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# Labeling of Genetically Engineered Foods Is a Losing Proposition

BY HENRY I. MILLER AND GREGORY CONKO

As Joe Six-pack munches Fritos and popcorn this NFL season, does he care what variety of corn was used to make them? Should he? Should the government require labels that tell him?

Most rational people would say no. But California's Proposition 37, which will appear on the state's ballot in November, would create just such a requirement. Supporters claim it is a simple measure designed to provide useful information to consumers about genetically engineered (GE) foods. It is not, and the deceptive measure fails every test, from science and economics to law and common sense.

A broad scientific consensus holds that modern techniques of genetic engineering are essentially an extension, or refinement, of the kinds of genetic modification that have long been used to enhance the foods we eat.

Except for wild berries and wild mushrooms, virtually all the fruits, vegetables and grains in our diet have been genetically improved by one technique or another—often as a result of seeds being irradiated or genes being moved from one species or genus to another in ways that do not occur in nature. Genetic engineering is more precise and predictable. Therefore, the technology is at least as safe as—and often safer than—the modification of food products in cruder, "conventional" ways. This superior technology is the target of Prop. 37.

The safety record of genetically engineered plants and foods derived from them is extraordinary. Even after the cultivation worldwide of more than 3 billion acres of genetically engineered crops—by more than 14 million farmers—and the consumption of more than 3 trillion servings of food by inhabitants of North America alone, there has not been a single ecosystem disrupted or a single confirmed adverse reaction.

The advantages are also remarkable. Every year, farmers planting genetically engineered varieties spray millions fewer gallons of chemical pesticides and substantially reduce topsoil erosion. In addition, many of these varieties are less susceptible to mold infection and have lower levels of fungal toxins, making them safer for consumers and livestock.

The mandatory labels required by Prop. 37 would convey none of this information. Instead, these labels would imply that the buyer needs to be warned of unspecified dangers. Compliance would also vastly inflate costs to everyone down the distribution chain, resulting in higher prices in grocery stores of up to $350 to $400 a year for California families.

*(continued on page 3)*

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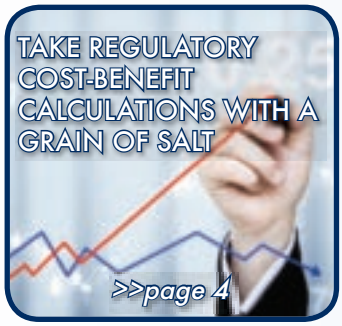


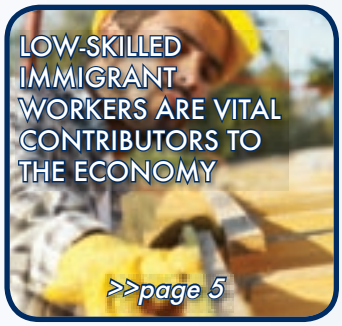



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>>FROM THE DISTINGUISHED FELLOW

# *In Memoriam: Ronald Hamowy*

## By Robert J. Smith

Ronald Hamowy passed away on September 8, 2012. Many excellent memorial pieces have praised Ron's academic achievements. Rather than repeat these paeans, I would like to briefly remember Ron personally.

I first met Ron in 1961, when I arrived in New York City to begin graduate work at New York University under Ludwig von Mises and as a staffer at the Foundation for Economic Education. I quickly became friends with Murray Rothbard and joined the group of students, academics, and friends of liberty who gathered at Murray's Manhattan apartment.

Ron was one of the most memorable and colorful—and ideologically hard core—of the group. Already at the University of Chicago studying under F.A. Hayek, he had an insatiable thirst for knowledge, a joyful sense of life, and a legendary wit. He loved to debate, sometimes taking positions contrary to his own simply to see how someone's arguments held up. We would often stay late into the early morning hours, discussing and debating ideas, singing songs, and as the crowd dwindled, playing board games.

Ron and Murray were great movie aficionados, visiting many of the local theaters. We would visit a wide circle of ethnic restaurants, especially Chinese and Italian. Murray—not a fan of tiny plates and petite portions—disliked *New York Times* restaurant reviewers who complained about large portions. However, Joey Rothbard was noted for her many dinners and parties and we often ate at Murray's.

We would occasionally play miniature golf and the competition was keen. Ron took special pleasure in his putting prowess. In those days, Rothbard had a travel phobia. A number of us began to regularly get Murray to visit an ever-widening circle of miniature golf courses in greater New York City. Eventually, we even got Murray down to the northern New Jersey shore and played once at a genuine par-three golf course.

In 1962, Ron traveled to Colorado Springs and got to know Robert LeFevre at his noted Freedom School, where LeFevre taught one- and two-week courses in libertarian theory. Ron helped LeFevre with his planning for Rampart College and played a role in my being selected to become the assistant dean of Rampart College—for its first and only exciting year, 1963-1964.

I had the pleasure of traveling with Ron to a few Mont Pelerin Society meetings in Europe. For the 1964 meeting in Semmering, Austria, we took a side trip across the Rhine into Liechtenstein. The international bridge was still a one-lane wooden covered bridge and halfway across there was a line painted with *Schweiz* written on one side and *Liechtenstein* on the other. We drove back across the bridge to be sure of what we had seen: an unguarded border with no checkpoint at the height of border controls in Cold War Europe. We had to search out the police headquarters in Vaduz to get someone to stamp our passports.

Ron's time at Stanford in 1968 teaching Western Civilization coincided with the anti-war movement and the rise of Students for a Democratic Society (SDS), some of whose leaders were in Ron's classes—including David Harris, one of the leading anti-war activists and husband of folk singer Joan Baez. On a mid-term essay exam, David described the Thermidorian Reaction as the Revolt of the Lobsters. Ron gave him a D- for originality and humor.

Ron's greatest culture shock came when he left Stanford the following year for the University of Alberta at Edmonton. Only three TV stations were available, with the main station showing mostly ice hockey games, the second showing replays of the games, and the third showing replays of the replays. And with winter so cold, he had to keep his car running 24 hours a day so it wouldn't freeze solid.

I still remember warmly when Ron visited my parents' home in Los Angeles and stayed with us for a few days. Over the years our paths would continue to cross, especially when settled in the Washington area. Always the same old Ronald, it was a delight to see him. Even with health problems, he remained unfailingly cheerful and discussions were always infused with his wit and bursts of enthusiasm.

RIP, old friend.

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# GMOs, *continued from page 1*

Perhaps most important, the required labels would actually reduce consumers' choices.

How can that be? Great Britain's labeling law, touted early on by a senior regulator as "a question of choice, of consumer choice," has had the opposite effect. Consumers naturally think that government-mandated labels signal a cause for concern, so food producers, retailers, and restaurant chains in Britain quickly rid their products of genetically engineered ingredients to avoid having to put "warning" labels on them.

In the United States, on the other hand, the Food and Drug Administration (FDA) followed the science and declined to require special labeling for genetically engineered foods. The agency does require foods to be labeled if they raise questions related to nutrition or safe use—if, for example, they contain substances new to the food supply, allergens presented in an unusual or unexpected way (such as a peanut protein in wheat) or increased levels of toxins found normally in foods.

The same FDA policy applies to both genetically engineered and conventionally modified foods. The required label information pertains to changes in the food's composition or use, not the breeding method used, because that's what consumers really need. Similar to informing them about whether a fruit or vegetable was hand- or machine-picked, telling them only that a product was "genetically engineered" conveys no useful information.

The FDA's risk-based approach has been upheld repeatedly in federal court. In the early 1990s, a group of Wisconsin activists sued the FDA, arguing that its policy allowed products to be labeled in a false and misleading manner. However, the plaintiffs could not demonstrate any material difference between genetically engineered and conventional foods, so the federal court agreed with the FDA and concluded that, "it would be misbranding to label the product as different, even if consumers misperceived the product as different."

Ironically, Prop. 37 has so many loopholes and carve-outs that it wouldn't even cover all so-called genetically engineered foods. Trying to figure out

what would and would not be covered would be a nightmare. It is noteworthy that producers cannot even avoid the higher costs associated with labeling by choosing non-genetically engineered ingredients, because they would still have to trace the pedigree of every ingredient they use, to keep from being sued.

Prop. 37 would not only create a large new bureaucracy but also encourage bounty-hunter, or shakedown, litigation to enforce the rules. The initiative is a trial lawyer's dream—and an invitation to abuse—which is not surprising given that it was written by a California trial lawyer who has spent his career suing large and small businesses. Lawsuits could be filed even against those following the law, because no proof of a violation is required. In fact, according to California's independent non-partisan Legislative Analyst Office, Prop. 37 would allow trial lawyers "to sue without needing to demonstrate that any specific damage occurred as a result of the alleged violation."

Even if Prop. 37 were to pass, it is unlikely to withstand legal challenges on at least two grounds.

First, federal law preempts state labeling rules that conflict with FDA policy. Just last year, a federal court in Los Angeles ruled that a California requirement to label genetically engineered foods "would impose a requirement that is not identical to federal law" and would therefore be preempted.

Second, and more fundamentally, the U.S. Second Circuit Court of Appeals ruled over a decade ago that labeling mandates based solely on an alleged consumers' "right to know," rather than on a product's measurable characteristics, violate the U.S. Constitution's First Amendment. A Vermont statute enacted in 1994 mandated labels on milk from cows treated with a bioengineered protein. The court found the law unconstitutional because it forced producers to make involuntary statements when there was no material reason to do so. "Were consumer interest alone sufficient," the court wrote, "there is no end to the information that states could require manufacturers to disclose about their production methods."

In order to pass constitutional muster, labeling laws must bear directly on safety, nutrition, or similar consumer welfare concerns. Prop. 37 clearly does not, and if it were approved by the voters, the state would need to spend years and millions of taxpayer dollars defending a lost cause in the federal courts.

As for consumers who prefer organic products, they have viable alternatives. The Constitution also protects the right to sell non-genetically engineered foods and to advertise that fact on product labels. Just over the last decade, more than 7,000 new food and beverage products have been introduced in the United States with explicit non-GE labeling, joining thousands of others that have been on the market since the early 1990s. Advocacy groups ranging from Greenpeace to the Organic Consumers Association have created websites, printed pocket guides, and even smart phone apps that direct purchasers to "GE-Free" products.

In short, consumers who want to avoid genetically engineered foods have plenty of information that enables them to do so. Thus, even if they were legal, government mandates are not needed.

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# Take Regulatory Cost-Benefit Calculations with a Grain of Salt

BY WAYNE CREWS AND RYAN YOUNG

Every year, the Internal Revenue Service releases data on how much tax revenue it takes in. It never argues that the nation's tax burden is actually negative because the benefits those taxes pay for outweigh the cost of paying them. Yet many regulatory agencies use exactly that argument to justify their expensive new regulations. Cost analysis is an imprecise art, but it is practically a science compared with estimating benefits from regulations. Agencies should stop using them.

Nobody knows how much the 169,000-page Code of Federal Regulations costs the economy, but we do have a rough idea. The Office of Management and Budget puts the cost at $68 billion, though this figure leaves out more than 90 percent of all rules. An upcoming Competitive Enterprise Institute report, "Tip of the Costberg," puts the number at $1.8 trillion.

This muddy picture is a model of clarity compared with benefit analysis, which is largely subjective. Regulatory agencies routinely take advantage of this—especially in the health and safety arena—making assumptions and pulling numbers out of thin air to tip the cost-benefit scales in favor of new rules.

Objectivity can be a problem. It is important to keep in mind that agencies are their own special interest. They want larger budgets and broader missions. As long as they publish their own unaudited estimates, their numbers are questionable.

Another problem with benefit analysis becomes clear when regulations and initiatives contradict each other. For example, the federal government gives subsidies and marketing support to the dairy industry. It also spends about $2 billion a year on anti-obesity campaigns—in direct opposition to government support of fattening foods such as cheese and corn.

Clearly, the measurable benefits of these policies would at least partially cancel each other out, but since benefit estimates ignore these confounding factors, they can double-count the alleged benefits.

The biggest problem lies in the simple question: Benefits compared with what? Government is hardly the only regulator; governance doesn't always require government. Competitive markets have disciplinary mechanisms—including reputation, loss, insurance, and liability—to punish bad actors. Consumers are harsh sovereigns. Private organizations like Underwriters Laboratories set high standards for its sought-after product certifications.

If a new government regulation codifies best practices for an industry, a common result is stasis. Technology and on-the-ground best practices evolve much more quickly than the Code of Federal Regulations does. When regulations hold back advances, they wipe out many potential benefits to consumers and producers alike.

The solution isn't an improvement in cost-benefit analysis techniques. Instead, Congress should conduct expedited votes on all new economically significant regulations—those with estimated costs of over $100 million a year.

The Rules from the Executive in Need of Scrutiny (REINS) Act, currently stalled in the Senate, would require this. That would be a significant step toward tackling the fundamental problem: regulation without representation.

Congress' abdication of its responsibilities is now so routine that few people notice and fewer still complain. Congress passed 81 bills into law last year, while agencies finalized 3,807 rules—which are binding law.

More recently, Congress shot down cybersecurity legislation, so President Obama is mulling an executive order to enact certain provisions anyway through the regulatory process. Congress is the only branch with the power to legislate. Both of its chambers should vote on any rules coming out of any such executive order.

Without congressional accountability, regulatory cost-benefit calculations should be taken with a stalactite of salt—especially the benefits.


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# Low-Skilled Immigrant Workers Are Vital Contributors to the Economy

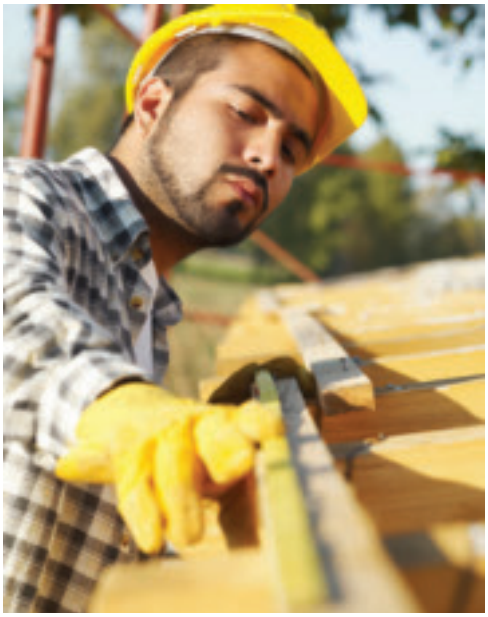
BY DAVID BIER

The Republican National Committee recently reformed its immigration platform to favor a new guest worker program. Unfortunately, the party still seems unwilling to accept permanent low-skilled immigrants. These workers are critical to America's future competitiveness, yet they have received little attention from the GOP compared to high-skilled workers from Asia. The disparate treatment stems from a fundamentally flawed view of the economy.

Many people view low-skilled immigrants as an economic burden because they pay few income taxes. But it's not just these immigrants—almost half of all Americans had no income tax liability in 2011. In other words, according to the logic of immigration's opponents, America's economy would benefit from deporting half the country's population. Yet, no other argument against immigration receives more attention from Congress and the media, despite its absurd implications.

The policies advocated by the major anti-immigration groups—NumbersUSA, the Federation for American Immigration Reform, and Center for Immigration Studies—actually do rest on the assumption that the U.S. would benefit greatly from significantly fewer people. These groups' founder, radical environmentalist John Tanton, argued that reducing the population leads to environmental progress, but "double the number of people," he says, and "we're back where we started." All three groups he founded apply his views to immigration and use the tax argument in favor of deporting undocumented workers and even ending low-skilled immigration altogether.

This view misses how low-wage earners contribute to the economy and government budgets. These workers allow Americans to specialize in more productive endeavors. Consider a worker who files paperwork for a doctor. Because the doctor is now free to see more patients, the worker has created economic value from both his efforts and the



doctor's. Child care providers free mothers to work; construction workers allow U.S. engineers to finish more projects; many others create similar benefits, and so make a much more substantial contribution to the economy and to the U.S. Treasury than appear on tax returns.

Allowing people to reside where their work is most valuable creates even more economic growth, which means U.S. companies make more sales—including sales to low-skilled workers. More sales equal larger economies of scale, which lowers per-unit costs of production for businesses and cuts prices for consumers. Economies of scale allow consumers to spend, save, and invest more of their money, which leads to more—taxable—economic activity that benefits everyone.

The most important flaw in this myth is that low wage workers do pay taxes. They pay not just regressive sales taxes, payroll taxes, and others that target them directly, they also indirectly bear the cost of those aimed at the rich. When taxes target the top 50 percent, they have spillover effects for everyone else. Companies compensate for higher taxes and lower rates of return partly with lower wages and higher prices, which disproportionately impact the poor. Lower rates of return discourage investment, meaning fewer jobs and slower wage growth.

The corporate income tax is the most studied tax targeted at the rich, but which also impacts workers. Although two recent studies found only a slight effect, many studies over the past 20 years have found corporate taxes are paid in large part by workers. Studies by the Congressional Budget Office (CBO), Oxford University, U.S. Treasury, Federal Reserve Bank of Kansas City, National Bureau of Economic Research, American Enterprise Institute, and several others have all concluded at different times that lower hourly wages account for a substantial portion of corporate income tax payments.

The Kansas City Fed found that, "from 1992 to 2005, a one-percentage-point increase in the state corporate tax rate decreased wages 0.52 percent, on average." In 2006, the CBO found that, "domestic labor bears slightly more than 70 percent of the burden of the corporate income tax." The U.S. Treasury concluded in 2007 after reviewing the most recent economic research that, "labor bears a large burden from the tax, possibly exceeding the revenues collected from the tax."

Conservatives have rightly argued for years that bigger government hurts the poor the most. Yet market advocates lose the force of their pro-liberty message when they characterize the working class as free-riding on the backs of the rich. In an economy in which everyone is connected, nothing is free. Immigrants and other low skilled workers are vital contributors to the economy. Rather than treating them as superfluous or parasitic, America must begin to see them as the base on which we all depend.

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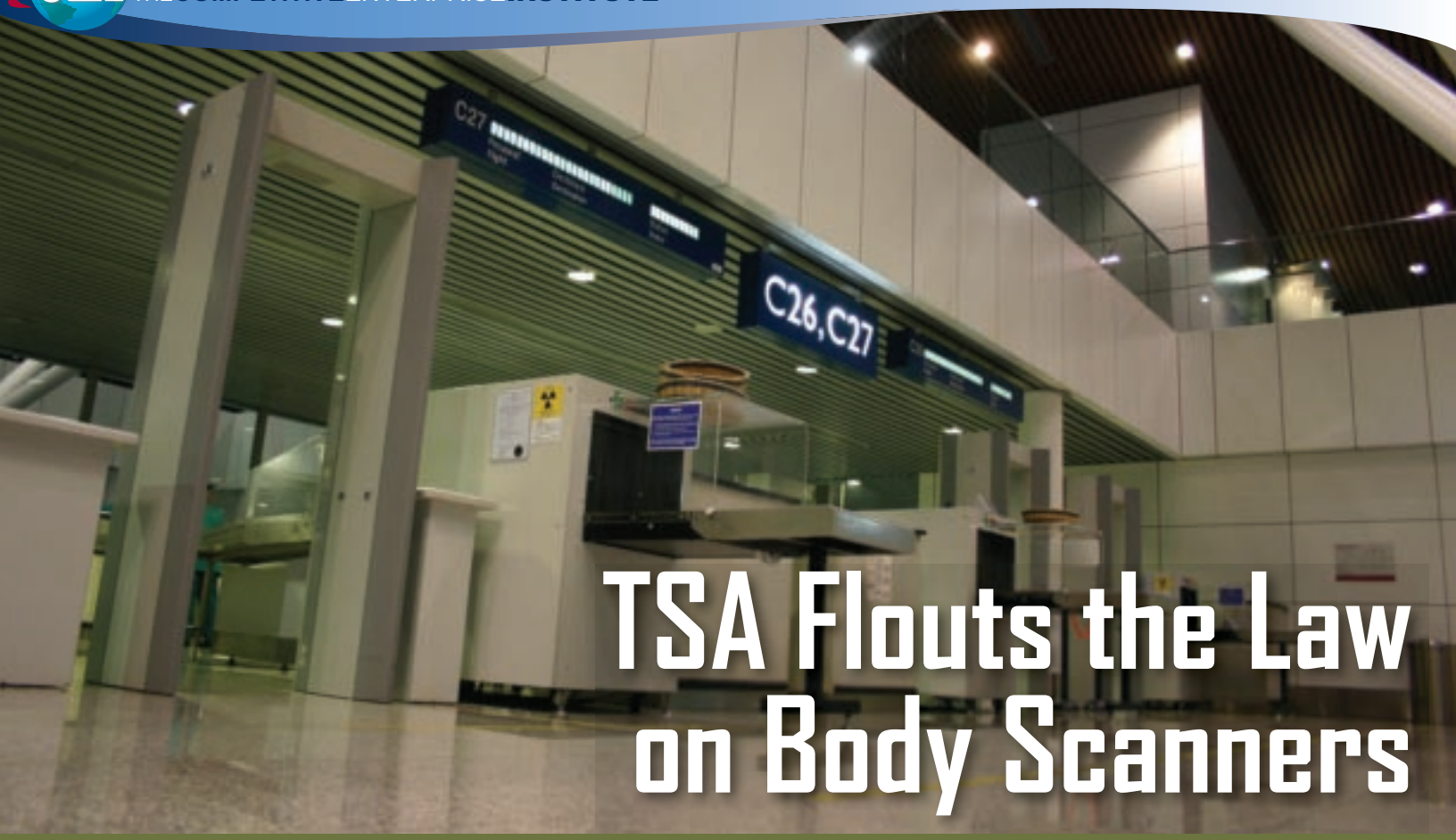


# TSA Flouts the Law on Body Scanners

BY ROBERT L. CRANDALL AND MARC SCRIBNER

For over five years, the Transportation Security Administration (TSA) has been deploying full-body imaging scanners in our nation's airports. About 700 scanners have been deployed in nearly 190 airports nationwide. While the agency keeps installing these devices—which most agree intrude on our privacy—there are real doubts whether they are actually making anybody safer. Yet the TSA is flying blind because it failed to solicit public comments about the scanners—in violation of federal law.

In 2010, the Electronic Privacy Information Center (EPIC) sued the Department of Homeland Security, TSA's parent department, to make sure TSA is actually soliciting the public's input and that of independent experts. In July 2011, the D.C. Circuit Court of Appeals ordered the agency to "promptly" begin a rulemaking to allow for legally required public comments.

A year later, the TSA, had not even begun the process. The law empowers courts to compel agency action when it is "unreasonably delayed." TSA says it does not have the resources to begin this public comment process. But it has a discretionary budget larger than that of the entire federal judiciary and staff larger than those of the Departments of Labor, Energy, Education, Housing and Urban Development, and State, combined. This supposed lack of capacity has not prevented TSA from opening new proceedings on other less important matters, adding many more body scanners at airports nationwide, and launching the new PreCheck program for frequent fliers in the last year.

On July 17, EPIC petitioned the Court to enforce its mandate. Two days later, CEI filed an amicus brief supporting EPIC's petition, along with the National Association of Airline Passengers, Electronic Frontier Foundation, and six other organizations.

**A Cornell University research team estimates that 500 people—more than enough to fill a 747—die annually due to TSA policies that have changed how Americans travel.**

This rulemaking is critical to determining whether the TSA's air travel security regime is worth its huge costs and adverse effects on the public's wellbeing. Several independent analyses have found that TSA's use of these machines would be economically wasteful even if they worked as well as TSA claims, but may actually make us less safe.

Ohio State University professor John Mueller has done a thorough analysis of U.S. air travel security. He found that even assuming the scanners are capable of detecting body-borne explosives, the likelihood of a terrorist carrying out such an attack is so low the massive annual cost to deploy these machines outweighs any security benefit and could be much better allocated elsewhere.

But TSA's security procedures are not merely ineffective, they may be driving consumers to far more hazardous forms of transportation.

Three Cornell University economists found that the agency's onerous screening rituals have led many people to abandon short-haul flights—New York City to Washington, D.C., for instance—and take to the road instead. Since driving is far more dangerous than flying, the research team estimates that 500 people—more than enough to fill a 747—die annually due to TSA policies that have changed how Americans travel.

Yet the agency still has not allowed the public to officially comment on its most invasive—and unpopular—security measure to date. This is unacceptable, especially as TSA continues deploying body scanners. According to Rep. John Mica (R-Fla.), co-sponsor of the law that created the TSA, a classified Government Accountability Office study found that the explosive detection rates are unacceptably low. "If we could reveal the failure rate, the American public would be outraged," said Rep. Mica at a March 2011 hearing.

Experience with "puffer" explosive detection machines shows how TSA's exuberance in adopting unproven screening technologies without consulting the public and independent experts can waste time and money, and be unnecessarily intrusive. After spending $36 million purchasing the devices, TSA found them to be ineffective and had to remove them. They now sit unused in a Texas warehouse. That was a bargain compared to the $500 million the agency expects to spend on body scanners. The longer the TSA delays in complying with the public comment proceeding, the more likely it will continue to set bad security policy.

At a minimum, the TSA should solicit input. For that reason, while the Court eventually denied EPIC's July 2012 petition, it held that it "expect[s] that the [notice of proposed rulemaking] will be published before the end of March 2013," which effectively sets a timetable for TSA to begin complying with federal law. The public will finally have a chance to comment on this intrusive and likely ineffective security technology.

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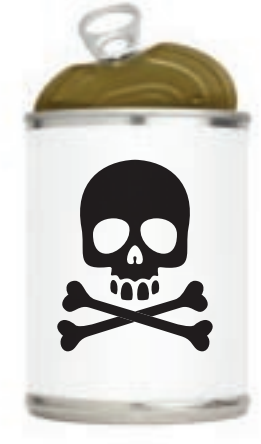

# Green Calls for BPA Bans Are Dangerous

BY ANGELA LOGOMASINI

This past July, the U.S. Food and Drug Administration (FDA) banned the use of the chemical bisphenol A (BPA) to make baby bottles and sippy cups. Environmental activists would like you to believe the move was designed to protect public health and that more bans are necessary. But the greens are wrong on both counts—and their advice could imperil public health.

For more than 50 years, manufacturers have safely used BPA to make hard, clear plastics for food containers, medical devices, safety goggles, and more. They also make resins that line aluminum and steel cans to reduce contamination of food and extend shelf life.

Much of BPA's alleged risk to humans is based on studies of rodents that were administered massive doses, often by injection. The relevance of these studies to humans who are exposed to trace amounts in food is highly questionable. In addition, activists have attempted to use a number of studies conducted on humans to make their case even though reputable scientific bodies around the world have dismissed these studies as seriously flawed or inconclusive.

Activists also condemn BPA simply because it shows up in human urine. Yet all this proves is that the human body, unlike rodents, quickly metabolizes BPA without ill effects. A study funded by the Environmental Protection Agency (EPA) and conducted on human volunteers who were exposed to high levels of BPA underscored this point. The chemical passed through the humans quickly, never reaching levels that pose problems to rodents.

Scientific panels around the world have investigated BPA many times—examining the full body of research and focusing on the best science available. In Japan, the European Union, Canada, Norway, France and elsewhere, researchers have found no public health risk related to consumer exposure to BPA. Even the Environmental Protection Agency—which is well known for exaggerating chemical risks—states that consumer exposure to BPA is likely 100 to 1,000 times lower than EPA's estimated safe-exposure levels for both infants and adults.

Because of activist group petitions, lobbying, and media campaigns, the FDA has continued to spend taxpayer dollars to study and re-study BPA during the past several years, but it has not been able to find a serious risk. Even as the agency issued its ban on BPA bottles and sippy cups, a representative explained to *The New York Times*: "based on all the evidence, we continue to support its [BPA's] safe use."

The ban came at the request of industry rather than to address health problems. The American Chemistry Council, explained in a press statement: "Although governments around the world continue to support the safety of BPA in food contact materials, confusion about whether BPA is used in baby bottles and sippy cups had become an unnecessary distraction to consumers, legislators and state regulators." Accordingly, the Council supported a ban because it "provides certainty that BPA is not used to make the baby bottles and sippy cups on store shelves, either today or in the future."

But green groups use this industry driven-ban to advance a larger anti-BPA crusade. "This is only a baby step in the fight to eradicate BPA," says Sarah Janssen of the Natural Resources Defense Council in a press release. "To truly protect the public, FDA needs to ban BPA from all food packaging," she explains. This is seriously bad advice, because BPA resins control dangerous food-borne pathogens such as E. coli and botulism. And there are no good alternative products to replace BPA resins.

In fact, packaging manufacturers have responded to the politically charged debate on BPA during the past several years by attempting to find alternatives—without much success. One industry representative told *The Washington Post*, "We don't have a safe, effective alternative, and that's an unhappy place to be ... No one wants to talk about that." As a result, BPA resin bans may eventually translate into an increase in serious food-borne illnesses.

Still, some people argue that we should at least seek substitutes to "be on the safe side." They forget that every product on the market prevailed because it was the best to perform the job at an acceptable price at the time. Politically driven substitutes will always be second to the products that won in the marketplace. Thus, unless there is a verified and significant risk, banning products isn't a good idea.

Banning safe, useful products simply wastes investment that went into designing them, discourages innovators who fear similar repercussions, and diverts resources from useful enterprises into production of second-best substitutes. And for consumers, the result can be dangerous.

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# Field of Cash

## *If You Offer, They Will Take*

BY TREY KOVACS

It has become a familiar ritual. Wealthy professional sports team owners ask state and local governments to subsidize their venues, threatening to skip town if taxpayers don't pony up. As Bloomberg News reports, 64 professional sports arenas around the nation currently receive either public financing or tax breaks. Despite national, state, and local fiscal woes, elected officials continue to spend or forgo billions of tax dollars on professional sports stadiums owned by millionaires and billionaires. Thankfully, taxpayers in 47 states have a weapon at their disposal: state constitutional provisions that restrict government aid to business. It's time they used them.

Minnesota, home of the Vikings of the National Football League (NFL), faces a projected $1 billion-plus deficit in 2013, in addition to just overcoming last summer's $5 billion budget shortfall and near-government shutdown. Yet that hasn't deterred Governor Mark Dayton (D) and elected officials on both sides of the aisle from bestowing millions of taxpayer dollars upon billionaire Vikings owner Zygi Wilf to construct a new football stadium—which the NFL says is necessary to keep the Vikings in Minnesota. In May, Dayton authorized $348 million for the stadium. Combined with the $150 million the city of Minneapolis had already chipped in, that brought the total public funding for the stadium to $498 million, or 51 percent of the stadium's estimated cost. On September 14, the Minnesota Sports Facility Authority began spending the taxpayer funds, awarding multiple deals to contractors for construction.

Sadly, this is an old game. Throughout the 19th century, state and local governments routinely offered subsidies to railroad tycoons and other one-percenters of the time. Concurrently, those industrialists played the various public offers against each other to garner even more taxpayer dollars. Naturally, businesses happily took the taxpayers' money. Ultimately, governments offered so many subsidies to private enterprise that eight states and the then-territory of Florida defaulted on debt obligations during 1841-1842, as numerous cities went bankrupt—leaving taxpayers with the bill.

*Despite national, state, and local fiscal woes, elected officials continue to spend or forgo billions of tax dollars on professional sports stadiums owned by millionaires and billionaires.*

To address this problem, the public pressured governments to eliminate public spending for private profit. Between 1846 and 1886, nearly every state amended its constitution to restrict government aid to private enterprise. These bans, known as "Gift Clauses," are intended to build a wall of separation between government and business.

So how, despite state Gift Clauses, do elected officials justify subsidizing billionaire professional sports team owners? The enduring explanation from politicians for awarding tax dollars to private enterprise is that it serves a "public purpose." This is a blatant misapplication of the legal philosophy known as the "public purpose doctrine." As law professor and Gift Clause expert Dale Rubin explains, "The doctrine was not created to provide legislators an excuse to spend taxpayer dollars on whatever project they choose."

The Minnesota Supreme Court, in its decision in *Visina v. Freeman* (1958), set the legal precedent for determining whether state government expenditures pass the public purpose doctrine. The court stated, "What is a 'public purpose' that will justify the expenditure of public money is not capable of a precise definition, but the courts generally construe it to mean such an activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government." In other words, a public expenditure is illegal if it primarily promotes a private end.

In addition, elected officials' explanations for such spending are utterly unconvincing. The law that finalized public funding for Vikings stadium, H.F. 2958, states, "The legislature finds … the expenditure of public money for this purpose is necessary and serves a public purpose." It goes on to state, "that government assistance to facilitate the presence of professional football provides to the state of Minnesota and its citizens highly valued intangible benefits that are virtually impossible to quantify."

This clearly falls afoul of Minnesota's Gift Clause (Constitution Article XI, Section 2), which clearly states, "The credit of the state shall not be given or loaned in aid of any individual, association or corporation except as hereinafter provided." It goes without saying that Minnesota's constitution does not provide for football stadiums.

Around the nation, state and local governments are struggling financially and need to cut spending somewhere. Cash contributions to billionaires would be a good start.

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## THE GOOD

### CEI Sues EPA for Hiding Agency Records on Private Email Accounts

On September 11, CEI filed suit in federal district court for the District of Columbia challenging the Environmental Protection Agency's efforts to shield a senior official's practice of hiding government communications in private email accounts that only he controls or can access. By exposing this practice, the suit will pave the way for obtaining all such public records stashed in private corners and thus out of reach of the nation's transparency laws, which clearly prohibit this kind of activity. In May, CEI filed a Freedom of Information Act request seeking correspondence between EPA Region 8 Administrator James Martin and the Environmental Defense Fund, where Martin had previously worked as a senior attorney. The EPA has refused to provide these emails and stonewalled CEI's administrative appeal. As such, CEI's suit seeks to compel the release of these records.

## THE BAD

### As Corn Production Shrivels, EPA Stalls on Ethanol/Hunger Issue

The U.S. Department of Agriculture released its much-anticipated crop data report on August 10, revealing sharply reduced corn supplies due to continuing drought conditions. Coupled with the United Nations' recent warning about surging food prices and the risks of a global food crisis, this indicates that the impact of ethanol fuel programs on world food supplies is worse than ever. The EPA administers these ethanol programs, but it has failed to even acknowledge their lethal effect on world hunger. In Spring 2011, a study indicated that nearly 200,000 lives per year are lost due to malnutrition caused by these programs. In October 2011, CEI and ActionAid USA, an anti-poverty organization, formally petitioned the EPA to take corrective action. The agency, however, has repeatedly pushed back its response date.

## THE UGLY

### FTC's Record Fine Sends Ominous Warning to Internet Innovators

On August 9, Google agreed to pay $22.5 million to settle a Federal Trade Commission (FTC) complaint that claimed the company misled users of Apple's Safari browser about its privacy practices. This is the largest fine the Commission has ever levied on a single company. CEI harshly criticized the FTC for setting a dangerously overbroad precedent that will chill Internet innovation and hurt online startups. "Google's only mistake here was failing to realize a software tweak by Apple rendered one of Google's help pages inaccurate. There is no evidence that any users were 'taken in' or harmed by this inaccurate help page," said Ryan Radia, Associate Director of the Center for Technology and Innovation at CEI. "Under this precedent, Internet companies that lack perfect knowledge of other firms' privacy decisions risk facing severe FTC fines for accidental, trivial misstatements."

# MediaMENTIONS

Compiled by Nicole Ciandella

**CEI President Fred Smith and Research Associate Michelle Wei introduce a market vision of true "sustainable development":**

Economic growth and technological progress have lightened our environmental footprint in important ways. People do more than simply consume resources; they also create new wealth and resources where none previously existed. Sustainability emerges from these social interactions, which encourage firms and individuals to use existing resources more efficiently and find new ways of meeting human needs.

True sustainability comes from capitalism. Consider the role of energy over the last few centuries. Few companies will invest if they could only make a profit for one year. Firms owe their shareholders the responsibility to ensure energy will remain available as years progress. Therefore, firms continuously hunt for new resources while avoiding activities that might deplete all the oil at once.

-August 9, 2012, RealClearMarkets

**Senior Fellow Christopher Horner discusses the Obama administration's track record of picking industry winners and losers:**

Of course, the U.S. auto industry would still exist had Obama not circumvented traditional, managed bankruptcy proceedings, but then he could not have handed hundreds of millions of dollars to his union supporters. Even GM likely would be around, but with a healthier structure that addressed the problems which still remain fatal flaws in the company.

But in discussing Obama's economic philosophy of state-managed capitalism, or industrial policy, something important has been lost amid talk of "picking winners and losers." In addition to choosing "winners" among struggling but politically favored enterprises, he has also deliberately targeted politically disfavored but viable businesses for extinction—"picking losers." These include industries critical to our economy and national security.

Obama famously said in an interview with the *San Francisco Chronicle*'s editorial board, "Under my plan of a cap-and-trade system, electricity rates would necessarily skyrocket," toward the specific end that he would "bankrupt" coal.

-August 15, 2012, *The Washington Examiner*

**Vice President for Strategy Iain Murray and Land-use and Transportation Policy Analyst Marc Scribner highlight the fiscal sleights of hand contained in the new federal highway bill:**

One provision that received little attention contains a significant pay-for used to fund the highway bill's spending programs and keep the legislation "budget neutral."

For this two-year measure, Congress relied on 10 years of budget offsets—including a dangerous accounting gimmick known as "pension smoothing." This provision reduces pension funding requirements under the Pension Protection Act of 2006 by allowing plan managers to assume higher investment returns—perversely at a time of very low interest rates on low-risk investments such as bonds.

The effect of this move is to make pensions seem better funded than they are, which allows fund managers to reduce tax-free pension contributions. By reducing contributions, more employer income will be taxable, which is why Congress expects this trick to generate $9.467 billion in additional tax revenues over 10 years.

-August 16, 2012, *The American Spectator*

**Senior Fellow for Finance and Access to Capital John Berlau explains why Dodd-Frank is a threat to economic recovery in a letter to the editor:**

Jack Gerard is spot on in pointing out that Dodd-Frank's Section 1504, requiring lengthy disclosures of payments by U.S. energy firms to foreign governments, will put the U.S. at a competitive disadvantage and harm the energy market.

Unfortunately, this isn't the only provision of Dodd-Frank the SEC voted Wednesday to implement that threatens U.S. energy through the clumsy shoehorning of foreign policy into domestic financial regulation. Section 1502 also threatens the energy supply by forcing U.S. companies into an expensive process of tracing their products for "conflict minerals."

This provision will require firms to disclose the use of metals such as tin and tungsten from war-torn regions of the Congo. But since these minerals are reused several times, there is great incentive for suppliers to avoid the Congo altogether so as to not run afoul of the law.

-August 23, 2012, *The Wall Street Journal*

**Senior Fellow Gregory Conko and Fellow in Regulatory Studies Ryan Young discuss the consequences of new food-safety regulations:**

Food-borne illnesses kill as many as 3,000 Americans each year, but consumers should not expect new Food and Drug Administration regulations to help.

These rules, being drafted to implement last year's food-safety law, will waste billions of dollars on antiquated practices unlikely to do much good. They will, however, aid giant food corporations by hobbling smaller competitors and make it harder for companies of all sizes to adopt innovative safety methods and technologies.

Enacted in response to 2010's massive egg recall, the law will spend nearly $1 billion to double the number of inspections on farms and in food processing facilities. That may sound appealing, but it only means that most facilities will be inspected every five years instead of every 10. Designated "high-risk" facilities would be inspected just once every three years.

More inspections would not have prevented the egg outbreak or this year's cantaloupe recall, however, because a visual examination cannot detect the microbes that cause most food-safety problems. Facilities that look clean can pass inspection because you simply cannot see bacteria.

-August 23, 2012, *USA Today*

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# ...END NOTES

### Regulators Close Boy's Food Cart, Family Now Homeless

Nathan Duszynski is 13 years old and lives in Holland, Michigan. His stepfather has multiple sclerosis. His mother has epilepsy. Neither is able to work. To help out with his family's expenses, Nathan started mowing lawns and soon saved up the $1,200 or so that he needed to buy a hot dog cart. That way he could make even more money. The owner of a local sporting goods store was even kind enough to allow Nathan to set up shop in his store's parking lot. But regulators shut Nathan down 10 minutes after opening up shop for the first time. Food carts are illegal in Holland unless they're connected to a brick-and-mortar restaurant. Restaurants would rather not have the competition, hence the law. Nathan and his family are now homeless because of this rent-seeking law.

### City Threatens Lawsuit for Business Owner's Abatement of City Nuisance

Philadelphia real estate developer and coffee shop owner Ori Feibush was tired of looking at a garbage-strewn vacant lot in his neighborhood, so he decided to clean it up himself. Feibush spent more than $20,000 of his own money to remove 40 tons of debris, even the soil, and landscape the formerly derelict property in Point Breeze. Unfortunately, the lot is owned by the Philadelphia Redevelopment Authority. Feibush received a letter from the city demanding that he return the property to its previous state. For Feibush, this is rich. The city has repeatedly fined him for not removing snow from the sidewalk in front of the lot. A year ago, he was even cited for not removing the trash that he recently paid to have removed.

### Environmentalists: Fracking May Be Responsible for Syphilis, Obesity

Environmentalists opposed to hydraulic fracturing—or fracking—have made a lot of bizarre claims about the technology. But their increasingly desperate appeals to prevent natural gas extraction in New York State have reached new heights of absurdity. Anti-fracking activists recently petitioned the state's Department of Environmental Conservation to commission studies on the impact of gas drilling on venereal diseases, reasoning that employees would tend to be single males who are more likely to engage in risky sexual activities. They also argued that more research is needed on the increase of heavy trucks on the roads, as more trucks could somehow be responsible for less physical exercise and therefore lead to a more obese population. The department wisely rejected the activists' requests.

### Facing Serious Fiscal Crisis, New Jersey Considers Seat Belt Law for Pets

In another case of "having solved all other problems," New Jersey Assemblywoman L. Grace Spencer (D-Newark) has introduced legislation to require that drivers secure dogs and cats with a harness if they are not being transported in crates. Initial violators would be issued a $25 citation, with repeat or "extreme" offenders potentially facing animal cruelty charges. The issue of pets traveling without wearing seatbelts is "a bigger issue than people realize," said Spencer. Perhaps Assemblywoman Spencer's pet seat belt bill is just a desperate act of political escapism, given that Garden State tax revenues for the first two months of the fiscal year are $100 million behind, residents are facing the highest unemployment in 30 years, New Jersey has the second-worst mortgage delinquency rate, and Standard & Poor's just lowered its outlook of the state to negative.