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THE NATIONAL SCHOOL LUNCH PROGRAM: LUNCH IS FOR THE KIDS, NOT POLITICAL PROPAGANDA

CAROLINE SCANLON BELESON*

I. INTRODUCTION

There is a rudimentary understanding that food is a necessity to survival. While such an understanding is not a novel concept, theories differ on the importance of food quality and quantity in relation to and in support of particular activities, including academic achievement. At its core, a person must eat a certain quantity of daily calories to survive. According to the United States Dietary Guidelines for 2015-2020, a person should consume around 2,000 calories a day.¹ The suggested 2,000-calorie count accounts for sex, height, weight, and lifestyle activities.² This baseline suggestion begs further inquiry as to what one should eat not just to survive, but to thrive. More specifically, how much should a child eat to encourage learning in a school environment?

American children are required to attend school throughout their youth. Beyond this legal requirement, academic achievement correlates to job attainment and overall success.³ Schoolchildren are more likely to retain information and achieve academic success when properly nourished.⁴ Therefore, a properly fed student is more likely to learn more than an unfed student. Because

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1. U.S. DEP'T OF HEALTH AND HUM. SERVS. & U.S. DEP'T OF AGRIC., 2015–2020 DIETARY GUIDELINES FOR AMERICANS 18 (8th ed. 2015) [hereinafter 2015-2020 DIETARY GUIDELINES].

2. *Id.*

3. Vanessa Hein et al., *Predictors of Postsecondary Success*, COLLEGE & CAREER READINESS & SUCCESS CENTER 1 (Nov. 2013), https://ccrcenter.org/sites/default/files/CCRS%20Center_Predictors%20of%20Postsecondary%20Success_final_0.pdf.

4. CTRS. DISEASE CONTROL & PREVENTION, HEALTH AND ACADEMIC ACHIEVEMENT 2 (May 2014), https://www.cdc.gov/healthyyouth/health_and_academics/pdf/health-academic-achievement.pdf.

food is a basic human need and education is legally foundational to a child's upbringing, the coupling of food and school requires sound policy.

In 1946, legislation concerning school lunches was introduced under the National School Lunch Program ("NSLP").⁵ Still in effect today, the NSLP provides free and reduced-cost lunches to America's schoolchildren. The program was enacted to ensure that children were receiving the necessary nutrients to live a healthy life, thereby tangentially assuring that no child is educationally disadvantaged due to hunger.⁶ To illustrate its impact, nearly five billion lunches were served in 2018, approximately 75% of which were free or sold at reduced prices.⁷ The United States Department of Agriculture ("USDA") reports that food served by schools makes up the bulk of many students' nutritional consumption.⁸

The NSLP sets forth nutritional guidelines schools must follow to receive funding from the federal government. Each presidential administration is able to amend the guidelines. Most recently, the Trump Administration amended three guidelines in the pre-existing NSLP framework, effectively altering the Obama Administration's revisions articulated in the Healthy Hunger-Free Kids Act ("HHFKA").⁹ With both support and resistance from citizens and commentators alike, the Trump Administration specifically altered guidelines concerning grains, sodium, and milk, resulting in more "relaxed" compliance standards for institutions to obtain federal funding.¹⁰ The Trump Administration's amended guidelines are a superficial departure from the objectives and missions of the Obama Administration's HHFKA. Though these shifted standards might not require the most nutritionally dense or otherwise healthiest foods for children, the guidelines ultimately reflect our nation's evolving perception of what it means to be healthy generally.¹¹ These changes are conducive to the long-term goals that the NSLP and the HHFKA intended to achieve, which ultimately benefit the students of America and society as a whole.

Section II of this Comment discusses the background of the NSLP and various Administrations' amendments to food guidelines.¹² Section III analyzes

5. Richard B. Russell National School Lunch Act, Pub. L. No. 79-396, 60 Stat. 230 (1946) (codified as amended at 42 U.S.C. §§ 1751–1769j (2019)).

6. *Id.*

7. U.S. Dep't of Agric., *National School Lunch Program*, ECONOMIC RESEARCH SERVICE, <https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs/national-school-lunch-program/> (last updated Oct. 1, 2020).

8. *Id.*

9. *See generally* Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 83 Fed. Reg. 63775 (Dec. 12, 2018) (to be codified at 7 C.F.R. pt. 210, 215, 220, 226) (amending the necessary grain composition, sodium intake timetable, and additional milk flavors for school meals).

10. *Id.*

11. *See infra* Section IV.

12. *See infra* Section II.

the Trump Administration's three amended standards and the presumptive effects of those changes; this section also considers the critiques and legislative intent behind the new guidelines.¹³ Finally, Section IV concludes that the Trump Administration's rationale for flexible guidelines are not unique to this Administration and ultimately do not undermine, but rather support, the NSLP's main objective.¹⁴

II. BACKGROUND

The NSLP was established in 1946 to provide nutritious food as a safeguard to children's health and well-being.¹⁵ Under the NSLP, schools receive federal funding for serving lunchtime meals that meet nutritional standards provided by the government.¹⁶ If a school serves food that complies with the standards or guidelines, the school receives six cents for each lunch served.¹⁷ Compliant schools are also reimbursed for lunches served to students that are free or reduced-priced lunch eligible.¹⁸ The total number of lunches served, including the percentage of free and reduced-priced lunches, has steadily increased since the introduction of the NSLP.¹⁹ The growing participation in the program indicates the program's general success and schools' commitments to abide by the guidelines. It is also in schools' best monetary interest to comply with these guidelines.²⁰ Although payment and reimbursement are positive factors of the NSLP, they are not the NSLP's main objectives.²¹ At its core, the NSLP's goal has been "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..."²² This overarching goal has become nuanced over time and

13. *See infra* Section III.

14. *See infra* Section IV.

15. Richard B. Russell National School Lunch Act, Pub. L. No. 79-396, 60 Stat. 230 (1946) (codified as amended at 42 U.S.C. §§ 1751–1769j (2019)).

16. U.S. Dep't of Agric., *National School Lunch Program (NSLP) Fact Sheet*, FOOD AND NUTRITION SERVICE 1 (Mar. 20, 2019), <https://www.fns.usda.gov/nslp/nslp-fact-sheet>.

17. *Id.* at 2.

18. *Id.* Each year, the USDA publishes guidelines in the Federal Register that a family must meet in order for a student to be eligible for free or reduced lunches. Child Nutrition Programs: Income Eligibility Guidelines, 85 Fed. Reg. 16050, 16050 (Mar. 20, 2020). The eligibility guidelines are based on federal income poverty guidelines. *Id.* A student is eligible for free lunch if the family's income is 130% of the poverty line or below. *Id.* A student is eligible for reduced lunch if the family's income is 130-185% of the poverty guidelines. *Id.*

19. U.S. Dep't of Agric., *Child Nutrition Tables*, FOOD AND NUTRITION SERVICE (Dec. 13, 2019), <https://www.fns.usda.gov/pd/child-nutrition-tables>. From 2016 to 2017, there was an average decrease of 161 lunches served. *Id.*

20. Richard B. Russell National School Lunch Act, Pub. L. No. 79-396, 60 Stat. 230 (1946) (codified as amended at 42 U.S.C. §§ 1751–1769j (2019)).

21. *Id.*

22. *Id.*

interpreted in ways that align with each Presidential Administration's perspective on food quality and nutrition.

To fully grasp how the NSLP's current guidelines affect the Program's trajectory, it is important to understand the Program's inception and subsequent development throughout successive Administrations. Despite the common aforementioned objective, Administrations interpret and employ qualitative and quantitative data differently.²³ Unsurprisingly, each Administration's policy changes – or consistencies – have been challenged by the American people. The volume and frequency of said challenges have fluctuated, but the ultimate goal and priority of each Administration has seemingly remained the same: to ensure that children are properly fed during the school day.

This transient nature of the NSLP is inherent in its construction. Every five years, the NSLP is eligible for reconsideration and amendment through a process called Child Nutrition Reauthorization (“CNR”).²⁴ Reauthorization allows certain Congressional Committees to amend and improve the NSLP guidelines and other federally funded nutritional programs.²⁵ Although Congress has jurisdiction over the reauthorization process, changes to the NSLP do not happen every year that reauthorization is eligible.²⁶ Notably, the CNR was not utilized to amend the NSLP in 2016 largely because of the policy differences in bills offered by the House and the Senate.²⁷ Due to this optional malleability, not all past Administrations have introduced significant changes to the Program. Therefore, the following analysis only evaluates contextually relevant changes under certain Administrations.

a. Truman and Johnson: NSLP Inception and Initial Changes

Nutrition metrics were not the sole indicator of health and well-being at the time the NSLP was implemented.²⁸ In fact, Congress introduced the policy as a matter of national security.²⁹ National security was reportedly at risk because a

23. See Colin Schwartz & Margo G. Wootan, *How a Public Health Goal Became a National Law: The Healthy, Hunger-Free Kids Act of 2010*, 54 NUTRITION TODAY 67 (2019) (describing various factors administrations considered when amending NSLP guidelines).

24. Child Nutrition Reauthorization Act of 1998, 42 U.S.C. § 1751.

25. *Id.*; *Child Nutrition Reauthorization (CNR)*, FOOD RSCH. & ACTION CTR., <https://frac.org/action/child-nutrition-reauthorization-cnr> (last visited Feb. 11, 2021). The CNR is also a foundation for amendments to the Child Nutrition Act of 1966. Child Nutrition Act of 1966, 42 U.S.C. § 1771.

26. *Child Nutrition Reauthorization (CNR): An Overview*, CONG. RSCH. SERV. (Feb. 27, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF10266>.

27. *Tracking the Next Child Nutrition Reauthorization: An Overview*, CONG. RSCH. SERV. 2 (May 23, 2017), <https://www.everycrsreport.com/reports/R44373.html>.

28. Schwartz & Wootan, *supra* note 23, at 72.

29. Gordon W. Gunderson, *The National School Lunch Program: Background and Development*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/nslp/program-history> (last visited Jan. 5, 2020).

number of men were rejected from the World War II draft due to malnutrition.³⁰ Consequently, President Truman introduced the NSLP as an attempt to eliminate malnutrition among late teen males which would theoretically result in stronger national security.³¹ Purportedly, ensuring the nation's youth received proper nutrition would strengthen national security by increasing the number of men eligible for the draft.³² To achieve this goal, the government established nutrition standards for school lunches in exchange for federal funding.³³ Though strengthening national security was the primary goal, the Program also intended to positively support children's well-being by ensuring students were properly fed.³⁴

To further advance this goal, President Lyndon B. Johnson's Administration later adopted the Child Nutrition Act ("CNA") to supplement the NSLP.³⁵ Through the CNA's enactment, Congress declared and further elaborated on the NSLP's purpose, emphasizing the connection between children's food intake, nutrition, and ability to learn.³⁶ As a result of the success and findings of the NSLP, Congress consequently launched the pilot "School Breakfast Program" and other food and health-related programs as part of the CNA.³⁷ The NSLP and CNA work in conjunction; for instance, the School Breakfast Program and the NSLP follow the same nutrition standards.³⁸

b. Carter, Clinton, and Bush: Nutritional Advancement

From 1966 to 2010, various presidential Administrations contributed to improving, amending, and thus molding the NSLP.³⁹ In particular, the Carter, Clinton, and Bush Administrations emphasized the importance of nutritional

30. Schwartz & Wootan, *supra* note 23, at 68

31. *See id.* (stating the NSLP was established "to address childhood malnutrition given the number of young men rejected from the World War II draft").

32. *Id.*

33. Gunderson, *supra* note 29, at 20–21.

34. Richard B. Russell National School Lunch Act, Pub. L. No. 79-396, § 2, 60 Stat. 230 (1946) (codified as amended at 42 U.S.C. §§ 1751–1769j (2019)) ("It is hereby declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children...").

35. *See* Child Nutrition Act of 1966, 42 § U.S.C. 1771 ("it is hereby declared to be the policy of Congress that these efforts shall be extended, expanded, and strengthened ...").

36. Gunderson, *supra* note 29, at 23.

37. *Id.* The School Breakfast Program was eventually enacted into legislation. *See* 42 U.S.C. § 1773 (establishing monetary assistance available for schools to provide student breakfasts in accordance with daily nutrition requirements).

38. *See* 7 C.F.R. § 210.1-0 (2021) (outlining meal requirements for the National School Lunch Program); *see also* 7 C.F.R. § 220.8 (2021) (providing meal requirements for the School Breakfast Program that mirror the NSLP requirements).

39. Nancy Becker, *Healthy School Food Timeline*, CTR. FOR SCI. IN THE PUB. INT., http://www.heart.org/ide/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_472291.pdf (last visited Jan. 5, 2020).

value in food. These respective eras of NSLP amendments included the implementation of pilot programs focused on setting nutritional standards for food and beverages, including grains and milk, and adopted a community approach to health.

In 1979, under the Carter Administration, Congress prohibited the sale of food with minimal nutritional value.⁴⁰ Food and beverages were considered of minimal nutritional value if the product had less than 10% of the recommended daily allowances of vitamins, minerals, or proteins.⁴¹ Although well-intentioned, the loopholes of this provision allowed schools to continue to sell unhealthy foods and beverages because there was no mention of sodium, calories, or saturated fats in the provision.⁴²

Under the Clinton Administration in 1994, Congress amended the NSLP to eliminate the requirement that schools offer both whole and non-fat milk options.⁴³ The Administration also introduced pilot programs to increase the use of fortified fluid milk, grain-based products, and low-fat dairy products.⁴⁴ The success of each pilot program was measured by student participation, meal quality, views of students, parents, and administrators, and paperwork, among other administrative concerns.⁴⁵ Most notably, the Clinton Administration mandated school meals to be served “consistent with” the Dietary Guidelines for Americans — a provision that has since remained in the Program.⁴⁶ The Dietary Guidelines were established in 1980 and are revisited every five years to provide recommendations for Americans at-large based on current scientific knowledge.⁴⁷

Nutrition standards were again amended by Congress under the Bush Administration in 2004.⁴⁸ As a departure from the Clinton Administration’s provisions, schools were required to serve milk with a variety of fat contents and milk could be flavored.⁴⁹ In conjunction with the nutritional amendments, the Bush Administration also introduced the “Local Wellness Policy,” which required schools to create goals for nutritional education, students’ physical activity, and nutritional guidelines for food served on school campuses outside

40. Schwartz & Wootan, *supra* note 23, at 68.

41. *Id.* at 67.

42. *Id.*

43. Healthy Meals For Healthy Americans Act of 1994, Pub. L. No. 103–448, § 107, 108 Stat. 4699, 4704 (1994).

44. *Id.* § 118.

45. *Id.*

46. *Id.* § 106.

47. National Nutrition Monitoring and Related Research Act of 1990, 7 U.S.C. § 5341; 2015-2020 DIETARY GUIDELINES, *supra* note 1.

48. See Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108–265, 118 Stat 729 (2004) (amending nutritional standards).

49. *Id.* § 102.

of school-provided meals.⁵⁰ Still largely in effect today, schools that participate in the NSLP are “required by federal law to establish a local school wellness policy.”⁵¹ The original goal of this policy was to promote student health and to reduce childhood obesity.⁵² The policy mandated that, “parents, students, representatives of the school food authority, the school board, school administrators, and the public” be involved in the development of the local wellness policy.⁵³ The Bush Administration seemingly took a community-based approach to school lunches. Though the nutritional standards of the NSLP were determined by the government, the specifics of local wellness policies were solely created and implemented by local school communities — facilitating a community-inclusive effort. The local wellness policies set the framework for the holistic approach later introduced by the Obama Administration.

c. Obama: Research-Driven, Health-Centered Provisions

In 2010, the Obama Administration enacted the Healthy Hunger Free Kids Act (“HHFKA”).⁵⁴ This Act focused on ensuring students’ diets were full of nutritious and healthy foods through the implementation of higher nutritional and quality-related standards.⁵⁵ The HHFKA’s objective was to serve students healthy food, which would teach children lessons about healthy food choices, ultimately resulting in lifelong healthy eating habits.⁵⁶

As recommended by research findings from the Institute of Medicine, HHFKA nutritional standards encouraged serving less sodium and fat, more vegetables, fruits, and whole grains, low-fat milk, and smaller portion sizes to help prevent childhood obesity.⁵⁷ Additionally, the HHFKA repealed language from the local wellness policy, which distinctively required student and parent involvement, and instead included language in favor of broader “community” involvement.⁵⁸ Further, the HHFKA required food sold on school grounds —

50. *Id.* § 204. The local wellness policy specifies nutrition guidelines for all food served in schools, not just those served during breakfast and lunch. *Id.*

51. *Local School Wellness Policy*, U.S. Dep’t Agri., <https://www.fns.usda.gov/tn/local-school-wellness-policy> (last accessed Dec. 10, 2020).

52. Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108–265, 118 Stat. 729, 780–81 (2004).

53. *Id.* at 781.

54. Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751.

55. *Id.*

56. Let’s Move, *Child Nutrition Reauthorization: Healthy, Hunger-Free Kids Act of 2010*, https://obamawhitehouse.archives.gov/sites/default/files/Child_Nutrition_Fact_Sheet_12_10_10.pdf (last visited Jan. 8, 2021).

57. *Healthy Schools*, LET’S MOVE, <https://letsmove.obamawhitehouse.archives.gov/healthy-schools> (last visited Jan. 8, 2021); U.S. Dep’t of Agric., *FACT SHEET: Healthy, Hunger-Free Kids Act School Meals Implementation*, FOOD & NUTRITION SERV., <https://fns-prod.azureedge.net/pressrelease/2014/009814> (last visited Jan. 8, 2021).

58. Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183 (2010).

outside of school meals, such as food sold in vending machines and snack shops — to follow the same nutritional standards as those sold during mealtimes.⁵⁹ In effect, standards for food outside of school meals were removed from the local wellness policy and instead re-housed directly within the NSLP.⁶⁰

Beginning in 2014 under the HHFKA and NSLP, schools were required to serve 100% whole grain food when serving food with grains, hit a reduced sodium intake target by July 2017, and serve unflavored, low fat/fat-free milk, with limited exceptions, in order to receive federal funding.⁶¹ The HHFKA also frequently referenced the Dietary Guidelines for Americans, remaining consistent with the Clinton Administration's implementation, mandating that certain nutritional standards, such as milk, abide by those guidelines.⁶² Though schools were required to serve meals in compliance with the Dietary Guidelines for Americans since 1996, the frequent mention of the Guidelines in the HHFKA reinforced schools' necessary commitment to follow the published standards.⁶³ This commitment further cemented the nutritional alignment of children's school lunches with American's general daily food intake and guidelines.

As a result of these well-intentioned, but perhaps overly ambitious standards, critics argued that the new lunches under the HHFKA failed to ensure schoolchildren were properly fed and focused too heavily on learning.⁶⁴ This shift in emphasis, it was argued, undermined the Act's dual purpose of providing both nutrition and food education.⁶⁵ Some critics remarked that the new meals were not palatable to kids, resulting in many students refusing to eat.⁶⁶ Other critics argued that "Hunger Free" was an unlikely result from the "Healthy" food guidelines that the Obama Administration implemented.⁶⁷ These critics claimed that the healthier, stricter standards resulted in food waste because students threw away their food instead of eating and reaping the nutritional benefits.⁶⁸ When

59. National School Lunch Program and School Breakfast Program, 81 Fed. Reg. 50132, 50133 (Jul. 29, 2016) (to be codified at 7 C.F.R. pt. 210, 220).

60. *Id.* As previously mentioned, the local wellness policy requires schools that receive federal funding under the NSLP to draft and implement their own local wellness policy to compliment and support the lessons and servings of nutritious foods under the NSLP. *Id.*

61. Nutrition Standards in the National School Lunch and Schools Breakfast Programs, 77 Fed. Reg. 4088 (Jan. 26, 2012) (to be codified at 7 C.F.R. pt. 210, 220).

62. *See* Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat 3183 (2010) (explaining that schools must abide by the Dietary Guidelines for Americans in order to receive federal funding).

63. *Id.*

64. U.S. GOV'T ACCOUNTABILITY OFF., IMPLEMENTING NUTRITION CHANGES WAS CHALLENGING AND CLARIFICATION OF OVERSIGHT REQUIREMENTS IS NEEDED 20 (Jan. 2014), <https://www.gao.gov/assets/670/660427.pdf> [hereinafter GAO].

65. *Id.*

66. *Id.* at 21.

67. *Id.*

68. Emelyn Rude, *An Abbreviated History of School Lunch in America*, TIME MAG. (Sept. 19, 2016), <https://time.com/4496771/school-lunch-history/>.

confronted with critiques concerning specific requirements, such as whole grain foods, the government stated that the standards were aligned with the Dietary Guidelines for Americans, as required by the Act.⁶⁹ Beyond taste concerns, schools expressed difficulty following the more stringent standards.⁷⁰ These administrative concerns ultimately influenced the Obama Administration to allow schools to apply for waivers from following the guidelines through demonstration of hardship in procuring products compliant with the standards.⁷¹

Despite these negatives, studies show that the HHFKA contributed to overall healthier children.⁷² In May 2014, the USDA released the HHFKA implementation results, finding a multitude of benefits attributable to the Act, including: an increase in children's consumption of fruit (23%) and vegetables (16%) at lunch; an approximate \$200 million increase in school lunch revenue within the first year of implementation; less food waste despite heightened standards; and increased school participation in the NSLP.⁷³

d. Trump: Qualitative Health-Centered Broadening

Some of the Obama-era benefits were reversed when the Trump Administration amended the HHFKA standards.⁷⁴ In July 2017, three requirements were amended by the Trump Administration in efforts to “make school meals great again.”⁷⁵ More specifically, the Trump Administration laxed grain standards, lengthened the sodium reduction timeline, and permitted serving flavored milk.⁷⁶

HHFKA critics continued to advance negative arguments despite positive research to suggest otherwise.⁷⁷ Markedly, in a May 2017 press release, the

69. National School Lunch Program and School Breakfast Program, 81 Fed. Reg. 50132 (Jul. 29, 2016) (to be codified at 7 C.F.R. pt. 210, 220).

70. GAO, *supra* note 64, at 28.

71. Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, 2171 (2015); Consolidated and Further Continuing Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242, 2279 (2016); Consolidated and Further Continuing Appropriations Act, 2017, Pub. L. No. 115-31, 131 Stat. 135, 176 (2017).

72. U.S. Dep't of Agric., *FACT SHEET: Healthy, Hunger-Free Kids Act School Meals Implementation*, FOOD AND NUTRITION SERV., <https://fns-prod.azureedge.net/pressrelease/2014/009814> (last visited Jan. 6, 2021).

73. *Id.*

74. Press Release, U.S. Dep't of Agric., *Ag Secretary Perdue Moves to Make School Meals Great Again* (May 1, 2017), <https://www.usda.gov/media/press-releases/2017/05/01/ag-secretary-perdue-moves-make-school-meals-great-again> [hereinafter USDA Press Release]; *see also supra* notes 54–60 and accompanying text (providing an overview of HHFKA standards under the Obama administration).

75. *Id.*

76. Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 83 Fed. Reg. 63775, 63776 (Dec. 12, 2018) (to be codified at 7 C.F.R. pt. 210, 215, 220, 226).

77. U.S. Dep't of Agric., *FACT SHEET: Healthy, Hunger-Free Kids Act School Meals Implementation*, FOOD AND NUTRITION SERV., <https://fns-prod.azureedge.net/pressrelease/2014/009814> (last visited Feb. 11, 2021) (citing to HHFKA benefits deduced from research).

Secretary of Agriculture, Sonny Perdue, stated that schools were having trouble meeting the “stringent” nutrition requirements and were facing increasing fiscal burdens to adhere to those requirements.⁷⁸ The press release noted that the food requirements under the HHFKA cost states and schools an additional \$1.22 billion in 2015.⁷⁹ Secretary Perdue added that despite quantitative findings demonstrating southern schools’ compliance with whole grain requirements, students did not eat the regionally-popular grits when served because of the taste.⁸⁰

The Trump Administration’s revisions, which became effective immediately, seemingly sought to lower certain standards at the request of meal preparers.⁸¹ Prefaced as ways to promote flexibility and meet the local needs of schools, the Trump Administration lowered the grain standards, requiring just half of the weekly grains to be whole grain-rich, allowed schools more time to meet the previously-set sodium goals, and permitted schools to serve low-fat flavored milk.⁸² The USDA reasoned that these flexible standards promote cultural enrichment and encourage more milk consumption.⁸³ School Nutrition Association (“SNA”), a non-profit organization representing nearly 60,000 meal providers, fully supported the Trump Administration’s changes, stating that the changes reflected years of feedback and prioritized the wants and needs of students.⁸⁴ Similar to previous Administrations, the Trump Administration made a mark on the National School Lunch Program.

III. THE TRUMP ADMINISTRATION’S EFFECT ON THE NSLP

The divisive culture of America’s current political atmosphere has tainted objective perceptions of the Trump Administration’s amended standards. Politically charged motivations aside, the original intent of the NSLP should be at the forefront of an objective analysis of the Trump Administration’s new standards. Despite the changed nutritional standards and their stark contrast to those of the Obama era, the new standards are not catastrophic. Rather, the standards are just another path to the unwavering goal of the NSLP: to nourish America’s children with food that aligns with current scientific knowledge.

The Trump Administration’s path toward achieving the NSLP’s goal is principally concerned with enhancing the administration of the Program. The

78. USDA Press Release, *supra* note 74.

79. *Id.*

80. *Id.*

81. *See id.* (emphasizing comments and observations about the administrative issues of serving lunch).

82. *Id.*

83. *Id.*

84. Diane Pratt-Heavner, *SNA Responds to School Meal Flexibilities Complaints*, SCH. NUTRITION ASS’N (Apr. 3, 2019), <https://schoolnutrition.org/news-publications/press-releases/2019/sna-responds-to-school-meal-flexibilities-complaints/>.

purpose of the amended standards is “to ease operational burden and provide school nutrition professionals the flexibility needed to successfully operate the Child Nutrition Programs.”⁸⁵ More explicitly, the Trump Administration said that the intent of the flexibilities is “to assist Program operators with specific challenges that limit their ability to offer nutritious and appealing meals that reflect community preferences, and that students enjoy and consume.”⁸⁶ Though this purpose is not verbatim related to children’s health, the recurring need for practicality is necessary in successfully implementing a uniform, nationwide program. The Trump Administration notes that “the cumulative impact of the unpredictable legislative mandates on Program operators has substantially harmed their ability to accomplish fundamental administrative responsibilities ranging from advance menu planning, to school district budgeting and competitive procurement of allowable foods.”⁸⁷ Due to the ever-changing nature of the NSLP, a sense of stability and predictability is arguably important to meal-preparers and children alike.

The 2018 amendments to the NSLP guidelines have been criticized as an end to the Obama Administration’s hard work, or otherwise indifferent to children’s health, favoring convenience over nutrition.⁸⁸ However, these purportedly flexible guidelines could now put the HHFKA’s objectives to the test; if students did effectively learn how to make healthy choices, those students might still choose the healthier food option. In this sense, the Trump Administration’s lunch plans are actually complimentary, rather than contradictory, to the HHFKA’s objectives. In fact, the new standards align with the HHFKA’s guiding authority, the Dietary Guidelines for Americans. Moreover, these standards are necessary due to the practicalities of the Program’s administration; a noticeable theme in the Trump Administration’s changes relate to feasibility.

a. More Flexible Grain Standards

Under the Trump Administration’s amendment, half of the grains served in the Program are required to be whole grain, in contrast to the HHFKA guideline that required one hundred percent of grains served to be whole grain.⁸⁹ The HHFKA stated that the whole-grain requirement was implemented because of

85. Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 83 Fed. Reg. 63775, 63784 (Dec. 12, 2018) (to be codified at 7 C.F.R. pt. 210, 215, 220, 226).

86. Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 82 Fed. Reg. 56703, 56705 (Nov. 30, 2017) (to be codified at 7 C.F.R. pt. 210, 215, 220, 226).

87. *Id.* at 56709.

88. Julia Jacobs, *Trump Administration Rolls Back Obama-Era Rules for School Lunches*, THE NEW YORK TIMES (Dec. 8, 2018), <https://www.nytimes.com/2018/12/08/us/trump-school-lunch-usda.html>.

89. Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 83 Fed. Reg. 63775, 63776 (Dec. 12, 2018) (to be codified at 7 C.F.R. pt. 210, 215, 220, 226).

the connection between whole grains and lower body weight.⁹⁰ The Act acknowledged that many commenters were concerned with the price of whole-grain foods.⁹¹ In response, the Act noted that whole-grain products were available to purchase through USDA Foods, which is a service available to school lunch providers.⁹² However, school lunch providers were not satisfied because, despite the option to purchase from the USDA, meeting the whole-grain requirements was still too costly.⁹³

The fifty percent whole-grain standard was “recommended by the School Nutrition Association, representing 57,000 school nutrition professionals.”⁹⁴ In fact, “due to a long history of administrative and legislative actions allowing exemptions,” the HHFKA whole-grains standard was never fully implemented nationwide.⁹⁵ Schools requested numerous exceptions and exemptions over the years, including for pasta, due to the difficulties in meeting the stringent standard.⁹⁶ Now, the amended standard implemented by the Trump Administration “is consistent with USDA’s commitment to alleviate difficult regulatory requirements, simplify operational procedures, and provide school food authorities ample flexibility to address local preferences.”⁹⁷

Price remains a chief concern regarding whole-grain products.⁹⁸ Another emerging complaint, however, focuses on the taste of whole-grain foods.⁹⁹ In a report announcing the changes, the Government acknowledged that “the changes are only truly successful when all of America’s schoolchildren eat and enjoy the school meals.”¹⁰⁰ Thus, these changed standards under the Trump Administration might increase participation in the NSLP because children will more likely eat the school meals, thereby actually providing children with the nutrition they need. Furthermore, the Administration’s changes are still in alignment with the 2020 Dietary Guidelines for Americans, which recommends that an individual’s consumption of grains be half whole-grain.¹⁰¹

90. Nutrition Standards in the National School Lunch and Schools Breakfast Programs, 77 Fed. Reg. 4088, 4093 (Jan. 26, 2012) (to be codified at 7 C.F.R. pt. 210, 220).

91. *Id.*

92. *Id.*

93. GAO, *supra* note 70, at 27.

94. Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 83 Fed. Reg. 63775, 63781 (Dec. 12, 2018) (to be codified at 7 C.F.R. pt. 210, 215, 220, 226).

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.* at 63776.

101. 2015-2020 DIETARY GUIDELINES, *supra* note 1, at 15.

Studies have shown that despite the relaxed whole-grain standards, schools continue to serve plenty of whole-grain rich options.¹⁰² After all, these amended guidelines only set the floor, or the minimum, for the amount of whole-grains served. Said differently, “schools are not required to change their menus and can choose whether or not to use the flexibilities this rule provides.”¹⁰³ Thus, schools can — and often do — provide whole-grain food at a higher rate than is required. Ultimately, students are put to the test: will they choose whole-grain food on their own?

b. Extended Sodium Reduction Timeline

The amendment to sodium guidelines illustrates the surprisingly complimentary nature of the Trump Administration’s flexible regulations to the HHSFKA. The HHSFKA originally planned for a steady decrease in the level of sodium served in meals.¹⁰⁴ An important reason for the sodium reduction is the effect that it has on a food’s nutritional content.¹⁰⁵ More specifically, reduction in sodium content would provide children with more nutrient-dense food, which would ultimately help children maintain a healthy bodyweight and better overall health.¹⁰⁶ To achieve these goals, the HHSFKA established two sodium targets for schools. Target 1 requires a lunch meal for students in grades 6-8 to average less than 1,360 milligrams of sodium; target 2 requires a lunch meal for students in grades 6-8 to average less than 1,035 milligrams of sodium.¹⁰⁷ In comparison, the Dietary Guidelines for Americans recommends that children aged 9-13 years consume less than 2,200 milligrams of sodium per day.¹⁰⁸

The Trump Administration’s new flexible timeline on sodium reduction still, in theory, supports a goal of healthy weight.¹⁰⁹ While the original sodium targets 1 and 2 remain, the timeline has shifted to give school meal preparers

102. *Whole Grain Rich Options Abound in Schools*, TRAY TALK (Aug. 26, 2019), <https://traytalk.org/2019/08/26/despite-flexible-regulations-whole-grain-rich-options-continue-to-grow-in-schools/#more-4749>.

103. *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements*, 83 Fed. Reg. at 63777.

104. *Nutrition Standards in the National School Lunch and Schools Breakfast Programs*, 77 Fed. Reg. 4088, 4097 (Jan. 26, 2012) (to be codified at 7 C.F.R. pt. 210, 220). Target 1 was scheduled for school year 2014-2015; target 2 was scheduled for school year 2017-2018. *Id.*

105. 2015-2020 DIETARY GUIDELINES, *supra* note 1, at 58.

106. *Nutrition Standards in the National School Lunch and Schools Breakfast Programs*, 77 Fed. Reg. at 4092.

107. *Id.* at 4098. Target 1 requires students in K-5 are served lunch with less than 1,230 milligrams of sodium and students in grades 9-12 are served lunch with less than 1,420 milligrams of sodium. *Id.* Target 2 requires students in K-5 are served lunch with less than 935 milligrams of sodium and students in grades 9-12 are served lunch with less than 1,080 milligrams of sodium. *Id.*

108. 2015-2020 DIETARY GUIDELINES, *supra* note 1, at 98. For persons aged 14 years and older, the Guidelines recommend intake of less than 2,300 milligrams of sodium per day. *Id.*

109. *See id.* (clarifying that the recommended sodium for adults is less than 2,300 milligrams of sodium per day).

more time to meet these targets.¹¹⁰ More specifically, schools have through the end of school year 2023-2024 to reach sodium target 1 and until school year 2024-2025 to meet sodium target 2.¹¹¹ The targets are proportional to age.¹¹² By pushing back the target 2 date and extending the time to attain target 1, the new timeline allows the findings from the Program to be researched and published in the 2020 Dietary Guidelines for Americans, which the NSLP is required to abide by.¹¹³

c. Availability of Flavored Milk

Previously, the HHFKA required schools to offer solely unflavored low-fat milk in an effort to eliminate sugar consumption in drinks.¹¹⁴ The HHFKA promoted and encouraged students to drink milk in hopes that students would get used to unflavored milk.¹¹⁵ However, there was a decrease in milk consumption as a consequence of those standards.¹¹⁶ According to USDA's Economic Research Service, data "shows a decrease in fluid milk consumption from 197 pounds per person in 2000 to 154 pounds per person in 2016."¹¹⁷

To entice students to drink milk, the Trump Administration has allowed schools to serve low-fat flavored milk.¹¹⁸ The guideline still insists that the milk be low-fat, but the flavoring is predicted to aid in increasing milk consumption.¹¹⁹ The primary oppositional concern was the increase in sugar consumption.¹²⁰ Though times and opinions change, the original statutory language of the National School Lunch Act stated that "students must be provided with a variety of fluid milk and milk may be flavored or unflavored; there is no statutory requirement" to serve milk with a certain level of fat.¹²¹ Thus, although the Obama Administration's goal in HHFKA was to decrease

110. Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 83 Fed. Reg. at 63782.

111. *Id.*

112. *Id.*

113. *Id.* at 63783.

114. Nutrition Standards in the National School Lunch and Schools Breakfast Programs, 77 Fed. Reg. 4088, 4095 (Jan. 26, 2012) (to be codified at 7 C.F.R. pt. 210, 220). The standards allowed flavored fat-free milk. *Id.*

115. Nutrition Standards in the National School Lunch and Schools Breakfast Programs, 77 Fed. Reg. at 4133.

116. Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 83 Fed. Reg. at 63779.

117. *Id.*

118. USDA Press Release, *supra* note 74.

119. *Id.* This amendment was greeted with much protest; The USDA received 5,441 out of 5,546 letters that opposed the new milk standard. Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 83 Fed. Reg. at 63777.

120. Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 83 Fed. Reg. at 63779.

121. *Id.* at 63780.

sugar consumption in liquids, the overarching objective of the milk program in the NSLP is to encourage milk consumption.¹²² Further, in response to the potential increase in sugar intake, “the National Milk Producers Federation and the International Dairy Foods Association noted that milk processors have significantly reduced the calorie and sugar content of flavored milk in recent years.”¹²³

The NSLP originally required milk to be served because it provides students with valuable nutrition; in fact, milk cannot even be substituted for water — schools must provide milk at lunch.¹²⁴ Further, if a school offers flavored milk, that school must also offer unflavored milk at the same meal service.¹²⁵ The Trump Administration has argued that students threw away their food and beverages served under the HHFKA, ultimately reducing milk consumption.¹²⁶ The intended goal of offering low-fat flavored milk as an option was to ensure that students consumed at least some type of milk, rather than none at all.¹²⁷ Although non-fat, non-flavored milk may be healthier if consumed, the purpose of the NSLP milk standard was to encourage students to drink milk to obtain more nutrients, a purpose that this amended guideline may still achieve.

This flexible guideline not only aligns with the statutory language of the NSLP, but the standard further compliments the Obama Administration’s HHFKA because, as was the case with students choosing between whole grain and non-whole grain options, it allows students the opportunity to choose unflavored milk over flavored milk. If the objective of the HHFKA was to encourage students to drink and choose unflavored milk, the amended guidelines provide students the setting and opportunity to put their preferences to the test.

d. Trump Administration Amendments Comport with Original Legislative Intent

Since different advocacy groups inform the legislature of their opinions, the intentions of the NSLP reflect opinions and research from a variety of people. Although particular guidelines may alter every five years, many of the Program’s overarching goals and objectives remain the same.

The Trump Administration amended the food guidelines because of qualitative evidence including: statements from teachers, students, lunch coordinators, and lunch staff.¹²⁸ The use of qualitative data to amend the

122. See Child Nutrition Act of 1966, 42 U.S.C. § 1772 (providing one of the purposes of the HHFKA is “to encourage consumption of fluid milk by children in the United States...”).

123. Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 83 Fed. Reg. at 63779.

124. *Id.* at 63780.

125. *Id.*

126. USDA Press Release, *supra* note 74.

127. *Id.*

128. *Id.*

guidelines is not unique to the Trump Administration. For instance, the Obama Administration received comments from:

[N]utrition, health, and child advocates at the national, state and local levels; SAs that administer the school meal programs; school districts/boards; schools; school food service staff; superintendents, principals, and teachers; food manufacturers and distributors; food industry representatives; food service management companies; academia; nutritionists/dietitians; community organizations; parents and students; and many other interested groups and individuals.¹²⁹

Ultimately, qualitative evidence, including feedback from involved and affected communities, has always played a role in amending the NSLP's guidelines.

In addition to utilizing the same method, each Administration has remained true to the original legislative intent of the NSLP: to provide students with food during the school day to support the learning process. The Trump Administration may have worked towards that objective differently than the Obama Administration did, but the amended guidelines still support the legislative intent. This intent, according to Secretary Purdue, is to ensure that students actually eat lunches and receive nutrition rather than throw the food away.¹³⁰

Organizations have advocated for the very amendments the Trump Administration promulgated. For example, in 2018, the School Nutrition Association advocated for more flexible standards to create a sustainable system.¹³¹ The SNA advocated for flexible standards because their self-distributed surveys showed that the number one barrier to the NSLP's success is student acceptance of the provided meals.¹³² Therefore, the SNA suggested more flexible standards to Congress to encourage students to eat the meals provided. Ultimately, the Trump Administration relied on qualitative data from local schools and advocacy groups to grant a more permanent flexibility in meal requirements — a leniency that merely extends the exemptions afforded by the Obama Administration.¹³³

Furthermore, these amended guidelines do not preclude a school from continuing to serve food with the more restrictive standards alongside those with

129. Nutrition Standards in the National School Lunch and Schools Breakfast Programs, 77 Fed. Reg. 4088, 4089 (Jan. 26, 2012) (to be codified at 7 C.F.R. pt. 210, 220).

130. USDA Press Release, *supra* note 74.

131. *2018-19 Annual Report President's Letter*, SCH. NUTRITION ASS'N, <https://schoolnutrition.org/aboutsna/annualreport/>. The SNA is "a national, nonprofit professional organization representing more than 55,000 members who provide high-quality, low-cost meals to students across the country." *Vision & Mission*, SCH. NUTRITION ASS'N, <https://schoolnutrition.org/aboutsna/visionmission/> (last visited Jan. 8, 2021).

132. *2019 School Nutrition Trends Summary Report*, SCH. NUTRITION ASS'N iii, <https://schoolnutrition.org/2019-school-nutrition-trends-summary-report/> (last visited Jan. 8, 2021).

133. *See supra* note 71 and accompanying text.

more flexible standards.¹³⁴ If a school provides food meeting both the flexible and restrictive standards, students will be “put to the test” to opt for the healthier option. Such a process would demonstrate whether the stricter guidelines under the Obama Administration did in fact teach students to choose “healthier” foods. Regardless, the Trump Administration’s amendments still attempt to realize this goal of the Obama Administration by providing students the opportunity to make healthy food choices autonomously. Such decision-making processes are crucial because students that make these choices as young consumers will one day exercise personal responsibility over their own dietary habits as adults.

Even if students are unable to make healthier choices independently, the NSLP still maintains the local school wellness policy legislation.¹³⁵ The local school wellness policy could prove useful and fruitful legislative ground for further community improvement and involvement. For those communities disapproving of the Trump Administration’s flexible guidelines, the local wellness policy “provides students, parents and interested community members an important opportunity to influence the school nutrition environment at large.”¹³⁶ As such, the local school wellness policy allows the community to get involved in food decisions for students within their area. In addition to local communities, state agencies also have “discretion to set stricter requirements that are not inconsistent with the minimum nutrition standards for school meals.”¹³⁷ Therefore, states that disagree with the Trump Administration’s flexible standards also have the ability to provide stricter guidelines. The amended standards to the NSLP merely provide greater options for both schools and students.

IV. CONCLUSION

The NSLP has been focused on children’s health since its inception. Regardless of the specific standards or particularized objectives of each Presidential Administration, the amendments to the NSLP primarily concern children’s health, and ultimately reflect the health community’s present knowledge of what is safe and healthy for children to eat. In April 2020, a federal court in Maryland struck down the Trump Administration’s amended standards upon a finding that the Administration did not follow proper protocols in informing the public.¹³⁸ In the early stages of President Biden’s Administration amidst the global pandemic, President Biden has extended the access and

134. See Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 83 Fed. Reg. 63775 (Dec. 12, 2018) (to be codified at 7 C.F.R. pt. 210, 215, 220, 226) (asserting that the flexibilities simply provide the minimum dietary requirements for a school to receive federal funding).

135. *Id.* at 63782.

136. *Id.* at 63780.

137. *Id.*

138. *Ctr. for Sci. in the Pub. Int. v. Perdue*, 438 F. Supp. 3d 546 (D. Md. 2020).

benefits of the SNAP and NSLP programs due to virtual learning; certainly his actions align with the NSLP purpose.¹³⁹ Ultimately, whether an administration prefers logistical efficiency or nutritional superiority, historically the end result has remained the same. As long as the NSLP is in effect, its overarching objective is to provide school children with food and nutrition.

139. Press Release, U.S. Dep't of Agric., *USDA Issues Pandemic Flexibilities for Schools and Day Care Facilities through June 2022 to Support Safe Reopening and Healthy, Nutritious Meals* (Apr. 18, 2021), <https://www.usda.gov/media/press-releases/2021/04/20/usda-issues-pandemic-flexibilities-schools-and-day-care-facilities>.