



IN THE SUPREME COURT OF THE STATE OF DELAWARE

CINDY GONZALEZ,)
)
Appellant, Defendant Below,)
) No. 416, 2018
v.)
)
THE STATE OF DELAWARE,) APPEAL FROM THE SUPERIOR
) COURT OF THE STATE OF
Appellee, Plaintiff Below.) DELAWARE
) C.A. No. N18C-01-144-RRC

CORRECTED
APPELLEE'S ANSWERING BRIEF

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Oliver J. Cleary
Oliver J. Cleary (I.D. No. 5830)
Deputy Attorney General
820 N. French St., 6th Floor
Wilmington, DE 19801
(302) 577-8400
Counsel for Appellant
Oliver.Cleary@state.de.us

DATED: October 12, 2018

TABLE OF CONTENTS

TABLE OF CITATIONS..... iii

NATURE OF PROCEEDINGS1

SUMMARY OF ARGUMENT5

STATEMENT OF FACTS6

ARGUMENT12

I. THE USE OF THE DFCRA TO PUNISH FRAUD IS CONSISTENT WITH CONGRESSIONAL OBJECTIVES IN THE SNAP ACT12

 A. Question Presented12

 B. Scope of Review.....12

 C. Merits of Argument13

II. THE SUPERIOR COURT CORRECTLY HELD THAT THE FEDERAL SNAP ACT DOES NOT PREEMPT THE DFCRA19

 A. Question Presented19

 B. Scope of Review.....19

 C. Merits of Argument19

 1. Introduction19

 2. The Federal SNAP Act Contains No Express Preemptive Language20

 3. Federal Law Does Not Implicitly Preempt States from Obtaining Redress for SNAP Fraud Under State Laws Other Than Those Related to the SNAP Program20

III. NOTHING IN FEDERAL LAW RESTRICTS DELAWARE IN THE MEANS BY WHICH IT MAY SEEK RECOVERY AGAINST INDIVIDUALS WHO DEFRAUD DELAWARE25

A. Question Presented25

B. Scope of Review25

C. Merits of Argument25

 1. There is no statute or case precedent supporting the position adopted by the Appellant.....25

CONCLUSION30

TABLE OF CITATIONS

<i>Altria Group, Inc. v. Good</i> , 555 U.S. 70 (2008)	19, 21
<i>Bazan v. Department of Social and Health Services</i> , 26 Wash.App. 16 (1980)	28
<i>California Div. of Labor Standards Enforcement v. Dillingham Constr. N. A., Inc.</i> , 519 U.S. 316 (1997).....	19
<i>California Fed. Sav. and Loan Ass'n v. Guerra</i> , 479 U.S. 272 (1987).....	19
<i>Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.</i> , 624 A.2d 1199 (Del. 1993)	12
<i>Dupler v. City of Portland</i> , 421 F.Supp. 1314 (D.Me. 1976)	
<i>Encompass Insurance Company v. Stone Mansion Restaurant Incorporated</i> , 902 F.3d 147 (3 rd Cir. 2018)	29
<i>Florida Lime & Avocado Growers, Inc. v. Paul</i> , 373 U.S. 132 (1963).....	20
<i>Freightliner Corp. v. Myrick</i> , 514 U.S. 280 (1995).....	21
<i>Harrelson v. Butz</i> , 547 F.2d 915 (4 th Cir. 1977).....	28
<i>Hines v. Davidowitz</i> , 312 U.S. 52 (1941).....	19
<i>Lamie v. United States Tr.</i> , 540 U.S. 526 (2004).....	29
<i>LightBody v. Madigan</i> , 1992 WL 246079 (E.D.Pa. Sept. 17, 1992)	28

<i>Louise B. v. Coluatti,</i> 606 F.2d 392 (3 rd Cir. 1979)	24
<i>Maryland v. Louisiana,</i> 451 U.S. 725 (1981).....	19
<i>McMaster v. E. Armored Servs., Inc.,</i> 780 F.2d 167 (3 rd Cir. 2015)	29
<i>New York State Dept. of Social Services v. Dublino,</i> 413 U.S. 405 (1973).....	18
<i>People v. Triuck,</i> 669 N.Y.S.2d 1018 (N.Y. 1998)	28
<i>Rohner v. Niemann,</i> 380 A.2d 549 (Del. 1977).....	12
<i>Sheehan v. Oblates of St. Francis de Sales,</i> 15 A.3d 1247 (Del. 2011).....	12
<i>State v. Bolar,</i> 39 Ohio App.3d 194 (Ohio Ct. App. 1987)	28
<i>State Department of Labor, Division of Unemployment Insurance v. Pasquale,</i> 2015 WL 5461540 (Del.Super. Sept. 17, 2015).....	18
<i>Turner v. Chandler,</i> 87 Hawai'i 330 (Haw. 1998).....	28
<i>U.S. v. Byrd,</i> 100 F. Supp.2d 342 (E.D.N.C. 2000)	26
<i>U.S. v. Gilchrist,</i> 215 F.3d 333 (3 rd Cir. 2000)	14
<i>U.S. v. Tran,</i> 11 F.Supp.2d 938 (S.D. Tex. 1998)	26

<i>U.S. v. Truong</i> , 860 F.Supp. 1137 (E.D. La. 1994)	26
<i>Williams v. City of Philadelphia</i> , 164 A.3d 576 (Pa. Commonw. Ct. 2017)	28
<i>Zambrana v. State</i> , 118 A.3d 775 (Del. 2015).....	29

Statutes and Other Authorities

6 Del. C. §§ 1201 <i>et seq.</i>	1, 7
6 Del. C. § 1203(a).....	8
6 Del. C. § 1204(f)	<i>passim</i>
6 Del. C. § 1209(c).....	8
11 Del. C. § 843	17
31 Del. C. § 610(a).....	17
7 U.S.C. § 2015(b)(2).....	<i>passim</i>
7 U.S.C. § 2022(b)(1)(D).....	15, 28
7 U.S.C. § 2024.....	27
28 U.S.C. § 2461	7
31 U.S.C. § 3730(c)(5).....	14
7 C.F.R. § 271.4(b).....	22
7 C.F.R. § 273	13, 22

NATURE OF PROCEEDINGS

This fraud case – one in which the fraud is undisputed - is a matter of first impression in Delaware. It presents the question whether the State of Delaware is preempted by the federal Supplemental Nutrition Assistance Program (“SNAP”) Act from filing a Delaware False Claims and Reporting Act (“DFCRA”)¹ lawsuit against appellant Cindy Gonzalez – who a Fair Hearing Officer (“FHO”) determined after an administrative hearing had fraudulently obtained Delaware SNAP benefits and who was disqualified from the SNAP program and required to reimburse the government for the amount she stole. The Superior Court found that the federal SNAP provisions imposing penalties for violation of the Act did not preempt a state from bringing a DFCRA action against a person who had already received administrative punishment. As the State will show, notwithstanding the attempts by both the appellant and *amicus curiae* to complicate the matter or portray this as a collections case, what is before the Court is very simple: a fraud case, for which there is no federal preemption. SNAP funds are finite, and every dollar stolen by Cindy Gonzalez means one less dollar available for the truly needy. Delaware has an interest in protecting its citizens from this fraud.

¹6 *Del. C.* §§1201 *et seq.* As will be discussed *infra*, the DFCRA is a state civil fraud statute that is (1) modeled on a federal statute, (2) required by the federal government under threat of loss of funding, and (3) enforced to punish and deter future harm to the State and the federal government.

On June 26, 2017, the Department of Health and Social Services, Audit and Recovery Management Services (“ARMS”) litigated an Administrative Disqualification Hearing (“ADH”) against Cindy Gonzalez (“Gonzalez”), a recipient of the Delaware “SNAP,” due to documented fraud in her initial and renewal applications for SNAP benefits. On August 18, 2017, FHO Joan Kirby (“Kirby”) issued a decision regarding that ADH, in which Kirby found that the Respondent, Ms. Gonzalez

committed an intentional Program violation by repeatedly providing fraudulent information and misrepresenting her household composition and income information to DSS so she could receive increased food benefits. Based on the Respondent’s false information, DSS based her food benefit amount on less household income than actually received. Consequently, the Respondent received a greater amount of food benefits than she was eligible to receive. The Respondent’s testimony was largely not credible and her evidence failed to refute the ARMS evidence.²

Gonzalez had the opportunity to appeal this finding but did not do so.

ARMS then assessed an overpayment of \$6,159.00, which Gonzalez had the opportunity to appeal. She did not appeal, and the assessment became final. ARMS then directed the federal government to begin withholding funds from Gonzalez.

² Appellant Appendix (Docket Index [“DI”] 6), page A-28 (hereafter A##). Because there is no significant factual dispute in this matter the Appellee adopts the Appendix of the Appellant in full.

On January 12, 2018, the State of Delaware, Department of Justice (“DOJ”) exercised its exclusive authority under the DFCRA by commencing a civil action³ against Gonzalez for her repeated submissions of false claims for payment of SNAP benefits to the State. The DOJ used the ADH and assessment findings as preclusive evidentiary findings, as permitted under 6 *Del. C.* § 1204(f). The civil action sought the relief authorized by the DFCRA, including restitution of \$6,159.00; treble damages of \$18,477.00; interest on the judgment; attorney fees; a temporary injunction from the receipt of SNAP benefits; and a civil penalty of \$5,500.00 to \$11,000.00 assessed for each of the 32 separate occasions on which Gonzalez submitted false claims.

On July 19, 2018, the Superior Court issued an Order⁴ granting the State’s Motion for Judgment on the Pleadings. The Court referred calculation of damages in the matter to a Commissioner. Rather than await a hearing before the Commissioner, Gonzalez filed a request to seek interlocutory review of the Court’s Order. The Superior Court granted that request on August 6, 2018. The Supreme Court accepted review on August 14, 2018. Gonzalez filed her Opening Brief on

³ A-6.

⁴ Exhibit 1 of the Appellant’s Brief, DI-6.

September 17, 2018.⁵ An *amicus curiae*, Professor David A. Super, filed an additional brief on September 28, 2018.⁶ This is the Appellee's Answering Brief.

⁵ DI-6.

⁶ DI-14.

SUMMARY OF ARGUMENT

- I. The Superior Court correctly held that the DFCRA is not preempted by the federal SNAP Act. The SNAP Act's administrative scheme does not preclude state-level civil fraud litigation filed by a separate state agency than the one administering SNAP. There is no express preemption and there cannot be implied conflict preemption when the Federal Code permits states to pursue additional civil and criminal penalties.
- II. The history and purpose of the DFCRA refute the Appellant's claims that the State is barred by federal law from seeking civil punishments for when it is defrauded. That argument raises significant federalism concerns and lacks any support in cited case law or statutes.
- III. There is no statute or case law which supports the Appellant's claims of preemption. To find preemption in this matter would be to read language into a federal statute which does not exist, and which is contradicted by the existing language of the statute and regulations.

STATEMENT OF FACTS

A. History of the Delaware False Claims and Reporting Act

The problem of fraud against the government has existed at least since 1791, when war profiteers victimized the United States Army by selling it tents that were not waterproofed and boots that came apart at the seams after less than one week's wear.⁷ The first federal False Claims Act ("Federal FCA") was enacted during the Civil War in response to fraud and profiteering against the Union Army following reports of sales to the military of munitions filled with sawdust and boots made of cardboard rather than leather.⁸ Fraud against the government was at the time (and is still today) viewed as especially pernicious; in the words of Senator Jacob M. Howard on January 20, 1863, "I do not think that there is any class of culprits who deserve more certain and speedy punishment than many of the classes of persons who are provided for... in this bill, and who have failed to perform their duties in the execution of contracts made with the Government."⁹

The Federal FCA has subsequently been amended several times, but the principle that pervades throughout each era is summarized well in the words of

⁷ James B. Helmer, Jr., *False Claims Act: Whistleblower Litigation*, § 2-3 (5th ed. 2007).

⁸ *Id.* at § 2-4.

⁹ *Id.*

Oliver Wendell Holmes, Jr.: “Men must turn square corners when they deal with the Government.” The DFCRA is modeled on its federal counterpart.

The federal government has conditioned a significant portion of Delaware’s receipt of Medicaid fraud recoveries upon its enactment of a False Claims Act that contains language meeting federal requirements. This was demonstrated in the Synopsis language to the amendments to the DFCRA that the General Assembly passed on June 26, 2013.¹⁰ The federal interest in a strong DFCRA was demonstrated again as recently as September 20, 2019, when Senate Bill (“SB”) 193 was signed into law. SB 193 amended 6 *Del. C.* § 1201 to increase civil penalties from a range of \$5,500 to \$11,000 per violation to a range of “\$10,957 to \$21,916, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 2015 (28 U.S.C. § 2461).” The DFCRA now incorporates federal civil penalties language directly into the statute. Furthermore, the synopsis to SB 193 states,

This Bill updates the State of Delaware’s False Claims and Reporting Act to make it compliant with the requirements of Section 1909 of the Social Security Act. Section 1909 of the Social Security Act provides a financial incentive for States to enact laws that establish liability to the State for individuals and entities that submit false or fraudulent claims to the State Medicaid Program. This incentive provides for a ten percent increase in the share of a *qui tam* recovery or settlement apportioned to the State. For a State to qualify for this incentive, State law must meet certain requirements enumerated under Section 1909(b) of the Social Security Act, so that the State’s law is at least

¹⁰ DI-6, A-63.

as effective as the Federal False Claims Act. After review by the Office of Inspector General for the United States Department of Health & Human Services (“OIG-HHS”), it was determined that Delaware’s current False Claims and Reporting Act fails to meet the requirements of Section 1909(b) of the Social Security Act. OIG-HHS has granted Delaware a two-year grace period, ending December 31, 2018, to address these deficiencies. This bill amends the False Claims and Reporting Act to bring it into compliance with the requirements of Section 1909(b).

The federal government thus anticipates and encourages the State use of the DFCRA to recover funds spent on false or fraudulent claims submitted to the State, including funds spent on public assistance programs like Medicaid.

Outside of the context of *qui tam* claims (not at issue in this matter), the statute vests exclusive authority to file DFCRA claims in the DOJ.¹¹ The DFCRA also contains provisions encouraging the use of administrative hearings to determine the facts of an underlying fraud matter before litigation. 6 *Del. C.* § 1209(c) states,

Notwithstanding any other provision of law, the Delaware Rules of Criminal Procedure, or the Delaware Rules of Civil Procedure, a final judgment rendered in favor of the Government in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under this chapter.

6 *Del. C.* § 1204(f) states,

¹¹ 6 *Del. C.* § 1203(a).

[T]he Department of Justice may elect to pursue its claim through any available alternate remedy, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the party initiating the action shall have the same rights in such proceeding as such party would have had if the action had continued under this chapter; provided however, that no insurer subject to the insurance fraud provisions of Chapter 24 of Title 18 shall have a cause of action pursuant to this chapter. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this chapter. For purposes of the preceding sentence, a finding or conclusion is final if it has been fully determined on appeal to the appropriate court, if all time for filing such appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

The statute vests sole authority to file DFCRA claims in the DOJ, contains provisions authorizing and encouraging the use of administrative findings of fact in DFCRA litigation, is modeled on a federal statute, maintains its language under substantial federal financial encouragement, and is used to punish and deter the commission of fraud against the State of Delaware.

B. Underlying Factual History

The factual issues in this case are undisputed. On or about June 18, 2013, Gonzalez submitted an application for SNAP benefits to the Division of Social Services (“DSS”), a Division within the Department of Health and Social Services (“DHSS”). In her application, Gonzalez stated that she lived alone and received no

income.¹² DSS approved her application, and approved subsequent applications for renewal of her SNAP benefits. Each application form contained language advising the applicant of the existence of penalties for “provid[ing] false or misleading information or documentation” or “hid[ing] or omit[ting] information or documentation.”¹³

ARMS began an investigation of Gonzalez when a data matching system showed that she was receiving retirement benefits while also receiving SNAP.¹⁴ That investigation revealed that Gonzalez was married and lived with her mother.¹⁵ Because of the false statements Gonzalez submitted to DSS to receive SNAP benefits to which she was not entitled, ARMS commenced an administrative proceeding to disqualify her from receiving SNAP benefits

FHO Joan Kirby held an evidentiary hearing on June 26, 2017. Both ARMS and Gonzalez presented testimony and evidence at the ADH.¹⁶

On August 18, 2017, Kirby issued her decision. She found that Gonzalez “committed an intentional program violation by submitting false information to DSS regarding her household composition and subsequent income, so she could receive

¹² DI-6, A-7.

¹³ DI-6, A-8.

¹⁴ DI-6, A-17.

¹⁵ DI-6, A-10.

¹⁶ DI-6, A-20.

more food benefits than she was eligible to receive.”¹⁷ Gonzalez did not appeal this decision, nor did she request a fair hearing filed when ARMS issued a final calculation of the size of the overpayment. ARMS then began collecting the assessed overpayment through federal intercepts.

On January 12, 2018, the DOJ filed a DFCRA claim against Gonzalez for filing false claims with the State of Delaware in order to receive SNAP benefits to which she was not entitled. The Verified Complaint set forth the factual basis for the DFCRA claim and the relief sought.¹⁸ Gonzalez filed an Answer in which she did not dispute the factual assertions in the Complaint; rather, she argued that the SNAP Act preempts the DFCRA.¹⁹ Because there were no substantive issues of fact in dispute, the DOJ moved for judgment on the pleadings. Briefing of this motion provided the parties with ample opportunity to research and litigate the issue of preemption. Ultimately, the Superior Court ruled in favor of the State of Delaware. This appeal followed.

¹⁷ DI-6, A-26.

¹⁸ DI-6, AA-6-14.

¹⁹ DI-6, A-48.

ARGUMENT

I. THE USE OF THE DFCRA TO PUNISH FRAUD IS CONSISTENT WITH CONGRESSIONAL OBJECTIVES IN THE SNAP ACT

A. Question Presented

Did the Superior Court err in holding that there is no inconsistency between the objectives of the SNAP Act and the sanctions sought by the State under the DFCRA?²⁰

B. Scope of Review

Appeals from grants of judgment on the pleadings are limited to a review of the contents of the pleadings.²¹ This Court will determine whether the court committed legal error in formulating or applying legal precepts.²² Where no factual dispute exists, the Court will determine whether the decision below was correct as a matter of law.²³ The Superior Court decided a question of law, which the Supreme Court reviews *de novo*.²⁴ The Supreme Court reviews for errors of law.²⁵

²⁰ This issue is preserved in the Superior Court's Memorandum Opinion; please see DI-8, Exhibit 1, pp. 7-8.

²¹ *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1204 (Del. 1993) (citing *Sellers v. M.C. Floor Crafters, Inc.*, 2nd Cir., 842 F.2d 639, 642 (1988); *Republic Steel Corp. v. Pennsylvania Engineering Corp.*, 7th Cir., 785 F.2d 174, 177 n. 2 (1986)).

²² *Id.*

²³ *Id.*

²⁴ *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1256 (Del. 2011).

²⁵ *Rohner v. Niemann*, 380 A.2d 549, 552 (Del. 1977).

C. Merits of Argument

The Superior Court relied on the United States Code and the Code of Federal Regulations to find Congressional intent with respect to the recovery of fraudulent overpayments of SNAP benefits.²⁶ The Superior Court placed 7 U.S.C. § 2015(b)(2) and 7 C.F.R. § 273.16(g)(1)(ii) on the page together; reading their language together, the Superior Court held,

The State of Delaware, in seeking a civil penalty against Defendant in this Court, is following the guidance of the federal food stamp regulations pursuant to 7 C.F.R. § 273.16(g)(1)(ii) and such relief sought is not “directly conflict[ing] with binding federal law” as Defendant claims.

Defendant’s reliance on the suggestive language of the disqualification regulation for Intentional Program Violations in 7 C.F.R. § 273.16 does not mandate this Court’s dismissal of the State’s action following an administrative hearing. Defendant cites to 7 C.F.R. § 273.16(1)(1) for the proposition “[t]he State agency *should* conduct administrative disqualification hearings in cases in which the State agency *believes* the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system[.]”[Emphasis added by Superior Court.] Defendant fails to rebut such circumstances when, as apparently here, a “State agency believes the facts of [an] individual case” do, in fact, “warrant civil or criminal prosecution” through the courts.²⁷

²⁶ *Id.* at p. 7.

²⁷ *Id.*

The Superior Court correctly analyzed the language of the statute, which is the first place to discern Congressional intent.²⁸ The SNAP Act delegates significant authority and control to the States; Congressional intent in 7 U.S.C. § 2015(b)(2) follows that same pattern:

Each State agency shall proceed against an individual alleged to have engaged in such activity either by way of administrative hearings, after notice and an opportunity for a hearing at the State level, or by referring such matters to appropriate authorities for civil or criminal action in a court of law.

That language does not preclude Delaware from pursuing its chosen method of resolving the issue of the fraud committed by Gonzalez. Rather than simply suing Gonzalez under the DFCRA (which the SNAP Act would clearly permit), Delaware opted to avail itself of an ADH first as permitted by 6 *Del. C.* § 1204(f). The ADH created dispositive factual findings for use in a subsequent DFCRA lawsuit- as would a criminal prosecution, something else the SNAP Act would permit. Language which is identical to the language in the DFCRA permitting the use of dispositive administrative findings may be found in the federal False Claims Act; see 31 U.S.C. § 3730(c)(5).

The SNAP Act does not preempt every possible avenue of sanction or deterrence Delaware could seek against individuals who defraud this federally-

²⁸ *U.S. v. Gilchrist*, 215 F.3d 333, 336 (3rd Cir. 2000).

funded, Delaware-operated program. The SNAP Act does not create an implied federal conflict preemption barring every possible state avenue of anti-fraud measures, and even the statute itself contradicts that claim. There is no implied conflict preemption when a federal statute such as 7 U.S.C. § 2022(b)(1)(D) authorizes the collection of over-issued benefits by “any other means.” The broad delegation of authority to Delaware certainly does not act as an implicit restriction on the use of civil fraud statutes.

In her brief, Gonzalez relies upon a number of arguments regarding Congressional intent which are also contradicted by the statute or any likely understanding of Congressional intent.

To begin with, Gonzalez argues that the use of the DFCRA in this matter “does not further any compelling government interest.”²⁹ Respectfully, the State of Delaware believes that stopping Gonzalez from defrauding it and deterring similarly-situated individuals from defrauding it are very much compelling interests of Delaware taxpayers. A State agency was defrauded by Gonzalez; DSS is more than a federal pass-through dispensing federal money. DSS personnel squandered valuable time and resources providing Gonzalez with her ill-gotten gains; ARMS personnel then spent time and resources investigating her fraud. The DOJ received no federal funds in this matter, but a Deputy Attorney General litigated the ADH on

²⁹ DI-8, p. 34.

behalf of ARMS. This imposes costs- costs borne by Delaware taxpayers, whether the federal government subsequently reimburses some of them or not.

Gonzalez also argues that “SNAP benefits are entirely federally funded.”³⁰ That may be true, but the program is administered by Delaware. Delaware makes determinations about the issuance of these funds. Delaware is responsible for the oversight of these funds. Delaware is a victim of fraud in this case. Delaware has followed the lead of the federal government by crafting a state statute, the DFCRA, to address situations where it is defrauded- even if the funds involved were not provided directly by Delaware taxpayers. Under the theory advanced by Gonzalez, if the federal government bought her a car and someone stole it, Delaware police could not help her because State property was not stolen. That is the absurd implication of the argument that the State of Delaware is not harmed when it is defrauded if the funds are not directly obtained from Delaware taxpayers.

Gonzalez then contends that “[t]he IPV procedures fully capture the interest of the state government” and that “the government has been made whole.”³¹ Delaware disagrees. Delaware taxpayers have interests which are not vindicated by a recoupment of federal moneys. The SNAP Act does not provide recompense for the time and energy Delaware wasted on Gonzalez, to say nothing of unquantifiable

³⁰ *Id.*

³¹ *Id.*

harm caused by consequence-free theft from the State. If the only consequence of bank robbery was that an individual caught robbing banks had to return the money from that bank robbery, there would be no incentive to stop robbing banks. The State was directly victimized by Gonzalez and is entitled to pursue independent remedies to sanction its victimizer.

Gonzalez then argues that seeking additional sanctions “would frustrate the objectives of the SNAP Act.”³² This argument is contradicted by the language of the statute. The objective of the SNAP Act includes the deterrence of fraud, as the language of 7 U.S.C. § 2015(b)(2) makes quite clear. The objective of Congress could not be to permit Gonzalez to defraud DSS. Since Gonzalez complains that the use of the DFCRA is a “cudgel” and “draconian,”³³ perhaps she should instead reflect that she was not criminally changed for stealing funds that were designated for hungry and needy Delaware families.

Gonzalez invokes the ultimate victims of her fraud- other SNAP recipients- to argue that the DFCRA’s punitive sanctions would deter the innocent from seeking needed benefits. Leaving aside that even the possibility of a lengthy prison sentence did not deter her from committing at least 32 separate criminal offenses,³⁴ there is

³² *Id.*

³³ *Id.*

³⁴ The undisputed facts in this case constitute violations of 31 *Del. C.* § 610(a) and 11 *Del. C.* § 843, among other possible statutes.

no evidence that individuals truly in need of benefits would be deterred from seeking them by the prospect of additional civil sanctions imposed on those who steal benefits. One might just as plausibly argue that the harsh sentences for vehicular manslaughter will discourage responsible motorists from driving. Those in need of program benefits will hardly be deterred from seeking them by the spectacle of aggressive measures to protect available of program benefits. Rather than undercutting Congressional objectives, the DFCRA supports them by deterring theft of federal money and punishing those who steal it. The DFCRA is an anti-fraud statute,³⁵ and the SNAP Act's fiscal solvency depends upon stern anti-fraud measures. Where coordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes, the case for federal pre-emption becomes a less persuasive one.³⁶

³⁵ *State Department of Labor, Division of Unemployment Insurance v. Pasquale*, 2015 WL 5461540 at *3 (Del.Super. Sept. 17, 2015).

³⁶ *New York State Dept. of Social Services v. Dublino*, 413 U.S. 405, 421 (1973).

II. THE SUPERIOR COURT CORRECTLY HELD THAT THE FEDERAL SNAP ACT DOES NOT PREEMPT THE DFCRA

A. Question Presented

Did the Superior Court correctly hold that the SNAP Act does not preempt an action brought pursuant to a state civil fraud statute?³⁷

B. Scope of Review

The Scope of Review is outlined in Section I.B. above.

C. Merits of Argument

1. Introduction

Federal law may preempt state law that conflicts with the full purposes and objectives of Congress.³⁸ But pre-emption is not to be lightly presumed.³⁹ When “federal law is said to bar state action in fields of traditional state regulation, ... [the United States Supreme Court has] worked on the ‘assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.’”⁴⁰ The United States Supreme Court has also held that “federal regulation of a field of commerce should not be deemed

³⁷ The preservation of this issue is in the Superior Court’s Memorandum Opinion at DI-8, Exhibit 1, page 5.

³⁸ *California Fed. Sav. and Loan Ass’n v. Guerra*, 479 U.S. 272, 281 (1987) (citing *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

³⁹ *Id.*, citing *Maryland v. Louisiana*, 451 U.S. 725, 726 (1981).

⁴⁰ *California Div. of Labor Standards Enforcement v. Dillingham Constr. N. A., Inc.*, 519 U.S. 316, 325 (1997) (citations omitted). See also *Altria Group, Inc. v. Good*, 555 U.S. 70, 77 (2008).

preemptive of state regulatory power in the absence of persuasive reasons - either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained.”⁴¹

2. The Federal SNAP Act Contains No Express Preemptive Language.

As Appellant acknowledges, nothing in the federal SNAP Act expressly preempts Delaware from pursuing its DFCRA claim against her. The issue thus depends on implied preemption and whether federal law directing ARMS to pursue certain remedies precludes other state agencies from pursuing alternative sanctions. Contrary to opposing counsel’s contention that the federal SNAP Act “controls the disposition of this lawsuit and appeal,”⁴² it is the lack of such control in the federal SNAP Act that is dispositive here. The Superior Court’s decision should be affirmed.

3. Federal Law Does Not Implicitly Preempt States from Obtaining Redress for SNAP Fraud Under State Laws Other Than Those Related to the SNAP Program.

The United States Supreme Court has found that implied preemption exists “where it is ‘impossible for a private party to comply with both state and federal requirements,’” or “where state law ‘stands as an obstacle to the accomplishment

⁴¹ *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963).

⁴² DI-8, p.17.

and execution of the full purposes and objectives of Congress.”⁴³ The “purpose of Congress is the ultimate touchstone in every case.”⁴⁴ Because it is not impossible for Ms. Gonzalez to comply with both state and federal requirements, and because state law does not stand as an obstacle to accomplishing Congress’ full purposes and objections, there is no implied preemption.

Gonzalez and *amicus curiae* contend that the federal SNAP Act and the regulations implementing it set out detailed, comprehensive and exclusive procedures for determining whether a program participant has violated the law and for determining the appropriate penalty, and that as a result, Congress has preempted state attempts to impose any other punishment.⁴⁵ Not so. Nothing in the federal SNAP Act implicitly precludes the State from using civil fraud remedies to deter SNAP recipients from committing fraud- particularly since those civil fraud remedies achieve the important Congressional goals of deterring fraud and safeguarding the limited supply of available funds. Nor does federal regulatory oversight of ARMS create a presumption that Congress intended to restrict the State in either its collection methods or its means of punishing fraud committed against the State.

⁴³ *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995) (internal citations omitted).

⁴⁴ *Altria Group, Inc.*, 55 U.S. 70 at 76 (internal citations omitted).

⁴⁵ Appellant’s Opening Brief at 20-25; Amicus Curiae Brief at 4.

To the extent federal regulations address the issue, they authorize the state agencies tasked with the issuance of welfare benefits to create a system of administrative disqualification hearings. 7 C.F.R. § 271.4(b) states, “[Food and Nutrition Service, U.S. Department of Agriculture] delegates to the State agency, subject to the standards in § 273.18, the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or non-fraudulent over-issuances to participating households.” Delaware thus has federal authority to pursue alternative remedies for collection efforts even if one assumes *arguendo* that federal law controls on this issue.

The language in the Code of Federal Regulations is mostly permissive regarding state actions. Words such as “may” and “should” predominate the federal guidance. They encourage the State agency to refer matters for additional litigation:

State agencies are encouraged to refer for prosecution under State or local statutes those individuals suspected of committing intentional Program violation, particularly if large amounts of food stamps are suspected of having been obtained by intentional Program violation, or the individual is suspected of committing more than one act of intentional Program violation. The State agency shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution. State agencies shall also encourage State and local prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed **in addition to any other civil or criminal penalties for such violations.**⁴⁶

⁴⁶ 7 C.F.R. § 273.16(g)(1)(ii) (emphasis added).

This language appears to contemplate additional remedies beyond an ADH and tax intercepts. Indeed, it would be strange language to include in regulations implementing the SNAP Act if the federal government was limiting the available remedies against one who fraudulently obtained SNAP Act benefits to only the remedies in the SNAP Act. And, of course, the SNAP Act does not so limit states (or other federal agencies). Individuals who steal these funds face significant criminal penalties at both the state and federal level. The Code of Federal Regulations does not discourage the use of state-level criminal sanctions against individuals such as Gonzalez- quite the contrary. It makes little sense to contend that federal law implicitly preempt state-level civil sanctions when the same federal law actively encourages state-level criminal sanctions.

There is nothing in federal law preventing the State from pursuing civil fraud sanctions against a SNAP recipient who stole benefits by means of fraud. It would be contrary to the objective of Congress to prohibit Delaware from using every means at its disposal to ensure that every dollar provided for SNAP benefits is spent on its intended purpose. The limited federal funds available make the issuance of SNAP benefits a zero-sum game, in which every dollar Gonzalez stole from Delaware was one dollar less to feed those who actually needed the food. As the Third Circuit has held, “Vigorous efforts to protect the integrity of welfare programs

are necessary to assure that the public's dollars go only to those whose real need qualifies them to receive this money.”⁴⁷

It is difficult to understand why Delaware would be constrained by a federal program from pursuing separate state-level fraud remedies against someone who defrauded Delaware, stealing Delaware resources and Delaware property. That is what Gonzalez fails to discuss in her briefing- this is a state agency that was defrauded, not a mere appendage of the federal government.

Gonzalez also fails to note that two state agencies are involved in this matter- ARMS, which is partially federally funded and pursues relief through an ADH; and the DOJ, which is not funded by the federal government, is not bound by whatever requirements of the SNAP Act bind ARMS, and is fundamentally prosecutorial in character. There is no dispute that instead of pursuing an ADH, DOJ could have simply prosecuted Gonzalez for multiple crimes. Rather than overburdening the criminal system, Delaware pursued this alternative means of deterring crime and punishing offenders. No good deed going unpunished, Gonzalez now implicitly criticizes Delaware for pursuing civil financial sanctions against her instead of a potential prison sentence.

⁴⁷ *Louise B. v. Coluatti*, 606 F.2d 392, 402 (3rd Cir. 1979).

III. NOTHING IN FEDERAL LAW RESTRICTS DELAWARE IN THE MEANS BY WHICH IT MAY SEEK RECOVERY AGAINST INDIVIDUALS WHO DEFRAUD DELAWARE

A. Question Presented

Does existing federal law support the position Gonzalez asks the Court to adopt?⁴⁸

B. Scope of Review

The Scope of Review is outlined in Section I.B. above.

C. Merits of Argument

1. There is no statute or case precedent supporting the position adopted by the Appellant.

The DFCRA contains a component of restitution, but its primary purpose is to punish and deter fraud. As such, it supports the Congressional objective of deterring the theft of federal benefits from the SNAP program. More to the point, the State is also harmed by the theft of benefits from a State program. The program is federally funded but it is administered and enforced by State workers (whose salaries are paid by Delaware taxpayers) and by State agencies (which are also funded by Delaware taxpayers). Federal SNAP Act fraud harms Delaware taxpayers.

⁴⁸ The preservation of this issue is in the Superior Court's Memorandum Opinion at DI-8, Exhibit 1, page 6.

As discussed in the underlying briefing and in the Superior Court decision, the federal False Claims Act has been used to penalize food benefits fraud. In *U.S. v. Byrd*,⁴⁹ the Court awarded summary judgment to the government after it filed a False Claims Act case for food benefits fraud against a SNAP provider who pled guilty to food stamp fraud.

A similar case is *U.S. v. Tran*.⁵⁰ In *Tran*, a SNAP provider was permanently disqualified from participating in the SNAP program after a finding that the store had exchanged SNAP benefits for cash.⁵¹ The federal government then filed a claim against the SNAP provider under the Federal False Claims Act.⁵² The Court granted summary judgment to the federal government.⁵³ A very similar situation occurred in *U.S. v. Truong*.⁵⁴ In a thorough analysis of the viability of False Claims cases involving SNAP benefits, the *Truong* Court held,

3. The purpose of the False Claims Act is to protect the funds and property of the Government from fraudulent claims regardless of their particular form, and has been broadly construed...

4. Acquiring, possessing, and presenting illegally obtained food stamps for redemption constitutes a claim and is a violation within the meaning of the False Claims Act.⁵⁵

⁴⁹ 100 F. Supp.2d 342 (E.D.N.C. 2000).

⁵⁰ 11 F.Supp.2d 938 (S.D. Tex. 1998).

⁵¹ *Id.* at 939-940.

⁵² *Id.*

⁵³ *Id.* at 942.

⁵⁴ 860 F.Supp. 1137 (E.D. La. 1994).

⁵⁵ *Truong*, 860 F.Supp. 1137 at 1139-1140 (internal citations omitted).

The issue of preemption did not arise in *Byrd*, *Tran*, and *Truong*; but it is difficult to understand why the government could not bring a state False Claims Act claim against the Defendant but could bring a federal False Claims Act claim against the Defendant. Gonzalez attempts to distinguish *Byrd* from the instant matter by citing the language of 7 U.S.C. § 2024; but that statute does not allow for False Claims Act liability either, and yet the *Byrd* Court found liability under the False Claims Act. If the DFCRA were somehow found to be preempted by the SNAP Act, presumably Gonzalez would have no qualms about Delaware prosecuting her for 32 separate criminal offenses, obtaining a conviction, and then filing a *qui tam* action against her in District Court under the Federal False Claims Act. That is the implication of her argument in this matter. There is no question that Gonzalez committed fraud and no question that the SNAP Act intends for Delaware to take actions to recover federal money stolen by fraud; the only question is if the SNAP Act preempts Delaware from punishing fraud against the federal government *and* Delaware independently of the SNAP Act's own regulatory scheme. It does not.

Gonzalez is unable to cite one case or statute that supports her contention that the federal SNAP Act preempts an action pursuant to the DFCRA. On the other hand, the State proffered several cases in which courts have held that the federal SNAP Act does not preempt other state and local actions, including the reduction of

general assistance benefits for receipt of food stamps;⁵⁶ municipal sweetened beverage tax ordinances;⁵⁷ the inclusion of scholarships and educational grants in determining income eligibility;⁵⁸ and the disclosure of welfare records pursuant to subpoena *duces tecum*.⁵⁹ Courts have found that the SNAP Act does not preempt a state law equitable estoppel defense.⁶⁰ An Ohio court found that the federal SNAP Act did not preempt a state statute governing collections of food stamp overpayments.⁶¹ The Washington Court of Appeals found that the federal SNAP Act did not preempt a state statute authorizing the Department of Social and Health Services to deduct a 25 percent fraud penalty through mandatory deductions from future assistance payments.⁶² The District Court for the Eastern District of Pennsylvania found that the language of 7 U.S.C. § 2022(b) permitting collection of overpayments by “any other means” permitted a set-off of food stamp benefits by the State.⁶³

Where the text of a statute is unambiguous, the statute should be enforced as written; “only the most extraordinary showing of contrary intentions in the

⁵⁶ *Dupler v. City of Portland*, 421 F.Supp. 1314 (D.Me. 1976).

⁵⁷ *Williams v. City of Philadelphia*, 164 A.3d 576 (Pa. Commonw. Ct. 2017).

⁵⁸ *Harrelson v. Butz*, 547 F.2d 915 (4th Cir. 1977).

⁵⁹ *People v. Triuck*, 669 N.Y.S.2d 1018 (N.Y. 1998).

⁶⁰ *Turner v. Chandler*, 87 Hawai'i 330 (Haw. 1998).

⁶¹ *State v. Bolar*, 39 Ohio App.3d 194 (Ohio Ct. App. 1987).

⁶² *Bazan v. Department of Social and Health Services*, 26 Wash.App. 16 (1980).

⁶³ *Lightbody v. Madigan*, 1992 WL 246079 at *2-3 (E.D.Pa. Sept. 17, 1992).

legislative history” justify a departure from that language.⁶⁴ When the statutory language is plain, the sole function of the courts is to enforce it according to its results- “at least where the disposition required by the text is not absurd.”⁶⁵ Courts have “no authority to vary the terms of a statute of clear meaning or ignore mandatory provisions.”⁶⁶ Gonzalez wants the Court to add language to the SNAP Act that isn’t there to find implied conflict preemption. Faced with the lack of supporting statutory authority and supporting case precedents, her contention must fail.

⁶⁴ *Encompass Insurance Company v. Stone Mansion Restaurant Incorporated*, 902 F.3d 147, 152 (3rd Cir. 2018)(citing *McMaster v. E. Armored Servs., Inc.*, 780 F.2d 167, 170 (3rd Cir. 2015)).

⁶⁵ *Id.* (citing *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004)).

⁶⁶ *Zambrana v. State*, 118 A.3d 775, 776 (Del. 2015).

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court uphold the Decision of the Superior Court in the above-referenced matter.

RESPECTFULLY SUBMITTED,

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Oliver J. Cleary

Oliver J. Cleary (I.D. No. 5830)
Deputy Attorney General
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8400
Oliver.Cleary@state.de.us
Counsel for Appellee

DATED: October 12, 2018