

Additional Background for pp. 85-91

USDA v. Murray

Section 5(b) of the Food Stamp Act, the statutory provision that was at issue in *USDA v. Murray* (casebook p. 85), states:

“Any household which includes a member who has reached his eighteenth birthday and who is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this chapter during the tax period such dependency is claimed and for a period of one year after expiration of such tax period. . . .”

Les v. Reilly

Les v. Reilly, casebook p. 89, concerns the “Delaney Clause.” Here are the relevant statutory provisions:

1. The Federal Food Drug and Cosmetic Act prohibits the sale of food that is “adulterated.” It further provides:

“A food shall be deemed to be adulterated . . . if it bears or contains . . . any food additive that is unsafe within the meaning of section 348 of this title.” 21 U.S.C. § 342(a)(2)(C).

2. Section 348, in turn, provides:

“A food additive shall . . . be deemed to be unsafe . . . unless . . . (1) it and its use or intended use conform to the terms of an exemption which is in effect . . . [or] (2) there is in effect, and it and its use or intended use are in conformity with, a regulation issued under this section prescribing the conditions under which such additive may be safely used.” 21 U.S.C. § 348(a).

3. And finally, section 348 also provides:

“No such regulation shall issue if a fair evaluation of the data before the Secretary—(A) fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe: Provided, That no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal. . . .” 21 U.S.C. § 348(c)(3).

Notes and Questions

1. Note that § 348(c)(3) provides *two* standards that a food additive must meet, a general standard and a more specific standard. What is the general standard? What is the specific standard?

2. Suppose you were the Secretary in charge of determining whether a food additive was “safe” and you determined that a particular food additive had been found to induce cancer when ingested by man or animal, but you also determined quantitatively that the cancer risk posed by the food additive was extremely low—imagine, for example, that you concluded based on scientific studies that widespread use of the additive was likely to cause only 1 excess cancer death in the entire United States over the next 100 years. Moreover, you determined that the additive had useful health benefits—imagine, for example that the additive was likely to prevent 100 excess deaths per year from some other cause besides cancer. Are any options open to you under the statute? Is there anyway you could approve the use of the additive?