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## Administrative Law and Procedure - Agriculture: Administrative Proceedings Determining Eligibility for Federal Crop Subsidies Labeled Nonadjudicative: The Pending Threat of Unrestrained Congressional Interference with Administrative Proceedings

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ADMINISTRATIVE LAW AND PROCEDURE—  
AGRICULTURE: ADMINISTRATIVE PROCEEDINGS  
DETERMINING ELIGIBILITY FOR FEDERAL CROP  
SUBSIDIES LABELED NONADJUDICATIVE:  
THE PENDING THREAT OF UNRESTRAINED  
CONGRESSIONAL INTERFERENCE WITH  
ADMINISTRATIVE PROCEEDINGS  
*DCP Farms v. Yeutter*, 957 F.2d 1183 (5th Cir. 1992)

## I. FACTS

Plaintiffs-Appellees (DCP Farms)<sup>1</sup> are farming operations which raise cotton, rice, and other crops on land situated primarily in Tunica and Coahoma Counties, Mississippi.<sup>2</sup> DCP Farms had created fifty-one irrevocable trusts in an attempt to maximize the number of “persons” eligible to receive federal crop subsidies for their farming operations.<sup>3</sup> DCP Farms sued the Defendants-Appellants, the United States Department of Agriculture (USDA)<sup>4</sup> and the Agricultural Stabilization and Conservation Service (ASCS),<sup>5</sup> a division of the USDA, alleging that the ASCS had improperly determined that DCP Farms was ineligible to receive federal crop subsidies.<sup>6</sup> The purpose of this Comment is to study the procedure that the ASCS utilized to deny DCP Farms’ eligibility; therefore, the issue of whether DCP Farms actually violated a

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1. Flowers Farms, Increase Plantation, Matagorda Plantation, Omega Plantation, and Flowers & Parker Farms joined DCP Farms in the complaint. These farming operations will be collectively represented as “DCP Farms.”

2. *DCP Farms v. Yeutter*, 957 F.2d 1183, 1185 (5th Cir.), *cert. denied*, 113 S. Ct. 406 (1992).

3. *Id.* Through this creation of trusts, DCP Farms was slated to receive \$1.4 million in subsidies for the 1989 crop year. *Id.*

4. Clayton Yeutter, Secretary of Agriculture, was also named in the lawsuit. *DCP Farms*, 957 F.2d at 1183.

5. For a comprehensive guide describing the ASCS administrative appeal process, see Christopher R. Kelley & John S. Harbison, *A Guide to the ASCS Administrative Appeal Process and to the Judicial Review of ASCS Decisions*, 36 S.D. L. REV. 14 (1991). The authority of the ASCS is derived from the Secretary of Agriculture. *Id.* at 17-19. The primary function of the ASCS is to administer the federal government’s farm income support programs through its three-tier system of county (COC), state (STC), and national (DASCO) committees. *Id.* at 17-18. However, the ultimate responsibility for the farm programs resides with the Secretary of Agriculture. *Id.* at 18. Most farmers only deal with the ASCS through the COC level. *Id.* at 24. The COC determines whether a farmer is eligible for federal benefits and may terminate a farmer’s benefits if the farmer does not comply with the program’s provisions. *Id.* (construing 7 C.F.R. § 7.22 (1992)). The STC is charged to hear all appeals of COC determinations. *Id.* at 26 (construing 7 C.F.R. § 7.20 (1992)). Finally, the DASCO office hears all final appeals. *Id.* at 27 (construing 7 C.F.R. § 780 (1992)). See *infra* text accompanying notes 65-69 (discussing congressional legislation which proposes to change the current ASCS appeals process).

6. *DCP Farms*, 957 F.2d at 1185. The relative subsidy payments are derived from the difference between a target crop price set by the government and the price that a farmer would receive in the open market. See 7 U.S.C. § 1308 (1988).

statutory provision is beyond the scope of this Comment.<sup>7</sup>

In April 1989, the Tunica County and Coahoma County ASCS Committees (COCs) approved DCP Farms' creation of fifty-one trusts as a basis for determining the amount of federal crop subsidies that DCP Farms could receive pursuant to the relevant statutory provision.<sup>8</sup> Shortly after this ASCS approval of eligibility at the county level, the USDA's Office of Inspector General (OIG) released a report about federal farm subsidy program abuses<sup>9</sup> and used DCP Farms as an example of how numerous farming operations had attempted to violate the \$50,000 per person limit.<sup>10</sup>

Following press accounts of the issues raised in the OIG report, USDA officials and some congressional staff members met to discuss the issues, particularly DCP Farms' alleged abuse.<sup>11</sup> Congressional staff members subsequently reported the abuses to Congressman Jerry Huckaby.<sup>12</sup> The Secretary of Agriculture, Clayton Yeutter, soon received a letter from Huckaby, wherein Huckaby expressed his opinion about various reported abuses of the federal crop subsidy program.<sup>13</sup> Huckaby's letter specifically cited DCP Farms, and he urged the USDA to terminate DCP Farms' eligibility for federal crop subsidies, stating that DCP Farms' utilization of its trust creation was a scheme to evade the relevant statutory provisions.<sup>14</sup> Secretary Yeutter's office routed

7. For more insight about a farming operation involved in this lawsuit and its alleged statutory violation, one can order a transcript of the December 8, 1991 CBS program, "60 Minutes," which featured Flowers Farms in a segment entitled "Mississippi Christmas Tree."

8. *DCP Farms*, 957 F.2d at 1186 (referring to 7 U.S.C. § 1308 (1988)). Pursuant to the relevant statutory provision, each legal entity created by a farming enterprise may qualify to receive a subsidy payment of up to \$50,000. See 7 U.S.C. § 1308 (1988).

9. The OIG is an independent unit under the supervision of the Secretary of Agriculture which conducts investigations and audits in order to prevent and detect fraud and abuse in the administration of agency programs. 7 C.F.R. § 2610.1 (1992). It is interesting to note, however, that a USDA representative testified at the trial that "OIG is notorious for making findings that we [DASCO] don't always agree with." Brief for Appellee at 7, *DCP Farms v. Yeutter*, 957 F.2d 1183 (5th Cir. 1992) (No. 91-1384).

10. *DCP Farms*, 957 F.2d at 1186.

11. *Id.* Some of those present at the meeting were John Campbell, Deputy Undersecretary of Agriculture for Commodity Programs; William E. Penn, Assistant Deputy Administrator for ASCS State and County Operations (Penn worked in the DASCO Office); and Parks Shackelford, the key staff aid on agricultural issues for Congressman Jerry Huckaby, Chairman of the Subcommittee on Cotton, Rice, and Sugar. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* (referring to 7 U.S.C. § 1308 (1988)). The portion of Huckaby's letter addressing DCP Farms' creation of irrevocable trusts states that the trusts

clearly [were] designed and carried out to evade the law applicable to payment eligibility. . . . *It seems clear that this reorganization was adopted as a device to avoid the payment eligibility law, and I strongly urge you to enforce the payment eligibility law. This provision of the law was adopted for this purpose.*

Brief for Appellee at 8, *DCP Farms v. Yeutter*, 957 F.2d 1183 (5th Cir. 1992) (No. 91-1384). For a comprehensive overview of the history and implications of payment limitation rules,

Huckaby's letter to William Penn, the ASCS administrator charged with review of the final ASCS appeals in the Deputy Administrator for ASCS State and County Operations (DASCO) office.<sup>15</sup> Penn drafted a response to Congressman Huckaby, assuring Huckaby that the USDA would take an aggressive position with the DCP Farms case.<sup>16</sup>

On June 1, 1990, Penn issued an opinion from the DASCO office, concluding that DCP Farms had evaded the statutory provisions<sup>17</sup> of the federal crop subsidy program by treating its fifty-one trusts as "persons," and therefore was ineligible to receive any subsidy payments for the 1989, 1990, or 1991 crop years.<sup>18</sup> Shocked by DASCO's reversal of the initial eligibility determination made by the COC level of the ASCS, DCP Farms appealed the determination and requested a hearing. A hearing was set for December 12, 1990.<sup>19</sup> DCP Farms then petitioned the DASCO office to prevent Penn and the officials who were involved in the Capitol Hill meetings from participating in any further administrative appellate proceedings.<sup>20</sup>

DASCO denied DCP Farms' petition to remove the allegedly biased officials.<sup>21</sup> As a result, DCP Farms sued the USDA in federal court<sup>22</sup> for declaratory and injunctive relief.<sup>23</sup> The trial court granted a preliminary injunction to preserve DCP's eligibility for federal crop subsidies.<sup>24</sup> The court held that the ASCS administrative proceedings were impermissibly tainted by congressional

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see Alan R. Malasky, *ASCS Appeals and Payment Limitation Revisions in the 1990 Farm Bill: What Did the American Farmer Really Gain (or Lose)?* 68 N.D. L. REV. 365, 380-86 (1992).

15. Brief for Appellee at 9, *DCP Farms v. Yeutter*, 957 F.2d 1183 (5th Cir. 1992) (No. 91-1384).

16. *DCP Farms*, 957 F.2d at 1186.

17. *Id.* See 7 U.S.C. § 1308 (1988).

18. *DCP Farms*, 957 F.2d at 1186.

19. *Id.*

20. *Id.* Without his recusal, Penn would be responsible for re-evaluating his own prior decision, thereby presenting an impartiality problem. See Brief for Appellee at 12, *DCP Farms v. Yeutter*, 957 F.2d 1183 (5th Cir. 1992) (No. 91-1384). See *infra* text accompanying notes 65-69 (discussing congressional legislation which proposes to change the current appeals process). DCP Farms further requested that the June 1, 1990 DASCO decision be declared invalid and that the COC decision be reinstated. *DCP Farms v. Yeutter*, 761 F. Supp. 1269, 1272 (N.D. Miss. 1991), *rev'd*, 957 F.2d 1183 (5th Cir. 1992).

21. *DCP Farms*, 957 F.2d at 1186.

22. For a discussion about judicial review of the ASCS and how the United States government has opposed judicial review in the United States District Courts, see Alexander J. Pires, Jr. & Shelley L. Bagoly, *Federal Court Jurisdiction Over USDA/ASCS Cases: How and In What Courts Farmers Can Seek Review of USDA Denials of Their Farm Subsidy Payments*, 24 IND. L. REV. 1488, 1500-05 (1991).

23. *DCP Farms*, 957 F.2d at 1187.

24. *DCP Farms v. Yeutter*, 761 F. Supp. 1269, 1276 (N.D. Miss. 1991), *rev'd*, 957 F.2d 1183 (5th Cir. 1992).

interference, and therefore concluded that the USDA had violated DCP Farms' due process right to a fair and impartial adjudication.<sup>25</sup> The court also concluded that the determination of DCP Farms' eligibility was arbitrary, capricious, an abuse of discretion, and contrary to law in violation of the Administrative Procedure Act.<sup>26</sup>

On March 23, 1992, a panel of the Fifth Circuit reversed and remanded the case with instructions to dismiss, concluding that Congressman Huckaby's contact with the ASCS occurred "well before any proceeding which could be considered judicial or quasi-judicial."<sup>27</sup> Consequently, the Fifth Circuit *held* that the congressional contact at issue was not in violation of DCP Farms' due process rights.<sup>28</sup>

## II. LEGAL HISTORY

The factual scenario in *DCP Farms* presents an example of the interplay that exists between the legislative and executive branches of the United States government when the respective powers converge on a mutual issue.<sup>29</sup> Agencies under the executive branch occasionally assume a judicial role in addition to their legislative decision-making functions; namely, agencies have the power to 1) adjudicate and 2) make rules.<sup>30</sup> An adjudication is a determination of individual rights or duties, whereas rule-making generally is an implementation of a law or policy which will have an impact on the public-at-large.<sup>31</sup> This judicial role is imperative, given the numerous disputes that may arise under the auspices of

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25. *Id.* at 1276.

26. *Id.* at 1275-76 (construing the Administrative Procedure Act, 5 U.S.C. § 706 (1988)).

27. *DCP Farms*, 957 F.2d at 1187. A collateral issue that was addressed to greater extent in the Fifth Circuit's decision was whether the judicial review of the ASCS administrative proceedings was justified under the futility exception to the administrative exhaustion requirement. *Id.* at 1188-89 (construing the Administrative Procedure Act, 5 U.S.C. § 704 (1988)). See generally *Patsy v. Florida Int'l Univ.*, 634 F.2d 900, 903-04 (5th Cir. 1981) (outlining various exceptions to the exhaustion of administrative remedies requirement, pursuant to 5 U.S.C. § 704 (1988)), *rev'd, sub nom. Patsy v. Bd. of Regents of State of Florida*, 457 U.S. 496 (1982). The Fifth Circuit held that the district court abused its discretion in determining that it had jurisdiction because DCP Farms had failed to provide sufficient evidence to support a finding of futility. *DCP Farms*, 957 F.2d at 1189.

28. *DCP Farms*, 957 F.2d at 1185.

29. See *id.* at 1185-87.

30. 1 CHARLES H. KOCH & RONALD F. WRIGHT, ADMINISTRATIVE LAW AND PRACTICE § 2.3 (1985). See also *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 400 (1940) (holding that "judicial power" may be conferred upon the National Bituminous Coal Commission). Agencies that adjudicate disputes are classified as "article I courts." 1 CHARLES H. KOCH & RONALD F. WRIGHT, ADMINISTRATIVE LAW AND PRACTICE § 1.30, (2) (Supp. 1992). Article I courts typically decide controversies between citizens and the government. *Id.*

31. 1 CHARLES H. KOCH & RONALD F. WRIGHT, ADMINISTRATIVE LAW AND PRACTICE § 2.3 (1985).

an administrative agency.<sup>32</sup> Of course, judicial courts have the limited power to review agencies' adjudications and to uphold one's constitutional right to a fair and impartial administrative adjudication.<sup>33</sup>

The seminal case of *Pillsbury Co. v. Federal Trade Commission*,<sup>34</sup> established a legal standard protecting one's right to a fair and impartial administrative adjudication.<sup>35</sup> The Fifth Circuit panel in *Pillsbury Co.* recognized the need for an administrative adjudication to be free from powerful external influences.<sup>36</sup> In *Pillsbury Co.*, the Federal Trade Commission (FTC) brought an antitrust action against Pillsbury for acquiring competing flour millers, and thereby substantially reducing competition in the southeast section of the United States.<sup>37</sup> While Pillsbury was preparing for its final administrative appeal of an FTC determination, the Antitrust Subcommittee of the Senate Judiciary Committee summoned FTC Chairman Edward F. Howrey and his staff to testify before the Subcommittee.<sup>38</sup> During his testimony, the Subcommittee subjected Howrey to intense and repeated criticism for his "wrong decision" not to apply the Clayton Act's "per se" doctrine to the Pillsbury case.<sup>39</sup> The Subcommittee presumably disapproved of Howrey's decision because it opened the door for Pillsbury to introduce countervailing evidence.<sup>40</sup> The Fifth Circuit panel held that the congressional pressure on FTC administrators to change their interpretation and application of the Clayton Act during FTC's adjudication of Pillsbury's alleged antitrust violation, deprived the Pillsbury Company of its constitutional right to a fair and impartial adjudication.<sup>41</sup> The panel determined that Congress' accusation that the agency had "made the wrong deci-

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32. See *infra* text accompanying note 62 (identifying specific federal programs which involve a determination of eligibility and subsequent adjudications if a dispute arises between the applicant and the agency).

33. See *Pillsbury Co. v. Federal Trade Comm'n*, 354 F.2d 952, 964 (5th Cir. 1966); *United States v. Morgan*, 313 U.S. 409, 422 (1941) (stating that any questioning of a judge as to his or her judicial processes would destroy judicial responsibility); *In re Murchison*, 349 U.S. 133, 136 (1955) (stating that a basic requirement of due process is a fair trial in a fair tribunal). For an analysis of an Article III court's power to adjudicate direct constitutional challenges to administrative adjudications, see MARTIN H. REDISH, *FEDERAL JURISDICTION: TENSIONS IN THE ALLOCATION OF JUDICIAL POWER* 69-82 (1990).

34. 354 F.2d 952 (5th Cir. 1966).

35. *Pillsbury Co. v. Federal Trade Comm'n*, 354 F.2d 952, 964 (5th Cir. 1966).

36. *Id.*

37. *Id.* at 954.

38. *Id.* at 955.

39. *Id.* at 955-62. Howrey's failure to adopt the "per se" doctrine occurred during the middle of the appeals process between Pillsbury and the FTC. *Id.* at 955.

40. *Pillsbury Co.*, 354 F.2d at 955.

41. *Id.* at 964.

sion" sacrificed the impartiality of the agency's pending adjudication, and thus, compromised the entire judicial process.<sup>42</sup> *Pillsbury Co.* has since been regarded by courts as holding that administrative adjudications are invalid if based, even in part, on pressures emanating from Congress.<sup>43</sup> Specifically, the panel in *Pillsbury Co.* held that it is not necessary that congressional pressure actually cause an administrator to consider extraneous factors; instead, mere congressional bias is sufficient grounds for invalidation.<sup>44</sup>

The standard regarding judicial or quasi-judicial proceedings enunciated in *Pillsbury Co.* differs from the standard promulgated in *United States v. Batson*;<sup>45</sup> wherein, the Fifth Circuit addressed the limitations of congressional interference with nonjudicial<sup>46</sup> administrative determinations.<sup>47</sup> The facts presented in *Batson* involved an ASCS determination which required several farmers to refund their over-payments of cotton subsidies because they evaded the provisions of the Upland Cotton Price Support Program.<sup>48</sup> Although there was evidence of ASCS bias regarding over-payments of subsidies (an ASCS hearing official was quoted as saying "those people in Gaines County had bilked the government out of six million dollars"), there was no allegation in *Batson* that the "administrators had prejudged individual cases or were biased against *particular individuals*."<sup>49</sup> In light of the fact that the ASCS did not target specific individuals when it made its determination, the court recognized that the determination was not an

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42. *Id.*

43. *Id.*

44. *Id.* See *Peter Kiewit Sons' Co. v. United States Army Corps of Eng'rs*, 714 F.2d 163, 171 (D.C. Cir. 1983) (holding that congressional interference had not tainted a debarment proceeding because there was no evidence that the administrator was influenced or even aware of the congressional pressure); *Koniag, Inc. v. Andrus*, 580 F.2d 601 (D.C. Cir. 1978) (holding that a congressman's letter compromised the administrator's impartiality), *cert. denied*, 439 U.S. 1052 (1978); *D.C. Fed'n of Civic Ass'ns v. Volpe*, 459 F.2d 1231, 1246 (D.C. Cir. 1971) (stating that if the administrator acted in a judicial capacity, his or her determination could be invalidated if it was influenced in whole or in part by congressional pressure), *cert. denied*, 405 U.S. 1030 (1972).

45. 782 F.2d 1307, 1315 (5th Cir. 1986) (court refusing to invalidate an ASCS determination that the plaintiff had employed a device to evade payment limitations because there was no evidence that the ASCS administrators' minds were irrevocably closed or that they were biased throughout the entire decision-making process), *cert. denied*, 477 U.S. 906 (1986).

46. See *supra* text accompanying notes 30-31 (identifying the powers held by agencies and explaining the difference between adjudication and rulemaking).

47. *United States v. Batson*, 782 F.2d 1307, 1313-15 (5th Cir. 1986), *cert. denied*, *Batson v. United States*, 477 U.S. 906 (1986). See also *Dirt, Inc. v. Mobile County Comm'n*, 739 F.2d 1562, 1566 (11th Cir. 1984) (stating that the standards governing nonjudicial proceedings are much more relaxed and much less likely to render the proceeding to be violative of due process).

48. *Batson*, 782 F.2d at 1309.

49. *Id.* at 1313.

adjudication, but rather, a legislative/nonjudicial proceeding. Therefore, the court reasoned that such a determination by an administrator may be invalidated only if there was evidence that an administrator had irrevocably closed his or her mind prior to making a determination.<sup>50</sup>

### III. LEGAL ANALYSIS

The Fifth Circuit in *DCP Farms* rejected the district court's utilization of the *Pillsbury Co.* standard.<sup>51</sup> Instead, the panel concluded that an administrative proceeding determining eligibility for federal crop subsidies was a nonjudicial procedure; therefore, DCP Farms did not deserve the same rights afforded to parties involved in an administrative adjudication.<sup>52</sup> The Fifth Circuit panel reasoned that no adjudication occurred because it viewed Congressman Huckaby's influential communication with the DASCO office as part of a larger policy debate and not as a direct attack upon the approval of DCP Farms' eligibility by the COC of the ASCS.<sup>53</sup> The panel also observed that ASCS eligibility proceedings at the county and national levels were just "preliminary" proceedings which may be subjected to "the political tugs of the different branches of government" without being violative of the due process right to a fair and impartial adjudication.<sup>54</sup>

*DCP Farms* marked a major departure from how other precedents have labeled administrative proceedings as adjudicative, or conversely, as nonjudicial.<sup>55</sup> The Fifth Circuit in *DCP Farms* con-

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50. *Id.* at 1313-15. See also *D.C. Fed'n of Civic Ass'ns v. Volpe*, 459 F.2d 1231, 1247 (D.C. Cir. 1971) (enunciating a slightly different standard for invalidation of a nonjudicial determination; namely, whether any extraneous factors intruded into the administrator's decision-making), *cert. denied*, 405 U.S. 1030 (1972).

51. *DCP Farms v. Yeutter*, 957 F.2d 1183, 1187 (5th Cir.), *cert. denied*, 113 S. Ct. 406 (1992).

52. *DCP Farms*, 957 F.2d at 1188.

53. *Id.* at 1187. See *supra* text accompanying note 14 (referring to a letter from Congressman Huckaby to Secretary Clayton Yeutter).

54. *Id.* at 1188.

55. The following cases identify and/or make reference to administrative adjudications: *Goldberg v. Kelly*, 397 U.S. 254, 265 (1969) (court recognizing that an initial decision to terminate an individual's welfare benefits were "summary adjudications"); *Independent Bankers Ass'n of Ga. v. Board of Governors of the Fed. Reserve Sys.*, 516 F.2d 1206, 1215 (D.C. Cir. 1975) (defining adjudication as a proceeding that determines "adjudicative facts"); *Association of Nat'l Advertisers v. FTC*, 627 F.2d 1151, 1161 n.17 (D.C. Cir. 1979) (concluding that an administrative action is adjudicatory if the decision affects the rights or liabilities of a party), *cert. denied*, 447 U.S. 921 (1980); *Esch v. Yeutter*, 876 F.2d 976, 993 (D.C. Cir. 1989) (detailing the decision-making process for agricultural subsidy programs from the county committee level up to DASCO, and holding that "there were serious questions as to whether the adjudicative officials at any given point considered all [the] relevant factors in reaching their determination"); *United States v. Batson*, 782 F.2d 1307, 1312-13 (5th Cir.) (1986) (referring to the decision-maker at the county and national levels as an "adjudicator"), *cert. denied*, 477 U.S. 906 (1986); *Weir v. United States*,



cluded that only a formal hearing may constitute an adjudication.<sup>56</sup> However, the United States Supreme Court, in *United States v. Florida East Coast Railway*,<sup>57</sup> stated that a determination of whether an administrative decision is adjudicatory depends upon the substantive nature of the proceeding and how it impacts particular parties.<sup>58</sup> The Supreme Court considered a three-part test to determine whether an administrative proceeding was an adjudication: 1) whether the action is generalized in nature; that is, whether the action applies to specific individuals or to unnamed and unspecified persons; 2) whether the promulgating agency considers general facts or adjudicates a particular set of disputed facts; and 3) whether the action determines policy issues or resolves a specific dispute between particular parties.<sup>59</sup>

*DCP Farms* made no reference to *Florida East Coast Railway*. Instead, the panel established a test of its own, focusing on the *formality* of the appeals process, rather than on the nature and circumstances surrounding a particular administrative determination. The panel appears to have disregarded the practical consideration that influencing an adjudicator before, during, or after a hearing has essentially the same effect. This decision demonstrated a new philosophy by the Fifth Circuit—Congress should have more control over federally administered programs. However, this new philosophy trivializes one's due process right to a fair and impartial decision-maker.

#### IV. IMPACT

There are serious implications that arise from the Fifth Circuit's observation that due process rights do not "kick in" until the commencement of a formal hearing. In light of the fact that DASCO was scheduled to adjudicate DCP Farms' appeal on December 12, 1990, the Fifth Circuit seems to have taken the position that hearing officers, who ultimately will adjudicate a particular dispute, may in the meantime, "lend their ear" to influen-

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310 F.2d 149, 156 (8th Cir. 1962) (referring to the county committee's initial determination of the amount of farm benefits as an "adjudication"); *United States v. Yarbrough*, 290 F. Supp. 4, 6 (N.D. Miss. 1968) (referring to the three-tiered ASCS appeal structure that determines whether applicants are eligible for farm subsidies as an "intra-agency adjudicatory process"); *Swartz v. United States*, 14 Cl. Ct. 570, 572 (1988) (referring to determinations by ASCS' three-tiered structure that administers farm subsidies in the form of commodity price support loans as an "adjudication").

56. *DCP Farms*, 957 F.2d at 1187.

57. 410 U.S. 224 (1973).

58. *United States v. Florida East Coast Ry.*, 410 U.S. 224, 244-46 (1973).

59. *Id.*

tial outside sources, particularly, members of Congress.<sup>60</sup>

The departure taken in *DCP Farms* will challenge many judicial precedents which have never considered *DCP Farms*' formalistic approach.<sup>61</sup> It is still too early to conclude that *DCP Farms* has initiated a trend, but the decision has laid a foundation for less restraint on Congress whenever Congress may decide to use its power to influence an administrative adjudication. *DCP Farms* has created a void in which congressional pressure and influence can be applied to coerce the outcome of many administrative decisions, whereas those adversely affected would have no opportunity to pursue a more just resolution. The result of the *DCP Farms* decision may have the same effect on applicants of many other federal benefit programs which employ administrative proceedings similar to the ASCS proceeding in the instant case.<sup>62</sup> The applicants of these federal benefit programs could be severely affected by the precedent established by *DCP Farms*, inasmuch as they could be denied their right to fair and impartial adjudicative administrative processes. The ramifications of *DCP Farms* conceivably may jeopardize the integrity of the judicial function of administrative agencies.<sup>63</sup>

North Dakota farmers have a good reason to be concerned about the precedent established in *DCP Farms* as well. North Dakota consistently has ranked near the top of the list of states which receive the largest dollar amount of federal crop subsidy payments provided by the ASCS.<sup>64</sup> In light of the current deficit reduction plans in this country, applicants requesting eligibility to

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60. See *supra* text accompanying notes 14-15 (discussing DASCO's communication with Congressman Huckaby prior to *DCP Farms*' December 12, 1990 hearing).

61. See *supra* note 55 and accompanying text (discussing cases that identify proceedings which are adjudicative).

62. The following is a partial list of federal benefit programs promulgated under the relevant authority: 7 C.F.R. § 245.7 (1992) (National School Lunch Program, School Breakfast Program, Special Milk Program benefit eligibility determinations); 7 C.F.R. § 246.9 (1992) (Special Supplemental Food Program for Women, Infants and Children benefit eligibility determinations); 7 C.F.R. § 273.15 (1992) (Food Stamp Program eligibility determinations); 7 C.F.R. § 400.93 (1992) (federal crop insurance eligibility determinations); 7 C.F.R. § 1900.55 (1992) (farm loan and grant eligibility determinations); 7 C.F.R. § 614.7 (1992) (Conservation Reserve Program eligibility determinations); 20 C.F.R. § 10.131 (1992) (Federal Employee's Compensation Act disability and death benefit eligibility determinations); 20 C.F.R. § 404.907 (1992) (federal old-age, survivors and disability insurance benefit eligibility determinations); 20 C.F.R. § 416.1400 (1992) (social security benefit eligibility determinations for the aged, blind, and disabled); 42 C.F.R. § 405.716 (1992) (Medicare benefit eligibility determinations).

63. See *supra* text accompanying notes 30-31 (identifying and explaining the powers of administrative agencies).

64. United States Dep't of Agric., *Agricultural Statistics*, United States Gov't Printing Office, Washington, D.C. (1990). North Dakota farmers received more than \$7.14 million in federal crop subsidy payments in 1988. *Id.* at 436. In dollar amount alone, North Dakota ranked seventh among the fifty states in 1988. *Id.* In light of North Dakota's relatively low

receive these payments could come under increased scrutiny by members of Congress, possibly leading to an exertion of congressional influence on eligibility proceedings.

The significance of the *DCP Farms* decision may be diminished in the wake of a bill which Senator Conrad and eight other representatives have introduced in the Senate and House of Representatives.<sup>65</sup> The proposed bill is the USDA National Appeals Division Act of 1992.<sup>66</sup> If enacted,<sup>67</sup> the proposed legislation will create an independent administrative appeals division within the USDA.<sup>68</sup> As a result, the ASCS, for example, could no longer act as a prosecutor and judge in federal farm program disputes.<sup>69</sup>

Presumably, the administrative determinations of federal crop subsidy eligibility would be less threatened by pressure from external sources, provided the bill is enacted. If the bill is enacted, the import of *DCP Farms* may never affect farmers' operations; however, farmers still could encounter the adverse implications of *DCP Farms* throughout their lives when they apply for other federal benefits.<sup>70</sup>

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population, this ranking proves just how important federal subsidies are to North Dakota farmers.

65. Alan Malasky, *USDA National Appeals Division Act of 1992 Is Introduced*, WASHINGTON AGLAW REPORT, Sept. 1992, at 1.

66. *Id.* The bill also would repeal two sections: 7 U.S.C. §§ 1385 & 1429 (1988). *Id.* at 2. The ASCS has consistently utilized these two sections to shield ASCS decisions from review by the federal courts. *Id.* at 4. Sections 1385 and 1429 generally state that agricultural administration agency determinations shall be firm and conclusive. *Id.* These sections, in effect, deny protection to farmers from arbitrary and capricious ASCS determinations because the judicial review provisions under the Administrative Procedure Act, 5 U.S.C. §§ 701-06 (1988), do not apply if a specific statute precludes review. *Id.* at 3.

67. Although the bill died at the end of the 1992 legislative session, a substantially similar proposal will be introduced this summer. Telephone interview with Lora Rose, Office Manager/Caseworker for Senator Kent Conrad's office, Grand Forks, North Dakota (June 11, 1993). Conrad is the leading sponsor of the proposal and expects the future bill to pass early, given the fact that Secretary of Agriculture Mike Espy was a co-sponsor of the USDA National Appeals Division Act of 1992.

68. *Id.* at 1. Currently, the Agricultural Stabilization and Conservation Service (ASCS), Commodity Credit Corporation (CCC), Farmers Home Administration (FmHA), Rural Development Administration (RDA), and Soil Conservation Service (SCS) offer no appeal system which is independent of their respective agencies. *Id.*

69. *Id.* at 3.

70. See *supra* note 62 (listing federal benefit programs).