor nutrition, studies show that malnourished children have limited potential to excel in educational activities, lower IQ scores, and an increased likelihood of suffering attention deficit disorder.[112] These myriad effects prove that the problems caused by poor nutrition run much deeper than the future physical ailments expected for overweight children.

Experts assert the existence of links between diet and academic performance, and most agree that additional, well-controlled studies are necessary to prove stronger connections.[113]

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106 H.R. REP. NO. 91-81, at 3 (1969), *as reprinted in* 1970 U.S.C.C.A.N. 3014, 3016.

107 *See, e.g.*, J. Michael McGinnis & William H. Foege, *Actual Causes of Death in the United States*, 270 JAMA 2207 (1993).

108 *See* Jess Alderman et al., *Application of Law to the Childhood Obesity Epidemic*, 35 J.L. MED. & ETHICS 90, 92–96 (2007).

109 *See* Center for Disease Control, Childhood Obesity, http://www.cdc.gov/HealthyYouth/obesity/index.htm (last visited Nov. 24, 2008) (showing that in 2006 17.0% of children aged six to eleven and 17.6% of children aged twelve to nineteen were obese).

110 Alderman et al., *supra* note 108, at 93.

111 *Id.* at 90.

112 *See* Betsy Lozoff, *Nutrition and Behavior*, 44 AM. PSYCHOLOGIST 231 (1989).

113 *See generally* Alderman et al., *supra* note 108.

Nutritionists widely accept the general theory that high-sugar and high-fat diets have a negative impact on attention, retention of information, and the development of motor skills.[114] Efforts to address obesity in children have historically focused on how fat children are ostracized[115] rather than addressing the health concerns of overeating.[116]

In the face of nutritional education failure, the Reagan administration resoundingly denounced any child-centered approach to school lunch by cutting funding to the NSLP and famously designating ketchup as a vegetable to reduce costs.[117] By the 1990s, federal nutritional policies were attempting to address the "complex relationships between diet choices and health."[118] The NSLP developed a list of prohibited items like chewing gum, marshmallows, candy corn, mints, and water ices, all of which have minimal nutritional value.[119] But while getting candy out of the approved lunch menu, Congress failed to deal with foods in which the bad significantly outweighs the good. By 1994, the Clinton administration began initiating changes[120] in response to a 1992 study showing that school lunches far exceeded the Dietary Guidelines for Americans recommendations for fat and sodium.[121] Even after the USDA implemented its School Meal Initiative for Healthy Kids ("SMI") to address the problem,[122] a follow-up study in 1999 showed that fewer than twenty percent of schools met the SMI standards for reducing the number of calories from fat.[123]

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114 *See* KELLY D. BROWNELL & KATHERINE BATTLE HORGEN, FOOD FIGHT 158 (2004).

115 *See generally* ELLYN SATTER, YOUR CHILD'S WEIGHT (2005).

116 *See, e.g.*, HARVEY DIAMOND & MARILYN DIAMOND, FIT FOR LIFE (1985); JANE R. HIRSCHMANN & LELA ZAPHIROPOULOS, PREVENTING CHILDHOOD EATING PROBLEMS (1993).

117 *See* DEMAS, *supra* note 30, at 24.

118 Stephen R. Crutchfield & Jon Weimer, *Nutrition Policy in the 1990's*, 23 FOOD REV. 38, 43 (2000).

119 *See* 7 C.F.R. § 210 app. B (2008).

120 *See* DEMAS, *supra* note 30, at 24–25.

121 *See* JOHN BURGHARDT & BARBARA DEVANEY, U.S. DEP'T OF AGRIC., THE SCHOOL NUTRITION DIETARY ASSESSMENT STUDY 8–9, 14–15 (1993), *available at* http://www.fns.usda.gov/oane/MENU/Published/CNP/FILES/SNDA-sum.pdf; Roberts, *supra* note 44, at 599.

122 *See* DEMAS, *supra* note 30, at 25.

123 Roberts, *supra* note 44, at 599–600.

In a response to the increased concern over the recent tripling of childhood obesity rates,[124] and without any unifying, comprehensive, child-centered policy from Congress, school districts have begun to set their own dietary guidelines.[125] But the guidelines generally only apply to those foods sold or offered outside of the NSLP meals.[126] Unless the state supplies significant independent funding, schools cannot regulate NSLP meals because the raw materials for NSLP meals come from the USDA commodity list, the schools' primary source of food.[127] The lip-service paid by Congress in the form of proposed bills like the Prevention of Childhood Obesity Act[128] and the Childhood Obesity Reduction Act[129] is an effort to increase the scientific study of obesity and to instill a lifelong appreciation of good nutrition and exercise. But neither Act addresses the commodities policy that has the most impact on a school's nutritional program.[130]

C. Competitive Foods

In the 1970s, vending machines made their first appearance in public schools. At first the Secretary of Agriculture restricted the type of items that could be sold from the vending machines in public schools.[131] However, in 1983 the National Soft Drink Association won a lawsuit which declared that the Secretary

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124 *See* Alderman et al., *supra* note 108, at 93.

125 *See* Jennifer Steinhauer, *California Bars Restaurant Use of Trans Fats*, N.Y. TIMES, July 26, 2008, at A1 (noting that California is the first state to ban trans fats in restaurants, and that the state has "some of the toughest food restrictions in the nation, including a ban on junk food and trans fats in school meals").

126 *See* Alderman et al., *supra* note 108, at 93 (reporting that Los Angeles, New York, and Philadelphia have successfully placed restrictions on beverage and junk food sales).

127 *See generally* Stacey L. Fabros, *A Cry for Health: State and Federal Measures in the Battle Against Childhood Obesity*, 7 J.L. & FAM. STUD. 447, 448–50 (2005) (examining the success at addressing childhood obesity in Arkansas and the state money spent by Governor Mike Huckabee and the legislature).

128 S. 799, 109th Cong. (2005).

129 S. 1324, 109th Cong. (2005).

130 Even bills that call for amendments to the Child Nutrition Act of 1966, like the Child Nutrition Promotion and School Lunch Protection Act of 2006, S. 2592, 109th Cong. (2006), which never became law, seek only to reduce the availability of foods of minimum nutritional value.

131 *See* Nat'l Soft Drink Ass'n v. Block, 721 F.2d 1348, 1350 (D.C. Cir. 1983).

could regulate only food sales from the cafeteria.[132] Since that time, healthy-food advocates have targeted the products in school vending machines, arguing that sodas made with sugar should not be available for purchase. Former President Bill Clinton successfully lobbied the soft-drink manufacturers to remove soft drinks from public schools.[133] A former "husky kid" who nearly died from a heart condition exacerbated by poor eating habits, Clinton is now set to "work with the snack people" to rid schools of unhealthy snacks as well.[134] Although this kind of effort helps to address the problem, school lunchrooms will find it nearly impossible to provide healthy, low-fat meals to children until Congress addresses the commodities-dumping issue.

Beyond vending machines, the creep of franchised, competitive foods into schools is virulent. The Federal Trade Commission reports that companies spent $1.6 billion in marketing their products to children in 2006.[135] Schools lack resources, and food companies need new consumers.[136] Furthermore, schoolchildren simply do not complain when offered a Pizza Hut pizza instead of fresh steamed broccoli. Textbooks like *Mathematics: Applications and Connections, Course 1*[137] use Gatorade, M&Ms, and Pop Secret in their word problems; this book is approved for use in fifteen states.[138] Major food chains like Dunkin' Donuts and Pizza Hut offer incentive programs where teachers reward students with coupons for donuts or pizza when they achieve stated learning goals.[139] Companies allocate resources to produce "educational items" because advertising to children at a young age builds a future client base by shaping attitudes about products before the

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132 *See id.* at 1352–53.

133 *See* David Remnick, *The Wanderer*, NEW YORKER, Sept. 18, 2006, at 42, 54.

134 *Id.*

135 *See* Kendra Marr, *Children Targets of $1.6 Billion in Food Ads*, WASH. POST, July 30, 2008, at D1.

136 *See* BROWNELL & HORGEN, *supra* note 114, at 129–30 (arguing that once food companies offer money and supplies to a school, that money slowly becomes a part of the overall operating budget, which makes divorcing schools from those foods even harder).

137 WILLIAM COLLINS ET AL., MATHEMATICS: APPLICATIONS AND CONNECTIONS, COURSE 1 (2001).

138 *See* BROWNELL & HORGEN, *supra* note 114, at 136–37.

139 *See id.* at 138.

child becomes a paying consumer.[140] A Consumers Union review of corporate-sponsored educational items like Skittles Math Riddles and the National Potato Board's Count Your Chips revealed that eighty percent of the materials offered a biased and favored view of the company's products.[141]

Foods competing against school lunches raise a social justice issue in that poor children cannot afford competitive foods and are forced to accept the NSLP's free lunch. Some districts, like Ann Cooper's BUSD, offer the same food to paying students and to students who receive free or subsidized meals.[142] Students who feel stigmatized by standing in the free-lunch line while their peers stand in the competitive-food line are less likely to participate in the school lunch program at all because they do not want to be identified as poor.[143] The NSLA prohibits the overt segregation and identification of any child,[144] though at some schools paying students go to a different line in the lunchroom from those who receive a free lunch.[145] Additionally, ninety percent of schools offer competitive a la carte foods so students who must eat the NSLP-subsidized meals are identifiable and, thus, subject to discrimination.[146]

D. The Use of Prepared, Highly Processed Foods

Schools turn to the food industry to supply a plethora of processed foods because the normal public school contains only a refrigerator, freezer, sink, and "hot boxes" for warming pre-made heat-and-eat foods.[147] Most of the food served in New York City's public schools arrives ready for heating in a processed form that contains trans fats, a kind of industrially produced fat that extends the shelf life and stabilizes taste for

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140 *Id.* at 137–38.

141 *Id.* at 137.

142 *See* Carol Pogash, *Free School Lunch Isn't Cool, So Some Students Go Hungry*, N.Y. TIMES, Mar. 1, 2008, at A1.

143 *See id.*

144 *See* Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108-265, § 104(b)(1), 118 Stat. 729 (codified at 42 U.S.C. § 1758(a)(6)(C) (2008)) (detailing the criminal penalty for releasing information about any free lunch recipient's financial status).

145 *See* Pogash, *supra* note 142.

146 *Id.*

147 COOPER & HOLMES, *supra* note 20, at 80.

processed foods.[148] As a testament to the government's inability to tackle the school lunch crisis, the Board of Health in New York City has voted to make its city the first to ban trans fats.[149] But the ban applies only to restaurants, which can no longer use partially hydrogenated vegetable oil in processed foods like cookies, pizza dough, and crackers, all of which are found in school lunch programs but are not subject to the trans fat ban.[150] Trans fats extend the shelf life of, among other items, premade blends like pancake mix and pizza dough.[151] Moreover, the top reprocessed USDA commodities show up in cooked beef and pork patties, chicken nuggets, bologna, and pizza, all of which appear on the school lunch menu. Because of the way the NSLP is structured, "it can cost a school district more than twice as much to provide a high-fiber, low-fat veggie burger instead of a high-fat, zero-fiber hamburger."[152]

To make matters worse, the one accountability program does not seem to provide feasible and accessible solutions. The USDA Traditional Food Based Menu Planning Approach[153] is actually an inflexible system that makes it almost impossible for schools to offer meat alternatives and other nontraditional, healthful food. Using the simple Traditional Menu Approach, schools pick from a list of food options and must include meat or a meat alternative, a fruit or vegetable, a whole grain, and milk

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148 *See* Jean-Michel Chardigny et al., *Do Trans Fatty Acids From Industrially Produced Sources and From Natural Sources Have the Same Effect on Cardiovascular Disease Risk Factors in Healthy Subjects? Results of the Trans Fatty Acids Collaboration (TRANSFACT) Study*, 87 AM. J. CLIN. NUTRITION 558 (2008). The purpose of this study was to compare industrially produced trans fats with those occurring naturally. The authors concluded that trans fats produced industrially cause more significant health risks, such as cardiovascular disease, than do naturally occurring trans fats.

149 *See* Thomas J. Lueck & Kim Severson, *New York Bans Most Trans Fats in Restaurants*, N.Y. TIMES, Dec. 6, 2006, at A1.

150 *See id.*; *see also* Steinhauer, *supra* note 125 (noting that California is unique in banning trans fats from restaurants and from school meals).

151 *See* Sara Kugler, *New York City Bans Trans Fats at Restaurants*, SEATTLE POST-INTELLIGENCER, Dec. 6, 2006, *available at* http://seattlepi.nwsource.com/health/294844_diet06.html.

152 *See* PCRM REPORT CARD, *supra* note 13, at 3.

153 *See id.* at 3; *see also* School Nutrition Association, Menu Planning, http://www.schoolnutrition.org/Content.aspx?id=630 (last visited Nov. 24, 2008) (offering examples of Menu Planning methods, such as "Traditional Food-Based Menu Planning," "Enhanced Food-Based Menu Planning," and "Nutrient Standard Menu Planning").

(which must be served as a fluid beverage).[154] In order to serve innovative vegetarian meals, a school would need to use a different menu-planning program like the Nutrient Standard Menu Planning Approach.[155] However, most schools lack both the computer resources necessary to conduct complex nutritional analysis and trained food workers who are able to plan beyond pointing and clicking on the traditional menu.[156]

E. Why Children Eat Poorly: The Need for Clear, Child-Centered Policy in the NSLP

The end result of the NSLP's efforts is that children do not eat very well. Only two percent of all youth meet the recommendations of the USDA food guide pyramid, and sixteen percent do not meet any of those recommendations.[157] Teenagers drink twice as much carbonated soda as milk and fewer than twenty percent eat adequate servings of fruit and vegetables.[158] The Physician's Committee for Responsible Medicine ("PCRM"), which examines school lunches to determine which schools offer low-fat vegetables and whole or dried fruits as alternative side dishes, gave the largest school districts an F on their report cards.[159]

There is considerable debate about why children eat food of little nutritional value. Anecdotal stories from schools that have removed unhealthy items from vending machines and replaced them with healthier items reveal that children purchase the healthier items at the same rate.[160] Generally, offering foods at lower prices boosts consumption, but enticing unhealthy foods may trump inexpensive fresh fruits and vegetables.[161] School administrators report that parents are often hostile to bans on

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154 *See* FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., A MENU PLANNER FOR HEALTHY SCHOOL MEALS 38–39 (2008), *available at* http://teamnutrition.usda.gov/Resources/menuplanner.html.

155 *See id.* at 76; PCRM REPORT CARD, *supra* note 13, at 3.

156 *See* PCRM REPORT CARD, *supra* note 13, at 3.

157 BROWNELL & HORGEN, *supra* note 114, at 141.

158 *See id.*

159 *See id.* at 142 (indicating that Philadelphia, Detroit, and Houston each received a grade of F from the PCRM).

160 *See id.* at 147 & n.61.

161 *See id.*

traditional celebration foods such as doughnuts and Twinkies.[162] Mothers in Great Britain, which has a childhood obesity problem much like that in the United States, started selling contraband hamburgers through the school gates after the British government banned junk food and required schools to serve two portions of fresh fruits and vegetables per child.[163] Food loyalties do not end quickly, and many current school-age children have parents who ate school lunch during the "ketchup is a vegetable" Reagan years.[164] But as parents slowly return to a "system of interdicts"[165] in controlling their children's food intake, they are adapting to schools' banishment of foods with low nutritional value.[166]

III

HOW THE USDA COMMODITIES POLICY AND NATIONAL PROCESSING AGREEMENTS HAVE DESTROYED THE NSLP

The current Farm Bill sets the rules for the American food system.[167] Congress subsidizes American farmers through its

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162 *See* Andrew Martin, *The School Cafeteria, on a Diet*, N.Y. TIMES, Sept. 5, 2007, at C1; *see also* Michael Pollan, *You Are What You Grow*, N.Y. TIMES, Apr. 22, 2007, § 6 (Magazine), at 15 (explaining that Twinkies are an "iconic processed foodlike substance . . . highly complicated, high-tech piece of manufacture, involving no fewer than 39 ingredients, many themselves elaborately manufactured," yet sold for less cost than a bunch of carrots due to the subsidies in the Farm Bill).

163 *See* Sarah Lyall, *Glorious Food? English Schoolchildren Think Not*, N.Y. TIMES, Oct. 18, 2006, at A1 (describing celebrity chef Jamie Oliver's attempts to reform the British school lunch program, which are similar to Ann Cooper's reforms of the BUSD lunch program).

164 *See generally* GUNDERSON, *supra* note 29, at 29–30 (detailing that in 1946, when it enacted the NSLA, Congress recognized the educational features of a good diet and saw school lunch as an opportunity to teach the benefits of a good diet directly to schoolchildren and *indirectly* to the parents and family). Congress intended that those parents who were not able to cast their own loyalties to foods with low nutritional value would indirectly benefit from their children eating a good diet at school. *Id.* at 30.

165 GREG CRITSER, FAT LAND 55 (2003); *see also* KEN MORRISON, MARX, DURKHEIM, AND WEBER: FORMATIONS OF MODERN SOCIAL THOUGHT 422 (2d ed. 2006) (discussing the need for religious interdicts in a stable society).

166 *See* David Kamp, *Don't Point That Menu at My Child, Please*, N.Y. TIMES, May 30, 2007, at F1.

167 *See* Pollan, *supra* note 162, at 16; *see also* Food, Conservation, and Energy Act of 2008, H.R. 2419, 110th Cong. (2008).

Farm Bill, which is renewed every five to seven years.[168] The Farm Bill has two purposes: (1) setting income and pricing supports for commodities, and (2) creating nutrition programs.[169] The Farm Bill, while having the noble agenda of stabilizing the financially insecure profession of farming, has become "an engine for surplus commodity production, a gravy train for powerful corporations."[170] In the 1990s, the General Accounting Office reported that sixty percent of total subsidies payments went to the top ten percent of recipient farmers.[171] Moreover, the products being subsidized are disproportionately animal products that contribute to obesity, heart disease, and cancer by virtue of being high in cholesterol and saturated fat.[172] The USDA then allocates those products to the NSLP, which puts the USDA in a significant conflict between serving the interests of industrial farm corporations and schoolchildren who need nutritious meals.[173]

A. Farm Bill Policy Supports Farmers, Not Schoolchildren

Through subsidies and purchasing agreements, the Farm Bill routinely emphasizes food of low nutritional value, which leaves schools attempting to order nutritious fresh fruits and vegetables from the commodity lists only to find those nutritious foods unavailable.[174] In 2006, Congress spent $25 billion in crop subsidies for commodity crops like corn, wheat, and cotton.[175] Programs geared toward organic agriculture, which produce foods that could be prepared in healthy school lunch meals, currently receive less than one-tenth of one percent of federal farm funding; at $7 million per year, Congress supports organic

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168 *See* DANIEL IMHOFF, FOODFIGHT: THE CITIZEN'S GUIDE TO A FOOD AND FARM BILL 22 (2007).

169 *See id.*

170 *Id.* at 23.

171 BROWNELL & HORGEN, *supra* note 114, at 133.

172 *See id.*

173 *See id.*

174 *See id.*

175 Carolyn Lochhead, *Congress Hears from Organic Growers over Farm Bill*, S.F. CHRON., Apr. 19, 2007, at A7.

farming at one-tenth the rate of the public sector in Europe.[176] Congress could encourage the production of organic fresh fruits and vegetables, but instead it chooses to encourage the production of meat, dairy, and commodity corn, the producers of which have powerful lobbyists. Congress spends nearly $1 billion on the school commodities program, repurchasing food that it has already subsidized into overproduction.[177] Populist, consumer, and farmer activism is on the rise in an effort to change the nation's agricultural policies to support and subsidize the production of healthy, organic foods.[178] In a very directed effort, California farmers are trying to seize a chunk of Farm Bill subsidies for the fruits and vegetables they grow.[179] Governor Schwarzenegger and the California congressional delegation are pushing for a shift away from subsidizing traditional commodity crops and toward subsidizing nutritious fruit and vegetable crops produced in California.[180]

The meal in a school lunchroom can be only as good as the raw ingredients, which in NSLP kitchens are mostly dairy and beef.[181] In the current Farm Bill, Congress made an effort to stimulate a fresh fruit and vegetable program to subsidize and encourage the production of more fruits and vegetables to be used in their fresh form by government programs like the school lunch program.[182] But the program's implementation remains in the control of the Secretary of Agriculture, whose primary responsibility is to support farmers and ensure food safety, not to oversee the health and well-being of schoolchildren.[183]

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176 Kari Hamerschlag & Colleen Bednarz, *Organic Farmers Demand Their Fair Share*, CERTIFIED ORGANIC, Spring 2007, at 16, 18 (explaining that Europe spends about seventy million euros each year subsidizing organic agriculture).

177 *See* Haskins, *supra* note 12, at 11; *see also* CRITSER, *supra* note 165, at 10.

178 *See generally* JOEL SALATIN, EVERYTHING I WANT TO DO IS ILLEGAL (2007).

179 *See* Carol Ness, *The New Food Crusade*, S.F. CHRON., July 10, 2007, at A1.

180 *See id.*

181 *See generally* USDA-APPROVED PROCESSORS, *supra* note 20.

182 *See* Food, Conservation, and Energy Act of 2008, H.R. 2419, 110th Cong. §§ 4304 & 4404 (2008).

183 *See* U.S. Department of Agriculture, Mission Statement, http://www.usda.gov/wps/portal/usdahome (follow "About USDA" hyperlink; then follow "Mission Statement" hyperlink) (last visited Nov. 24, 2008).

B. Commodities Processing: The Ultimate Conflict of Interest for the USDA

With few facilities and almost no trained staff to turn raw commodities into healthy lunches, most schools rely on processed foods for their menus,[184] even though the current advice for healthy eating is to eat "whole fresh foods rather than processed food products."[185] Although nutritional content of meals has been the focus of the NSLP since it created the nutritive Type A lunch that was designed to meet one-third to one-half of the minimum daily nutritional requirements of an adolescent child,[186] the NSLP fails to provide whole fresh food to the schools for preparation into healthy meals. Instead, food industries fortify and enrich food products in order to simplify food preparation and service for schools that lack human resources and facilities.[187] The USDA defines "engineered foods" as "those foods which are so prepared and processed that they . . . improve nutrition, reduce cost, offer greater convenience in meal preparation, improve acceptability, and improve stability."[188] The USDA's goal is to find easy-to-prepare engineered substitutes with the same or higher nutritional values at the same or lower costs.[189]

In the early days of school lunch programs, local food producers processed and canned fresh fruits and vegetables to extend the life of food from times of abundance to times of scarcity.[190] However, this process is now used to the detriment of the consumer schoolchildren. Foods like corn and soybeans, which adapt well to processing, are now found in nearly every processed food available.[191] Corn syrup supplies

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184 *See* Bilger, *supra* note 6, at 73–74.

185 POLLAN, *supra* note 5, at 1.

186 *See* GUNDERSON, *supra* note 29, at 33.

187 *See id.* at 55.

188 *Id.*

189 *Id.*

190 *See* POLLAN, *supra* note 19, at 90–91.

191 *See id.*

carbohydrates,[192] soybeans supply protein,[193] and both act as cheap, stable substitutes for real food.[194] Overindulgence of energy-rich processed foods leads to health problems, such as type 2 diabetes and obesity, which plague the nation's schoolchildren. The body's metabolism wears out from overuse when it has to manage too much glucose, which typically results in type 2 diabetes.[195]

When she set out to revamp the BUSD, one of the biggest challenges for Ann Cooper was the wholesale reliance on processed foods. Cooper had to find free USDA commodities that were still whole foods, then supplement with privately purchased fresh foods and actually cook meals instead of microwaving processed foods that were full of added fat and sugars.[196] Her task, however, proved to be extremely difficult. Beyond the added fat and sugars, the raw ingredients used in processed foods are often full-fat cheese, butter, and beef, all USDA commodities found in great surplus and used by the NSLP.[197] When Congress attempted to require the NSLP to comply with new dietary guidelines set in 1994, economists estimated that the new guidelines would displace millions of pounds of butter, cheese, and beef annually.[198] Interestingly, both the food industry and school food services opposed the requirement of compliance: the food industry wanted to

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192 *See* CRITSER, *supra* note 165, at 10–11. High-fructose corn syrup became a staple in processed foods in the United States after Earl Butz, Secretary of Agriculture in the Nixon administration, subsidized corn, even in the wake of surpluses, in order to decrease U.S. dependence on foreign sugar. *See id.* at 10. Invented by Japanese scientists in 1971, high-fructose corn syrup was a cheaper sweetener than sugar and could be produced by anyone with a supply of corn. *See id.* Corn syrup protects against freezer burn in frozen foods, extends shelf life in vending machine items, and makes baked goods look "more natural." *Id.* at 10–11.

193 *See* POLLAN, *supra* note 19, at 91. Butz also imported cheap palm oil to the United States from Kuala Lumpur to keep a strong ally in Southeast Asia; no one considered the havoc that adding palm oil to processed foods would wreak on Americans' health. *See* CRITSER, *supra* note 165, at 16–17.

194 *See* POLLAN, *supra* note 19, at 91–92.

195 *See id.* at 107.

196 *See* IMHOFF, *supra* note 168, at 142; Anna Lappé, *Doing Lunch: Ann Cooper Serves Up a New Vision of School Food*, THE NATION, Sept. 11, 2006, at 35, 35 (offering Cooper's explanation that she transformed school lunch in Berkeley from one where ninety-five percent of the foods were processed to one where ninety-five percent are prepared from scratch).

197 *See* NESTLE, *supra* note 17, at 192.

198 *See id.* at 192–93.

maintain its market share, and schools recognized the impossibility of serving meals that met the dietary guidelines without additional funding.[199] Congress ultimately made significant concessions in its compliance agenda.[200] For example, even though school children get fifty percent of their recommended fat calories from whole milk, the dairy industry was able to block any changes to the rule that requires schools to offer whole cow's milk.[201]

C. Commodity Processing Agreements: The Ultimate Expression of the USDA's Conflict of Interest

Despite the well-known health problems associated with processed foods, the USDA still chooses to enter into processing agreements to supply food to the NSLP. The Commodity Processing Program allows "school districts to contract with commercial food processors to convert raw bulk USDA commodities into . . . ready-to-use end products."[202] The USDA holds the Commodity Processing Agreements ("CPAs") on behalf of school districts so that the table-ready end products, such as pizza products, sandwich pockets, and "Oriental" chicken entrees, appear on the commodities list that each school uses to select food for its lunch program.[203] Since 1958, the USDA has used CPAs to maximize each school's use of donated commodities,[204] and as processing has become the standard practice most schools now lack the personnel and the equipment to turn raw commodities into suitable meals.[205]

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199 *See id.* at 193.

200 *See id.*

201 *Id.*

202 *See* FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., FOOD DISTRIBUTION FACT SHEET 1 (2007), *available at* http://www.fns.usda.gov/fdd/processing/pfs-processing.pdf [hereinafter USDA FACT SHEET].

203 *See* FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., APPROVED USDA NPA COMMODITY PROCESSORS FOR SY0708 3 (2008).

204 FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., COMMODITY PROCESSING, http://www.fns.usda.gov/fdd/processing/about_processing.htm (last visited Nov. 24, 2008).

205 *See* COOPER & HOLMES, *supra* note 20, at 80 ("[T]he biggest challenges lie in in the infrastructure. For starters, school kitchens are severely lacking in equipment. In some cases, kitchens are virtually nonexistent. In Berkeley, which is typical of many districts, some kitchens have nothing but 'hot boxes' to heat and hold premade processed food.").

The USDA has declared that CPAs are mutually beneficial to the food industry and NSLP participants alike.[206] The benefits to the USDA and food processors are clear. Food industries, including huge agribusiness firms like ConAgra, are guaranteed to profit from government contracts for turning raw commodities into highly processed, marketable, table-ready products. Local schools with no funding for training kitchen personnel and necessary equipment are supplied table-ready food that needs only microwave preparation. School children were ignored in the assessment of usefulness of CPAs; children, of course, do not benefit from highly processed food that is full of added sugars and fats.

At least seventy raw commodities are available for reprocessing.[207] The USDA props up the market for pork, beef, chicken, and turkey (the four most often reprocessed commodities), then pays food industries to transform those commodities into chicken nuggets, bologna, sausage patties, and meat "crumbles."[208] Although the raw chicken has some fat and some protein, the processed breaded chicken nugget has added fat and carbohydrates that nearly eclipse the nutritional value of the chicken.[209] The CPAs do not address the nutritional value of the end, table-ready product. Instead, the CPAs focus on the value of the commodities and how to make the processing as easy as possible for food industries.[210] Without dictating how healthy the end-use processed food should be, the twenty-four-page National Processing Agreement ("NPA") carefully details how the food industry may substitute purchased raw products for donated raw commodities so long as the products are "of the same generic identity and of equal or better quality."[211] The NPA addresses maximizing utilization of the commodities and

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206 USDA FACT SHEET, *supra* note 202, at 4.

207 *Id.*

208 *Id.*

209 *See* POLLAN, *supra* note 5, at 32–40 (explaining the derogation of food quality when processed).

210 *See generally* FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., NATIONAL PROCESSING AGREEMENT PROGRAM 1 (2008), http://www.fns.usda.gov/fdd/processing/national/default.htm.

211 *Id.* at 2.

salvageable by-product materials but never once addresses the nutritional quality of the end-use processed food.[212]

The USDA has a well-developed system for guaranteeing maximum usage of donated commodities and specific requirements to minimize fraud and waste, but it completely ignores the health needs of children. The NPA governs how to efficiently convert the unhealthiest commodities, like meat and dairy products, into taco filling, breaded chicken patties, hamburgers, and hot dogs for school lunches.[213] The few fruits and vegetables that appear on the list of approved processors, such as potatoes, tomatoes, and generic fruit, are processed into french fries, tater tots, pizza sauce, and fruit pastries.[214] The industrially produced trans fats in processed foods lead to increased risk of cardiovascular disease; in fact, the recent Trans Fatty Acids Collaboration study concludes that the industrially produced trans fats cause cardiovascular disease in ways that naturally occurring trans fats do not.[215] The act of processing food replaces the good qualities of raw commodities with shelf-life extenders and taste stabilizers that harm children even more than unhealthy raw commodities might.[216]

From the food industry perspective, the greatest benefit of holding CPAs with the USDA is the opportunity to market its products to children. The food industry spends $15 billion per year marketing to children, but by putting products like breaded chicken nuggets in front of children during school lunch, the food industry is able to profit from the CPA contract and stealthily market to school-age consumers.[217] The fact that most parents have some kind of frozen chicken nugget in their freezer is a testament to the food industry's successful manufacturing and marketing, some of which occurs in schools. The USDA lauds the cost-efficiency of processing raw commodities into table-ready meals, but low-cost foods are usually the least healthy.

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212 *See id.*

213 *See* USDA-APPROVED PROCESSORS, *supra* note 20.

214 *See id.*

215 *See* Chardigny et al., *supra* note 148, at 558.

216 *See* POLLAN, *supra* note 5, at 32–40.

217 IMHOFF, *supra* note 168, at 89. In contrast, the NSLP spends only $7 billion actually feeding school children. *Id.*

IV
MODELS FOR SUCCESS

To combat childhood obesity and to give children every advantage for success in school, Congress should set policy in a comprehensive reform rather than using tools such as taxation and regulation.[218] The first piece to begin solving the puzzle of the failed school lunch policy is an independent broker working on behalf of children; from there, an acknowledgement of the conflicts within NSLP and necessary reform in gathering food and preparing it in healthy ways may be within reach.

Increased awareness of the childhood obesity epidemic offers a unique opportunity for Congress to reform its school lunch policies.[219] The National Conference of State Legislatures reports that eighteen states considered "Nutrition Standards for Schools" legislation in 2006.[220] But state and local laws are fragmented and incremental and fail to establish a unified policy for changing school lunch.[221] As a first step, the NSLP should be taken away from USDA control and moved to a suitable agency like the Department of Education or Health and Human Services. The Secretary of Agriculture, whose primary responsibility is to support farmers and ensure food safety[222] should not attempt to oversee the health and well-being of schoolchildren.

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218 *See* Alderman et al., *supra* note 108, at 91–92 (discussing legislative efforts to control obesity through taxation and other regulatory methods, but noting that "[l]egal approaches to the obesity epidemic should . . . incorporate larger, more strategic public health goals.").

219 *See* Beckey Bright, *Poll Shows Growing Concern About Role of Advertising in Child Obesity*, WALL ST. J., Aug. 20, 2007, http://online.wsj.com/article/SB118730629508900233.html (noting that in 2007 eighty-four percent of American adults thought obesity was a "major problem," whereas only seventy-seven percent found it to be a "major problem" in 2005); *see also* Alderman et al., *supra* note 108, at 93 ("Heightened awareness of the childhood obesity epidemic . . . has renewed the call for regulatory and legislative action . . . .").

220 NAT'L CONF. OF STATE LEGISLATURES CHILDHOOD OBESITY—2006 UPDATE AND OVERVIEW OF POLICY OPTIONS (April 30, 2007), http://www.ncsl.org/programs/health/ChildhoodObesity-2006.htm.

221 Alderman et al., *supra* note 108, at 94 (noting that states' "[b]ill provisions vary widely and demonstrate the broad disparity of approaches to setting school nutritional guidelines at the local level").

222 *See* Mission Statement, *supra* note 183.

A. Making Healthy Eating a Cornerstone of a Comprehensive Public Education

Treating the lunchroom as a classroom would bring food service into the educational mainstream, thus making it more difficult for administrators to focus on cost and income production over the good of the children.[223] Although activists are beginning to refer to the Farm Bill as the "Food, Health, and Farm Bill,"[224] seeing good nutrition as a piece of a comprehnsive education policy may be an easier solution than wholesale reform of agricultural policy. For the law to be an effective policy tool, it must focus on broader change that can affect individual decisions;[225] Congress should set an example for the states, given that it provides primary funds and resources for school lunch. Legislative and regulatory efforts to control obesity typically call for intervention at the individual level with labeling, dietary guidelines, and the promotion of exercise, but the most comprehensive approaches to combat obesity in children must involve a coordinated response, such as those employed in public health epidemics.[226] A unified examination of the condition (childhood obesity) within the context (school lunch) by an agency with the primary focus of the health and education of children would offer an opportunity for reflection on the role that law has played in creating the obesity epidemic.[227]

B. The Need for Educated Chefs and Kitchen Staff: How the Department of Education Could Draw the Best Chefs to a Social Cause

On a small level, yet offering an excellent model for success, the BUSD has been able to achieve positive reform with the substantial financial help of the Chez Panisse Foundation.[228]

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223 *See* BROWNELL & HORGEN, *supra* note 114, at 145–46.

224 Ness, *supra* note 179.

225 *See* Alderman et al., *supra* note 108, at 91.

226 *Id.*

227 *See* Nancy Krieger, *Epidemiology and the Web of Causation: Has Anyone Seen the Spider?*, 39 SOC. SCI. MED. 887, 892 (1994); Alderman et al., *supra* note 108, at 92.

228 *See* Bilger, *supra* note 6, at 73, 79.

Chef Ann Cooper's days start at 3:30 a.m., and she supervises a staff of undertrained kitchen workers, acting as educator more than as supervising chef most days.[229] The combination of Cooper's training, enthusiasm, significant additional funding, and sheer talent makes the reform in the BUSD possible. Cooper routinely confronts a lack of facilities, with no blender, food processor, stovetop, or grill available in the central kitchen, yet she is able to examine the raw commodities available to her and turn them into innovative, healthy, and tasty lunches.[230] To avoid charges of fraud and waste, Cooper must use the USDA commodities that she has in her freezer, but she has slowly taken control over her larder and chooses all raw commodities over the processed ones.[231] She utilizes only local food processing, using a small local business for pizza crust and a lone cook whom she met at the daily Berkeley farmers' market for enchiladas.[232]

One way to achieve reform is to get more chefs like Cooper into school lunchrooms, and the recent increase in the number of chefs may make this possible. Inspired by the Food Network and the rise of the celebrity chef,[233] more people opt for culinary school each year.[234] The Culinary Institute of America reports a thirty-five percent increase in student enrollment in cooking school during the past five years.[235] In 2006, 53,000 students attended cooking school.[236] Demonstrating the trend to

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229 *See id.* at 73–74.

230 *See id.* at 73.

231 *See* Interview with Ann Cooper, in Berkeley, Cal. (May 3, 2007) [hereinafter Cooper Interview].

232 *See* Bilger, *supra* note 6, at 77; Lappé, *supra* note 196, at 36. Cooper detailed that she is not opposed to all processed food and explained that any act of cooking involves some processing. Cooper Interview, *supra* note 231. She simply wants to serve real food that she prepares and wants to get away from using "shitty food." *Id.*

233 *See, e.g.*, ANTHONY BOURDAIN, KITCHEN CONFIDENTIAL (2000); MICHAEL RUHLMAN, THE SOUL OF A CHEF (2001) (detailing the celebrity of Michael Symon and Thomas Keller); Alec Le Sueur, *A Donegal Son Returns*, FOOD & WINE, Mar. 2008, http://www.foodandwine.com/articles/a-donegal-son-returns (profiling Chef Cathal Armstrong, *Food and Wine* magazine's best new chef of 2006).

234 *See* Kim Severson, *'Top Chef' Dreams Crushed by Student Loan Debt*, N.Y. TIMES, May 8, 2007, at A1.

235 *Id.* at A22.

236 MICHAEL RUHLMAN, THE REACH OF A CHEF 11 (2006). For comparison, almost 43,000 law students received a J.D. in 2006. *See* AM. BAR ASS'N, ENROLLMENT AND DEGREES AWARDED 1 (2007), *available at* http://www.abanet.org/legaled/statistics/charts/stats%20-%201.pdf.

professionalize the skilled labor of the chef, there are currently eighteen master's programs and three doctoral programs for chefs in the United States.[237] Overall, the number of culinary schools has increased four-fold in the past twenty years.[238] Many culinary schools are developing two- and four-year bachelor's degree programs, and students in those programs incur student-loan debt just like many other undergraduate and graduate students.[239] Total tuition and supplies for a two-year culinary education may reach $48,000 with only about $14,000 available in low-interest federal loans.[240] As a result, culinary students, who disproportionately come from blue-collar backgrounds and are often the first in their family to receive any post-secondary education, leave culinary school with significant student-loan debt.[241]

Each graduate of an accredited culinary program receives training in menu planning and nutrition,[242] two skills useful and lacking in most school kitchen staff members. While graduates may aspire to high-paying executive chef positions, many will end up earning far less than expected.[243] Ann Cooper notes that, although cooking is a skill that takes practice and training, it is essentially a common trade where entry-level positions pay about $20,000 per year.[244] In 2006, institutions such as schools and hospitals employed more than 400,000 chefs. The median

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237 Doctorates are offered at NYU, Kansas State, and the University of Illinois at Chicago. Master's degrees are offered at Baltimore International College, New York University, California State Polytechnic University, Florida International University, Iowa State, Kansas State, Kent State, Mississippi State, Roosevelt University, Florida State, George Washington University, University of Central Florida, University of Hawaii, University of Houston, University of Illinois at Chicago, University of Illinois at Urbana-Champaign, Utah State, and Widener University.

238 *See* Severson, *supra* note 234.

239 *See id.* A review of culinary programs shows 90 B.A. and 245 A.A. programs in the United States. *See generally* ShawGuides, The Guide to Career Cooking & Wine Schools, http://cookingcareer.shawguides.com (last visited Nov. 24, 2008) (providing consolidated information about professional culinary schools).

240 Severson, *supra* note 234.

241 *See id.*

242 *See* BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, OCCUPATIONAL HANDBOOK, 2008–09 EDITION: CHEFS, COOKS, AND FOOD PREPARATION WORKERS 3 (2008), *available at* http://www.bls.gov/oco/pdf/ocos161.pdf [hereinafter OCCUPATIONAL HANDBOOK].

243 *See* Severson, *supra* note 234.

244 *Id.*; *see also* Cooper Interview, *supra* note 231.

annual income for food service workers in hospitals was $22,980, while those working in schools earned only $18,770.[245]

Cooper sees the growing pool of trained, entry-level chefs as an untapped resource for school kitchens.[246] In order to draw these trained chefs into public service, Congress could offer loan forgiveness for school-kitchen chefs within existing teacher loan forgiveness programs.[247] The program expansion would be appropriate since the school chef is as important as a teacher in helping a child succeed in school. Moreover, since many of the most needy students eat nearly half of their meals at school, Congress could view the school chef as a necessary part of the overall education system, much the way it views public defenders as a part of the overall law enforcement system and offers loan forgiveness to both prosecutors and public defenders.[248] Rewarding the public service of newly trained chefs through loan forgiveness could begin to solve the problem presented by the significant lack of training in most school kitchens.

Congress strives to offer healthy foods to children and improve the food environment, but the quality of its effort is low and nonspecific.[249] Center for Disease Control and USDA guidelines for healthy eating are worthless without funding for healthy foods and training and facilities in which to prepare those foods.[250] The push toward healthy additions, like the fresh fruit and vegetable initiative, must be coupled with funding or loan forgiveness incentives to draw trained chefs into schools and with new initiatives to stop subsidizing and dumping unhealthy foods into school lunch programs. The healthy foods cannot compete with the unhealthy foods any better than healthy foods can compete with foods of minimal nutritional value.[251]

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245 *See* OCCUPATIONAL HANDBOOK, *supra* note 242, at 5.

246 *See* Cooper Interview, *supra* note 231.

247 *See, e.g.*, 20 U.S.C. § 1078-10 (2008).

248 *See* College Cost Reduction and Access Act, Pub. L. No. 110-84, § 401, 121 Stat. 784, 800 (2007) (codified at 20 U.S.C. § 1087e (2008)).

249 *See generally* Food, Conservation, and Energy Act of 2008, H.R. 2419, 110th Cong. §§ 4304-4404 (2008). *But see* Pollan, *supra* note 162 (explaining which commodities Congress most supports).

250 *See* BROWNELL & HORGEN, *supra* note 114, at 153.

251 *See id.*

C. Setting Ambitious Policy Can Provoke Change

Setting a new policy to eliminate processed foods from school lunchrooms would be a noble agenda and would take years to accomplish. But asserting that goal would motivate the USDA to provide more stringent regulations for NPAs, such as requiring processors to eliminate obviously dangerous additives like trans fats and high-fructose corn syrup.

The overwhelming consensus in the whole food movement rejects processed, quick foods as detrimental to health and to an appreciation and understanding of food. There remains some debate between visions, with Alice Waters striving for a whole-food dining experience where children play a significant role in growing and preparing the food and then eat at a table with conversation at a relaxed pace.[252] Waters's annual Slow Food Nation, a kind of Woodstock for food, is a testament to her vision, essentially drawing people together for a picnic.[253] But, as Ann Cooper well knows, the vision is difficult to achieve given the complexity of the issues involved.[254] Changing children's expectations and tastes is nearly as difficult as finding whole foods to prepare, and local growing and purchasing creates an additional layer of challenge.[255] Using her substantial talents and sheer hard work, Cooper accomplishes the impossible nearly every day, all without the benefit of a trained staff and suitable facilities. She has recognized that some processed food is necessary in the arduous transition from trans fat-filled, unhealthy foods to her healthy, child-friendly meals. But her ability to choose processed foods with natural products and none of the dangerous preservatives is controlled by USDA policy decisions on farm subsidies and on acceptable food products supplied through the NPA. Innovators like Cooper are finding ways to work around policies that ignore the needs of children, but the health of the nation's schoolchildren should not depend

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252 *See* Interview with Carina Wong, Executive Director, Chez Panisse Found., in Berkeley, Cal. (May 4, 2007) (explaining the value of the Edible Schoolyard).

253 *See* Severson, *supra* note 5. Waters hopes to bring thousands of people together to begin solving the nation's food problems. *See* Slow Food Nation, Frequently Asked Questions, http://www.slowfoodnation.org/faq (last visited Nov. 24, 2008).

254 *See* Bilger, *supra* note 6.

255 *See generally* BARBARA KINGSOLVER, ANIMAL, VEGETABLE, MIRACLE (2007).

wholly on innovative, underpaid chefs. The fundamental policies introduced into the marketplace by Earl Butz[256] in the 1970s must be reformed from the farm subsidy, through the NPA, to the school kitchen, and all the way to the meal on every child's plate.

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256 *See* Cooper Interview, *supra* note 231.