

# THE HAZARDS OF GMOS: SCIENTIFIC REASONS WHY THEY SHOULD BE REGULATED, POLITICAL REASONS WHY THEY ARE NOT, AND LEGAL ANSWERS TO WHAT SHOULD BE DONE

## INTRODUCTION

“Contrary to what some might have us believe, there are indeed hazards associated with [genetically modified organisms].”<sup>1</sup> This statement, made by the Chair of the International Biosafety Advisory Committee,<sup>2</sup> is one of the many reasons why the current voluntary labeling status of genetically modified (“GM”) foods in America is so disconcerting. Ever since the introduction of GM food products into the American market in 1996,<sup>3</sup> the Food and Drug Administration (“FDA”) has taken a regulatory view that favors the big food industry and opposes traditional notions of food product safety. Despite the mounting evidence showing the hazardous nature of GM food products, the FDA continues to allow the widespread production and sale of GM food products to overtake the U.S. food market with minimal oversight and regulation.<sup>4</sup>

Genetically modified food products now make up a large majority of the foodstuffs in the American marketplace; seventy percent of processed foods contain GM products.<sup>5</sup> Nevertheless, potentially dangerous GM food products remain unlabeled on the shelves of American grocery stores.<sup>6</sup> And because the most widely grown GM crops such as corn, sugar beets, and soybeans are used as primary ingredients in most manufactured products, many food manufacturing companies vehemently oppose efforts

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<sup>1</sup> Alan McHughen, *Welcome* to PROCEEDINGS OF THE SIXTH INTERNATIONAL SYMPOSIUM ON THE BIOSAFETY OF GENETICALLY MODIFIED ORGANISMS 1 (Clare Fairbairn, Graham Scoles & Alan McHughen eds., 2000).

<sup>2</sup> *Id.*

<sup>3</sup> Proposed Federal Actions to Update Field Test Requirements for Biotechnology Derived Plants and to Establish Early Food Safety Assessments for New Proteins Produced by Such Plants, 67 Fed. Reg. 50578, 50578 (proposed Aug. 2, 2002) [hereinafter Proposed Federal Actions].

<sup>4</sup> See Statement of Policy: Foods Derived from New Plant Varieties, 57 Fed. Reg. 22984, 22984 (May 29, 1992) (reiterating that GM food products would be “regulated within the existing framework of the [Federal Food, Drug, and Cosmetic] [A]ct . . . utilizing an approach identical in principle to that applied to foods developed by traditional plant breeding”); JEFFREY M. SMITH, SEEDS OF DECEPTION: EXPOSING INDUSTRY AND GOVERNMENT LIES ABOUT THE SAFETY OF THE GENETICALLY ENGINEERED FOODS YOU’RE EATING 11 (2003) [hereinafter SEEDS OF DECEPTION]; David Alan Nauheim, Comment, *Food Labeling and the Consumer’s Right to Know: Give the People What They Want*, 4 LIBERTY U. L. REV. 97, 105–06 (2009).

<sup>5</sup> SEEDS OF DECEPTION, *supra* note 4, at 10.

<sup>6</sup> *Id.* at 237.

to impose mandatory labeling laws and continue to spend millions of dollars each year on lobbying against food labeling at all levels of government.<sup>7</sup> For over a decade, attempts to pass federal laws requiring mandatory labeling of GM foods have continually failed in Congress.<sup>8</sup> Because more than ninety percent of consumers favor mandatory labeling of GM foods,<sup>9</sup> congressional action is clearly out of sync with public preference. Instead, extensive lobbying funded by large-scale food manufacturers and the farmers that produce their products have won the battles at the federal level, and they are now moving on to make sure these mandatory labeling laws are not enacted in individual states.<sup>10</sup>

Congress has repeatedly shown an interest in reducing the corruption that can result from corporate funding of lobbying on issues of great public interest.<sup>11</sup> For example, the Federal Election Campaign Act (“FECA”) and the Bipartisan Campaign Reform Act of 2002 (“BCRA”) imposed monetary limits on political contributions to federal election campaigns, and the Lobbying Disclosure Act (“LDA”) requires lobbyists to report their income and expenses.<sup>12</sup> Equally important as protecting the integrity of the federal election process is ensuring the integrity of regulatory agencies that make decisions affecting the health and safety of the public. Therefore, legislation restricting political contributions on issues related to public health and safety should be enacted and would likely be upheld by American courts.

This Note exposes the hazards of GM food products and reviews some of the political and economic factors influencing the current voluntary status of GM food labeling in America. Part I reviews the current federal

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<sup>7</sup> JEFFREY M. SMITH, *GENETIC ROULETTE: THE DOCUMENTED HEALTH RISKS OF GENETICALLY ENGINEERED FOODS* 7 (2007) [hereinafter *GENETIC ROULETTE*]; *SEEDS OF DECEPTION*, *supra* note 4, at 245; *see infra* Part II.B.

<sup>8</sup> See Morgan Anderson Helme, Note, *Genetically Modified Food Fight: The FDA Should Step Up to the Regulatory Plate so States Do Not Cross the Constitutional Line*, 98 MINN. L. REV. 356, 358 & n.16 (2013).

<sup>9</sup> Emily Marden, *Risk and Regulation: U.S. Regulatory Policy on Genetically Modified Food and Agriculture*, 44 B.C. L. REV. 733, 760 (2003) (citing a 1997 survey); Allison Kopicki, *Strong Support for Labeling Modified Foods*, N.Y. TIMES (July 27, 2013), <http://www.nytimes.com/2013/07/28/science/strong-support-for-labeling-modified-foods.html>.

<sup>10</sup> See *SEEDS OF DECEPTION*, *supra* note 4, at 218–19 (describing the biotech industry’s spending \$5.4 million to defeat a 2002 Oregon voter initiative pushing for mandatory GM labeling); Meredith K. Schuh, Note, *California’s Proposition 37: Will Its Failure Forecast the Fate of the GM Food Labeling Movement in the United States Once and for All?*, 6 KY. J. EQUINE, AGRIC., & NAT. RESOURCES L. 181, 189 & n.73 (2014); *see infra* Part II.B.

<sup>11</sup> See *infra* text accompanying notes 80–88.

<sup>12</sup> Federal Election Campaign Act, 2 U.S.C. §§ 431(19), 441 (2012); Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81–83 (2002); *Nat’l Ass’n of Mfrs. v. Taylor*, 582 F.3d 1, 7 (D.C. Cir. 2009); *see infra* text accompanying notes 80–88.

voluntary labeling laws for GM foods, examines scientific studies suggesting that genetically modified organisms (“GMOs”) are harmful to human health, and concludes that Congress and the FDA are failing to fulfill their duty to the public by refusing to enact mandatory labeling laws for GM foods. Part II asserts that GM foods continue to circumvent proper regulatory standards, despite scientific evidence of their harm. This Part also discusses how this circumvention is largely due to the inappropriate influence of lobbyists funded by those with profit interests in the agricultural industry and by ties between lobbyists and government officials, which has resulted in the corruption of the proper legislative process. Part III proposes a solution to this inappropriate influence: new legislation limiting the amount of money any person or entity can pay to lobbying activities on issues implicating public health and safety. This legislation would help protect the integrity of regulatory agencies when they make decisions that affect the health and safety of the public, such as decisions on the labeling status of foods containing hazardous GMOs.

#### I. THE HAZARD: GMOS ARE UNSAFE AND MERIT STRICTER REGULATIONS

##### A. *Current GM Regulations*

The FDA is the agency responsible for ensuring the safety of all food products in the American market, and its authority comes from the Federal Food, Drug, and Cosmetic Act (“FDCA”).<sup>13</sup> Although GM foods are not specifically mentioned in the FDCA, the FDA has stated that it will treat GM plants the same way it treats traditionally-bred plants.<sup>14</sup> That logic is based on the method by which a GM plant is created. Because the process is simply to insert a naturally occurring gene or bacteria into the DNA of a plant in which it does not naturally occur,<sup>15</sup> the FDA claims that there is no material difference between a GM food product and a traditional food product;<sup>16</sup> that position has been confirmed and permitted in court.<sup>17</sup> Additionally, because traditionally-bred plants are presumed

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<sup>13</sup> Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301, 393 (2012).

<sup>14</sup> Statement of Policy: Foods Derived from New Plant Varieties, 57 Fed. Reg. 22984, 22984 (May 29, 1992).

<sup>15</sup> See, e.g., Carl R. Galant, Comment, *Labeling Limbo: Why Genetically Modified Foods Continue to Duck Mandatory Disclosure*, 42 HOUS. L. REV. 125, 131–32 (2005).

<sup>16</sup> Sally Noxon Vecchiarelli, Comment, *Mandatory Labeling of Genetically Engineered Food: Constitutionally, You Do Not Have a Right to Know*, 22 SAN JOAQUIN AGRIC. L. REV. 215, 216 (2013).

<sup>17</sup> See *Alliance for Bio-Integrity v. Shalala*, 116 F. Supp. 2d 166, 181 (D. D.C. 2000). In a 2000 case, a food manufacturer “was not arbitrary and capricious in its finding that genetically modified foods need not be labeled because they do not differ ‘materially’ from non-modified foods under 21 U.S.C. § 321(n).” *Nauheim*, *supra* note 4, at 120–21.

safe, GM plants are presumed safe as well.<sup>18</sup> This presumption allows GM seed developers to create new breeds of GM plants with little to no oversight or testing before the plants are used in food products that end up on grocery shelves across America.<sup>19</sup> Although the official FDA policy maintains that the label of the food must reveal all material facts about the food,<sup>20</sup> the FDA has decided that mandatory labeling of GM products is improper because it would mislead consumers to believe there is some difference between traditional and GM plants.<sup>21</sup> The result of labeling GM products on a voluntary basis is a standard that neglects to inform consumers about whether hazardous GM products are in their food.<sup>22</sup> Other regulations are far from satisfactory as the FDA shirks its responsibility to ensure product safety, allowing GM seed developers to decide for themselves whether it is necessary to conduct safety testing on their GM products.<sup>23</sup>

Unfortunately, that view of GM food stands in stark contrast to the FDA's typical precautionary approach for new products, which imposes higher standards of caution when regulating any food or pharmaceutical products that have the potential to impose health or environmental hazards.<sup>24</sup> Under the precautionary approach, any food additive that has been shown to cause cancer in laboratory animals would be banned from the marketplace, and any other new product that could even potentially harm the environment would be analyzed under a worst-case scenario scrutiny;<sup>25</sup> issues of scientific uncertainty, such as the safety of GM food products, should be analyzed the same way. The American Medical Association released a report in June of 2012 stating that, although there were no proven "overt consequences on human health," it is still possible that GM foods could result in the development of allergies, horizontal gene transfer, and toxicity in humans.<sup>26</sup> Even the FDA's own scientists have expressed concern over the approach adopted by the agency regarding GM

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<sup>18</sup> Draft Guidance for Industry: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering, 66 Fed. Reg. 4839, 4839 (Jan. 18, 2001) [hereinafter Draft Guidance for Industry].

<sup>19</sup> See *id.*; SEEDS OF DECEPTION, *supra* note 4, at 130 (explaining that GM food companies face no regulation because the government's policy on GM foods indicates that the government considers GM foods safe).

<sup>20</sup> Draft Guidance for Industry, 66 Fed. Reg. at 4839.

<sup>21</sup> See *id.* at 4840.

<sup>22</sup> *Id.* at 4839; Nauheim, *supra* note 4, at 97–98.

<sup>23</sup> See Draft Guidance for Industry, 66 Fed. Reg. at 4839.

<sup>24</sup> Maria Gabriela Balboa, *Legal Framework to Secure the Benefits While Controlling the Risks of Genetically Modified Foods: A Comparison of the Cartagena Protocol and Three National Approaches*, 31 TEMPLE J. SCI., TECH. & ENVTL. L. 255, 265 (2012).

<sup>25</sup> *Id.*

<sup>26</sup> Vecchiarelli, *supra* note 16, at 219.

food safety.<sup>27</sup> Despite these disconcerting statements by the experts, the FDA continues to hold to minimal regulation and voluntary labeling standards for GMOs that are inconsistent with traditional concepts of caution in the public interest.<sup>28</sup>

Although the FDA claims to regulate the production of GM foods, the only point of contact between a GM seed developer and the FDA is on a voluntary basis<sup>29</sup> and offers no real accountability. Any GM seed developer who decides that his most recent experiment is ready to be sold as seed for crops that will eventually end up on Americans' plates is not required to have his product tested or even reviewed by the FDA.<sup>30</sup> Indeed, the FDA's oversight is limited merely to a "consultation process that *encourages* developers of genetically engineered plants to consult with [the] FDA before marketing their products."<sup>31</sup> The FDA goes on to explain the purpose of this process as if the existence of it, despite being purely voluntary, ensures the safety of GM foods:

This process helps developers determine the necessary steps to ensure their food products are safe and lawful. The goal of the consultation process is to ensure that any safety or other regulatory issues related to a food product are resolved before commercial distribution. Foods from genetically engineered plants intended to be grown in the United States that have been evaluated by FDA through the consultation process have not gone on the market until the FDA's questions about the safety of such products have been resolved.<sup>32</sup>

To suppose that a *voluntary* consultation process is sufficient to evaluate potentially hazardous substances before they enter the food market is like playing Russian roulette with public health and safety, as such a process does not ensure the safety the FDA suggests. One exchange between the FDA and a GM seed developer approving a new GM corn seed shows that the consultation simply consisted of the developer's submission of *its own assessment* of the safety and nutrition of *its own* GM seed, to which the FDA gave its unreserved approval based on an unrealistic presumption of the study's reliability.<sup>33</sup> In its letter, the FDA stated that the seed

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<sup>27</sup> Jon R. Luoma, *Pandora's Pantry*, MOTHER JONES, Feb. 2000, at 53, 57–58.

<sup>28</sup> See *Questions & Answers on Food from Genetically Engineered Plants*, U.S. FDA, <http://www.fda.gov/Food/FoodScienceResearch/Biotechnology/ucm346030.htm> (last updated July 22, 2014) [hereinafter *Questions & Answers*].

<sup>29</sup> *Id.*

<sup>30</sup> See *id.*

<sup>31</sup> *Id.* (emphasis added).

<sup>32</sup> *Id.*

<sup>33</sup> Letter from Dennis M. Keefe, Dir., Office of Food Additive Safety for the Ctr. for Food Safety & Applied Nutrition, to Georges Freyssinet, CEO of Genective S.A. (May 7, 2013), available at <http://www.fda.gov/Food/FoodScienceResearch/Biotechnology/Submissions/ucm357709.htm>.

developer's GM corn was "not materially different in composition, safety, and other relevant parameters from corn-derived food" and that it "[did] not raise issues that would require premarket review or approval by [the] FDA"<sup>34</sup>—a typical boilerplate response. This cursory review process effectively allows GM food developers and manufacturers to bypass the oversight of the FDA. Thus, the FDA is shirking its regulatory responsibility as it is "essentially taking the biotech industry's word that [genetically engineered] food is not hazardous"<sup>35</sup> based on unfounded conjecture that GM plants are not materially different from traditional ones, despite scientific evidence suggesting otherwise.

*B. The Overwhelming Evidence: What the FDA Ignores*

Many recent studies have shown not only material differences but also harmful differences between GM plants and their traditionally-bred counterparts.<sup>36</sup> A senior scientist at the Food and Environment Program of the Union of Concerned Scientists recently said that "[b]lanket statements about the safety or risks of biotechnology products are scientifically unjustified."<sup>37</sup> Because GM foods have only been in the marketplace since 1996,<sup>38</sup> significant long-term safety testing has not yet established the total safety of GM foods for human consumption.<sup>39</sup> The FDA claims that it "seek[s] to assure that new plant varieties do not have significantly higher levels of toxicants than present in other edible varieties of the same species."<sup>40</sup> However, the voluntary consultation process casts doubt on this claim, and many studies have shown the harmful effects that GM crops can cause.<sup>41</sup>

Recent studies have shown that one commonly used genetic modification method is likely injurious to human health.<sup>42</sup> In that method,

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<sup>34</sup> *Id.*

<sup>35</sup> Michele Simon & Andrew Kimbrell, *Why Center for Science in the Public Interest Is Wrong Not to Support Genetically Engineered Food Labeling*, CENTER FOR FOOD SAFETY (July 10, 2013), <http://www.centerforfoodsafety.org/blog/2353/why-center-for-science-in-the-public-interest-is-wrong-not-to-support-genetically-engineered-food-labeling>.

<sup>36</sup> See SEEDS OF DECEPTION, *supra* note 4, at 38.

<sup>37</sup> Margaret Mellon, *Transcript: Public Regulation of Biotechnology (or Not)*, 37 VT. L. REV. 1071, 1074 (2013).

<sup>38</sup> Proposed Federal Actions, 67 Fed. Reg. 50578, 50578 (proposed Aug. 2, 2002); see also Vecchiarelli, *supra* note 16, at 218–19 (citing Monsanto as the first company to develop GM crops and sell them to farmers, who used them to produce foodstuff that entered the marketplace by 1996).

<sup>39</sup> Mellon, *supra* note 37, at 1074.

<sup>40</sup> Statement of Policy: Foods Derived from New Plant Varieties, 57 Fed. Reg. 22984, 22987 (May 29, 1992).

<sup>41</sup> See SEEDS OF DECEPTION, *supra* note 4, at 11–13, 38.

<sup>42</sup> See *id.*; *infra* text accompanying notes 43–54.

GM crops are produced by inserting the naturally occurring soil bacterium *Bacillus thuringiensis* (“B.t.”) into the genetic code of the plant, causing the plant to produce a protein that acts as a natural insecticide.<sup>43</sup> Because many traditional farmers have used this bacterium as an insecticide spray, many GM advocates claim that the change in method of administering B.t. is fully acceptable.<sup>44</sup> B.t.’s natural occurrence is one reason the FDA presumes both that there can be no material difference between GM plants and natural plants and that this GM technology is safe; thus, the FDA requires no independent studies of the effects of the B.t. bacterium when used by GM technologies.<sup>45</sup>

Alarming, evidence shows that B.t. is more toxic when inserted into a plant’s DNA using GM technology than when B.t. is used as a spray; “[i]t is estimated that the plants [injected with B.t.] produce 3,000–5,000 times the amount of toxin as the sprays, but it varies with plants.”<sup>46</sup> Unlike plants with B.t. DNA injections, those that have only been sprayed are able to break down B.t. on their own, with the help of sunlight and weather, in a matter of days.<sup>47</sup> Even if that never happens, the residue can always be rinsed away by consumers.<sup>48</sup> By contrast, a plant whose DNA has been injected with B.t. toxin continually produces the toxin, which can neither be rinsed off nor worn off by weather.<sup>49</sup> Although B.t. in its natural form only releases its toxic insecticide properties when mixed with stomach acids of insects, this is not so when it is used in GM technology.<sup>50</sup> Because of the way the toxin is inserted into the plant’s genes during the GM process, it is always active in the plant and is more likely to cause a negative response when ingested.<sup>51</sup>

Advocates for this GM method also assert that the B.t. toxin is quickly destroyed in the human stomach, and that even if this were not

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<sup>43</sup> Galant, *supra* note 15.

<sup>44</sup> See *EPA’s Regulation of Bacillus thuringiensis (Bt) Crops*, U.S. EPA, <http://www.epa.gov/pesticides/biopesticides/pips/regofbt crops.htm> (last updated Feb. 3, 2014) [hereinafter *EPA’s Regulation*]; *Global Insect Resistance Management*, MONSANTO, <http://www.monsanto.com/products/pages/insect-resistance-management.aspx> (last visited Nov. 11, 2014).

<sup>45</sup> See, e.g., Draft Guidance for Industry, 66 Fed. Reg. 4839, 4839 (Jan. 18, 2001); SEEDS OF DECEPTION, *supra* note 4, at 38 (discussing the lack of pre-market safety tests on GM foods in the United States); *EPA’s Regulation*, *supra* note 44.

<sup>46</sup> GENETIC ROULETTE, *supra* note 7, at 97.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

the case, humans do not have receptors for the toxin in the first place.<sup>52</sup> However, those assertions are unsupported and, in fact, have been proven false: Manufacturers of the B.t. herbicide warn that allergy-like symptoms may occur as a result of its use, and some workers who sprayed the herbicide suffered nose, throat, eye, and respiratory irritation.<sup>53</sup> Other responses to the spray included antibody immune responses, infections, ulcers on the cornea, and, for a woman who was directly sprayed, even altered consciousness and seizures.<sup>54</sup> Because the voluntary consultation process in America does not require testing of the safety of these GM technologies,<sup>55</sup> the FDA's continual lack of oversight in this process is an ever-increasing concern.

Furthermore, a comparison of GM corn and non-GM corn shows a material difference in the make-up of the GM corn.<sup>56</sup> Roundup Ready corn, a type of GM corn, and a non-GM corn were grown on adjacent fields with the same soil conditions.<sup>57</sup> The comparison showed that Roundup Ready corn, which was treated with a typical glyphosate-based herbicide, contained 13 parts per million ("ppm") of glyphosate, which is toxic at merely 1 ppm; in contrast, the traditional corn contained no traces of glyphosate whatsoever.<sup>58</sup> Coincidentally, the EPA recently increased the legal limit for glyphosate in corn to 13 ppm.<sup>59</sup> The Roundup Ready corn also contained 200 ppm of formaldehyde, which was absent from the non-GM corn.<sup>60</sup> Although formaldehyde can come from normal plant metabolism, it is detoxified by the presence of other normal plant enzymes.<sup>61</sup> However, in plants treated with glyphosate-based herbicides, the glyphosate can break down into formaldehyde.<sup>62</sup> In fact, any Roundup Ready plant that is sprayed with a glyphosate-based herbicide has the

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<sup>52</sup> SEEDS OF DECEPTION, *supra* note 4, at 178; *Bacillus thuringiensis Cry3Bb1 Protein and the Genetic Material Necessary for its Production (Vector ZMIR13L) in Event MON863 Corn (006484) Fact Sheet*, U.S. EPA, [http://www.epa.gov/pesticides/biopesticides/ingredients\\_keep/factsheets/factsheet\\_006484.htm](http://www.epa.gov/pesticides/biopesticides/ingredients_keep/factsheets/factsheet_006484.htm) (issued May 2005) (last updated Aug. 21, 2012).

<sup>53</sup> GENETIC ROULETTE, *supra* note 7, at 95.

<sup>54</sup> *Id.*

<sup>55</sup> *See Questions & Answers*, *supra* note 28.

<sup>56</sup> *See infra* text accompanying notes 57–66.

<sup>57</sup> Mae-Wan Ho, "Stunning" Difference of GM from Non-GM Corn, PERMACULTURE RES. INST. (Apr. 22, 2013), <http://permaculturenews.org/2013/04/22/stunning-difference-of-gm-from-non-gm-corn/>.

<sup>58</sup> *Id.*

<sup>59</sup> Glyphosate; Pesticide Tolerance, 76 Fed. Reg. 27268, 27270 (proposed May 11, 2011) (codified at 40 C.F.R. pt. 180).

<sup>60</sup> Ho, *supra* note 57.

<sup>61</sup> *Id.*

<sup>62</sup> *See id.*



potential to produce formaldehyde that would not exist in a normal, healthy plant.<sup>63</sup> Formaldehyde is “a toxic compound that . . . has been classified as a mutagen and suspected carcinogen.”<sup>64</sup> It is also a neurotoxin that has been shown to affect certain brain proteins in the same way as Alzheimer’s disease and lead to neurotic cell death.<sup>65</sup> The independence of the study adds to its validity; farmers themselves performed the study instead of relying on a study sponsored by the biotech companies.<sup>66</sup>

This Note does not discuss many other factors indicating the hazardous nature of GM food products. The process of inserting genes naturally found in one plant into another plant that would never naturally crossbreed with the first plant could result in mutations that, though currently unknown, are harmful to humans.<sup>67</sup> The environment could also be harmed; if an herbicide-resistant GM plant intermingled with a weed, it could create a kind of invincible “super-weed.”<sup>68</sup> In fact, organic crops have already been contaminated due to pollen migration and cross-pollination with their GM counterparts.<sup>69</sup> This problem presents the frightening potential to destroy the natural biodiversity of our foods and wipe out traditional plant species altogether.<sup>70</sup> In some cases, cross-pollination has also led to inequitable economic hardship on traditional plant farmers who have been exposed to litigation when their plants inadvertently become contaminated with rogue GM seeds.<sup>71</sup> Antibiotic resistance in humans is another potential issue because GM technology uses bacteria with naturally-occurring antibiotic resistance genes that may increase during the GM process and thereby decrease the effectiveness of medicinal antibiotics when humans need them most.<sup>72</sup>

Based on these studies, assertions by the FDA and biotech companies that GM plants are not materially different from their traditional counterparts are blatantly untrue; these differences should, by themselves, be enough at the very least to require mandatory labeling of GM foods, if not a total ban until further research is done. Considering the

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Nauheim, *supra* note 4.

<sup>68</sup> *Id.* at 106.

<sup>69</sup> *Id.*; see SEEDS OF DECEPTION, *supra* note 4, at 68.

<sup>70</sup> Nauheim, *supra* note 4, at 106.

<sup>71</sup> See *Organic Seed Growers & Trade Ass’n v. Monsanto Co.*, 718 F.3d 1350, 1352–53, 1355–56 (Fed. Cir. 2013) (describing Monsanto’s “history of aggressive assertion of its transgenic seed patents against other growers and sellers (144 suits and 700 settlements) . . .”).

<sup>72</sup> See SEEDS OF DECEPTION, *supra* note 4, at 59–60.

prevalence of GM plant products in many of the foods that Americans eat on a daily basis,<sup>73</sup> such data should not be taken lightly.

## II. THE PROBLEM: DEREGULATION THROUGH PROFIT-MOTIVATED LOBBYING

Often, the primary fight between conflicting interest groups occurs within the framework of lobbying. The detrimental effect of this highly politicized forum is evident in the current debate over GM food product labeling in America. The FDA has wide latitude in making its decisions, especially for those decisions requiring scientific judgments.<sup>74</sup> And because regulatory agencies like the FDA are independent bodies not subject to the same checks and balances as the three branches of the federal government,<sup>75</sup> their decisions are largely autonomous. Wide decision-making latitude, along with the political pressure imposed by lobbyists, creates the perfect storm for the possibility of corruption among regulatory agencies.

It has been over a decade since the FDA revised its policy toward GM food products.<sup>76</sup> However, based on the studies cited above, mandatory labeling and more stringent testing of food products containing GM plants should have been enacted long ago.<sup>77</sup> This discrepancy between theory and practice is due largely to the successful lobbying of pro-GM groups backed by the finances of corporations that use GM crops in their food products.<sup>78</sup> Because of the overwhelming influence of these lobbyists, those with profit-motives contrary to public interest have driven the regulatory status of hazardous GM foods, and mandatory labeling laws and other regulations that would typically be enacted by agencies like the FDA have been thwarted.<sup>79</sup> Despite strong opposition, the issue persists and has led to the nearly inexorable prevalence of hazardous GM food products in the

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<sup>73</sup> *Id.* at 10, 267. Some of the most notable GM plant products are corn-based food products such as “cereals, tortillas, tacos, corn chips, corn flour, [and] corn grits . . . .” Simon & Kimbrell, *supra* note 35.

<sup>74</sup> Nauheim, *supra* note 4, at 119.

<sup>75</sup> See Vale Krenik, Note, “*No One Can Serve Two Masters*”: A Separation of Powers Solution for Conflicts of Interest Within the Department of Health and Human Services, 12 TEX. WESLEYAN L. REV. 585, 587, 620–21; Susan M. McDonough, *The Fourth Power? Administrative Searches vs. the Fourth Amendment*, 20 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 195, 197–98 (1993) (asserting that the very existence of administrative agencies is unconstitutional because of the consolidation of legislative, executive, and judicial power in one place).

<sup>76</sup> See *FDA’s Role in Regulating Safety of GE Foods*, U.S. FDA (May 2013), <http://www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM352193.pdf> (citing the FDA’s draft guidance on GM foods released in January 2001).

<sup>77</sup> See *supra* Part I.B.

<sup>78</sup> See *infra* Part II.B.

<sup>79</sup> See *supra* text accompanying notes 8–10; see *infra* Part I.A.

American market, creating a public health and safety issue that cannot be ignored. The root of the problem is the unchecked lobbying power wielded by those more interested in increasing profits than ensuring public safety. Because of the significant influence wielded by lobbyists over federal policymakers, lobbying is an important issue to consider when analyzing the current state of GM food product laws in America.

*A. Inappropriate Influence: Current Lobbying Legislation*

The federal government has been regulating lobbying activities since 1946, when it enacted the Federal Regulation of Lobbying Act (“FRLA”).<sup>80</sup> In 1995, when it was clear that the FRLA no longer accomplished its purpose, every member of Congress voted to replace it with the Lobbying Disclosure Act (“LDA”).<sup>81</sup> The LDA recognized that a “responsible representative Government requires public awareness of the efforts of paid lobbyists to influence the public decisionmaking process in both the legislative and executive branches of the Federal Government”<sup>82</sup> and that “the effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government.”<sup>83</sup> As a result, Congress expanded the definition of lobbying and broadened enforcement provisions of the relevant legislation.<sup>84</sup> Under the LDA, lobbyists must register with both the Senate and the House forty-five days before making lobbying contacts.<sup>85</sup> The lobbyists must also disclose information regarding their client and/or employers as well as the specific topics on which they intend to lobby.<sup>86</sup> Furthermore, all monetary contributions and expenses that the lobbyist received or incurred must be periodically reported.<sup>87</sup> The House Judiciary Committee further demonstrated its dedication to securing the transparency of lobbying activities by enacting another provision that requires lobbyists to disclose any other organization (other than their own clients) that contributes over \$10,000 to the lobbyists on a semiannual basis and who “in whole or in major part plans, supervises, or controls” the lobbyists’ activities.<sup>88</sup>

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<sup>80</sup> *Nat’l Ass’n of Mfrs. v. Taylor*, 582 F.3d 1, 6 (D.C. Cir. 2009).

<sup>81</sup> *Id.* & n.1.

<sup>82</sup> 2 U.S.C. § 1601(1) (2012).

<sup>83</sup> *Id.* § 1601(3).

<sup>84</sup> *Nat’l Ass’n of Mfrs.*, 582 F.3d at 6–7.

<sup>85</sup> *Id.* at 7.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* (quoting Lobbying Disclosure Act of 1995 § 4(b)(3), Pub. L. No. 104-65, 109 Stat. at 696 (codified as amended at 2 U.S.C. § 1603(b)(3) (1995))).

In 2007, Congress responded to multiple lobbying-related scandals by amending the LDA with further provisions, embodied in the Honest Leadership and Open Government Act (“HLOGA”), to “close loopholes in current law.”<sup>89</sup> The HLOGA was an important amendment that included a heightened requirement for disclosures of non-client organizations who gave financially to the lobbyists; Congress raised the standard from requiring disclosure of any organization that plans, supervises, or controls the lobbying activities “in whole or in major part” to requiring disclosure of any organization that “actively participates” in such activities.<sup>90</sup> In its “Purpose and Summary” for the HLOGA, the Committee on the Judiciary noted:

Federal lobbying is a multi-billion dollar industry, and spending to influence Members of Congress and Executive Branch officials has continued to increase over the last decade. While the Lobbying Disclosure Act was intended to promote transparency and accountability in the Federal lobbying industry, it falls far short of a complete solution. Its shortcomings were highlighted during the 109th Congress by the conviction of a high-profile lobbyist, as well as a number of highly publicized incidents involving the provision of privately-funded travel, free meals, and lavish entertainment by lobbyists to Members of Congress, congressional staff, and some Executive Branch officials in exchange for favorable treatment for clients with specific interests before the Government.<sup>91</sup>

Although the Judiciary Committee cited mostly to issues regarding the use of financial resources to exploit the favor of federal policymakers, the ensuing legislation of the HLOGA only addressed the issue “by requiring more rigorous disclosure of lobbying-related activities and heightened enforcement of lobbying laws and regulations.”<sup>92</sup> The inappropriate influence of lobbyists was also an issue for the committee,<sup>93</sup> but the HLOGA nonetheless fails to address it. Lobbyists’ unrestricted financing continues to create and promote the inappropriate influence that Congress was trying to prevent through the HLOGA and creates a high potential for unjust policymaking on important issues affecting public health and safety. Further legislation is necessary to constrain the inappropriate influence of lobbyists on policymakers.

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<sup>89</sup> *Id.* (internal quotation marks omitted); Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81, § 203, 121 Stat. 735 (codified as amended at 2 U.S.C. § 1604(d) (2012)).

<sup>90</sup> *Nat’l Ass’n of Mfrs.*, 582 F.3d at 8 (internal quotation marks omitted).

<sup>91</sup> H.R. REP. NO. 110-161, pt. 1, at 9 (2007).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 10.

### B. Lobbying for Voluntary Labeling Standards

Despite the overwhelming evidence, the fight for mandatory labeling of GM food products is still unresolved at the federal level. Evidence of the lobbying activities surrounding GM food product regulation in America illustrates the powerful effect that lobbying can have, even when other interests involved are infinitely more important. When two interest groups compete against each other for the policy each group prefers, “the resulting policy can be more extreme and less efficient” than it should be.<sup>94</sup> The current regulatory policy for GM food products aptly illustrates that concept. Extensive lobbying of government agencies by pro-GMO groups funded by the food industry has resulted in inappropriate influence of lobbying and led to frivolous regulatory standards in opposition to public safety interests.

Regulatory agencies are not immune to inappropriate private sector influence over the safety issues with which they have been entrusted. In 2009, the FDA used a fast-track approval process to approve a controversial medical device without conducting the clinical trials necessary to establish a full review of the product’s safety.<sup>95</sup> Similar to the FDA’s current policy that GM food products are presumed safe because their modified genes occur in traditional plants,<sup>96</sup> the fast-track process for the new medicinal device did not require clinical trials because the product was similar to existing products.<sup>97</sup> One doctor with knowledge about the device even opined that the FDA might have “stacked” the advisory committee that considered the device to get the decision it wanted.<sup>98</sup> This decision is an alarming illustration of how easily “political and industry pressure can influence [the] scientific conclusions”<sup>99</sup> of governmental agencies.

The threat of this inappropriate influence on policymaking is compounded because many of those lobbying against stricter regulation of GM food products are doing so based on profit interests rather than public health and safety interests. For instance, the Grocery Manufacturer’s Association (“GMA”) is the largest trade group for food producers, and one

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<sup>94</sup> Yoav Wachsman & Jie Zhou, *A Model of Cournot Competition with Lobbying*, 11 J. BUS. & ECON. RES. 251, 252 (2013).

<sup>95</sup> Alicia Mundy, *Political Lobbying Drove FDA Process*, WALL ST. J. Mar. 6, 2009, 12:01 AM, <http://online.wsj.com/articles/SB123629954783946701> (case sensitive URL).

<sup>96</sup> See Draft Guidance for Industry, 66 Fed. Reg. 4839, 4839 (Jan. 18, 2001); see *supra* text accompanying notes 14–21.

<sup>97</sup> Mundy, *supra* note 95.

<sup>98</sup> *Id.* (quoting Dr. Jay Mabrey, chief of orthopedic surgery at Baylor University Medical Center in Dallas and chairman of the FDA advisory committee that considered the device).

<sup>99</sup> *Id.*

of its significant purposes is to lobby on behalf of its members.<sup>100</sup> Members of GMA include large-scale food manufacturers such as Pepsi, Kellogg's, General Mills, and even the leading biotechnology developer, Monsanto.<sup>101</sup> If legislation required mandatory labeling of GMOs, all of these companies would be forced to label most, if not all, of their products as containing GMOs. Because a company's profits rely heavily on a positive public perception of their products—and mandatory labeling could potentially destroy this positive perception—these companies pour millions of dollars into lobbying against mandatory GM labeling each year.<sup>102</sup> In Europe, where the labeling of GM foods is strictly enforced, many companies produce all GMO-free products, suggesting that labeling laws are a significant factor influencing the prevalence of GM food products.<sup>103</sup> While European legislation focuses on public safety and prevents harm to consumers, American legislation has taken the opposite approach by allowing those with profit interests to puppeteer the legislative process with little regard for public interests.

The lobbying efforts of GMA and other political action committees ("PACs") against mandatory labeling laws have been vastly successful at the federal level for over a decade. Between November 16, 1999, and December 2, 2011, congressmen made multiple attempts to enact the Genetically Engineered Food Right to Know Act, a proposed federal law that would have required all foods containing GM products to be labeled before entering the marketplace.<sup>104</sup> Each of these attempts failed in the House of Representatives,<sup>105</sup> in spite of polls from both 1997 and 2013 reflecting that ninety-three percent of American consumers prefer GM food products to be labeled.<sup>106</sup> One of the most likely reasons for the legislation's failure is the successful lobbying efforts of the food manufacturing industry. In 2012, GMA spent \$3 million to lobby at the federal level for the continued deregulation and use of GM products,

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<sup>100</sup> Response in Support of Certiorari Review at iii, *Am. Fuel & Petrochemical Mfrs. v. EPA*, 133 S. Ct. 2881 (2013) (No. 12-1229), 2013 U.S. S. Ct. Briefs LEXIS 2117 at \*1; Grocery Manufacturers Association, *Benefits of Membership*, GMAONLINE.ORG, [http://www.gmaonline.org/file-manager/Membership/Benefits%20of%20Membership\\_2012.pdf](http://www.gmaonline.org/file-manager/Membership/Benefits%20of%20Membership_2012.pdf); Michele Simon, *Are Junk Food Corporations Hiding Behind Lobbyists to Stop GE Food Labeling in Washington State?*, CENTER FOR FOOD SAFETY (Sept. 17, 2013), <http://www.centerforfoodsafety.org/blog/2572/are-junk-food-corporations-hiding-behind-lobbyists-to-stop-ge-food-labeling-in-washington-state?key=71655651>.

<sup>101</sup> Response in Support of Certiorari Review, *supra* note 100; Simon, *supra* note 100.

<sup>102</sup> See *infra* text accompanying notes 107–09.

<sup>103</sup> *Labels for GMO Foods Are a Bad Idea*, SCI. AM., Aug. 20, 2013, <http://www.scientificamerican.com/article/labels-for-gmo-foods-are-a-bad-idea/>.

<sup>104</sup> See Helme, *supra* note 8.

<sup>105</sup> *Id.*

<sup>106</sup> Marden, *supra* note 9; Kopicki, *supra* note 9.

among other things.<sup>107</sup> This statistic does not include the separate payments made by the individual members of GMA such as Monsanto, whose payments to lobbyists totaled approximately \$5.97 million in 2012 alone.<sup>108</sup>

Taken together, these facts suggest that the funds given to these lobbying groups have a great effect on the outcome of legislation, whether the funds are used to lobby government officials or the voters themselves. As one author aptly stated, “[f]ood agencies’ failure to adopt a precautionary standard begs the question as to whether the rule furthers the interests of corporations, lobbyists, and biotech companies rather than the public’s interests.”<sup>109</sup> With this kind of lopsided lobbying on such an important issue, a solution seems increasingly illusive to those aware of the true hazards of GM food.

### C. *The Revolving Door and Over-Representation of Corporate Interests*

Another glaring issue with the integrity of American GM food policy is what has become known as the “revolving door” among members of the FDA, the food industry, and lobbyists. Perhaps one of the most alarming examples is Michael Taylor, who became the FDA deputy commissioner for foods in 2010 after serving as vice president for public policy with Monsanto,<sup>110</sup> a very prominent GM seed development company.<sup>111</sup> Several other officials have worked for both Monsanto and the government,

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<sup>107</sup> Simon, *supra* note 100; see Grocery Mfrs. Ass’n Lobbying Report, First Quarter 2012 (Apr. 20, 2012), available at <http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=f3a6638d-259a-4fda-8da8-a3d642e61129&filingTypeID=51>; Grocery Mfrs. Ass’n Lobbying Report, Second Quarter 2012 (July 18, 2012), available at <http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=4913ec35-73d7-41dd-a05c-f544072fbc03&filingTypeID=60>; Grocery Mfrs. Ass’n Lobbying Report, Third Quarter 2012 (Oct. 19, 2012), available at <http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=dd332bd3-ab56-4c53-8723-e26652177a17&filingTypeID=69>; Grocery Mfrs. Ass’n Lobbying Report, Fourth Quarter 2012 (Jan. 22, 2013), available at <http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=34c3ab1e-efaa-4442-abbd-03fc3c4c62aa&filingTypeID=78>.

<sup>108</sup> See *Monsanto Co: Lobbyists Representing Monsanto Co, 2012*, OPENSECRETS.ORG, <http://www.opensecrets.org/lobby/clientlbs.php?id=D000000055&year=2012> (last visited Nov. 11, 2014).

<sup>109</sup> Michèle Alexandre, *Justice Kagan’s Presidential Administration and Bioengineered Foods: Making the Case for Congressional Guidance as a Check to Presidential Policy Setting*, 46 IND. L. REV. 265, 272 (2013).

<sup>110</sup> Meet Michael R. Taylor, J.D., Deputy Commissioner for Foods and Veterinary Medicine, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/aboutfda/centersoffices/officeoffoods/ucem196721.htm> (last updated July 7, 2014).

<sup>111</sup> Carey Gillam, *U.S. GMO Labeling Foes Triple Spending in First Half of This Year Over 2013*, REUTERS (Sept. 3, 2014, 3:44 PM), <http://www.reuters.com/article/2014/09/03/us-usa-gmo-labeling-idUSKBN0GY09O20140903>; *What We Do*, MONSANTO, <http://www.monsanto.com/products/pages/default.aspx> (last visited Nov. 11, 2014).

including other regulatory agencies like the Environmental Protection Agency (“EPA”).<sup>112</sup> But the influence does not stop there. Based on a study done by the Center for Responsive Politics, twenty-nine of GMA’s thirty-five lobbyists in 2013 previously held government jobs,<sup>113</sup> making them highly influential within the political sphere.

Furthermore, some of the food industry’s most successful “lobbyists” are not even registered to lobby; this is a blatant violation of the LDA.<sup>114</sup> In some instances, prominent lobbyists<sup>115</sup> or lobbying groups<sup>116</sup> failed to disclose their lobbying activity, illustrating the ease with which the food industry can leave its mark on FDA policy-making and regulation, despite existing laws aimed at limiting this influence. Not all people who push an agenda are registered, and, when they are, public disclosure is minimal.<sup>117</sup>

There is also alarming evidence of the over-involvement of industry representatives and underrepresentation of consumer interests in the regulatory determination process. United States policymakers have a history of allowing the over-representation of farmer and food manufacturer interests when determining agricultural policy. During the 2006 Congressional Hearings on the topic, seventeen witnesses testified before the House Agricultural Committee, all of whom represented farm lobby groups.<sup>118</sup> Furthermore, the memoranda from meetings of the FDA’s Center for Food Safety and Applied Nutrition (“CFSAN”) showed that industry representatives were present at meetings four times more often than those representing consumer interests.<sup>119</sup> Over a period of two years, representatives of the food industry were present at seventy-eight percent of CFSAN meetings, but representatives of consumer interests were

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<sup>112</sup> Hunter Lewis, *Monsanto’s Friends in High Places*, LUDWIG VON MISES INST., (Nov. 9, 2013), <http://mises.org/daily/6580/Monsantos-Friends-in-High-Places> (listing former Monsanto employees who later worked for the EPA and FDA).

<sup>113</sup> Simon, *supra* note 100.

<sup>114</sup> See Nancy Watzman, *Rulemaking in the Dark: Little Disclosure When Big Food Lobbies the FDA*, SUNLIGHT FOUND. BLOG (Sept. 26, 2013, 7:14 AM), [http://reporting.sunlightfoundation.com/2013/Rulemaking\\_in\\_the\\_dark\\_FDA/](http://reporting.sunlightfoundation.com/2013/Rulemaking_in_the_dark_FDA/); see *supra* text accompanying notes 84–90.

<sup>115</sup> Watzman, *supra* note 114; Marjorie Yano & Katie Reardon, *What Went Wrong? Lobbyist Guilty of Misdemeanors for Filing False Disclosure Forms*, BRICKER & ECKLER ATT’YS AT L. (Apr. 17, 2014), <http://www.bricker.com/publications-and-resources/publications-and-resources-details.aspx?Publicationid=2845>.

<sup>116</sup> Brad Shannon, *Judge Rejects Call to Freeze Anti-I-522 Cash—Group in Support of Labeling GMO Foods Claims Grocery Association Had Not Registered as Political Committee Before Soliciting Funds*, OLYMPIAN, Oct. 24, 2013, at 5A.

<sup>117</sup> Watzman, *supra* note 114.

<sup>118</sup> *Committee and Farm Groups Talk Ag Policy*, HOUSE COMMITTEE ON AGRIC. (Sept. 20, 2006), <https://agriculture.house.gov/press-release/committee-and-farm-groups-talk-ag-policy>.

<sup>119</sup> Watzman, *supra* note 114.



present at only eighteen percent.<sup>120</sup> With the FDA in charge of developing many of the details regarding regulatory law, the ease with which lobbyists can attend meetings and push private agendas is pushing the limits of propriety in an industry closely connected with public health and safety.

### III. THE SOLUTION: NEW LOBBYING REGULATIONS

The legislative process is a delicate one that is meant, first and foremost, to ensure the safety of the public through regulations decided with careful deliberation and fair representation of the population. Regulatory agencies such as the FDA play an essential role in this process, but they are largely independent, unaccountable to the public, and free from the checks and balances of our federal system of government.<sup>121</sup> The ability of these agencies to make an objective and impartial assessment of the issues they decide is crucial to enacting regulations that protect public interests. However, large payments made to lobbyists by those with profit motives threaten the impartiality of these bodies and actually jeopardize public health and safety.

Current legislation does not effectively address the bias issue created by those payments because it leaves the financial aspect of lobbying untouched, in effect leaving the public without fair representation against those with profit motives in the pending legislation.<sup>122</sup> Although the HLOGA requires disclosure about who makes lobbying contributions and how much,<sup>123</sup> it does not effectively deter the inappropriate influence of lobbying on specific public safety issues because it does not limit the amount of contributions lobbyists can make. Therefore, legislators should take further action to ensure independent agency decisions are protected from prejudicial outside influences that are often against the public interest.

While lobbying is a natural part of the democratic political process, it should not be involved—or should be vastly limited—in decisions that affect public health and safety. Because the most likely explanation attributes this fault in legislation to the successful lobbying of companies and PACs that represent corporate, rather than public, interests, the best response is to enact lobbying laws that will restrict lobbying activities and contributions on issues that affect public health and safety. Legislation to that effect must do more than require disclosure of lobbyist payments and

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<sup>120</sup> *Id.*

<sup>121</sup> *See supra* notes 74–75 and accompanying text.

<sup>122</sup> *See supra* Part II.A.

<sup>123</sup> Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81, § 203, 121 Stat. 735, 743 (codified as amended at 2 U.S.C. § 1604(d) (2012)).

activities; it should also vastly limit the payment amounts made to lobbyists on these issues—or perhaps prohibit lobbying on those issues altogether. Such limitations will serve the current lobbying legislation’s intended purpose of deterring the inappropriate influence that lobbyists wield over the political process<sup>124</sup> by limiting the influence of those with profit motives contrary to public interests.

In the area of GM food product regulations, lobbyist contribution limits will help ensure that the FDA is unbiased in its scientific review of GM food products by taking away the potential for opposing profit interests to overpower scientific evidence of GM product hazards. As it stands, the unchecked financing of lobbyists has led to over a decade of inappropriate influence over GM food regulations in America,<sup>125</sup> resulting in policies that elevate the profit interests of the food and agriculture industries above the safety of the American public. Because lobbyists have a prominent influence on the pro-industry regulatory policies set by the FDA, such legislation would further ensure the proper representation of public interests regarding public health and safety.

Although the First Amendment typically protects political contributions as a type of political speech, they are not immune to restriction.<sup>126</sup> Some restrictions on financial contributions to federal election campaigns, for example, have been struck down as unconstitutional,<sup>127</sup> while others have been upheld.<sup>128</sup> A restriction on a person or corporation’s First Amendment right to political speech is valid if it can withstand the strict scrutiny test, which requires that the restriction be narrowly tailored to effectively accomplish a compelling governmental interest.<sup>129</sup> Because protecting public health and safety is a compelling governmental interest,<sup>130</sup> laws restricting lobbying activities or contributions on issues involving that interest will be valid if they are narrowly tailored to accomplish that interest. Scientific evidence about the health and safety hazards posed by GM foods exists; therefore, public health and safety interests are implicated. Because evidence suggests that constant profit-motivated GMO lobbying and political pressure stopped the FDA from enacting legislation likely to protect public health and

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<sup>124</sup> See *supra* Part II.A.

<sup>125</sup> See *supra* text accompanying notes 100–07.

<sup>126</sup> See *McCutcheon v. FEC*, 134 S. Ct. 1434, 1440–41 (2014).

<sup>127</sup> See, e.g., *Citizens United v. FEC*, 130 S. Ct. 876, 888, 896, 917 (2010).

<sup>128</sup> See, e.g., *Cao v. FEC (In re Cao)*, 619 F.3d 410, 413–14 (5th Cir. 2010).

<sup>129</sup> *Citizens United*, 130 S. Ct. at 898; see also *Nat’l Ass’n of Mfrs. v. Taylor*, 582 F.3d 1, 11 (D.C. Cir. 2009).

<sup>130</sup> See *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 310 (1978); *Buchwald v. Univ. of N.M. Sch. of Med.*, 159 F.3d 487, 498 (10th Cir. 1998); *Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 550 (S.D.N.Y. 2006).

safety interests,<sup>131</sup> a law restricting the amounts that private corporations can give to lobbying activities on public safety issues, such as the GMO labeling issue, would be sufficiently narrowly tailored to serve that government interest.

In upholding legislation requiring disclosure of lobbying activities, the Supreme Court recognized the importance of ensuring the voice of the public is heard above the political pressures that often hinder the legislative process:

[T]he American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate [political] pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal.<sup>132</sup>

The Supreme Court recognized that Congress has “a vital national interest” in accessing the disclosures of lobbying activities in order to help legislators better understand the pressures that lobbyists exert.<sup>133</sup> Thus, it follows that an even more vital interest arises when those pressures are so strong that Congress, or other regulatory bodies like the FDA, continually reject both scientific studies and public consensus on an issue, especially one that affects public health and safety.

The Supreme Court held that only government interests in preventing corruption and its appearance are sufficient to uphold restrictions on amounts given to campaign finances.<sup>134</sup> Although this test has traditionally been applied only to restrictions on payments to election campaigns, the test also should be applied to laws restricting lobbying contributions when they have the potential to corrupt the authorities trusted with the responsibility to enact laws that affect public safety. As previously discussed, this is certainly the case for the FDA’s policy on GM food products.<sup>135</sup>

Large food manufacturing corporations make massive contributions to GMO lobbying activities.<sup>136</sup> Although the government cannot impose restrictions on contributions based solely on the corporate identity of the speaker,<sup>137</sup> the independent expenditures of a corporate body combined with campaign contributions may still raise a question of corruption.<sup>138</sup>

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<sup>131</sup> See *supra* Part II.B–C.

<sup>132</sup> *United States v. Harriss*, 347 U.S. 612, 625 (1954).

<sup>133</sup> *Id.* at 625–26.

<sup>134</sup> *FEC v. Nat’l Conservative Political Action Comm.*, 470 U.S. 480, 496–97 (1984).

<sup>135</sup> See *supra* Part II.B.

<sup>136</sup> Gillam, *supra* note 111; Simon, *supra* note 100.

<sup>137</sup> *Citizens United v. FEC*, 130 S. Ct. 876, 883 (2010).

<sup>138</sup> *Ala. Democratic Conference v. Broussard*, 541 F. App’x 931, 935 (11th Cir. 2013); *Stop This Insanity, Inc. v. FEC*, 902 F. Supp. 2d 23, 43–44 (D.D.C. 2012).

Thus, a court may not, as a matter of law, invalidate contribution limits on an entity when that entity makes both contributions to the campaign itself and is using independent expenditures to advocate for the same candidate.<sup>139</sup> When extended to the lobbying issue, this reasoning indicates that restrictions on financial contributions by large corporations could be valid. Many corporations, both in the biotechnology business and in food manufacturing, have historically made payments to GM lobbying groups that oppose GMO regulations<sup>140</sup> while simultaneously spending money to lobby independently against the same regulations.<sup>141</sup> To maintain the integrity of the legislative process, a corporation that gives large contributions to a PAC that lobbies against GMO regulations should be subject to a monetary cap for that issue. In addition, the possibility of corruption within these corporate companies is heightened when viewed in light of the close ties between government agencies and companies like Monsanto, providing even more reason to impose contribution limits on such a delicate and important issue. Policymaking on public health and safety issues should not be open to control by those with adverse profit interests.

#### CONCLUSION

The current legislation on lobbying activities is ineffective in deterring the inappropriate influence lobbyists exert on the process for determining proper standards for safety regulations, especially regulations of GM foods. Although the FDA has regulatory authority over GM products, the current regulations are not sufficient to fulfill a proper precautionary approach to ensure the safety of these foods. Despite multiple scientific studies showing a material difference between traditional crops and GM crops, mandatory labeling standards and heightened testing standards for GM products have yet to be enacted. Overwhelming evidence on the issue suggests that corporate lobbying is a primary factor influencing the FDA's stagnant and unjustified position on GM foods. To effectively release the FDA and other regulatory government agencies from the inappropriate influence of lobbyists, Congress should enact new regulations to limit monetary contributions to any lobbying

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<sup>139</sup> *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 465 (2001); *Ala. Democratic Conference*, 541 F. App'x at 935.

<sup>140</sup> Christina Salerno, *Grocery Manufacturers Association Discloses Donors to Anti-GMO Label Effort*, CAPITOL REC. (Oct. 18, 2013), <http://capitolrecord.tvw.org/2013/10/grocery-manufacturers-association-discloses-contributors-to-anti-gmo-label-effort/#.Uw-jPvRdV0I>.

<sup>141</sup> See, e.g., Brad Shannon, *Olympia Judge Rejects Lawsuit vs. No on 522; Fines "Moms for Labeling" Group \$10,000*, OLYMPIAN (Oct. 4, 2013), <http://www.courts.wa.gov/content/PublicUpload/eclips/2013%2010%2007%20Olympia%20judge%20rejects%20lawsuit%20vs%20No%20on%20522.pdf>; Simon, *supra* note 100.

activities on an issue that could reasonably have an effect on public health and safety.

Notwithstanding current legislation, which is meant to ensure transparency in the lobbying industry and require more frequent disclosures of lobbyist activities,<sup>142</sup> the inappropriate influence that lobbyists maintain over the legislative process remains a prominent factor determining the regulatory status of GM foods in America. While the Federal Election Campaign Act limits campaign contributions individuals and political committees may give to candidates running for federal office,<sup>143</sup> no similar limit is set on contributions to PACs lobbying in other areas of significant public interest regarding health and safety. Due to the strong potential for corruption within the regulating bodies and a long history of regulatory agencies' slowness to respond to public consensus, the best way to ameliorate this inequitable position toward GM food products is to enact lobbying contribution restrictions to enable public opinion to be heard more clearly and equitably. With gross underrepresentation of the public's interests in agency decision-making, the GMO debate in America has swayed in favor of corporate interests, and it has left a serious safety hazard largely unregulated. When overwhelming scientific evidence and the popular opinion of American consumers are consistently and systematically ignored in favor of policies driven by profit-motivated lobbying, legislators must intervene to protect public interests.

*Krystle B. Blanchard\**

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<sup>142</sup> H.R. REP. NO. 110-161, pt. 1, at 9–10 (2007); *see also* Brian W. Schoeneman, *The Scarlet L: Have Recent Developments in Lobbying Regulation Gone Too Far?*, 60 CATH. U. L. REV. 505, 516–17 (2011).

<sup>143</sup> Federal Election Campaign Act of 1971, 2 U.S.C. § 441a(a)(1)(A), (2)(A) (2012) (transferred to 52 U.S.C.A. § 30116(a)(1)(A), (2)(A) (West, Westlaw through Pub. L. No. 113-163 2014)).

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