



California's Proposition 37: A Legal & Policy Analysis

October 2012



This report is not intended to be and should not be considered an advocacy document. It does not argue in favor of or against Proposition 37. Rather, this report is intended to serve as an independent and objective analysis of this key measure appearing on California's November 2012 general election ballot. It is hoped that this analysis will help inform the public debate over Proposition 37, and be of use to California voters, commentators, and interested observers.

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Introduction



On November 6, 2012, California voters will decide the fate of a proposed, landmark genetically engineered (“GE”)¹ food labeling law, Proposition 37.² The voter initiative raises many issues related to the increasing political, social, environmental, and economic debates over genetically modified food labeling laws and government regulation of marketing GE foods as “natural.”

Proposition 37, if enacted, would require GE food sold in California to be labeled as “genetically engineered.” It would also ban the use of the word “natural,” or other similarly descriptive terms, on food labels if the food item offered for sale contains GE ingredients. Thus, once implemented, Proposition 37 would likely heighten awareness of California consumers regarding which foods are genetically engineered and which are “natural.”

Genetic engineering of foods first gained popularity in the United States and abroad in the 1990’s, and has expanded as an industry practice ever since. The underlying technology involves isolating genetic material from one organism and transferring it into another organism, generally to incorporate a desired trait into the target crop or animal, and at much faster rates than through traditional cross-breeding. Genetic engineering is most commonly used to make crops herbicide resistant or to make crops that synthesize their own pesticide. Besides increasing yields, these changes can also decrease pesticide use, resulting in less polluted water and soil.

Proposition 37 appears on the California general election ballot at a time when GE foods are prevalent in the U.S. grocery marketplace. GE varieties account for about

80% of corn, 92% of soybeans, 86% of cotton, and 93% of canola planted in the United States.³ About 80% of processed foods found in American grocery stores contain some level of GM ingredients.⁴

Proponents of Proposition 37 focus on health and environmental concerns regarding GE foods, arguing the measure “empowers us to make the right choice for our families.”⁵ They also assert that the labeling requirements will not impose new costs on California consumers and that the scheme will not create new bureaucracy.⁶ Opponents of the measure claim the initiative conflicts with scientific studies on the health impacts of GE foods, and they assert Proposition 37 would “increase grocery bills for families by \$400 per year and increase taxpayer costs by millions.”⁷ Opponents also highlight exemptions contained in the initiative as catering to “special interests,” and raise fears about “shakedown lawsuits” from trial lawyers.⁸

Opponents of Proposition 37, consisting mainly of agricultural interests and the processed food industry, do not want the measure to pass. As of October 14, 2012, an estimated \$35,600,000 had been contributed by agricultural and food industry interests to defeat Proposition 37, in comparison to \$7,700,000 of contributions favoring the measure.⁹ The “pro” side of the campaign is primarily funded by organic farmers and the “natural food” industry.

One reason campaign spending for Proposition 37 is so prodigious is California’s potential influence, or “ripple effect,” on other states. If the measure passes, it would constitute the first comprehensive GE food labeling law in the United States. This could spur consideration and potential enactment of parallel legislative or initiative measures addressing GE food labeling in other states. It might also prompt calls for more direct regulation of GMOs by the federal government. As one columnist remarked, Proposition 37 “has the potential ... to change the politics of food not just in California but nationally too.”¹⁰ Many predict the implementation of Proposition 37 would be followed closely by out-of-state observers because of California’s large market share of food products. Past experience with related laws suggests that food sellers might reformulate all of their products to be compliant with California’s law, rather than have separate labels for products only sold in California. These factors

may account for the considerable, nationwide interest in the current political debate over Proposition 37.

This report offers a legal and a policy analysis of Proposition 37. It does so first by explaining the background and circumstances giving rise to the initiative. The report then goes on to summarize key provisions of the measure. Finally, the report identifies and analyzes a substantial number of important, unresolved questions raised by Proposition 37. Depending on the results of the November 6, 2012 election, how those questions are resolved promises to have a profound effect on the people, economy, and natural resources of the State of California.

Background of the Initiative Measure

The Origins of & Impetus for Proposition 37

Proponents of Proposition 37 say a primary impetus for the measure is the lack of regulation of GE food labeling at both the federal and state level.

Minimal regulation of GMOs takes place at the federal level. In 1992, the U.S. Food and Drug Administration (“FDA”) issued a policy statement that GE foods were not “materially” different from non-GE foods, and thus did not need to be labeled.¹¹ The agency severely constricted what it called “material,” limiting it to the ability of a change to be tasted, smelled, or known through the other senses. After almost 20 years, this policy is still in effect today, and the federal government is taking little to no steps toward comprehensive GE food labeling policies.

At the state level, Assembly Bill 88 (Huffman) on Food Labeling of Genetically Engineered Food is the only recent attempt by the California Legislature to regulate GE food labeling. The bill is limited to a labeling requirement of all genetically engineered salmon entering and sold within California.¹² It would deem food misbranded if it is GE fish or fish product and if its labeling did not conspicuously identify the fish or fish product as genetically engineered.¹³ The bill initially passed through the California Health Assembly Committee in April 2011, but it most recently failed in the California Appropriations Assembly Committee in January 2012.¹⁴

Meanwhile, citizens and citizens groups have taken various steps to compel government action at both the state and federal level. In October 2011, a coalition of consumer groups, environmental groups, farm groups, and food companies filed a legal petition demanding the FDA to issue new regulations on GE foods.¹⁵ In March 2012, a letter supporting that legal petition was signed by 55 members of Congress, led by Senator Barbara Boxer (D-CA) and Congressman Peter DeFazio (D-OR), and was sent to the FDA Commissioner Margaret Hamburg. The letter called on the agency to require labeling of GE foods.¹⁶ Later in March, at least one million public comments had been submitted in support

of the legal petition. The FDA has taken no action since the petition was filed.

Meanwhile, in November 2011, Proposition 37 was submitted to the California Attorney General's office, eventually gaining enough signatures to qualify for the November 2012 general election. The remainder of this background section contains four parts aimed to give additional context for Proposition 37. First, it provides an overview of GE food labeling in other states and in other nations; next, a discussion of GE foods in the courts; and, it concludes with a comparison to California's Proposition 65.

Overview of GE Food Labeling in Other States

Since 2011, 19 states have introduced through their legislative processes at least 36 bills concerning mandatory labeling of GE foods.¹⁷ To date, only Alaska has actually enacted a labeling law, and it is limited to mandatory labeling of GE fish.¹⁸ The failure of the vast majority of these bills to secure passage can be attributed primarily to stiff resistance from the American biotech industry and processed food companies.¹⁹

Vermont's experience with its House Bill 722 exemplifies the barriers that the agribusiness industry creates for potential labeling regulations. At the outset, legislators in Vermont stated that they supported mandatory labeling for GE foods sold in that state.²⁰ However, concerns that passing the bill would result in costly litigation ultimately influenced the Vermont Legislature to vote down the proposed labeling law.²¹ Monsanto specifically threatened to sue if House Bill 722 passed, and legislators feared potential suits from the DuPont Corporation and the Dow Chemical Company as well.²²

In response to widespread legislative failures to enact GE food labeling laws, the State of Washington, like California, is contemplating placing a voter initiative, I-522, on that state's ballot in 2013.²³ Also characterized as a "right to know" law, the proposed Washington initiative closely tracks the language of Proposition 37.²⁴ Thus, it can be argued that California's Proposition 37 is already having a catalytic effect beyond its borders, as is the case with many of the Golden State's legislative and regulatory trends.

The introductory sections of both the California and Washington measures stress common concerns, including unpredictable and unintended consequences of GE foods, claimed adverse impacts on the environment, and harm to the organic farming industry.²⁵ The exemption section of Washington's I-522 duplicates California's Proposition 37 exemption section almost exactly, with only one small variation.²⁶ Proposition 37 only permits GE ingredients to reach a threshold of 0.5 percent, but allows up to 10 such ingredients in a food item, which could total 5 percent of the product.²⁷ Washington's I-522, by comparison, permits an aggregate GE ingredient threshold of 0.9 percent.²⁸

It is interesting to note that I-522 is not Washington citizen's first attempt to place a GE labeling law on that state's ballot. A 2002 attempt, Measure 254, failed to garner enough signatures to qualify for the ballot.²⁹

Previous GE Food-Related Ballot Measures

A decade ago, the Oregon electorate voted on Measure 27,³⁰ which would have mandated labels on food containing 0.1 percent or greater GM ingredients.³¹ At one point in the Oregon campaign, the measure was favored in state polls by 20 percentage points.³² However, following a nearly five million dollar advertising campaign by the measure's opponents, Measure 27 lost by more than 70 percent.³³ The "Vote No on Measure 27" campaign was strongly supported by national food companies and agribusiness firms.³⁴

Advocates in other cities and states have attempted to place initiatives to regulate GE food on the ballot, but failed to collect sufficient signatures.³⁵ These include a Denver initiative to ban GE food from school lunches and Washington and Florida measures mandating labels for food with GE ingredients.³⁶ Interestingly, in 2002, 33 towns in Vermont passed an initiative creating non-binding resolutions that called for labeling or imposed moratoria on GMOs.³⁷

Animal Product Labeling

Aside from Alaska (discussed above), at least five states have considered proposed legislation to mandate labels for GE fish.³⁸ For instance, Oregon proposed legislation that would require GE fish and shellfish to be labeled³⁹ and would prohibit the importation and farming of GE

fish in any Oregon body of water.⁴⁰ Multiple states' bills propose to impose stricter labeling regulations on milk than does California's Proposition 37. (As detailed below, Proposition 37 excludes milk products from labeling regulations as long as they are not derived from an animal that is itself genetically engineered, thus, creating an exemption for a non-GE animal that has been injected with GE growth hormones.) Legislative proposals in at least three states – Massachusetts, New Yorks, and North Carolina – specifically require labeling on milk from animals given growth hormones such as Recombinant Bovine Growth Hormone (rBGH).⁴¹ North Carolina's bill recognizes legislators' and citizens' concerns regarding the long-term impacts of ingesting milk products from animals administered rBGH by mandating that labels on milk include a reference to whether the animal was administered the hormone.⁴²

Voluntary Labeling Laws

At least four states have laws regulating *voluntary* labels. (By comparison, these relate to Proposition 37's provision that would regulate "natural" food labeling.) Alaska and Wisconsin regulate rBGH-free labels on milk;⁴³ Alaska and Mississippi regulate organic labels as well.⁴⁴ Under Maine's voluntary GMO-free label, foods cannot exceed one percent GMO ingredients.⁴⁵

Other Related Areas of Regulation

At least three states have introduced bills to mandate the labeling of GE seeds,⁴⁶ with Vermont actually passing a seed-labeling bill.⁴⁷

Regulation of "Natural"

In the absence of overarching federal regulation of the "natural food" label, some consumers welcome state regulation on this subject.⁴⁸ Currently, Connecticut may be the only state regulating what can be labeled as "natural food." Under that state's law, a food described as "organic," "organically grown," "natural," or similarly described, cannot be advertised, distributed, or sold in Connecticut unless the food meets the definitions of "organically grown food" or "natural food."⁴⁹ The Connecticut law explains that "natural foods" cannot include preservatives, antibiotics, synthetic additives, artificial flavoring or artificial coloring.⁵⁰ Further,

food processed to the point it is "significantly less nutritive" cannot be labeled as "natural."⁵¹ However, the Connecticut statute explicitly notes several processes that alone do not prevent a food from being considered natural: extracting, purifying, heating, fermenting, concentrating, dehydrating, cooling, or freezing.⁵²

Overview of GE Food Labeling In Other Nations

More than 40 nations – and as many as 60 – currently have in place mandatory food labeling laws for GE foods (see accompanying map).⁵³ They include the European Union (EU), Russia, China, Brazil, Japan, Australia, New Zealand, Turkey, South Korea, and South Africa.⁵⁴ India will require labeling of GE foods beginning in 2013.⁵⁵ These countries include some of the largest producers of genetically modified crops. However, no consistent labeling framework exists globally. Further, enforcement of labeling requirements varies as well among those nations with such laws in effect.

[See *Center for Food Safety Map of Genetically Engineered Food Labeling Laws by Country on the following page*]⁵⁶

Motivations and Justifications for Mandatory GE Food Labels in Other Nations

Those countries that have adopted mandatory labeling laws for GE foods have done so for a variety of stated reasons. The most oft-cited impetuses are the precautionary principle,⁵⁷ often coupled with regard for consumer choice, and trade objectives. Under the auspices of the precautionary principle, a number of countries have chosen to strictly regulate GMOs out of concern for potential harms – even in the absence of clear scientific evidence of harm⁵⁸ – thereby placing the burden on GE proponents to disprove the potential for adverse health or environmental effects.⁵⁹

Switzerland is a particularly interesting case study, inasmuch as it is an industrialized country with national concerns over GE products. Switzerland is home to multinational giants including representatives from the pharmaceutical, agrochemical, and food-processing industries.⁶⁰ Despite these economic interests, Switzerland's GE regulatory policies have been shaped by dependence on international trade, protection

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of consumers' freedom of choice, and, again, the precautionary principle.⁶¹

Policies in the EU and Japan have grown out of concerns relating to perceived unknown, long-term effects of GE crops and food. For instance, Japanese media has grown increasingly concerned with the unknown ecological impacts of GE crops since 2000.⁶² The EU has adopted the precautionary approach to GMOs due to concern that a lag time may exist between exposure and manifested, adverse impacts on the natural environment or human health.⁶³ The EU has also advanced labeling laws in an effort to protect informed consumer choice.⁶⁴ Similarly, South Korea has sanctioned GE foods, yet mandates labeling based on that nation's stated desire to safeguard consumer choice.⁶⁵

In other countries, safeguarding trade with trading partners like the EU and Japan influences GE food

labeling regulations. Several African nations fall into this category.⁶⁶ Some African countries have resisted planting GM crops to protect their capacity to export to the EU.⁶⁷ The depth of this concern was evidenced in 2002 when Zambia rejected U.S. GM corn aid during a famine, due to fears of potential contamination of Zambia's own, non-GE crops.⁶⁸ Labeling policies in Russia, other Eastern European countries, China, and Latin America are designed to some extent with EU regulations and trade opportunities in mind.⁶⁹

Past regulatory failures have reinforced concerns about GMOs. In 2002, an unapproved variety of GE corn, StarLink, was inadvertently imported into the U.S. food supply, which in turn contributed to Zambia's refusal of U.S. corn aid.⁷⁰ Another unapproved variety of GM corn, Bt10, made it into global commerce for several years before being discovered.⁷¹ By 2005, Bt10 corn had

been placed erroneously on the market in Europe and in the U.S. and had been comingled into shipments to Japan and Ireland.⁷² Such oversights and mistakes have provided further justification to some interest groups for labeling laws.⁷³

International Labeling Laws Do Not Necessarily Signify Disapproval of GM Crops

Mandatory labeling policies in foreign nations do not necessarily equate with general disapproval of GM technology. By 2010, 52 countries approved importation of GM crops for food and animal feed.⁷⁴ They include China, Japan, and South Korea. South Korea alone has approved over 50 different GM varieties crops.⁷⁵ A number of the countries that are the largest producers of GE crops require mandatory labeling. Brazil is second only to the U.S. in reliance on GM crops, and currently grows 19 percent of global hectareage.⁷⁶ China and India together grow 14.5 million hectares of GE crops out of a global total of 160 million hectares.⁷⁷

Brief Overview of Labeling in the European Union

Initially, European countries appeared as supportive as the United States to genetic engineering and to the EU's nascent biotech industry.⁷⁸ Public support for genetic engineering of crops and processed foods eroded substantially by the end of the 1980's.⁷⁹ More recently, the precautionary principle has been applied to review and approval of new GMOs in markets.⁸⁰ By the late 1990's, the EU had gone so far as to place a moratorium on GE imports from the U.S.⁸¹ Ultimately, action by the World Trade Organization was required to lift the EU moratorium.⁸² Nonetheless, importation of GE crops into the EU continued to struggle in the face of labeling and traceability requirements as well as broad consumer hostility towards GE food generally.⁸³ Subsequently, the EU and other countries entered into the Cartagena Protocol on Biosafety, which strengthens risk assessment on GMO imports.⁸⁴ The EU now regulates labeling and traceability under its Regulation (EC) 1830/2003.⁸⁵ That regulation applies to GE products, GE food, and GE feed,⁸⁶ but specifies that processed products under a 0.9 percent GE ingredient threshold do not have to be labeled as GE.⁸⁷

Inconsistent Labeling Standards Among Nations

Labeling requirements for GE foods are inconsistent between countries. Some countries have stricter thresholds for accidental contamination, and some exempt more products from labeling. The EU requires labeling for foods containing over 0.9 percent GMO ingredients.⁸⁸ Both processing aids and unintentional, technically unavoidable mixing not exceeding 0.9 percent are exempt from labeling in the EU.⁸⁹ Australia and New Zealand require labels when GE ingredients in food exceed one percent of the total weight of the product.⁹⁰ Vegetable oils, food additives, and food processing aids are exempt.⁹¹ South Korea requires labeling for food with over three percent GE ingredients.⁹² Labeling is not required in that nation for "soybean source, oils, sugars, and alcohol products."⁹³ Japan has a higher threshold at five percent and exempts "feedstuffs, alcoholic beverages, and processed foods, such as soya sauce, corn flakes, and other vegetable oils."⁹⁴

Variance in Enforcement Within the International Community

The enforcement of GE food labeling policies varies considerably among nations.⁹⁵ A 2007 study of international labeling policies described China as the only developing country with an effective labeling policy.⁹⁶ (A 2011 Chinese news account called China's regulation of GM food unreliable, however.⁹⁷) A 2007 study listed the following countries as actually enforcing their mandatory labeling policies: Australia, China, the EU, New Zealand, Norway, Japan, Russia, Saudi Arabia, South Korea, Switzerland, and Taiwan.⁹⁸ By contrast, the following countries were listed in the same study as at best only partially enforcing their labeling policies: Brazil, Chile, Croatia, Ecuador, El Salvador, Indonesia, Mauritius, Serbia, Sri Lanka, Thailand, Ukraine, and Vietnam.⁹⁹

Challenges to enforcement may account for the disparities. In 1999, Brazil banned commercial cultivation of GE crops.¹⁰⁰ Nonetheless, GE corn was repeatedly discovered in southern Brazil, possibly smuggled in from neighboring countries or purchased on the black market.¹⁰¹ By 2003, Brazil began to relax restrictions on GE soy and permitted GE corn in 2007.¹⁰²

However, Brazil's corn crops achieved record high prices when the strict non-GMO policy was in place.¹⁰³

Thus, while labeling of GE foods began in the late 1990's in Europe, and has been adopted in many other nations worldwide, it has only recently been widely considered in the United States, and only at the state level.

GE Foods in the Courts

In the United States, case law relating to genetically modified foods has been developing steadily since their introduction into the American market. One group of cases involves the contamination of non-GM crops with GM strains. In such cases, in addition to statutory claims regarding trade, plaintiffs have brought claims based on varied theories, such as public and private nuisance, negligence, and conversion.

Another group of cases involves challenges brought against the federal and state governments for labeling and failing to label genetically modified foods. These cases have primarily consisted of First Amendment-based claims.

Contamination Cases

Monsanto Co. v. Geertson Seed Farms

The 2010 decision of the United States Supreme Court in *Monsanto Co. v. Geertson Seed Farms*¹⁰⁴ is perhaps the most notable decision involving genetically modified foods. In that case, alfalfa growers and environmental groups brought suit against Monsanto, a company that had developed a type of genetically modified alfalfa that was resistant to the herbicide Roundup. The plaintiffs named in the same lawsuit the U.S. Department of Agriculture, which had deregulated the GE alfalfa without first preparing an Environmental Impact Statement ("EIS") under the National Environmental Policy Act ("NEPA").¹⁰⁵ The District Court for the Northern District of California found that the Department of Agriculture had violated NEPA, and entered an injunction preventing Monsanto from further planting GM alfalfa before the Department of Agriculture prepared an EIS.¹⁰⁶

The defendants appealed the decision and the Ninth Circuit Court of Appeals affirmed the district court's holding.¹⁰⁷ The Supreme Court granted review and held that while petitioners had constitutional standing to challenge the lower court's decision, and the environmental groups and farmers had constitutional standing to seek the injunction, the district court had abused its discretion in issuing the injunction.

The Court specifically found that the farmers and environmental groups bringing the lawsuit could not show that they were likely to suffer irreparable injury if the agency was permitted to proceed with partial deregulation of the GE alfalfa.¹⁰⁸ In overruling the district court's issuance of the injunction, the Supreme Court made it clear that granting an injunction in such cases is a drastic remedy that should only issue under extraordinary circumstances not present on the facts of the case.¹⁰⁹

In re Genetically Modified Rice Litigation

In 2006, the U.S. Department of Agriculture announced that trace amounts of LLRICE 601, a GM rice strain produced by Bayer CropScience, had been found in the U.S. long-grain rice supply.¹¹⁰ Prior to this finding, the strain was not being sold commercially and had not been approved for human consumption.¹¹¹ The U.S.D.A. announcement led to an immediate decline in rice futures and the withdrawal of U.S. rice from foreign markets.¹¹²

Long grain rice farmers and others involved in the international rice trade brought suit against the corporation that had developed the GM rice, claiming damages from contamination of their rice supply. The farmers sought relief under theories of negligence, public and private nuisance, negligence per se, and the North Carolina Unfair Trade Practices Act.

While the defendants successfully defeated many of the plaintiffs' causes of action, the district court allowed claims for negligence and private nuisance to proceed to trial.¹¹³ In December 2009, a federal jury awarded two of the farmers approximately \$2 million in compensatory damages arising from the comingling of rice.¹¹⁴ Since the 2006 discovery, over 7,000 rice farmers and others in the rice business have filed suit against Bayer.¹¹⁵

In re Genetically Modified Corn Litigation

In October 2000, numerous reports concluded that human food products in the U.S. had tested positive for a type of GM corn, which produces a protein known as Cry9C, and is toxic to certain insects.¹¹⁶ Prior to the discovery, the EPA had prohibited that type of corn from use for human consumption.¹¹⁷ The widespread contamination led to serious economic ramifications for the U.S. corn market.¹¹⁸

The incident also led to the filing of numerous lawsuits. Plaintiffs brought suit against both the distributors and producers of StarLink. Fifteen separately filed cases were consolidated in *In re StarLink Corn Products Liability Litigation*.¹¹⁹ In the class action, as well as in statutory claims, plaintiffs pursued damages under theories of common law negligence, strict liability, nuisance, and conversion.¹²⁰ The federal district court granted defendants' motion to dismiss the conversion claim, but found that several of the plaintiffs' other common law claims could proceed.

Defendants subsequently argued that the Federal Insecticide Fungicide and Rodenticide Act ("FIFRA") had preempted plaintiffs' state law claims.¹²¹ Under FIFRA, the U.S. EPA had approved StarLink's label and issued a limited registration.¹²² The court held that FIFRA preempted any claims based on the inadequacy of StarLink labels or defendants failure to warn, but did not preempt plaintiffs' claims based on the standard of care mandated by the EPA.¹²³

Labeling Cases

Free Speech: *Dairy Foods Ass'n v. Amestoy*

Although not a GM foods case per se, perhaps one of the most relevant cases to the discussion of Proposition 37 is *Dairy Foods Ass'n v. Amestoy*. In this case, dairy manufacturers brought an action challenging a Vermont law requiring the labeling of products from cows treated with Recombinant Bovine Growth Hormone (rBGH).¹²⁴

The federal district court held that the Vermont law, which was found to constitute a government restriction in the form of compelled speech, was unconstitutional.¹²⁵ Specifically, the court held that defendants failed to show a substantial state interest in the regulation.¹²⁶ The

interest in protecting its citizen's consumer interests¹²⁷ was found to be insufficient to support the labeling regulation. While the majority held that consumer curiosity alone is not enough to support a state-labeling requirement, the dissent speculated that in a case where the state was able to advance something more to support its interest, the majority's ruling would have no precedential effect.¹²⁸

Freedom of Religion: *Alliance for Bio Integrity v. Shalala*

In *Alliance for Bio Integrity v. Shalala*, plaintiffs brought a lawsuit based on the federal Free Exercise and Religious Freedom Restoration Act ("RFRA"), in addition to other causes of action,¹²⁹ challenging the U.S. Food and Drug Administration's decision not to require labeling of genetically modified foods.¹³⁰ In regard to the free exercise challenge, the federal court held that the FDA's decision amounted to a neutral law of general applicability. As such, even if it did incidentally burden religion, it did not violate the First Amendment.¹³¹ The court also rejected the arguments based on the RFRA. While the court acknowledged that the FDA's decision made it difficult for the public to determine what foods are genetically modified, the court held that the "potential inconvenience" did not amount to a substantial burden on religion.¹³²

A California Precursor to Proposition 37: Comparisons to Proposition 65 – California's Safe Drinking Water and Toxic Enforcement Act of 1986

Proposition 37 is not California's first voter initiative based on the tenet that the public has a right to know about the products it consumes. To the contrary, this topic has played a prominent role in the state's recent electoral politics. In 1986, Californians passed the voter initiative formally titled the California Safe Drinking Water and Toxic Enforcement Act – better known as Proposition 65.¹³³ This statute was enacted, in part, to address the perceived failure of state and federal regulators to protect citizens from exposure to hazardous chemicals by companies.¹³⁴

This law, with which Proposition 37 shares many similarities, is comprised of two major components. First, Proposition 65 requires that businesses notify the public when there are significant amounts of carcinogenic or reproductive toxins in the products they produce or are released into the environment.¹³⁵ Second, the law bans the discharge of those chemicals to any source of drinking water.¹³⁶ Under the law, the state must annually revise and publish a list of chemicals that trigger Proposition 65's notification requirements.¹³⁷

Proposition 65 contains several features intended to encourage private enforcement of the initiative. For example, Proposition 65 requires that 25% of the civil penalties assessed in private enforcement litigation are to be paid to the plaintiff, the remainder to the state.¹³⁸ Like Proposition 37 (discussed below), Proposition 65 allows private citizens to enforce the measure in court and permits the award of court-ordered attorney's fees to successful private plaintiffs.¹³⁹

Many laude Proposition 65 for achieving significant reductions or eliminating exposure of California consumers to carcinogens and reproductive toxins. Others characterize the law as unfair and misleading, or criticize it for resulting in wasted resources.¹⁴⁰ Some of the most repeated criticisms focus on the law's enforcement scheme, which empowers citizen enforcement against businesses that fail to provide requisite warnings, regardless of whether the plaintiff has suffered specific damages. Opponents of Proposition 65 claim that the law's enforcement provisions provided incentives for plaintiffs to bring frivolous claims against businesses for private financial gain.

Like Proposition 37, any amendments to Proposition 65 must be approved by two-thirds of each house of the California Legislature, and must also be deemed to further the underlying purposes of the law.¹⁴¹

In spite of these limitations, and in response to concerns, the Legislature has amended the measure substantively twice since voters enacted Proposition 65 by a 2-to-1 margin in 1986. These amendments were pursued and enacted in an effort to regulate private plaintiffs and curb frivolous enforcement litigation under Proposition 65.

In 1999, the Legislature amended the proposition to require plaintiffs to file copies of their settlement agreements with the Attorney General.¹⁴² In 2001, the Legislature amended the measure to require that plaintiffs provide a "certificate of merit" before proceeding with their action. The amendment allowed a court to impose sanctions on plaintiffs whose claims were later determined to lack merit.¹⁴³ The 2001 amendments also gave California's Attorney General the authority to investigate the merit of private Proposition 65 enforcement suits, and to participate in court hearings reviewing private settlements in order to enforce new civil penalty standards.¹⁴⁴ Finally, the revisions require that all settlements be subject to court approval under specific guidelines.¹⁴⁵

In sum, California's experience with Proposition 65 demonstrates both the advantages and drawbacks of implementing a consumer labeling law containing a private citizen enforcement scheme. Those lessons may prove valuable, should Californians vote to enact Proposition 37 in November 2012.

Key Features of Proposition 37

Proposition 37, the California Right to Know Genetically Engineered Food Act, contains 10 sections:

- An initial statement of “Findings and Declarations”;
- A related “Statement of Purpose”;
- The key, substantive provisions, which amend California’s Health and Safety Code;
- An “Enforcement” section;
- A “Misbranding” section;
- A standard severability clause;
- A section on “Construction with Other Laws”;
- The effective date of the measure;
- A section on “Conflicting Measures”; and,
- A final, but important, provision addressing how the state legislature can amend the law.

Statement of Findings and Declarations/ Statement of Purpose

Proposition 37 contains detailed statements setting forth the perceived bases and purposes of the initiative. These could prove quite significant, inasmuch as it is a basic rule of judicial review that, in the event the express terms of an initiative measure are ambiguous, reviewing courts should refer to the findings contained in the measure to discern the voters’ collective intent in enacting the measure.¹⁴⁶

Proposition 37’s statement of findings and declarations begins with the general impetus for the act, that “California consumers have the right to know whether the foods they purchase were produced using genetic engineering.”¹⁴⁷ This “right to know” is then supported by various assertions regarding the perceived dangers of GE foods to consumers, the environmental impacts stemming from the cultivation of GE foods, implications for the California organic farming industry, and public opinion and the state of GE food labeling laws at the state, national, and international levels.

The initiative’s stated arguments concerning the alleged perils of GE foods are that genetic engineering of plants and animals “often causes unintended consequences,” is “an imprecise process,” and has results that “can lead to adverse health or environmental consequences.”¹⁴⁸ Further, according to government scientists, artificial insertion of DNA into plants “can increase the levels of known toxicants in foods and introduce new toxicants and health concerns.”¹⁴⁹ Additionally, Proposition 37’s statement of findings declares, in the absence of disclosure, “consumers of genetically engineered food can unknowingly violate their own dietary and religious restrictions.”¹⁵⁰ On a more positive note, the measure declares: “Mandatory identification of foods produced through genetic engineering can provide a critical method for tracking the potential health effects of eating genetically engineered foods.”¹⁵¹

Proposition 37’s statement of findings declares that cultivation of GE crops can cause “serious impacts to the environment.”¹⁵² It goes on to provide the following explanation:

*For example, genetically engineered crops are designed to withstand weed-killing pesticides known as herbicides. As a result, hundreds of millions of pounds of additional herbicides have been used on U.S. farms. Because of the massive use of such products, herbicide-resistant weeds have flourished – a problem that has resulted, in turn, in the use of increasingly toxic herbicides. These toxic herbicides damage our agricultural areas, impair our drinking water, and pose health risks to farm workers and consumers.*¹⁵³

In discussing California’s burgeoning organic farming industry, Proposition 37 states that organic farmers, who are prohibited from using genetically engineered seeds, “are regularly threatened with accidental contamination from neighboring lands where genetically engineered crops abound.”¹⁵⁴ The measure continues by maintaining: “This risk of contamination can erode public confidence in California’s organic products, significantly undermining this industry.”¹⁵⁵

Proposition 37's statement of findings also references public opinion, declaring: "Polls consistently show that more than 90 percent of the public want to know if their food was produced using genetic engineering."¹⁵⁶ In discussing genetically engineered food regulation generally, the measure states:

*No federal or California law requires that food producers identify whether foods were produced using genetic engineering. At the same time, the U.S. Food and Drug Administration does not require safety studies of such foods. Unless these foods contain a known allergen, the FDA does not even require developers of genetically engineered crops to consult with the agency.*¹⁵⁷

In contrast, Proposition 37 notes that 50 countries, including key U.S. trading partners, have laws mandating disclosure of GE foods. It also specifically declares that, "No international agreements prohibit the mandatory identification of foods produced through genetic engineering."¹⁵⁸

Proposition 37's final statement of findings relates to the measure's separate, substantive ban on labeling GE foods as "natural." It declares: "The labeling, advertising and marketing of genetically engineered foods using terms such as 'natural,' 'naturally made,' 'naturally grown,' or 'all natural' is misleading to California consumers."¹⁵⁹

Much shorter than the statement of findings, Proposition 37's statement of purpose summarizes the objective of the proposition as a whole:

*The purpose of this measure is to create and enforce the fundamental right of the people of California to be fully informed about whether the food they purchase and eat is genetically engineered and not misbranded as natural so that they can choose for themselves whether to purchase and eat such foods.*¹⁶⁰

Intriguing issues woven into these assertions are discussed in the analysis section of this report addressing key, unresolved aspects of the measure.

Substantive Provisions

The substantive provisions of Proposition 37 would add Article 6.6 to Chapter 5 of the Sherman Food, Drug, and Cosmetic Laws, located within the Environmental Health Division of the California Health and Safety Code. This new Article would contain six separate sections. Proposition 37 would also amend section 111910 of the Health and Safety Code regarding enforcement. Finally, it would add section 110663 to the Code regarding "misbranding."

The substantive additions and amendments to the Code address six distinct areas:

- A provision declaring raw agricultural commodities and processed foods as "misbranded" if produced using genetic engineering without that fact being disclosed in a "clear and conspicuous" fashion on the commodity packaging, shelf or bin, and on processed food packaging;
- A prohibition on labeling foods as "natural" if they are produced using genetic engineering;
- An extensive exemptions provision;
- A provision allowing the Department of Public Health to adopt necessary regulations to implement of the law;
- Two important enforcement provisions;
- A misbranding section that is added to an existing set of provisions regulating misbranded food generally; and,
- A set of statutory definitions of key initiative terms.

The discussion that follows first examines the two, key substantive provisions of Proposition 37 concerning labeling and misbranding; then discusses the initiative's exemption provisions; next briefly explains the regulatory role created for the California Department of Public Health; and concludes by examining Proposition 37's enforcement provisions.

The Labeling Provisions – The Heart of Proposition 37



At the heart of Proposition 37 are two provisions dealing with disclosure and misbranding. The aim of the first key provision is to require GE foods sold in California to be labeled as genetically engineered. The second bans the marketing of GE foods as “natural” or using any similar terms.

Proposition 37’s labeling requirement specifically states that, “any food offered for retail sale in California is misbranded if it is or may have been entirely or partially produced with genetic engineering and that fact is not disclosed.”¹⁶¹ The term “genetically engineered” is defined in the initiative as “any food that is produced from an organism or organisms in which the genetic material has been changed through application of:

(A) In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection of nucleic acid into cells or organelles, or

(B) Fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells/ protoplasts do not fall within the same taxonomic family, in a way that does not occur by natural multiplication or natural recombination.”¹⁶²

For raw agricultural commodities, the “clear and conspicuous” words “Genetically Engineered” must appear on the package, or if the commodity is not

packaged, on the shelf or bin in which the commodity is displayed for sale at the retail store.¹⁶³ For processed foods, the words “Partially Produced with Genetic Engineering” or “May be Partially Produced with Genetic Engineering” must appear in “clear and conspicuous” language on the front or back of the food packaging.¹⁶⁴ “Processed food” is defined as, “any food other than a raw agricultural commodity, and includes any food produced from a raw agricultural commodity that has been subject to processing such as canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.”¹⁶⁵ This “processed food” labeling requirement must also be read in conjunction with the processed food exemption, discussed in the following section.

Notably, Proposition 37 clarifies that the specific ingredients that are genetically engineered in food products do not have to be identified, and the label “genetically engineered” does not have to appear in the name of the product.¹⁶⁶

This initial provision does not take effect until July 1, 2014, meaning California food retailers would have 20 months to comply with the requirements if Proposition 37 is enacted.¹⁶⁷

Under the second key, substantive part of the initiative, genetically engineered food, as well as processed food that is not exempted from coverage:

... may not in California, on its label, accompanying signage in a retail establishment, or in any advertising or promotional materials, state or imply that the food is ‘natural,’ ‘naturally made,’ ‘naturally grown,’ ‘all natural,’ or any words of similar import that would have any tendency to mislead any consumer.¹⁶⁸

It is unclear the extent to which this provision applies just to GE food or also to processed food, a point that is discussed further in the analysis discussion found later in this report.

In contrast to Proposition 37’s labeling requirement, the ban on labeling GE foods as “natural” would appear to take effect immediately upon passage of Proposition 37.

If either of these substantive provisions is not complied with, the affected food product is deemed “misbranded.” Under the Health and Safety Code, it is unlawful for any

person to misbrand food,¹⁶⁹ and further, “It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.”¹⁷⁰ The legal implications of unlawfully violating these “misbranding” provisions are discussed in the discussion relating to Proposition 37’s enforcement provisions, below.

Proposition 37’s Exemptions

Proposition 37 contains nine exemptions for specified food products that do not have to comply with the labeling and misbranding requirements of the initiative.



First, the measure exempts foods derived from non-genetically engineered animals, even if the animal itself “has been fed or injected with any genetically engineered food or any drug that has been produced through means of genetic engineering.”¹⁷¹ To provide an example, this means that genetically engineered salmon would not be exempted and would

need to be appropriately labeled under Proposition 37, whereas steak or milk would be exempted even if it comes from a cow fed GE corn or injected with rBGH.

Second, “A raw agricultural commodity or food derived therefrom that has been grown, raised, or produced without the knowing and intentional use of genetically engineered seed or food”¹⁷² is exempt from Proposition 37. To fall under this exemption, the retailer must obtain a sworn statement from whoever sold the food to the retailer, stating that the food: “(1) has not been knowingly or intentionally genetically engineered; and (2) has been segregated from, and has not been knowingly or intentionally commingled with, food that may have been genetically engineered at any time.”¹⁷³ A retailer can also rely on a sworn statement containing those same words from the retailer’s supplier.

A third provision exempts from Proposition 37’s labeling requirement, “Any processed food that would be subject to Section 110809 solely because it includes one or more genetically engineered processing aids or enzymes.”¹⁷⁴

The term “processing aid” is defined as:

(1) A substance that is added to a food during the processing of such food, but is removed in some manner from the food before it is packaged in its finished form;

(2) A substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; or

(3) A substance that is added to a food for its technical or functional effect in the processing, but is present in the finished food at insignificant levels and does not have any technical or functional effect in that finished food.”¹⁷⁵

The term “enzyme” is defined as, “a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the reactions.”¹⁷⁶

A fourth exemption applies to alcoholic beverages subject to California’s Alcoholic Beverage Control Act,¹⁷⁷ which encompasses “alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of 1 percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.”¹⁷⁸

Fifth, Proposition 37 exempts any processed food that would be subject to section 110809 solely because it includes one or more genetically engineered ingredients, provided that: “(1) no single such ingredient accounts for more than one-half of one percent of the total weight of such processed food; and (2) the processed food does not contain more than 10 such ingredients.”¹⁷⁹ Significantly, this exemption only applies until July 1, 2019. The language of this fifth exemption is critical in determining whether a particular processed food item is exempted from labeling.

The initiative’s sixth exemption applies to, “Food that an independent organization has determined has not been knowingly and intentionally produced from or commingled with genetically engineered seed or genetically engineered food, provided that such

determination has been made pursuant to a sampling and testing procedure approved in regulations adopted by the [Department of Public Health].”¹⁸⁰ While this exemption initially seems quite broad, further provisions make the exemption more specific: “No sampling procedure shall be approved by the department unless sampling is done according to a statistically valid sampling plan consistent with principles recommended by internationally recognized sources such as the International Standards Organization (ISO) and the Grain and Feed Trade Association (GAFTA).”¹⁸¹ Further, states the initiative, “No testing procedure shall be approved by the department unless: (1) it is consistent with the most recent ‘Guidelines on Performance Criteria and Validation of Methods for Detection, Identification and Quantification of Specific DNA Sequences and Specific Proteins in Foods,’ (CAC/GL 74 (2010)) published by the Codex Alimentarius Commission; and (2) it does not rely on testing of processed foods in which no DNA is detectable.”¹⁸² In general, this exemption requires action by California’s Department of Public Health.

Proposition 37’s seventh exemption applies to, “Food that has been lawfully certified to be labeled, marketed, and offered for sale as ‘organic’ pursuant to the federal Organic Food Products Act of 1990 and the regulations promulgated pursuant thereto by the United States Department of Agriculture.”¹⁸³ This exemption seems superfluous, given that organic foods by definition are not genetically engineered.



The initiative’s eighth exemption applies to food served in restaurants and exempts from coverage, “Food that

is not packaged for retail sale and that either: (1) is a processed food prepared and intended for immediate human consumption or (2) is served, sold, or otherwise provided in any restaurant or other food facility that is primarily engaged in the sale of food prepared and intended for immediate human consumption.”¹⁸⁴

Proposition 37’s ninth and final exemption applies to “medical food,”¹⁸⁵ defined by the federal Food, Drug, and Cosmetic Act as “a food which is formulated to be consumed or administered enterally under the supervision of a physician and which is intended for the

specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.”¹⁸⁶

The California Department of Public Health’s Obligations Under Proposition 37

The California Department of Public Health is currently responsible for regulating the safety and labeling of most foods. Proposition 37 authorizes the Department to adopt regulations to implement the initiative. Specifically, proposed section 110809.3 states that, “The department may adopt any regulations that it determines are necessary for the enforcement and interpretation of this article, provided that the department shall not be authorized to create any exemptions beyond those specified in Section 110809.2.”¹⁸⁷ It is important to note that the Department is not obliged to adopt implementing regulations, but is simply granted the authority to do so.

Enforcement Provisions

Proposition 37 contains a series of detailed enforcement provisions. Together these provisions allow for private citizen enforcement and for enforcement by the Department of Public Health by way of the California Attorney General.

Section 110809.4

Section 110809.4¹⁸⁸ concerns violations of the proposed requirement to disclose genetically engineered foods and the prohibition on misbranding genetically engineered foods as “natural.” When they believe such a “misbranding” violation has occurred, the California Attorney General or any district attorney can bring a lawsuit on behalf of the Department of Public Health seeking a temporary or permanent injunction restraining the person from violating the provisions.¹⁸⁹ In addition to injunctive relief, civil penalties can be recovered, with damages up to \$1,000 for each day of a misbranding violation.¹⁹⁰ If successful, the Department of Public Health can also recover reasonable costs in bringing the action.¹⁹¹

In addition, under Proposition 37 such activities also trigger section 1770 of the California Civil Code, which proscribes certain unfair methods of competition intended to result in the sale of goods.¹⁹² Under this provision, the misbranding or failure to disclose genetically engineered foods may be prosecuted under California's Consumers Legal Remedies Act.¹⁹³ That Act enables private citizen enforcement and provides that successful plaintiffs who suffer damage as a result of methods declared unlawful under section 1770 of the Civil Code may recover actual damages, a court order enjoining the unlawful activities, punitive damages, court costs, and attorney's fees.¹⁹⁴

While section 110809.4 provides for prosecution of violations of Proposition 37 under the Civil Code, it adds two caveats. First, private plaintiffs bringing actions under these provisions of the Civil Code need not establish any specific damage or reliance on the alleged violation.¹⁹⁵ Second, in such cases the damages will be deemed to be in at least the amount of the actual or offered retail price of each package or product alleged to be in violation.¹⁹⁶

Section 111910

Proposition 37 also amends enforcement provisions already contained in the Health and Safety Code.¹⁹⁷ The Code currently allows "any person" to bring an action in a superior court, and gives the court jurisdiction to grant injunctions for violations of the California Organic Products Act of 2003.¹⁹⁸ Section 111910 of Proposition 37 provides that a superior court shall also have jurisdiction to grant temporary or permanent injunctions for violations of Proposition 37's substantive provisions.¹⁹⁹

The initiative provides that injunctive proceedings, with notable exceptions, must conform to the California Code of Civil Procedure's existing requirements regarding injunctions.²⁰⁰ Like the California Organic Products Act of 2003, however, Proposition 37 provides that in such enforcement cases, plaintiffs need not allege facts demonstrating the lack of an adequate remedy at law, irreparable damage or loss, or unique or special individual injury or damages.²⁰¹ Also, like the California Organic Products Act, Proposition 37 states that the initiative's enforcement provisions may not be construed to limit the powers of the Attorney General or any

district attorney to bring their own action to enforce the initiative.²⁰²

Additionally, section 111910 adds new provisions to the Health and Safety Code's existing rules governing court proceedings in which injunctive relief is sought. The Health and Safety Code provides that in granting injunctive relief, the court may award attorney's fees to plaintiffs bringing suit to enforce the California Organic Products Act. Proposition 37 adds that, in addition to attorney's fees, the court may also award "all reasonable costs incurred in investigating and prosecuting" actions brought under the initiative.²⁰³ This new language mirrors language in the existing section 111905, which states that the Department of Public Health can recover all reasonable costs in bringing an action against violators, as discussed above.

Procedural Provisions of Proposition 37

Proposition 37 contains a number of other procedural provisions, which can be summarized as follows:

- The measure contains a standard "severability clause," stating that if one provisions of the initiative is invalidated by a reviewing court, the remaining features remain in full force and effect.²⁰⁴
- Proposition 37 also contains a standard "construction with other laws clause," stating that the initiative "shall be construed to supplement, not to supersede, the requirements of any federal or California statute or regulation that provides for less stringent or less complete labeling of any raw agricultural commodity or processed food subject to the provisions of this initiative."²⁰⁵ (Potential federal preemption issues are discussed below.)
- If Proposition 37 is enacted, the effective date for most of its features is the day after the election (November 7, 2012), unless the measure provides otherwise.²⁰⁶ As noted above, however, portions of the initiative's GE food labeling requirements do not take effect until July 1, 2014.²⁰⁷
- A "conflicting measures" section is also included, which states that conflicting measures on the ballot that are approved by voters shall be harmonized with Proposition 37. In this case, it is irrelevant because

no other measures on the November 6 ballot conflict with Proposition 37.²⁰⁸

- A key section on “Amendments” states that, “This initiative may be amended by the Legislature, but only to further its intent and purpose, by a statute passed by a two-thirds vote in each house.”²⁰⁹ This “supermajority” provision tracks that contained in California’s Safe Drinking Water and Toxic Enforcement Act of 1986, a.k.a. Proposition 65.

Analysis of Proposition 37 and Discussion of Key, Unresolved Issues

This analysis of Proposition 37 focuses on the main provisions in the initiative, what has been popularly discussed by the campaigns and the media, and a few important areas that have not garnered much attention. It first looks at the stated reasons for the initiative; next at the substantive provisions, exemptions, and enforcement methods; and concludes with additional legal uncertainties.

Validity of Scientific, Health, and Legal Claims Made in the Statement of Findings and Declarations



As detailed above, the formal statement of findings and declarations contained in Proposition 37 makes several assertions regarding the dangers of GE foods to consumers, the environmental impacts stemming from the cultivation of GE foods, implications for the California organic farming industry, public opinion, and the state of GE food labeling laws at the state, national, and international levels. Most of these assertions appear objectively true. For example, Proposition 37 accurately describes the current, minimal government regulation of GE food labeling in California and the U.S.²¹⁰ No California or federal law presently requires that food producers identify whether foods were produced using genetic engineering. Nor does the FDA require that GM foods be labeled.²¹¹ However, a few of the initiative’s

findings and declarations are subjects of legitimate debate and controversy.

The primary area of debate centers on the potential negative health impacts of consuming GE foods. Proposition 37 claims consumption of GE foods can lead to adverse health consequences, and that artificial insertion of DNA into plants can increase the levels of known and new toxicants in foods. However, the scientific community seems largely undecided on that issue.

Some researchers do suggest a connection between GE crops and increasing rates of food allergies.²¹² Advocates of labeling argue that labeling would be helpful in determining whether GE food consumption is causing more allergies in consumers.

Opponents of policies that require labeling for GE food products argue that the vast majority of scientific studies indicate no adverse public health effects associated with consumption of GE foods. These opponents highlight the current position of the American Medical Association, that “there is no scientific justification for special labeling of bioengineered foods, as a class, and that voluntary labeling is without value unless it is accompanied by focused consumer education.”²¹³ UC Davis Professor Pamela Ronald writes in *Scientific American* that, “There is broad scientific consensus that genetically engineered crops currently on the market are safe to eat. After 14 years of cultivation and a cumulative total of 2 billion acres planted, no adverse health or environmental effects have resulted from commercialization of genetically engineered crops.”²¹⁴ Ronald cites to the Board on Agriculture and Natural Resources, Committee on Environmental Impacts Associated with Commercialization of Transgenic Plants, National Research Council and Division on Earth and Life Studies 2002.

Proponents of GE food labeling have relied in part upon a French study published earlier this year, which found that rats fed GE corn developed tumors at higher rates than rats fed with non-GE corn,²¹⁵ as evidence of the ill health effects of consuming GE foods. The study has been criticized heavily since its publication, including in connection with discussions of Proposition 37.²¹⁶ These reactions illustrate how contentious these issues are among citizens, industry, and even within the scientific community.

A complicating factor in these discussions is over the funding of scientific studies examining GE foods. This issue was discussed in a scientific literature review published last year.²¹⁷ That review explained that, “most of the studies demonstrating that GM foods are as nutritional and safe as those obtained by conventional breeding, have been performed by biotechnology companies or associates, which are also responsible for commercializing these GM plants.”²¹⁸ Such revelations cause many observers to challenge the objectivity and validity of the studies. The review makes the following conclusion: “more scientific efforts are clearly necessary in order to build confidence in the evaluation and acceptance of GM foods/plant by both the scientific community and the general public.”²¹⁹

To counter arguments about health concerns, those in the GE food industry promote their products by proffering the potential beneficial traits GE crops may contain. Some examples include: “golden rice,” genetically engineered to produce higher levels of vitamin A; virus resistant sweet potatoes which could prevent famine in Africa; grains that may protect against heart disease; and, crops that produce vaccines.²²⁰ These types of crops are known as second-generation GE crops. They contain attributes desired by consumers — often, extra nutrition or a form of environmental resilience.²²¹ This type of technology departs from first generation GE crops, which predominantly benefit producers and innovators by increasing crop yields.²²² First generation GE crops typically contain traits that save farmers time and money, such as genes for pesticide or herbicide resistance.²²³

As of 2005, second-generation GE crops had yet to enter commercial cultivation.²²⁴ Their status today is unclear. Increasing consumer hostility to GE foods may be contributing to the delay in their production.²²⁵ Additionally, market and regulatory uncertainties can diminish the incentive for biotech companies to invest in necessary research and development.²²⁶

Without a clear consensus, it will be up to voters to decide their feelings on GE foods and whether they should be labeled. In a recent blog post, UCLA Law Professor Ann Carlson shared her sentiments on the measure, to which many voters can most likely relate: “On the one hand, the initiative is simply calling for disclosure of information that can otherwise be hard to find. On the other hand, the disclosure may,

oddly, prove misleading to consumers, suggesting that something is wrong with genetically modified food with very little evidence that any harm exists.”²²⁷

Proposition 37’s Substantive Provisions – Ambiguity in the Provision Governing the Misbranding of GE Foods as “Natural”

Some ambiguity exists as to whether Proposition 37’s prohibition on the labeling or advertising of GE foods as “natural” also applies broadly to processed foods. The operative provision states that GE foods and processed foods cannot be labeled or marketed as “natural” unless they are *otherwise exempted*.²²⁸ Processed foods consisting of little to no GE content meet the applicable processed foods exemption, which seems to suggest that non-GE processed foods would not be subject to the “natural” language ban. However, confusion arises because the exemption states that it exempts processed foods from proposed section 110809 (the substantive provision addressing labeling of GE foods), and makes no mention of proposed section 110809.1 (the “natural” language ban). By providing no exception under section 110809.1, the measure could signify foods defined as processed under section 110808(d) as prohibited from being labeled as “natural.”

In analyzing this issue, the Legislative Analyst’s Office stated: “Given the way the measure is written, there is a possibility that these restrictions would be interpreted by the courts to apply to some processed foods regardless of whether they are genetically engineered.”²²⁹

This is an ambiguity in the law that may require interpretation by the Department of Public Health through implementing regulations, or by the courts in litigation brought under the measure if it is enacted.

The Scope of Proposition 37’s Exemptions

While several of the nine stated exemptions written into Proposition 37 seem logical and straightforward, a few require additional analysis.

The first of these relates to the exemption for foods derived from non-genetically engineered animals, even if the animal itself consumed GE foods.²³⁰ Proponents of the measure explain that “animal feed was exempted

because of the difficulty and cost of tracking the commodity from farms to grain elevators to wholesalers and ranches.”²³¹ They also argue that Proposition 37 uses the same animal feed exemption as European GMO labeling laws. This latter point is in fact true – the EU regulation states:

*This Regulation should cover food and feed produced ‘from’ a GMO but not food and feed ‘with’ a GMO. The determining criterion is whether or not material derived from the genetically modified source material is present in the food or in the feed. Processing aids which are only used during the food or feed production process are not covered by the definition of food or feed and, therefore, are not included in the scope of this Regulation. Nor are food and feed which are manufactured with the help of a genetically modified processing aid included in the scope of this Regulation. Thus, products obtained from animals fed with genetically modified feed or treated with genetically modified medicinal products will be subject neither to the authorisation requirements nor to the labelling requirements referred to in this Regulation.*²³²

This also illustrates that the exemption in Proposition 37 for processed food that “would be subject to Section 110809 solely because it includes one or more genetically engineered processing aids or enzymes” is also exempted under the EU regulatory scheme.²³³ Whether following the EU’s example is a good idea is for voters to decide. But it explains the basis for this particular exemption, and would seem to rebut the notion that it is a “special interest” exemption, as opponents of Proposition 37 suggest.

Proposition 37’s exemption for alcoholic beverages²³⁴ has garnered much public attention. The No on 37 campaign argues that this exemption is included only to avoid having to deal with the politically powerful alcoholic beverage lobby. The Yes on 37 campaign justifies the exemption as follows: “Alcoholic beverages already are regulated by a large body of both federal and state law ... and including them in Proposition 37 could violate a California law that requires an initiative to deal with only one subject.”²³⁵ The proponents’ argument in this regard seems strained, in light of existing judicial precedents interpreting California’s so-called “single subject rule” governing the initiative process. At the same time, a recent Los Angeles Times article reported

that the alcoholic beverage and restaurant industries have confirmed that they did not seek any special exemptions from the initiative for their businesses.²³⁶

Proposition 37 exempts micro-ingredients from the initiative's labeling requirements if they constitute less than of .5% the product (for up to 10 ingredients); this exemption would only be in effect until July 1, 2019.²³⁷ The Yes on 37 campaign writes, "This is to give manufacturers time to source non-GMO micro-ingredients if they choose to do so." One potential issue for this exemption relates to the initiative's implementation and enforcement. In particular, it will be challenging for the Department of Public Health to test processed foods for the percentage of GE content each food contains, and to do so by testing up to ten ingredients per item.

Proposition 37's restaurant food exemption is another controversial one. The Yes on 37 campaign states that this exemption was included in the initiative because restaurants are not required to list any ingredients for food on their menus.²³⁸ Proposition 37 proponents also argue that food on supermarket shelves is what is most prevalent in the American diet. Their stated goal is to maximize the amount of genetically engineered food that is labeled, keep compliance easy, and not violate California's single subject rule governing initiative measures.²³⁹

Proposition 37's Enforcement Provisions



A. Oversight Mechanisms

While both Proposition 65 and 37 include "private attorney general" provisions that allow individual citizens to bring suit against violators, the enforcement provisions

of the two measures differ in several key respects. One of the most significant differences is that Proposition 37 does not provide for the same state oversight that was incorporated into Proposition 65 through legislative amendments enacted by the California Legislature many years after Proposition 65 was initially enacted by voters in 1986. As discussed above, these amendments were enacted to prevent or discourage frivolous litigation by private plaintiffs.

Concerns that plaintiffs' lawyers were abusing the legal process by bringing frivolous consumer protection suits also have prompted ballot initiatives. In November 2004, for example, voters overwhelmingly passed Proposition 64, which significantly limits the ability of private plaintiffs and their attorneys to bring suit under California's Unfair Competition Law ("UCL") and False Advertising Law ("FAL"). These two consumer protection laws often have been used in conjunction with actions brought under Proposition 65 to enjoin violations and disgorge profits resulting from failure to comply with Proposition 65's product labeling requirements.

Proposition 64 prohibits actions brought by private plaintiffs unless they meet often-difficult standing requirements. That initiative mandates that private plaintiffs must have suffered "injury-in-fact" and lost money or property as a result of alleged unfair competition by the defendant(s).²⁴⁰ Proposition 64, in addition to requiring that all plaintiffs must have been actually harmed by the challenged business practice, also limits to restitution the monetary recovery to individuals who suffered injury-in-fact.

Proposition 37 lacks the same prophylactic mechanisms incorporated into Proposition 64 and Proposition 65 to limit private plaintiffs' potential abuses of their enforcement power. Should Proposition 37 be enacted, pressure may arise for corresponding amendments to preclude such private enforcement abuses.

B. Economic Implications of Proposition 37

Critics of Proposition 37's enforcement mechanisms have also voiced concern over the measure's economic implications. In particular, Proposition 37 opponents claim that the new law's implementation and associated lawsuits will result in significant, increased taxpayer costs and food prices for consumers.

Opponents of Proposition 37 specifically claim that the law would force state agencies to administer complex labeling requirements, which would ultimately be a burden born by taxpayers. This criticism is not without merit. The Legislative Analyst's Office estimates that the State of California's cost to administer the measure could range from a few hundred thousand dollars to over \$1 million annually, depending on the extent to which the Department of Public Health chooses to promulgate and enforce implementing regulations.²⁴¹

Another concern voiced by Proposition 37 detractors is that the law would force farmers and food retailers to implement costly new labeling schemes that would lead to sharp increases in food prices. Specifically, opponents claim that economic studies show the law would increase food costs for the "average California family up to \$400 per year."²⁴²

Perhaps the most common attack is that the proposed law creates a new category of lawsuits that will make private lawyers rich while imposing an aggregate fiscal burden on the state.²⁴³ While concerns about the cost of administering the statute have some potential merit, concerns regarding the cost of ensuing enforcement litigation under Proposition 37 seem largely unfounded. The Legislative Analyst's Office (LAO) finds that government costs to address violations of the measure will likely not be significant, especially in the context of overall court spending.²⁴⁴ The LAO also predicts that court filing fees that parties would have to pay under the proposed law's enforcement mechanisms would largely provide for any costs related to increases in litigation.²⁴⁵

While companies may pass the cost of complying with Proposition 37 on to consumers, another lesson to be learned from the implementation of Propositions 65 may be that the fiscal burden imposed on businesses is not actually as great as critics portray. For example, while the civil penalty for a failure to warn under Proposition 65 is \$2,500 per violation per day, substantial civil penalties are rarely assessed under the measure.²⁴⁶

Additional Legal Ambiguities Under Proposition 37

Federal Preemption

A potential question exists as to whether Proposition 37, a state initiative, is preempted by federal law. Generally, preemption is the constitutional principle that federal law trumps state law, meaning state laws may not conflict with or otherwise frustrate federal law. Here, the Food, Drug, and Cosmetic Act ("FDCA"), the Federal Meat Inspection Act ("FMIA"), and the Poultry Products Inspection Act ("PPIA") are all relevant to Proposition 37's scope. All contain provisions expressly stating that they preempt conflicting state laws. Thus, it is possible that if Proposition 37 is enacted, its implementation could be hampered by legal challenges that it violates the U.S. Constitution's Supremacy Clause and is preempted by those federal laws.²⁴⁷

First Amendment Issues

If enacted, implemented, and enforced, Proposition 37 could also face legal challenges on the ground that the initiative violates protections guaranteed by the First Amendment of the U.S. Constitution. The First Amendment limits the government's power to either prohibit or to compel speech. Proposition 37 would regulate speech both by prohibiting certain statements and by compelling certain statements. Food law blogger Lauren Handel has commented on the issue, and explains that, "From a First Amendment standpoint, Prop 37's prohibition on 'natural' claims is its most problematic provision."²⁴⁸ She notes, "California would have to establish that it has a substantial interest in protecting consumers from being deceived by 'natural' claims and that the prohibition directly serves the state's interest without overly infringing on speech."²⁴⁹ Handel suggests that the portion of Proposition 37 requiring GE food labeling is less likely to violate the First Amendment because it is well-established that the government generally may compel purely factual disclosures to consumers for purposes of preventing consumer deception.²⁵⁰ Thus, Handel predicts that in order to defend the initiative's disclosure requirement, California would have to argue the provision is related to its interest in preventing consumer deception, or that it directly serves another substantial state interest, such as protecting human health or the environment.²⁵¹

Conclusion

California's November 6, 2012, general election will focus public attention on the issue of mandatory labeling for genetically engineered foods. Proposition 37 will also present voters with the question of whether to ban labeling of genetically engineered foods as "natural." The presence of the initiative on California's ballot contributes to the broader national discussion of regulating GMOs and draws attention to the federal government's decision to date not to require labeling of genetically engineered foods on a nationwide basis.

While Proposition 37 generally captures the spirit of the GE food labeling movement, it also contains several exemptions and ambiguities that may dissuade voters from supporting the initiative. If enacted, those ambiguities will have to be resolved through regulatory interpretation or in the courts.

The result of the November election and the fate of Proposition 37 at the polls will likely have a profound impact on the future of genetically engineered food labeling both in California and in the United States as a whole.

Endnotes

¹ For the purposes of this report, the terms genetically engineered (“GE”) food and genetically modified (“GM”) food are used interchangeably.

² The text of Proposition 37 can be found as “Exhibit A” to this report. The official ballot materials prepared by California’s Secretary of State, Attorney General, and Legislative Analyst for Proposition 37 are attached as “Exhibit B.” The ballot arguments submitted by the proponents and opponents of Proposition 37 are attached as “Exhibit C.” All of these materials can be accessed through the California Secretary of State’s website at voterguide.sos.ca.gov/propositions/37.

³ See Government Accountability Office, *Genetically Engineered Crops* (2008), 1.

⁴ See Carey Gilliam, *U.S. Consumer Groups Demand GMO Labeling, Question Food Safety*, REUTERS, Mar. 27, 2012, available at www.reuters.com/article/2012/03/27/usa-food-idUSL2E8ERK7C20120327.

⁵ “Yes on 37,” www.carighttoknow.org.

⁶ *Id.*

⁷ “No on 37,” www.noprop37.com.

⁸ *Id.*

⁹ Ballot Pedia, *California Proposition 37, Mandatory Labeling of Genetically Engineered Food* (2012), [ballotpedia.org/wiki/index.php/California_Proposition_37_Mandatory_Labeling_of_Genetically_Engineered_Food_\(2012\)](http://ballotpedia.org/wiki/index.php/California_Proposition_37_Mandatory_Labeling_of_Genetically_Engineered_Food_(2012)). See also Alicia Chang, *Prop. 37 Will Test California’s Appetite For GMO Food*, THE HUFFINGTON POST, Oct. 6, 2012, available at www.huffingtonpost.com/2012/10/07/prop-37-california-gmo-food_n_1945106.html; Michael Hiltzik, *Using junk science to promote Proposition 37*, THE LOS ANGELES TIMES, Oct. 14, 2012, available at articles.latimes.com/2012/oct/14/business/la-fi-hiltzik-20121014.

¹⁰ Michael Pollan, *Vote for the Dinner Party*, THE NEW YORK TIMES MAGAZINE, Oct. 10, 2012, available at www.nytimes.

com/2012/10/14/magazine/why-californias-proposition-37-should-matter-to-anyone-who-cares-about-food.html.

¹¹ 57 Fed.Reg. 22,984, 22,991.

¹² AB 88 (*Huffman*) *Food labeling: genetically engineered food*, Around the Capitol, www.aroundthecapitol.com/Bills/AB_88/20112012/ (last visited Oct. 22, 2012).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The petition is available at gmolabeling.files.wordpress.com/2011/10/ge-labeling-petition-10-11-2011-final.pdf.

¹⁶ The letter is available at www.centerforfoodsafety.org/wp-content/uploads/2012/03/Final-Signed-GE-Labeling-Letter.pdf.

¹⁷ *Clarity in Food Labeling Warranted: the Time has come to Allow Labeling of GMO Foods*, MINNEAPOLIS—ST. PAUL STAR TRIBUNE, Sept. 18, 2012, 08A, available at 2012 WLNR 19891955;

e.g., CALIFORNIA Assemb. B. 88, 2011 Assemb. (Cal. 2011), available at capwiz.com/grassrootsnetroots/webreturn?url=http%3A%2F%2Fwww.cqstatetrack.com%2Ftaxis%2Ffredir%3Frtyp e%3Dtext%26id%3D4d27088969;

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WASHINGTON S.B. 6298, 62 Leg, 2012 Reg. Sess. (Wash. 2012), available at capwiz.com/grassrootsnetroots/webreturn?url=http%3A%2F%2Fwww.cqstatetrack.com%2Ftaxis%2Fredir%3Fid%3D4f169f09ba%26rtype%3Dtext;

WEST VIRGINIA H.B. 2178, 2012 Reg. Sess. (W. Va. 2012), available at legiscan.com/gaits/text/514793.

¹⁸ See Alaska Stat. Ann. § 17.20.040 (West 2012).

¹⁹ Marc Lifsher, *Ballot Battle Looms Over Genetically Modified Food*, THE LOS ANGELES TIMES, July 20, 2012, at 1, available at 2012 WLNR 15209262; see Granby Newberg, *Opinion Letter, Legislature Failed on GMOs*, THE HARTFORD COURANT, May 15, 2012, at A12, available at 2012 WLNR 10548761.

²⁰ Michelle Monroe, *GMO: Yes or No? Lawmakers Provide Their Take on the Bill*, ST. ALBANS MESSENGER, April 21, 2012, at 1A, available at 2012 WLNR 8817355.

²¹ *Id.*

²² *Id.*

²³ See Melissa Allison, *Food Fight: PCC Joins Push for New Law on Labeling*, Seattle Times, Oct 1, 2012, at A1, available at 2012 WLNR 21132093 (“By early January, the I-522 campaign needs to submit 241,153 valid signatures to the state, at which point the initiative would go to the Legislature. If lawmakers do not enact the initiative as law in some form — and they usually don’t — it would go before voters in November 2013.”).

²⁴ See texts of California Proposition 37 and Washington Initiative 522, available at www.labelitwa.org/read_i_522.

²⁵ California Proposition 37 § 1; Washington Initiative 522 § 1.

²⁶ Compare California Proposition 37 § 110809.2, with Washington Initiative 522 § 3(3).

²⁷ California Proposition 37 § 110809.2(e).

²⁸ Washington Initiative 522 § 3(3)(e).

²⁹ See PEW CHARITABLE TRUSTS, PEW INITIATIVE ON FOOD AND BIOTECHNOLOGY FACTSHEET: LEGISLATION TRACKER 2006 57 (Feb. 2007) available at www.pewtrusts.org/news_room_detail.aspx?id=17966.

³⁰ Carolyn Raab & Deana Grobe, *Labeling Genetically Engineered Food: The Consumer’s Right to Know?*, 6 AGBIOFORUM 155, 155 (2003); Lisa Baertlein & Carey Gillam Reuter, *Big Food Fight: Companies That Make or Use Genetically Modified Crops and Their Critics Square Off on a California Ballot Measure That Could Change What We All Eat*, CHICAGO TRIBUNE, Aug. 22, 2012, at 3, available at 2012 WLNR 17754339.

³¹ Carolyn Raab & Deana Grobe, *Labeling Genetically Engineered Food: The Consumer’s Right to Know?*, 6 AGBIOFORUM 155, 155 (2003).

³² See Bob Condor, *Round 1 Defeats Rules of Labeling Gene-Altered Food*, CHICAGO TRIBUNE, Nov. 10, 2002, at Q9, available at 2002 WLNR 12685933.

³³ *Id.*

³⁴ See Lisa Baertlein & Carey Gillam Reuter, *Big Food Fight: Companies That Make or Use Genetically Modified Crops and Their Critics Square Off on a California Ballot Measure That Could Change What We All Eat*, CHICAGO TRIBUNE, Aug. 22, 2012, at 3, available at 2012 WLNR 17754339; Bob Condor, *Round 1 Defeats Rules of Labeling Gene-Altered Food*, CHICAGO TRIBUNE, Nov. 10, 2002, at Q9, available at 2002 WLNR 12685933.

³⁵ See PEW CHARITABLE TRUSTS, PEW INITIATIVE ON FOOD AND BIOTECHNOLOGY FACTSHEET: LEGISLATION TRACKER 2006 4, 56-57 (Feb.

2007) available at www.pewtrusts.org/news_room_detail.aspx?id=17966.

³⁶ *Id.* at 57.

³⁷ *Id.* at 56.

³⁸ H.B. 99, 27th Leg. (Alaska 2011), available at www.legis.state.ak.us/basis/get_bill_text.asp?hsid=HB0099A&session=27; Assemb. B. 88, 2011 Assemb. (Cal. 2011), available at capwiz.com/grassrootsnetroots/webreturn?url=http%3A%2F%2Fwww.cqstatetrack.com%2Ftaxis%2Fredir%3Frtype%3Dtext%26id%3D4d27088969; S.B. 2190, 26th Leg. (Haw. 2012) available at capwiz.com/grassrootsnetroots/webreturn?url=http%3A%2F%2Fwww.cqstatetrack.com%2Ftaxis%2Fredir%3Fid%3D4f1922b01c5%26rtype%3Dtext; S.B. 517, 76th Or. Leg. Assemb., Reg. Sess. (Or. 2011), available at capwiz.com/grassrootsnetroots/webreturn?url=http%3A%2F%2Fwww.cqstatetrack.com%2Ftaxis%2Fredir%3Frtype%3Dtext%26id%3D4d2c087a2a4; H. 123, 2011-12 Sess. (Vt. 2011), available at capwiz.com/grassrootsnetroots/webreturn?url=http%3A%2F%2Fwww.cqstatetrack.com%2Ftaxis%2Fredir%3Frtype%3Dtext%26id%3D4d41154e83.

³⁹ S.B. 517, 76th Or. Leg. Assemb., Reg. Sess. (Or. 2011), available at capwiz.com/grassrootsnetroots/webreturn?url=http%3A%2F%2Fwww.cqstatetrack.com%2Ftaxis%2Fredir%3Frtype%3Dtext%26id%3D4d2c087a2a4.

⁴⁰ H.B. 4060, 76th Or. Leg. Assemb., 2011 Reg. Sess. (Or. 2012), available at capwiz.com/grassrootsnetroots/webreturn?url=http%3A%2F%2Fwww.cqstatetrack.com%2Ftaxis%2Fredir%3Fid%3D4f254bf04bd%26rtype%3Dtext.

⁴¹ H.B. 3276, 2011 Gen. Ct. (Mass. 2011), available at www.malegislature.gov/Bills/187/House/H03276; A.B. 1897, 2011-12 Reg. Assemb. (N.Y. 2011), available at capwiz.com/grassrootsnetroots/webreturn?url=http%3A%2F%2Fwww.cqstatetrack.com%2Ftaxis%2Fredir%3Frtype%3Dtext%26id%3D4d2ebd2b113;

- H.B. 446, 2011 Gen. Assemb. Sess. (N.C. 2011), available at www.ncga.state.nc.us/Sessions/2011/Bills/House/HTML/H446v1.html.
- ⁴² H.B. 446, 2011 Gen. Assemb. Sess. (N.C. 2011), available at www.ncga.state.nc.us/Sessions/2011/Bills/House/HTML/H446v1.html.
- ⁴³ Alaska Stat. Ann. § 17.20.013 (West 2012); Wis. Stat. Ann. § 97.25 (West 2012).
- ⁴⁴ Alaska Stat. Ann. § 17.06.010 (West 2012); Miss. Code Ann. § 69-47-27 (West 2011).
- ⁴⁵ Me. Rev. Stat. tit. 7, § 530-A (West 2011).
- ⁴⁶ Vt. Stat. Ann. tit. 6, § 611 (West 2012); H.B. 1172, 161st Sess. Of Gen. Ct. (N.H. 2010), available at www.gencourt.state.nh.us/legislation/2010/HB1172.html; A.B. 3716, 2011-12 Reg. Sess. (N.Y. 2011); A.B. 7640, 231st Annual Leg. Sess. (N.Y. 2009), available at legiscan.com/gaits/view/51558.
- ⁴⁷ Vt. Stat. Ann. tit. 6, § 611(c) (West 2012)
- ⁴⁸ Erik Benny, “Natural” Modifications: The FDA’s Need to Promulgate an Official Definition of “Natural” That Includes Genetically Modified Organisms, 80 GEO. WASH. L. REV. 1504, 1508 (2012) (discussing a 2006 FDA study that found 83 percent of consumers want the FDA to define “natural” foods).
- ⁴⁹ Conn. Gen. Stat. Ann. § 21a-92a (West 2012).
- ⁵⁰ Conn. Gen. Stat. Ann. § 21a-92 (16) (West 2012).
- ⁵¹ Conn. Gen. Stat. Ann. § 21a-92 (16) (West 2012).
- ⁵² Conn. Gen. Stat. Ann. § 21a-92 (16) (West 2012).
- ⁵³ E.g. Jagadeesan Premanandh, *Global Consensus – Need of the Hour for Genetically Modified Organisms (GMO) Labeling*, 17 J. COM. BIOTECH. 37, 41 (2011); *Center for Food Safety Releases New Genetically Engineered Food Labeling Laws Map*, CENTER FOR FOOD SAFETY (Oct. 4, 2012), gefoodlabels.org/2012/10/04/center-for-food-safety-releases-new-genetically-engineered-food-labeling-law-map/.
- ⁵⁴ Valery Federici, *Genetically Modified Food and Informed Consumer Choice: Comparing U.S. and E.U. Labeling Laws*, 35 BROOK. J. INT’L L. 515, 545 (2010); Guillaume Gruere, *A Review of International Labeling Policies of Genetically Modified Food to Evaluate India’s Proposed Rule*, 10 AgBioForum 51, 51-53 (2007); Hae-Yeong Kim, *Regulation and Detection Methods for Genetically Modified Foods in Korea*, 82 PURE APPLIED CHEM. 129, 132 (2010); *Center for Food Safety Releases New Genetically Engineered Food Labeling Laws Map*, CENTER FOR FOOD SAFETY (Oct. 4, 2012), gefoodlabels.org/2012/10/04/center-for-food-safety-releases-new-genetically-engineered-food-labeling-law-map/.
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- ⁵⁶ CENTER FOR FOOD SAFETY (Sept. 2012), www.centerforfoodsafety.org/ge-map/.
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- ⁵⁸ See Robert Falkner, *The Global Biotech Food Fight: Why the United States Got It So Wrong*, 14 BROWN J. OF WORLD AFF. 99, 104 (2007).
- ⁵⁹ See Frank J. Miskiel, *Voluntary Labeling of Bioengineered Food: Cognitive Dissonance in the Law, Science and Public Policy*, 38 CAL. W. L. REV. 223, 239 (2001).
- ⁶⁰ See Franz Xaver Perrez, *GMOs and International Law: the Swiss Example*, 14 RECEIL 161, 161 (2005).
- ⁶¹ *Id.* at 161-62.
- ⁶² Tomiko Yamaguchi & Fumiaki Suda, *Changing Social Order and the Quest for Justification: GMO Controversies in Japan*, 35 SCI., TECH, & HUMAN VALUES 382, 383 (2010).
- ⁶³ See Jagadeesan Premanandh, *Global Consensus – Need of the Hour for Genetically Modified Organisms (GMO) Labeling*, 17 J. COM. BIOTECH. 37, 39 (2011).
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- ⁶⁶ See Valery Federici, *Genetically Modified Food and Informed Consumer Choice: Comparing U.S. and E.U. Labeling Laws*, 35 BROOK. J. INT’L L. 515, 517 (2010).
- ⁶⁷ Valery Federici, *Genetically Modified Food and Informed Consumer Choice: Comparing U.S. and E.U. Labeling Laws*, 35 BROOK. J. INT’L L. 515, 517 (2010). Africa exports six times as much farm goods to Europe as to the U.S. Robert Paarlberg, *GMO Foods and Crops: Africa’s Choice*, 27 NEW BIOTECHNOLOGY 609, 612 (2010).
- ⁶⁸ See Valery Federici, *Genetically Modified Food and Informed Consumer Choice: Comparing U.S. and E.U. Labeling Laws*, 35 BROOK. J. INT’L L. 515, 517 (2010); Christine M. Castellano, *A Trip Around the Food Law World*, BUSINESS LAW TODAY, June 18, 2009, at 17.
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- ⁷⁰ Christine M. Castellano, *A Trip Around the Food Law World*, BUSINESS LAW TODAY, June 18, 2009, at 17.
- ⁷¹ *Id.*
- ⁷² Charles W. Schmidt, *Genetically Modified Foods: Breeding Uncertainty*, 113 ENVTL. HEALTH PERSP. A 527, A 533 (2005).
- ⁷³ *Id.*

- ⁷⁴ Hae-Yeong Kim, *Regulation and Detection Methods for Genetically Modified Foods in Korea*, 82 PURE APPLIED CHEM. 129, 129 (2010).
- ⁷⁵ *Id.*
- ⁷⁶ CLIVE JAMES, INTERNATIONAL SERVICE FOR THE ACQUISITION OF AGRICULTURAL BIOTECH APPLICATIONS (ISAAA), GLOBAL STATUS OF COMMERCIALIZED BIOTECH/GM CROPS: 2011 4-5 (Brief 43 2011).
- ⁷⁷ *Id.* at 2.
- ⁷⁸ See Robert Falkner, *The Global Biotech Food Fight: Why the United States Got It So Wrong*, 14 BROWN J. OF WORLD AFF. 99, 103 (2007).
- ⁷⁹ See *id.*
- ⁸⁰ *Id.* at 104.
- ⁸¹ See Robert Falkner, *The Global Biotech Food Fight: Why the United States Got It So Wrong*, 14 BROWN J. OF WORLD AFF. 99, 104 (2007); Laura Moore Smith, *Divided We Fall: The Shortcomings of the European Union's Proposal for Independent Member States to Regulate the Cultivation of Genetically Modified Organisms*, 33 U. PA. J. INT'L L. 841, 844 (2012).
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- ⁸⁵ Council Regulation 1830/2003, 2003 O.J. (L268) 24, 24-28 (EC).
- ⁸⁶ Council Regulation 1830/2003, art. 2, 2003 O.J. (L268) 24, 25 (EC).
- ⁸⁷ Council Regulation 1830/2003, art. 7, 2003 O.J. (L268) 24, 27 (EC).
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- ⁹⁶ Guillaume Gruere, *A Review of International Labeling Policies of Genetically Modified Food to Evaluate India's Proposed Rule*, 10 AgBioForum 51, 53 (2007); see also Guillaume Gruere, *A Review of International Labeling Policies of Genetically Modified Food to Evaluate India's Proposed Rule*, 10 AgBioForum 51, 52 (2007) (classifying China among countries with enforced labeling policies).
- ⁹⁷ Zheng Fengtian, *China Must Be Wary of Genetically Modified Food*, PEOPLE'S DAILY ONLINE (ed. & translated by People's Daily Online Aug. 25, 2011), <http://english.people.com.cn/90780/7580241.html> (describing lack of regulation regarding commercial planting of FM rice and absence of punishment for selling it).
- ⁹⁸ Guillaume Gruere, *A Review of International Labeling Policies of Genetically Modified Food to Evaluate India's Proposed Rule*, 10 AgBioForum 51, 52 (2007).
- ⁹⁹ *Id.*
- ¹⁰⁰ Christine M. Castellano, *A Trip Around the Food Law World*, BUSINESS LAW TODAY, June 18, 2009, at 16.
- ¹⁰¹ *Id.*
- ¹⁰² *Id.*
- ¹⁰³ See *id.*
- ¹⁰⁴ *Monsanto Co. v. Geertson Seed Farms*, 130 S.C. 2743 (June 21, 2010).
- ¹⁰⁵ The National Environmental Policy Act "NEPA" requires federal agencies "to the fullest extent possible" to prepare an environmental impact statement (EIS) for "every recommendation or report on proposals for legislation and other major Federal actio[n] significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).
- ¹⁰⁶ *Monsanto* at 2749.
- ¹⁰⁷ *Id.* at 2753.
- ¹⁰⁸ *Id.* at 2760.
- ¹⁰⁹ *Id.* at 2757, 2761.
- ¹¹⁰ *In re Rice* at 1014.
- ¹¹¹ *Id.*
- ¹¹² *Id.* at 1015.
- ¹¹³ *Id.* at 1034.
- ¹¹⁴ *In re Genetically Modified Rice Litig.*, Case No. 06-md-01811 (E.D. Missouri). For a website containing updated court documents from the rice litigation, see www.bayerricelitigation.com.
- ¹¹⁵ *In re Genetically Modified Rice Litig.*, 2010 WL716190, 2 (Feb. 24, 2010, E.D. Mo.).
- ¹¹⁶ *In re StarLink Corn Products Liability Litigation*, (N.D. Ill. 2002) 212 F. Supp.2d 828.

¹¹⁷ In re StarLink Corn Products Liability Litigation, (N.D. Ill. 2002) 212 F. Supp.2d 828, 834-35 (“The EPA noted that Cry9C had several attributes similar to known human allergens, and issued only a limited registration, permitting StarLink use for such purposes as animal feed, ethanol production and seed increase . . .”).

¹¹⁸ *Id.* at 835 (“Many U.S. food producers have stopped using U.S. corn, replacing it with imported corn or corn substitutes. South Korea, Japan and other foreign countries have terminated or substantially limited imports of U.S. corn. Grain elevators and transport providers are now mandating expensive testing on all corn shipments.”).

¹¹⁹ In re StarLink Corn Products Liability Litigation, (N.D. Ill. 2002) 212 F. Supp.2d 828.

¹²⁰ *Id.* at 833.

¹²¹ *Id.*

¹²² *Id.* at 835.

¹²³ *Id.* at 836.

¹²⁴ Dairy Foods Ass’n v. Amestoy, (2d Cir. 1996) 92 F.3d 67, 69.

¹²⁵ *Id.* at 70-71.

¹²⁶ *Id.* at 73.

¹²⁷ The court stated that “consumer curiosity alone is not a strong enough state interest to sustain the compulsion of even an accurate, factual statement.”

¹²⁸ *Id.* at 81 (“ . . . the precedential effect of the majority’s ruling is quite limited. By its own terms, it applies only to cases where a state disclosure requirement is supported by no interest other than the gratification of consumer curiosity. In any case in which a state advanced something more, the majority’s ruling would have no bearing.”)

¹²⁹ Plaintiffs also challenged the decision on the grounds that it violated NEPA and various mandates under the APA.

¹³⁰ 116 F.Supp.2d 166, 179-181 (D.D.C. 2000).

¹³¹ *Id.* at 179.

¹³² *Id.* at 181.

¹³³ Officially titled Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986 is codified in Health and Safety Code section 25249.5 *et seq.*

¹³⁴ Initiative Measure, Proposition 65, Section 1 (Nov. 4, 1986).

¹³⁵ Cal. Health & Saf. Code § 25249.6.

¹³⁶ Cal. Health & Saf. Code § 25249.5.

¹³⁷ Cal. Health & Saf. Code § 25249.8.

¹³⁸ Cal. Health & Saf. Code § 25249.12.

¹³⁹ Cal. Health & Saf. Code § 25249.7(f) (4)(B).

¹⁴⁰ For varying critiques on Proposition 65, see ENVIRONMENTAL LAW NEWS, Volume 17, No. 1, Spring 2008.

¹⁴¹ Proposition 65, § 7 (adopted Nov. 4, 1986).

¹⁴² 1999 Cal. Stats., ch. 599 (amending Health & Safety Code § 25249.7).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ 2001 Cal. Stat. ch. 578 (amending Health & Safety Code § 25249.7).

¹⁴⁶ See, e.g., *Hodges v. Superior Court*, 980 P.2d 433, 437 (Cal. 1999).

¹⁴⁷ Proposition 37, Section 1(a).

¹⁴⁸ Proposition 37, Section 1(a).

¹⁴⁹ Proposition 37, Section 1(b).

¹⁵⁰ Proposition 37, Section 1(g).

¹⁵¹ Proposition 37, Section 1(c).

¹⁵² Proposition 37, Section 1(h).

¹⁵³ Proposition 37, Section 1(h).

¹⁵⁴ Proposition 37, Section 1(j).

¹⁵⁵ Proposition 37, Section 1(j).

¹⁵⁶ Proposition 37, Section 1(e).

¹⁵⁷ Proposition 37, Section 1(d).

¹⁵⁸ Proposition 37, Section 1(f).

¹⁵⁹ Proposition 37, Section 1(k).

¹⁶⁰ Proposition 37, Section 2.

¹⁶¹ Proposition 37, Cal. Health & Saf. Code § 110809(a).

¹⁶² Proposition 37, Cal. Health & Saf. Code § 110809(c).

¹⁶³ Proposition 37, Cal. Health & Saf. Code § 110809(a)(1).

¹⁶⁴ Proposition 37, Cal. Health & Saf. Code § 110809(a)(2).

¹⁶⁵ Proposition 37, Cal. Health & Saf. Code § 110808(d).

¹⁶⁶ Proposition 37, Cal. Health & Saf. Code § 110809(b).

¹⁶⁷ Proposition 37, Cal. Health & Saf. Code § 110809(a).

¹⁶⁸ Proposition 37, Cal. Health & Saf. Code § 110809.1.

¹⁶⁹ Cal. Health & Saf. Code § 110765.

¹⁷⁰ Cal. Health & Saf. Code § 110760.

¹⁷¹ Proposition 37, Cal. Health & Saf. Code § 110809.2(a).

¹⁷² Proposition 37, Cal. Health & Saf. Code § 110809.2(b).

¹⁷³ *Id.*

¹⁷⁴ Proposition 37, Cal. Health & Saf. Code § 110809.2(c).

¹⁷⁵ Proposition 37, Cal. Health & Saf. Code § 110808(e).

¹⁷⁶ Proposition 37, Cal. Health & Saf. Code § 110808(b).

¹⁷⁷ Proposition 37, Cal. Health & Saf. Code § 110809.2(d).

¹⁷⁸ Cal. Bus. & Prof. Code § 23004.

¹⁷⁹ Proposition 37, Cal. Health & Saf. Code § 110809.2(e).

¹⁸⁰ Proposition 37, Cal. Health & Saf. Code § 110809.2(f).

¹⁸¹ *Id.*

¹⁸² *Id.*

- ¹⁸³ Proposition 37, Cal. Health & Saf. Code § 110809.2(g).
- ¹⁸⁴ Proposition 37, Cal. Health & Saf. Code § 110809.2(h).
- ¹⁸⁵ Proposition 37, Cal. Health & Saf. Code § 110809.2(i).
- ¹⁸⁶ 21 U.S.C. § 360ee(b)(3).
- ¹⁸⁷ Proposition 37, Cal. Health & Saf. Code § 110809.3.
- ¹⁸⁸ Proposition 37, Cal. Health & Saf. Code § 110809.4.
- ¹⁸⁹ Cal. Health & Saf. Code § 111900.
- ¹⁹⁰ *Id.* § 111915.
- ¹⁹¹ *Id.* § 111905.
- ¹⁹² Specifically, violations of section 11809 and 11809.1 are deemed violations of California Civil Code Section 1770(5) (a), which makes unlawful “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have”
- ¹⁹³ Cal. Civil Code §§ 1750 et seq.
- ¹⁹⁴ Cal. Civil Code §§ 1780-1784.
- ¹⁹⁵ Proposition 37, Cal. Health & Saf. Code § 110809.4.
- ¹⁹⁶ *Id.*
- ¹⁹⁷ Proposition 37, Cal. Health & Saf. Code § 111910.
- ¹⁹⁸ Cal. Civil Code § 110810.
- ¹⁹⁹ *Id.*
- ²⁰⁰ Cal. Code Civ. Pro, §§ 525 et seq.
- ²⁰¹ Proposition 37, Cal. Health & Saf. Code § 111910(a).
- ²⁰² Proposition 37, § 111910(c).
- ²⁰³ Proposition 37, § 111910(b).
- ²⁰⁴ Proposition 37, Section 6.
- ²⁰⁵ Proposition 37, Section 7.
- ²⁰⁶ Proposition 37, Section 8; Cal. Const. Art. 2, § 10.
- ²⁰⁷ See Proposition 37, Cal. Health & Saf. Code § 110809(a).
- ²⁰⁸ Proposition 37, Section 9.
- ²⁰⁹ Proposition 37, Section 10.
- ²¹⁰ Proposition 37, Section 1(d).
- ²¹¹ 57 Fed.Reg. 22,984, 22,991 (declining to require disclosure of presence of GMOs in food labeling).
- ²¹² *To Label or Not to Label: California Prepares to Vote on Genetically Engineered Foods*, 120 ENVIRONMENTAL HEALTH PERSPECTIVES, A359, A360 (2012).
- ²¹³ American Medical Association, H-480.958 Bioengineered (Genetically Engineered) Crops and Foods, ssl3.ama-assn.org/apps/ecommm/PolicyFinderForm.pl?site=www.ama-assn.org&uri=%2fresources%2fdoc%2fPolicyFinder%2fpolicyfiles%2fhNe%2fH-480.958.HTM.
- ²¹⁴ Pamela Ronald, *Genetically Engineered Crops—What, How and Why*, SCIENTIFIC AMERICAN, Aug. 11, 2011, blogs.scientificamerican.com/guest-blog/2011/08/11/genetically-engineered-crops/.
- ²¹⁵ Gilles-Eric Seralini, *Long Term Toxicity of a Roundup Herbicide and a Roundup-tolerant Genetically Modified Maize*, FOOD AND CHEMICAL TOXICOLOGY (2012), available at research.sustainablefoodtrust.org/wp-content/uploads/2012/09/Final-Paper.pdf.
- ²¹⁶ See Ann Carlson, *Genetically Modified Foods: a Controversial New Study and Prop. 37*, LEGAL PLANET: THE ENVIRONMENTAL LAW AND POLICY BLOG, Sept. 26, 2012, available at legalplanet.wordpress.com/2012/09/26/genetically-modified-foods-a-controversial-new-study-and-prop-37/; Michael Hiltzik, *Using junk science to promote Proposition 37*, THE LOS ANGELES TIMES, Oct. 14, 2012, available at articles.latimes.com/2012/oct/14/business/la-fi-hiltzik-20121014.
- ²¹⁷ José L. Domingo & Jordi Giné Bordonaba, *A Literature Review on the Safety Assessment of Genetically Modified Plants*, 37 ENV'T INT'L 734 (2011).
- ²¹⁸ *Id.* at 741.
- ²¹⁹ *Id.*
- ²²⁰ See Charles W. Schmidt, *Genetically Modified Foods: Breeding Uncertainty*, 113 ENVTL. HEALTH PERSP. A 527, A 530 (2005); Justin Wade, *Sunstein's Blunder; or, the Perils of Reconstructing Precaution*, 20 GEO. INT'L ENVTL. L. REV. 473, 479 (2008); Chantal Pohl Nielsen & Kym Anderson, *Genetically Modified Foods, Trade and Developing Countries: Is Golden Rice Special?*, AGBIOWORLD (2001), www.agbioworld.org/biotech-info/topics/goldenrice/specialgoldrice.html; David G. Victor, COUNCIL ON FOREIGN RELATIONS, TRADE, SCIENCE, AND GENETICALLY MODIFIED FOODS, (released Mar. 13, 2001), www.cfr.org/genetically-modified-organisms/trade-science-genetically-modified-foods/p8689.
- ²²¹ See Kenrett Y. Jefferson-Moore, *Second Generation GMOs: Where to from Here?*, 8 AGBIOFORUM 143 (2005), available at agbioforum.org/v8n23/v8n23a11-jefferson.htm; Chantal Pohl Nielsen & Kym Anderson, *Genetically Modified Foods, Trade and Developing Countries: Is Golden Rice Special?*, AGBIOWORLD (2001), www.agbioworld.org/biotech-info/topics/goldenrice/specialgoldrice.html.
- ²²² David G. Victor, COUNCIL ON FOREIGN RELATIONS, TRADE, SCIENCE, AND GENETICALLY MODIFIED FOODS, (released Mar. 13, 2001), www.cfr.org/genetically-modified-organisms/trade-science-genetically-modified-foods/p8689 (noting one-half the profit from developing “Roundup Ready” soybeans went back to Monsanto and one-quarter to the farmers).
- ²²³ Charles W. Schmidt, *Genetically Modified Foods: Breeding Uncertainty*, 113 ENVTL. HEALTH PERSP. A 527, A 530 (2005); see David G. Victor, COUNCIL ON FOREIGN RELATIONS, TRADE, SCIENCE, AND GENETICALLY MODIFIED FOODS, (released Mar. 13, 2001), www.cfr.org/genetically-modified-organisms/trade-science-genetically-modified-foods/p8689.
- ²²⁴ Charles W. Schmidt, *Genetically Modified Foods: Breeding Uncertainty*, 113 ENVTL. HEALTH PERSP. A 527, A 530 (2005).

²²⁵ Charles W. Schmidt, *Genetically Modified Foods: Breeding Uncertainty*, 113 ENVTL. HEALTH PERSP. A 527, A 530 (2005); DAVID G. VICTOR, COUNCIL ON FOREIGN RELATIONS, TRADE, SCIENCE, AND GENETICALLY MODIFIED FOODS, (released Mar. 13, 2001), www.cfr.org/genetically-modified-organisms/trade-science-genetically-modified-foods/p8689.

²²⁶ See Charles W. Schmidt, *Genetically Modified Foods: Breeding Uncertainty*, 113 ENVTL. HEALTH PERSP. A 527, A 530 (2005); Chantal Pohl Nielsen & Kym Anderson, *Genetically Modified Foods, Trade and Developing Countries: Is Golden Rice Special?*, AGBIOWORLD (2001), www.agbioworld.org/biotech-info/topics/goldenrice/specialgoldrice.html; David G. Victor, COUNCIL ON FOREIGN RELATIONS, TRADE, SCIENCE, AND GENETICALLY MODIFIED FOODS, (released Mar. 13, 2001), www.cfr.org/genetically-modified-organisms/trade-science-genetically-modified-foods/p8689.

²²⁷ Ann Carlson, *Genetically Modified Foods: a Controversial New Study and Prop. 37*, LEGAL PLANET: THE ENVIRONMENTAL LAW AND POLICY BLOG, Sept. 26, 2012.

²²⁸ Proposition 37, Cal. Health & Saf. Code § 110809.1 (emphasis added).

²²⁹ *Proposition 37 Analysis*, CALIFORNIA LEGISLATIVE ANALYST'S OFFICE, Exhibit B.

²³⁰ See Proposition 37, Cal. Health & Saf. Code § 110809.2(a).

²³¹ Marc Lifsher, *Support for Proposition 37 is slipping, poll finds*, THE LOS ANGELES TIMES, Oct. 12, 2012, articles.latimes.com/2012/oct/12/business/la-fi-prop37-exemptions-poll-20121012.

²³² Council Regulation 1829/2003, 2003 O.J. (L268) 1, 2-3 (EC), available at www.gmo-compass.org/pdf/law/1829-2003.pdf.

²³³ Proposition 37, Cal. Health & Saf. Code § 110809.2(c).

²³⁴ See Proposition 37, Cal. Health & Saf. Code § 110809.2(d).

²³⁵ Marc Lifsher, *Support for Proposition 37 is slipping, poll finds*, THE LOS ANGELES TIMES, Oct. 12, 2012, www.articles.latimes.com/2012/oct/12/business/la-fi-prop37-exemptions-poll-20121012.

²³⁶ *Id.*

²³⁷ See Proposition 37, Cal. Health & Saf. Code § 110809.2(e).

²³⁸ Marc Lifsher, *Support for Proposition 37 is slipping, poll finds*, THE LOS ANGELES TIMES, Oct. 12, 2012, articles.latimes.com/2012/oct/12/business/la-fi-prop37-exemptions-poll-20121012.

²³⁹ Cal. Const. Art. 2, § 8(d).

²⁴⁰ Cal. Bus. & Prof. Code § 17204.

²⁴¹ http://lao.ca.gov/ballot/2012/37_11_2012.aspx (last visited Oct. 10, 2012).

²⁴² <http://www.noprop37.com/facts/food-costs/> (last visited Oct. 10, 2012).

²⁴³ <http://www.noprop37.com/facts/trial-lawyers/> (last visited Oct. 10, 2012).

²⁴⁴ http://lao.ca.gov/ballot/2012/37_11_2012.aspx (last visited Oct. 10, 2012).

²⁴⁵ *Id.*

²⁴⁶ Carol Rene Brophyal, *Proposition 65 at 20 Years*, 38 No. 3 ABA TRENDS 4, ABA TRENDS, January/February, 2007.

²⁴⁷ For a more complete discussion of this topic, see Lauren Handel, *California's Prop 37, GMO Labeling, Part 3*, Jason Foscolo LLC's Food Law Blog, Sept. 27, 2012, available at jasonfoscolo.com/?p=814.

²⁴⁸ Lauren Handel, *California's Prop 37, GMO Labeling, Part 2*, Jason Foscolo LLC's Food Law Blog, Sept. 26, 2012, available at jasonfoscolo.com/?p=809.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

Exhibit A:

Text of Proposition 37

(2) The petitioner’s disciplinary record and record of rehabilitation while incarcerated; and

(3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.

(h) Under no circumstances may resentencing under this act result in the imposition of a term longer than the original sentence.

(i) Notwithstanding subdivision (b) of Section 977, a defendant petitioning for resentencing may waive his or her appearance in court for the resentencing, provided that the accusatory pleading is not amended at the resentencing, and that no new trial or retrial of the individual will occur. The waiver shall be in writing and signed by the defendant.

(j) If the court that originally sentenced the defendant is not available to resentence the defendant, the presiding judge shall designate another judge to rule on the defendant’s petition.

(k) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(l) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act.

(m) A resentencing hearing ordered under this act shall constitute a “post-conviction release proceeding” under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy’s Law).

SEC. 7. Liberal Construction:

This act is an exercise of the public power of the people of the State of California for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes.

SEC. 8. Severability:

If any provision of this act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this act, which can be given effect without the invalid provision or application in order to effectuate the purposes of this act. To this end, the provisions of this act are severable.

SEC. 9. Conflicting Measures:

If this measure is approved by the voters, but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this act shall be given the full force of law.

SEC. 10. Effective Date:

This act shall become effective on the first day after enactment by the voters.

SEC. 11. Amendment:

Except as otherwise provided in the text of the statutes, the provisions of this act shall not be altered or amended except by one of the following:

(a) By statute passed in each house of the Legislature, by rollcall entered in the journal, with two-thirds of the membership and the Governor concurring; or

(b) By statute passed in each house of the Legislature, by

rollcall vote entered in the journal, with a majority of the membership concurring, to be placed on the next general ballot and approved by a majority of the electors; or

(c) By statute that becomes effective when approved by a majority of the electors.

PROPOSITION 37

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure amends and adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The people of the State of California do enact as follows:

THE CALIFORNIA RIGHT TO KNOW GENETICALLY ENGINEERED FOOD ACT

SECTION 1. FINDINGS AND DECLARATIONS

(a) California consumers have the right to know whether the foods they purchase were produced using genetic engineering. Genetic engineering of plants and animals often causes unintended consequences. Manipulating genes and inserting them into organisms is an imprecise process. The results are not always predictable or controllable, and they can lead to adverse health or environmental consequences.

(b) Government scientists have stated that the artificial insertion of DNA into plants, a technique unique to genetic engineering, can cause a variety of significant problems with plant foods. Such genetic engineering can increase the levels of known toxicants in foods and introduce new toxicants and health concerns.

(c) Mandatory identification of foods produced through genetic engineering can provide a critical method for tracking the potential health effects of eating genetically engineered foods.

(d) No federal or California law requires that food producers identify whether foods were produced using genetic engineering. At the same time, the U.S. Food and Drug Administration does not require safety studies of such foods. Unless these foods contain a known allergen, the FDA does not even require developers of genetically engineered crops to consult with the agency.

(e) Polls consistently show that more than 90 percent of the public want to know if their food was produced using genetic engineering.

(f) Fifty countries—including the European Union member states, Japan and other key U.S. trading partners—have laws mandating disclosure of genetically engineered foods. No international agreements prohibit the mandatory identification of foods produced through genetic engineering.

(g) Without disclosure, consumers of genetically engineered food can unknowingly violate their own dietary and religious restrictions.

(h) The cultivation of genetically engineered crops can also cause serious impacts to the environment. For example, most genetically engineered crops are designed to withstand weed-

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killing pesticides known as herbicides. As a result, hundreds of millions of pounds of additional herbicides have been used on U.S. farms. Because of the massive use of such products, herbicide-resistant weeds have flourished—a problem that has resulted, in turn, in the use of increasingly toxic herbicides. These toxic herbicides damage our agricultural areas, impair our drinking water, and pose health risks to farm workers and consumers. California consumers should have the choice to avoid purchasing foods production of which can lead to such environmental harm.

(i) Organic farming is a significant and increasingly important part of California agriculture. California has more organic cropland than any other state and has almost one out of every four certified organic operations in the nation. California’s organic agriculture is growing faster than 20 percent a year.

(j) Organic farmers are prohibited from using genetically engineered seeds. Nonetheless, these farmers’ crops are regularly threatened with accidental contamination from neighboring lands where genetically engineered crops abound. This risk of contamination can erode public confidence in California’s organic products, significantly undermining this industry. Californians should have the choice to avoid purchasing foods whose production could harm the state’s organic farmers and its organic foods industry.

(k) The labeling, advertising and marketing of genetically engineered foods using terms such as “natural,” “naturally made,” “naturally grown,” or “all natural” is misleading to California consumers.

SEC. 2. STATEMENT OF PURPOSE

The purpose of this measure is to create and enforce the fundamental right of the people of California to be fully informed about whether the food they purchase and eat is genetically engineered and not misbranded as natural so that they can choose for themselves whether to purchase and eat such foods. It shall be liberally construed to fulfill this purpose.

SEC. 3. Article 6.6 (commencing with Section 110808) is added to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, to read:

ARTICLE 6.6.

THE CALIFORNIA RIGHT TO KNOW GENETICALLY ENGINEERED FOOD ACT

110808. Definitions

The following definitions shall apply only for the purposes of this article:

(a) *Cultivated commercially.* “Cultivated commercially” means grown or raised by a person in the course of his business or trade and sold within the United States.

(b) *Enzyme.* “Enzyme” means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the reactions.

(c) *Genetically engineered.* (1) “Genetically engineered” means any food that is produced from an organism or organisms in which the genetic material has been changed through the application of:

(A) *In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection*

of nucleic acid into cells or organelles, or

(B) *Fusion of cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells/ protoplasts do not fall within the same taxonomic family, in a way that does not occur by natural multiplication or natural recombination.*

(2) *For purposes of this subdivision:*

(A) *“Organism” means any biological entity capable of replication, reproduction, or transferring genetic material.*

(B) *“In vitro nucleic acid techniques” include, but are not limited to, recombinant DNA or RNA techniques that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as micro-injection, macro-injection, chemoporation, electroporation, micro-encapsulation, and liposome fusion.*

(d) *Processed food.* “Processed food” means any food other than a raw agricultural commodity, and includes any food produced from a raw agricultural commodity that has been subject to processing such as canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

(e) *Processing aid.* “Processing aid” means:

(1) *A substance that is added to a food during the processing of such food, but is removed in some manner from the food before it is packaged in its finished form;*

(2) *A substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; or*

(3) *A substance that is added to a food for its technical or functional effect in the processing, but is present in the finished food at insignificant levels and does not have any technical or functional effect in that finished food.*

(f) *Food Facility.* “Food facility” shall have the meaning set forth in Section 113789.

110809. *Disclosure With Respect to Genetic Engineering of Food*

(a) *Commencing July 1, 2014, any food offered for retail sale in California is misbranded if it is or may have been entirely or partially produced with genetic engineering and that fact is not disclosed:*

(1) *In the case of a raw agricultural commodity on the package offered for retail sale, with the clear and conspicuous words “Genetically Engineered” on the front of the package of such commodity or, in the case of any such commodity that is not separately packaged or labeled, on a label appearing on the retail store shelf or bin in which such commodity is displayed for sale;*

(2) *In the case of any processed food, in clear and conspicuous language on the front or back of the package of such food, with the words “Partially Produced with Genetic Engineering” or “May be Partially Produced with Genetic Engineering.”*

(b) *Subdivision (a) of this section and subdivision (e) of Section 110809.2 shall not be construed to require either the listing or identification of any ingredient or ingredients that were genetically engineered or that the term “genetically*

engineered” be placed immediately preceding any common name or primary product descriptor of a food.

110809.1. *Misbranding of Genetically Engineered Foods as “Natural”*

In addition to any disclosure required by Section 110809, if a food meets any of the definitions in subdivision (c) or (d) of Section 110808, and is not otherwise exempted from labeling under Section 110809.2, the food may not in California, on its label, accompanying signage in a retail establishment, or in any advertising or promotional materials, state or imply that the food is “natural,” “naturally made,” “naturally grown,” “all natural,” or any words of similar import that would have any tendency to mislead any consumer.

110809.2. *Labeling of Genetically Engineered Food—Exemptions*

The requirements of Section 110809 shall not apply to any of the following:

(a) Food consisting entirely of, or derived entirely from, an animal that has not itself been genetically engineered, regardless of whether such animal has been fed or injected with any genetically engineered food or any drug that has been produced through means of genetic engineering.

(b) A raw agricultural commodity or food derived therefrom that has been grown, raised, or produced without the knowing and intentional use of genetically engineered seed or food. Food will be deemed to be described in the preceding sentence only if the person otherwise responsible for complying with the requirements of subdivision (a) of Section 110809 with respect to a raw agricultural commodity or food obtains, from whoever sold the commodity or food to that person, a sworn statement that such commodity or food: (1) has not been knowingly or intentionally genetically engineered; and (2) has been segregated from, and has not been knowingly or intentionally commingled with, food that may have been genetically engineered at any time. In providing such a sworn statement, any person may rely on a sworn statement from his or her own supplier that contains the affirmation set forth in the preceding sentence.

(c) Any processed food that would be subject to Section 110809 solely because it includes one or more genetically engineered processing aids or enzymes.

(d) Any alcoholic beverage that is subject to the Alcoholic Beverage Control Act, set forth in Division 9 (commencing with Section 23000) of the Business and Professions Code.

(e) Until July 1, 2019, any processed food that would be subject to Section 110809 solely because it includes one or more genetically engineered ingredients, provided that: (1) no single such ingredient accounts for more than one-half of one percent of the total weight of such processed food; and (2) the processed food does not contain more than 10 such ingredients.

(f) Food that an independent organization has determined has not been knowingly and intentionally produced from or commingled with genetically engineered seed or genetically engineered food, provided that such determination has been made pursuant to a sampling and testing procedure approved in regulations adopted by the department. No sampling procedure shall be approved by the department unless sampling is done according to a statistically valid sampling plan

consistent with principles recommended by internationally recognized sources such as the International Standards Organization (ISO) and the Grain and Feed Trade Association (GAFTA). No testing procedure shall be approved by the department unless: (1) it is consistent with the most recent “Guidelines on Performance Criteria and Validation of Methods for Detection, Identification and Quantification of Specific DNA Sequences and Specific Proteins in Foods,” (CAC/GL 74 (2010)) published by the Codex Alimentarius Commission; and (2) it does not rely on testing of processed foods in which no DNA is detectable.

(g) Food that has been lawfully certified to be labeled, marketed, and offered for sale as “organic” pursuant to the federal Organic Food Products Act of 1990 and the regulations promulgated pursuant thereto by the United States Department of Agriculture.

(h) Food that is not packaged for retail sale and that either: (1) is a processed food prepared and intended for immediate human consumption or (2) is served, sold, or otherwise provided in any restaurant or other food facility that is primarily engaged in the sale of food prepared and intended for immediate human consumption.

(i) Medical food.

110809.3. *Adoption of Regulations*

The department may adopt any regulations that it determines are necessary for the enforcement and interpretation of this article, provided that the department shall not be authorized to create any exemptions beyond those specified in Section 110809.2.

110809.4. *Enforcement*

In addition to any action under Article 4 (commencing with Section 111900) of Chapter 8, any violation of Section 110809 or 110890.1 shall be deemed a violation of paragraph (5) of subdivision (a) of Section 1770 of the Civil Code and may be prosecuted under Title 1.5 (commencing with section 1750) of Part 4 of Division 3 of the Civil Code, save that the consumer bringing the action need not establish any specific damage from, or prove any reliance on, the alleged violation. The failure to make any disclosure required by Section 110809, or the making of a statement prohibited by section 110809.1, shall each be deemed to cause damage in at least the amount of the actual or offered retail price of each package or product alleged to be in violation.

SEC. 4. ENFORCEMENT

Section 111910 of the Health and Safety Code is amended to read:

111910. (a) Notwithstanding the provisions of Section 111900 or any other provision of law, any person may bring an action in superior court pursuant to this section and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of Article 6.6 (commencing with Section 110808), or Article 7 (commencing with Section 110810) of Chapter 5. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the person shall not be required to allege facts

necessary to show, or tending to show, lack of adequate remedy at law, or to show, or tending to show, irreparable damage or loss, or to show, or tending to show, unique or special individual injury or damages.

(b) In addition to the injunctive relief provided in subdivision (a), the court may award to that person, organization, or entity reasonable attorney's fees *and all reasonable costs incurred in investigating and prosecuting the action* as determined by the court.

(c) This section shall not be construed to limit or alter the powers of the department and its authorized agents to bring an action to enforce this chapter pursuant to Section 111900 or any other provision of law.

SEC. 5. MISBRANDING

Section 110663 is added to the Health and Safety Code, to read:

110663. Any food is misbranded if its labeling does not conform to the requirements of Section 110809 or 110809.1.

SEC. 6. SEVERABILITY

If any provision of this initiative or the application thereof is for any reason held to be invalid or unconstitutional, that shall not affect other provisions or applications of the initiative that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this initiative are severable.

SEC. 7. CONSTRUCTION WITH OTHER LAWS

This initiative shall be construed to supplement, not to supersede, the requirements of any federal or California statute or regulation that provides for less stringent or less complete labeling of any raw agricultural commodity or processed food subject to the provisions of this initiative.

SEC. 8. EFFECTIVE DATE

This initiative shall become effective upon enactment pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

SEC. 9. CONFLICTING MEASURES

In the event that another measure or measures appearing on the same statewide ballot impose additional requirements relating to the production, sale and/or labeling of genetically engineered food, then the provisions of the other measure or measures, if approved by the voters, shall be harmonized with the provisions of this act, provided that the provisions of the other measure or measures do not prevent or excuse compliance with the requirements of this act.

In the event that the provisions of the other measure or measures prevent or excuse compliance with the provisions of this act, and this act receives a greater number of affirmative votes, then the provisions of this act shall prevail in their entirety, and the other measure or measures shall be null and void.

SEC. 10. AMENDMENTS

This initiative may be amended by the Legislature, but only to further its intent and purpose, by a statute passed by a two-thirds vote in each house.

PROPOSITION 38

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Education Code, the Penal Code, and the Revenue and Taxation Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

OUR CHILDREN, OUR FUTURE: LOCAL SCHOOLS AND EARLY EDUCATION INVESTMENT AND BOND DEBT REDUCTION ACT

SECTION 1. Title.

This measure shall be known and may be cited as "Our Children, Our Future: Local Schools and Early Education Investment and Bond Debt Reduction Act."

SEC. 2. Findings and Declaration of Purpose.

(a) California is shortchanging the future of our children and our state. Today, our state ranks 46th nationally in what we invest to educate each student. California also ranks dead last, 50th out of 50 states, with the largest class sizes in the nation.

(b) Recent budget cuts are putting our schools even farther behind. Over the last three years, more than \$20 billion has been cut from California schools; essential programs and services that all children need to be successful have been eliminated or cut; and over 40,000 educators have been laid off.

(c) We are also failing with our early childhood development programs, which many studies confirm are one of the best educational investments we can make. Our underfunded public preschool programs serve only 40 percent of eligible three- and four-year olds. Only 5 percent of very low income infants and toddlers, who need the support most, have access to early childhood programs.

(d) We can and must do better. Children are our future. Investing in our schools and early childhood programs to prepare children to succeed is the best thing we can do for our children and the future of our economy and our state. Without a quality education, our children will not be able to compete in a global economy. Without a skilled workforce, our state will not be able to compete for jobs. We owe it to our children and to ourselves to improve our children's education.

(e) It is time to make a real difference: no more half-measures but real, transformative investment in the schools on which the future of our state and our families depends. This act will enable schools to provide a well-rounded education that supports college and career readiness for every student, including a high-quality curriculum of the arts, music, physical education, science, technology, engineering, math, and vocational and technical education courses; smaller class sizes; school libraries, school nurses, and counselors.

(f) This act requires that decisions about how best to use new funds to improve our schools must be made not in Sacramento, but locally, with respect for the voices of parents, teachers, other school staff, and community members. It requires local school

Exhibit B:

Title and Summary Prepared
by the California Attorney
General and Analysis by the
California Legislative
Analyst's Office

GENETICALLY ENGINEERED FOODS. LABELING. INITIATIVE STATUTE.

- Requires labeling on raw or processed food offered for sale to consumers if made from plants or animals with genetic material changed in specified ways.
- Prohibits labeling or advertising such food, or other processed food, as “natural.”
- Exempts foods that are: certified organic; unintentionally produced with genetically engineered material; made from animals fed or injected with genetically engineered material but not genetically engineered themselves; processed with or containing only small amounts of genetically engineered ingredients; administered for treatment of medical conditions; sold for immediate consumption such as in a restaurant; or alcoholic beverages.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- Increased annual state costs ranging from a few hundred thousand dollars to over \$1 million to regulate the labeling of genetically engineered foods.
- Potential, but likely not significant, costs to state and local governments due to litigation resulting from possible violations of the requirements of this measure. Some of these costs would be supported by court filing fees that the parties involved in each legal case would be required to pay under existing law.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Genetically Engineered (GE) Foods. Genetic engineering is the process of changing the genetic material of a living organism to produce some desired change in that organism’s characteristics. This process is often used to develop new plant and animal varieties that are later used as sources of foods, referred to as GE foods. For example, genetic engineering is often used to improve a plant’s resistance to pests or to allow a plant to withstand the use of pesticides. Some of the most common GE crops include varieties of corn and soybeans. In 2011, 88 percent of all corn and 94 percent of all soybeans produced in the U.S. were grown from GE seeds. Other common GE crops include alfalfa, canola, cotton, papaya, sugar beets, and zucchini. In addition, GE crops are used to make food ingredients (such as high fructose corn syrup) that are often included in processed foods (meaning foods that are not raw agriculture crops). According to some estimates, 40 percent to 70 percent of food products sold in grocery stores in California contain some GE ingredients.

Federal Regulation. Federal law does not specifically require the regulation of GE foods. However, the U.S. Department of Agriculture

currently places some restrictions on the use of GE crops that are shown to cause harm to other plants. In addition, the U.S. Food and Drug Administration is responsible for ensuring that most foods (regardless of whether they are genetically engineered) and food additives are safe and properly labeled.

State Regulation. Under existing state law, California agencies are not specifically required to regulate GE foods. However, the Department of Public Health (DPH) is responsible for regulating the safety and labeling of most foods.

PROPOSAL

This measure makes several changes to state law to explicitly require the regulation of GE foods. Specifically, it (1) requires that most GE foods sold be properly labeled, (2) requires DPH to regulate the labeling of such foods, and (3) allows individuals to sue food manufacturers who violate the measure’s labeling provisions.

Labeling of Foods. This measure requires that GE foods sold at retail in the state be clearly labeled as genetically engineered. Specifically, the measure requires that raw foods (such as fruits and vegetables) produced entirely or in part through genetic engineering be labeled with the words “Genetically

Engineered” on the front package or label. If the item is not separately packaged or does not have a label, these words must appear on the shelf or bin where the item is displayed for sale. The measure also requires that processed foods produced entirely or in part through genetic engineering be labeled with the words “Partially Produced with Genetic Engineering” or “May be Partially Produced with Genetic Engineering.”

Retailers (such as grocery stores) would be primarily responsible for complying with the measure by ensuring that their food products are correctly labeled. Products that are labeled as GE would be in compliance. For each product that is not labeled as GE, a retailer generally must be able to document why that product is exempt from labeling. There are two main ways in which a retailer could document that a product is exempt: (1) by obtaining a sworn statement from the provider of the product (such as a wholesaler) indicating that the product has not been intentionally or knowingly genetically engineered or (2) by receiving independent certification that the product does not contain GE ingredients. Other entities throughout the food supply chain (such as farmers and food manufacturers) may also be responsible for maintaining these records. The measure also excludes certain food products from the above labeling requirements. For example, alcoholic beverages, organic foods, and restaurant food and other prepared foods intended to be eaten immediately would not have to be labeled. Animal products—such as beef or chicken—that were not directly produced through genetic engineering would also be exempted, regardless of whether the animal had been fed GE crops.

In addition, the measure prohibits the use of terms such as “natural,” “naturally made,” “naturally grown,” and “all natural” in the labeling and advertising of GE foods. Given the way the measure is written, there is a possibility that these restrictions would be interpreted by the courts to apply to some processed foods regardless of whether they are genetically engineered.

State Regulation. The labeling requirements for GE foods under this measure would be regulated by

DPH as part of its existing responsibility to regulate the safety and labeling of foods. The measure allows the department to adopt regulations that it determines are necessary to carry out the measure. For example, DPH would need to develop regulations that describe the sampling procedures for determining whether foods contain GE ingredients.

Litigation to Enforce the Measure. Violations of the measure could be prosecuted by state, local, or private parties. It allows the court to award these parties all reasonable costs incurred in investigating and prosecuting the action. In addition, the measure specifies that consumers could sue for violations of the measure’s requirements under the state Consumer Legal Remedies Act, which allows consumers to sue without needing to demonstrate that any specific damage occurred as a result of the alleged violation.

FISCAL EFFECTS

Increase in State Administrative Costs. This measure would result in additional state costs for DPH to regulate the labeling of GE foods, such as reviewing documents and performing periodic inspections to determine whether foods are actually being sold with the correct labels. Depending on how and the extent to which the department chooses to implement these regulations (such as how often it chose to inspect grocery stores), these costs could range from **a few hundred thousand dollars to over \$1 million annually.**

Potential Increase in Costs Associated With Litigation. As described above, this measure allows individuals to sue for violations of the labeling requirements. As this would increase the number of cases filed in state courts, the state and counties would incur additional costs to process and hear the additional cases. The extent of these costs would depend on the number of cases filed, the number of cases prosecuted by state and local governments, and how they are decided by the courts. Some of the increased court costs would be supported by the court filing fees that the parties involved in each case would be required to pay under existing law. In the context of overall court spending, these costs are not likely to be significant in the longer run.

Exhibit C:

Arguments in Favor of and Against Proposition 37

★ ARGUMENT IN FAVOR OF PROPOSITION 37 ★

YES ON PROPOSITION 37—because you should have the right to know what is in your food.

Voting Yes on Prop. 37 means three things

- **YOU WILL HAVE THE RIGHT TO KNOW WHAT'S IN YOUR FOOD**, and whether your food is produced using genetic engineering.
- **FOOD WILL BE LABELED ACCURATELY**. Food labels will have to disclose if the product was produced through genetic engineering.
- **PROTECTING YOUR FAMILY'S HEALTH WILL BE EASIER**. You'll have the information you need about foods that some physicians and scientists say are linked to allergies and other significant health risks.

The food we buy already has nutritional information on the labels. With Proposition 37, we will have information, in plain language, if the food was genetically engineered, which means the food has DNA that was artificially altered in a laboratory using genes from viruses, bacteria, or other plants or animals.

Because genetically engineered foods are controversial, *over 40 countries around the world require labels for genetically engineered foods*, including most of Europe, Japan, and even China and India. Shouldn't American companies give Americans the same information they give foreigners?

There are no long-term health studies that have proven that genetically engineered food is safe for humans. Whether you buy genetically engineered food or not, you have a right to know what you are buying and not gamble on your family's health. Labeling lets us know what's in our food so we can decide for ourselves.

PROPOSITION 37 IS A SIMPLE, COMMON SENSE MEASURE. It doesn't cost anything to include information on a label, and it's phased in, giving manufacturers time to print new labels telling you what's in the food, or change their products if they do not want to sell food produced using genetic engineering.

Proposition 37 also prevents the misleading use of the word "natural" on products that are genetically engineered.

Big food manufacturers and agrichemical companies and their lobbyists oppose this measure. Many of these are the same companies that lied to us about the effects of pesticides or fought to keep other information off food labels, such as the number of calories, or how much fat or salt is in their products. Now they want to keep us in the dark about their genetic engineering of our foods.

Whether you want to eat genetically engineered foods or not, **PROPOSITION 37 GIVES YOU THE POWER** to choose what foods to feed your family. The big chemical companies should not make the decision for you.

Consumers, family farmers, doctors, nurses, nutritionists, and small business people and **NEARLY ONE MILLION CALIFORNIANS ALREADY STEPPED UP TO SIGN THE PETITIONS GIVING YOU THE RIGHT TO KNOW WHAT'S IN OUR FOOD. WILL YOU JOIN THEM?**

Find out more or join us now at www.CARightToKnow.org.

When you vote on Prop. 37, please ask yourself just one question: **DO I HAVE THE RIGHT TO KNOW WHAT IS IN THE FOOD I EAT AND FEED MY FAMILY?** The answer is *Yes on Proposition 37*.

www.CARightToKnow.org

DR. MICHELLE PERRO, Pediatrician
REBECCA SPECTOR, West Coast Director
Center for Food Safety
GRANT LUNDBERG, Chief Executive Officer
Lundberg Family Farms

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 37 ★

37

37's so-called "right to know" regulations are really a deceptive scheme, full of special-interest exemptions and hidden costs for consumers and taxpayers.

37 exempts milk, cheese and meat from its labeling requirements. It exempts beer, wine, liquor, food sold at restaurants and other foods containing genetically engineered (GE) ingredients.

In fact, **IT EXEMPTS TWO-THIRDS OF THE FOODS CALIFORNIANS CONSUME**—including products made by corporations funding the 37 campaign.

CREATES NEW SHAKEDOWN LAWSUITS

37 was written by a trial lawyer who specializes in filing lawsuits against businesses. It creates a new category of shakedown lawsuits allowing lawyers to sue farmers, grocers, and food companies—without any proof of violation or damage.

CONSUMERS WOULD GET MISLEADING INFORMATION

More than 400 scientific studies have shown foods made with GE ingredients are safe. Leading health organizations like the American Medical Association, World Health Organization, National Academy of Sciences, 24 Nobel Prize winning scientists, and US Food and Drug Administration agree.

"There is no scientific justification for special labeling of bioengineered foods."—American Medical Association

HIGHER COSTS FOR CONSUMERS AND TAXPAYERS

Studies show that, by forcing many common food products to be repackaged or remade with higher-priced ingredients, 37 would cost the average California family hundreds of dollars more per year for groceries.

The official state fiscal impact analysis concludes that administering 37's red tape and lawsuits would cost taxpayers millions.

Even 37's largest funder admits it *"would be an expensive logistical nightmare."*

37 IS A DECEPTIVE AND COSTLY SCHEME. Vote NO!

www.NoProp37.com

JONNALEE HENDERSON

California Farm Bureau Federation

DR. HENRY I. MILLER, Founding Director

Office of Biotechnology of the Food & Drug Administration

TOM HUDSON, Executive Director

California Taxpayer Protection Committee

★ ARGUMENT AGAINST PROPOSITION 37 ★

Prop. 37 isn't a simple measure, like promoters claim. It's a deceptive, deeply flawed food labeling scheme that would add more government bureaucracy and taxpayer costs, create new frivolous lawsuits, and increase food costs by billions—without providing any health or safety benefits. And, it's full of special-interest exemptions.

PROP. 37 CONFLICTS WITH SCIENCE

Biotechnology, also called genetic engineering (GE), has been used for nearly two decades to grow varieties of corn, soybeans and other crops that resist diseases and insects and require fewer pesticides. Thousands of common foods are made with ingredients from biotech crops.

Prop. 37 bans these perfectly safe foods in California unless they're specially relabeled or remade with higher cost ingredients.

The US Food and Drug Administration says such a labeling policy would *"be inherently misleading."*

Respected scientific and medical organizations have concluded that biotech foods are safe, including:

- National Academy of Sciences
- American Council on Science and Health
- Academy of Nutrition and Dietetics
- World Health Organization

"There is no scientific justification for special labeling of bioengineered foods."—American Medical Association, June 2012

PROP. 37: FULL OF SPECIAL-INTEREST EXEMPTIONS

"Prop. 37's arbitrary regulations and exemptions would benefit certain special interests, but not consumers."—Dr. Christine Bruhn, Department of Food Science and Technology, UC Davis

37 is full of absurd, politically motivated exemptions. It requires special labels on soy milk, but exempts cow's milk and dairy products. Fruit juice requires a label, but alcohol is exempt. Pet foods containing meat require labels, but meats for human consumption are exempt.

Food imported from China and other foreign countries are exempt if sellers simply claim their products are "GE free." Unscrupulous foreign companies could game the system.

PROP. 37 AUTHORIZES SHAKEDOWN LAWSUITS

It was written by a trial lawyer to benefit trial lawyers. It creates a new class of "headhunter lawsuits," allowing lawyers to sue family farmers and grocers without any proof of harm.

"37 lets trial lawyers use shakedown lawsuits to squeeze money from family farmers and grocers—costing California courts, businesses and taxpayers millions."—California Citizens Against Lawsuit Abuse

PROP. 37: MORE BUREAUCRACY AND TAXPAYER COSTS

37 requires state bureaucrats to administer its complex requirements by monitoring tens of thousands of food labels. It sets no limit on how many millions would be spent on bureaucracy, red tape and lawsuits.

It's a blank check . . . paid by taxpayers.

PROP. 37 MEANS HIGHER FOOD COSTS

37 forces farmers and food companies to implement costly new operations or switch to higher-priced, non-GE or organic ingredients to sell food in California.

Economic studies show this would increase food costs for the average family by hundreds of dollars annually—a HIDDEN FOOD TAX that would especially hurt seniors and low-income families who can least afford it.

"37 would unfairly hurt family farmers and consumers. It must be stopped."—California Farm Bureau Federation, representing 80,000 farmers

Join scientists, medical experts, family farmers, taxpayer advocates, small businesses.

VOTE NO ON 37.

STOP THIS DECEPTIVE, COSTLY FOOD LABELING SCHEME.

www.NoProp37.com

DR. BOB GOLDBERG, Member
National Academy of Sciences

JAMIE JOHANSSON

California Family Farmer

BETTY JO TOCCOLI, President

California Small Business Association

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 37 ★

Proposition 37—Say "Yes" to know what's in your food.

Proposition 37 simply means you've the right to know what's in your food. The way to do that is to make sure food labels are accurate.

Proposition 37 puts you in charge. No government bureaucracy, politician or agricultural company will be able to hide whether your food is genetically engineered. Enforcement is only an issue if companies disobey the law! All they must do is tell you what's in your food, as they already do in over 40 other nations throughout Europe, Australia, Japan and even China and Russia.

Proposition 37 doesn't ban genetically engineered food. Big agribusiness and agricultural companies and their lobbyists want to scare you. Under Proposition 37, you can keep buying your current foods, or you can select foods that aren't genetically engineered. It's your choice.

Proposition 37 doesn't raise food costs or taxes. Because food companies regularly re-print labels and there's a reasonable phase in period, Proposition 37 won't raise prices.

Proposition 37 will help protect your family's health. The FDA says "providing more information to consumers about

bioengineered foods would be useful." Without accurate food labeling, you risk eating foods you are allergic to. Why don't the big food companies want you to know what's in your food? With conflicting, uncertain science about the health effects of genetically engineered foods, labeling is an important tool to protect your family's health.

WE HAVE THE RIGHT TO KNOW WHAT'S IN OUR FOOD. *Yes on 37.*

www.Carighttoknow.org

JAMIE COURT, President

Consumer Watchdog

JIM COCHRAN, General Manager

Swanton Berry Farm

DR. MARCIA ISHII-EITEMAN, Senior Scientist

Pesticide Action Network