

*Joint Informational Hearing*

**Senate Committee on Agriculture**

**Senator Anthony Cannella, Chair**

and

**Assembly Committee on Agriculture**

**Assemblymember Cathleen Galgiani, Chair**

**Proposition 37: Genetically Engineered Foods.  
Mandatory Labeling**

**September 13, 2012**

**Sacramento, CA**

**SENATOR CANNELLA:** Thank you very much for being here. I have some opening statements, and then I'll turn it over to Assemblywoman Cathleen Galgiani.

Welcome to the Senate and Assembly Agriculture Committees' joint informational hearing on Prop 37: Genetically Engineered Foods. Mandatory Labeling.

Pursuant to Section 9034 of the Elections Code, the Legislature is required to hold public joint informational hearings on measures that qualify for the ballot. Today's hearing serves to meet this statutory requirement.

I would like to remind everyone in attendance today that this committee hearing today is only informational, and this committee has no authority or power to make changes of any kind to Proposition 37. The successful passage or failure of this issue rests in the hands of all California voters.

That said, I'm looking forward to an informative discussion that will examine current food labeling practices in California and how Proposition 37 will impact the state, food systems, and consumers. It is my intent that this hearing examine all information necessary to best inform the public of this initiative's content and provide a forum for public discourse.

For those of you interested in testifying during the public comment period of the hearing, please sign up with the Senate sergeants over here. I'd also ask that public comments—and actually, I will limit public comments to two minutes per person so that all voices may be heard today.

Assemblymember Galgiani, would you like to say a few words?

**ASSEMBLYMEMBER GALGIANI:** Yes. Thank you, Senator Cannella. I wish to echo your comments that this is only an informational hearing and, in fact, we cannot alter the contents of the proposition. I look forward to hearing from our testifiers to learn more about it. I know that this issue is important to many of the sponsors and the ag industry, as well, and that there are concerns that it could increase costs—potential costs—to food, and so, it could additionally result in potential lawsuits.

I want to thank the participants who are here today who will share their perspectives with us. And I will turn it back over to Senator Cannella.

**SENATOR CANNELLA:** Okay. Thank you very much. With that, I think you know which panel you're on. So if we could have the first panel come up—the legislative analysts—come up and take a seat; if you could state your name and what agency you're with, specifically, and then we'll get into the testimony.

**MR. ANTHONY SIMBOL:** Anthony Simbol with the Analyst's Office.

**MR. ANTON FAVORINI-CSORBA:** Anton Favorini-Csorba also with the Analyst's Office.

**MR. JACK ZORMAN:** Jack Zorman with the Office of Legislative Counsel.

**SENATOR CANNELLA:** Okay. So I believe you have prepared testimony. Go ahead and begin.

**MR. SIMBOL:** As you are aware, our office—the LAO—is required under statute to analyze every proposition that qualifies for a ballot. Specifically, we were asked to discuss the major provisions of the measure as well as what the impact would be on state and local finances if that measure were to pass. And our analysis is included in the State's Official Voter Guide.

So usually you're probably used to seeing us before you weighing in on the merits of a proposal, providing you specific recommendations; where today, again, we're just focused on trying to explain to you what the measure does and what the impact would be on the state and local finances.

And with that, I'll turn it over to Anton, who is our lead analyst on the measure and he has a handout he'll walk you through.

**MR. FAVORINI-CSORBA:** All right. Thank you, Mr. Chair and Members, or both Chairs, I should say.

The first thing I'll discuss here is a little bit of background on genetic engineering and genetically engineered foods. The process of genetic engineering is

changing the genetic material of a living organism to produce some sort of desired change in that organism's characteristics. In the case of foods, you often see things like instilling resistance to pests or resistance to the application of pesticides, and these foods are somewhat widespread.

In 2011, 88 percent of all corn in the U.S. and 94 percent of all soybeans were produced from GE seeds. Especially corn and soybeans, but also other crops like that, are ingredients in many processed foods. Corn makes up high fructose corn syrup, for example. And so, according to some estimates, you could say that 40 to 70 percent of the foods on grocery store shelves may contain some sort of genetic engineered ingredient.

As far as what we do currently on genetically engineered foods: Neither state nor federal law requires the specific regulation of genetically engineered foods. However, genetically engineered foods are regulated like any other food in terms of their safety and their labeling. For instance, under its existing authority, the U.S. Department of Agriculture regulates plant pests, pests that are shown to demonstrate or cause harm to other plants that could apply to genetically engineered foods. The U.S. Food and Drug Administration at the federal level, ensures the safety and proper labeling of foods. And at the state level, that responsibility primarily lies with the California Department of Public Health.

I'll jump into the major provisions of this measure. So as the title suggests, the primary provision is the mandatory labeling of genetically engineered foods and this comes about in a couple of ways.

In the case of raw foods or raw agricultural commodities, as they're described in the measure (these are things like fruits and vegetables) either the bin that they're displayed in for retail sale or if they have a packaging, that packaging must say "genetically engineered," if those foods are in fact genetically engineered. Processed foods that contain some genetically engineered ingredients or are entirely produced through genetic engineering would have to be labeled in one of two ways: either "partially produced with genetic engineering;" or "may be partially produced with genetic engineering." And that latter one is to allow producers a little bit more flexibility to change their inputs, as often occurs.

The measure does specify a number of exemptions, products that even if they're genetically engineered they wouldn't have to be labeled: alcoholic beverages;

restaurant food or any food intended for immediate consumption; medical food; animal products like chicken or beef—if that animal was not produced itself through genetic engineering, even if it was fed, say, genetically engineered alfalfa, that food product wouldn't have to be labeled.

Two other significant exemptions: One, if a retailer has a product that could be genetically engineered but in fact isn't, they can get a sworn statement from the person or entity that sold them that product saying, "This product was not produced intentionally or knowingly with genetic engineering."

A second way of demonstrating that a product isn't genetically engineered would be to have an independent organization certify it as not genetically engineered. And the Department of Public Health, under the measure, is charged with drafting, you know, sample regulations on how do you go about sampling; what's a large enough sample size and the other criteria there.

One final major provision of this measure is the prohibition on the use of the term "natural," or "naturally made," anything carrying that kind of meaning in the labeling or advertising of genetically engineered foods.

In addition, there is a bit of a lack of clarity in the language of the measure in how it was drafted. And so, there's a possibility that this prohibition on the use of the term "natural" could apply to all processed foods regardless of whether or not they're genetically engineered. That decision lies with the courts if it comes to that; if a case is brought.

In terms of compliance with this measure; it seems to us that retailers, grocery stores, you know, convenience stores, those would be the entities largely responsible for complying with this measure. It's possible that some of the paperwork could extend further back into the food chain. So you might go to a wholesaler who has to have a sworn statement from the farmer saying that this wasn't produced with genetic engineering.

The labeling requirements themselves would be enforced by the Department of Public Health as they do for all other labeling and safety issues. In our view, this is largely incremental to the work that they already do. It involves looking for a couple more things when they do their inspections.

Enforcement of the measure can be brought either by state, local, or private individuals in terms of a lawsuit. There's also a provision incorporating the Consumer

Legal Remedies Act, which is basically another way to bring a suit for a violation of this measure.

So what does this mean for the State—fiscal effects to the state and local governments? We estimate state costs of roughly a few hundred thousand dollars to over a million dollars, and the range is there because it depends partly on how the Department of Public Health goes about enforcing this measure. They're afforded some discretion in how often they perform inspections of documentation or groceries, or they go out and inspect grocery stores. And so, if you see a particular administration in the future that is less or more interested in enforcing this, that estimate could change.

Finally, there are some potential cost increases due to the litigation. Obviously, the courts would have to process these cases; hear them; try them. Those costs would be partially offset by the fees that are required to file a case and to respond to filing. On average for these types of cases, about half of the cost of actually administering the case is covered by those fees. That said, in view of the overall magnitude of court costs, these costs are not likely to be significant.

So with that, I'm happy to answer any questions that you have. Thank you very much.

**SENATOR CANNELLA:** Any further testimony? Go ahead.

**MR. JACK ZORMAN:** Madam Chairwoman, Mr. Chairman, Jack Zorman with the Office of Legislative Counsel. I'm here to provide a brief description of the effect that Proposition 37 would have on existing law.

Proposition 37, if approved by the voters at the November 2012 ballot, would add several food labeling provisions to the existing Sherman Food, Drug, and Cosmetic Law—or Sherman Law—within the Health and Safety Code.

By way of background: The Sherman Law generally prohibits the adulteration and misbranding of food for human or animal consumption. Food is deemed to be misbranded if the food labeling is false or misleading or, if among other requirements, it does not conform to specific federal labeling requirements. Also relevant to this discussion; the Sherman Law defines a raw agricultural commodity to mean any food in its raw or natural state. It includes, but is not limited to, any fruit that is washed, colored, or otherwise treated in its unpeeled natural form prior to marketing.

As previously mentioned, administration and general enforcement of the Sherman Law is the responsibility of the State Department of Public Health. A violation of the Sherman Law is a misdemeanor and subject to civil penalties. The attorney general or any district attorney acting on behalf of the department may seek and obtain an injunction to restrain any person from violating the Sherman Law.

Proposition 37, if enacted, would add the definition of the term “genetically engineered,” and commencing July 1, 2014 would deem any food offered for retail sale in this state to be misbranded if it is or may have been entirely or partially produced with genetic engineering; and that fact is not disclosed in a specified manner depending upon whether the food is a raw agricultural commodity or a processed food.

Proposition 37 would define a processed food to mean any food other than a raw agricultural commodity. Even if a food is or may have been entirely or partially produced with genetic engineering, the food would not be subject to the disclosure requirement if the food falls within one of nine previously described specified categories. And again, these include food consisting entirely of or entirely derived from an animal that has not been itself genetically engineered, a raw agricultural commodity, or food derived therefrom that has been grown, raised, or produced without the knowing and intentional use of genetically engineered seed or food. And, it also would include processed food that would be subject to the disclosure requirements solely because it includes one or more genetically engineered processing aids or enzymes.

In addition to the disclosure requirement, if a food meets the definition of genetically engineered or of a processed food and does not fall within one of these previously mentioned categories, Proposition 37 would prohibit a food label, accompanying signage in a retail establishment, and any advertising or promotional materials from stating or implying that the food is “natural,” “naturally made,” “naturally grown,” “all natural,” or any words of similar import that would have any tendency to mislead the consumer. Food would be deemed to be misbranded if its labeling does not conform to these provisions.

Proposition 37 would authorize the State Department of Public Health to adopt any regulations it determines necessary for the enforcement and interpretation of these provisions except that the department may not create any exemptions to the previously mentioned food categories that do not already exist in the proposition.

Proposition 37 would authorize any person to bring an action to enjoin a violation of the provisions. And in addition, Proposition 37 would deem a violation of its provisions to be an unfair method of competition, an unfair or deceptive act or practice that may be enforced pursuant to the Consumer Legal Remedies Act. This initiative may be amended by the Legislature but only to further its intent in purpose and only upon a two-thirds vote.

Thank you.

**SENATOR CANNELLA:** Okay. Thank you very much. So the term “natural,” I read ... this proposition is a bit confusing to me. And so, there’s a lot of talk about “natural.” I don’t know who would answer this, but can you expand on that? What is “natural?” I know you gave us some examples. But if it’s natural foods but it’s being processed, you know ... like almonds go to a holder and then they get processed into some candied almonds or something and sent out; that’s processed. Would that now no longer be termed “natural?”

**MR. FAVORINI-CSORBA:** I think what you find is that there’s ... that question is hard to answer and it’s probably ...

**SENATOR CANNELLA:** Which means it will go to the courts, probably, and be answered through litigation.

**MR. FAVORINI-CSORBA:** I think that’s probably the case.

**SENATOR CANNELLA:** So your review of the proposition, you can’t tell whether that would be natural or not, right?

**MR. FAVORINI-CSORBA:** We can’t tell ... ah, yes, I would agree with that. It would be hard to tell.

**SENATOR CANNELLA:** All right. So in your opinion, to what extent would producers, grocers, processors, and so forth be liable for mislabeled products? I’m just thinking about the grocers who we’ll have on panel. I’m assuming that food comes in—they don’t label it. It comes in in boxes. They stick it on the shelves. Now maybe corn or fruit they would put something else. But I mean, it seems like they have a very little role in labeling. But it seems it’s like they’re the line of defense to try to implement this thing. I mean, how liable would these folks be for mislabeling under this provision—under this proposition?

**MR. FAVORINI-CSORBA:** Well, I think they would have some responsibility to ensure that they are properly labeled. I think, similarly, they’re responsible for

ensuring that they're weighed correctly—the weight on the package is correct. So I would say that to the degree that they're already responsible for that, they would also be responsible for that under this measure.

**SENATOR CANNELLA:** Well, I could see weighing, right? Because you could grab a bag and you could stick it on a scale and see if a few of them meet. But it just seems harder—and I don't deal with genetically engineered foods—but that seems like you're tracing back many different steps for a box of crackers, so it just seems like it would be very difficult to do that.

**MR. FAVORINI-CSORBA:** I think you're right. In theory it could be ... you could have to go further back into the food chain to perhaps that farmer if the Department of Public Health was more aggressive about prosecuting this or private parties that were ...

**SENATOR CANNELLA:** One more question and then I'll turn it over to you, Cathleen. So yeah, I'm not concerned about the district attorneys or the attorney general; I'm concerned about the private right of action. Because I'm thinking of Prop 65 and the ability to initiate litigation based on, in some cases, not the real story and so, do you see a potential for the same type of abuse?

**MR. FAVORINI-CSORBA:** There are some similarities in terms of the scope of how broadly this applies to Prop 65. Whether cost would approach the same amount, it's hard to say at this point. It also depends on how food manufacturers respond to this. If they shift away from genetically engineered foods, then that ...

**SENATOR CANNELLA:** That's going to be tough if 88 percent of the corn is currently genetically engineered. I guess we won't eat corn anymore maybe. It will be more for the dairy folks.

Okay. I'll turn it over to the Assemblymember.

**ASSEMBLYMEMBER GALGIANI:** Okay. You mentioned earlier that it's the Department of Health that has enforcement authority over... are there local authorities also that have enforcement authority?

**MR. ZORMAN:** Well, generally for the Sherman Law it's the State Department of Public Health. However, local health authorities or public enforcement agencies may work with the department to enforce the law.



**ASSEMBLYMEMBER GALGIANI:** Okay. Do they have fee authority to be able to do this? In other words; to generate revenue to the department to be able to cover the cost of doing the enforcement actions?

**MR. FAVORINI-CSORBA:** Does the Department of Public Health have fee authority?

**ASSEMBLYMEMBER GALGIANI:** Yes.

**MR. FAVORINI-CSORBA:** They have a certain amount of fee authority. And probably the Department of Public Health, who is, I believe, coming up in a later panel, can address this better. But they have some form of fee authority. Whether it allows them to fully recover their costs, I'm not sure on that.

**ASSEMBLYMEMBER GALGIANI:** Okay. Thank you.

**SENATOR CANNELLA:** All right. I think we have a staff member here who has a question. It's unusual, but this is a very complicated item and so we're going to have our very qualified staff ask a question.

**MR. DOUG HAALAND:** Thank you, Senator. Along the lines that was just asked by Madam Chair: The estimate from LAO is that this is potentially a million dollar cost price tag to the Department of Public Health. The proposition has no language in it assigning fee authority for recovery of costs. And then you also make the assertion that costs for litigation would be covered by the court costs for filing. Do those court costs that you discussed, number one, do they cover the cost of the Department of Health going out and establishing that there was a violation of any sort? And number two, under the language that you put out in your analysis, there's no requirement... this proposition represents a fairly significant departure under existing law that damages need to be established, and under Prop 37 no damage needs to be established. So could you address those issues?

Thank you, Senators.

**MR. ZORMAN:** Well, with respect to the damages: Existing law, the Consumer Legal Remedies Act, establishes or provides a right of action for consumers to obtain actual damages. This proposition says that a consumer can bring a claim under that act except that the consumer does not need to establish any specific damage from or prove any reliance on an alleged violation. However, the proposition says that actual damage shall be deemed to at least meet the amount of the actual or offered retail price of each package or product that's alleged to be in violation of the proposition.

**MR. HAALAND:** And as to the cost to the department of investigating all of the claims; that essentially a pound of grapes improperly labeled for a buck-75 we're going to have a multi-thousand dollar lawsuit; how is the department involved in establishing that violation?

**MR. FAVORINI-CSORBA:** So on the issue of the court fees and how much they cover: Those fees go to the courts. They would not go to the Department of Public Health. In the case of a proven violation in the courts; the measure allows the courts to award damages and also all the reasonable costs incurred in prosecuting the measure, so that would certainly help the department recover some of its costs.

**SENATOR CANNELLA:** Okay. Any further questions? No. Okay. Thank you very much for your testimony.

Before we get to our next panel I do want to announce that we will be taking a brief recess at 11:00, where the Assemblymember and I are going to step away for about ten minutes or so and then we'll reconvene around 11:20 or so.

All right. Our next panel: Existing Labeling Requirements and Enforcement. We had invited the U.S. Food and Drug Administration but they declined our request to discuss this very important issue. So we have, also, Patrick Kennelly, Chief, Food Safety Section, Food and Drug Branch, California Department of Public Health. So thank you very much for being here today.

**MR. PATRICK KENNELLY:** Thank you, Members. Pat Kennelly, again, with the Department of Public Health. I've prepared a number of comments relative to this to help you understand the scope of what we currently do; how we address food labeling issues currently; and likely how we are going to be addressing some of the issues under Proposition 37.

California has a fairly complex regulatory system, as does most of the country for food safety. There is not any one specific agency that's in charge of regulating food safety across the board. The California Department of Public Health is the primary food safety enforcement agency across the state that oversees most of the food safety operations. But we also have local health departments that become the lead agencies in terms of doing routine inspection work and follow-up at retail food facilities, with the department providing technical assistance, standardization, and oversight to those activities. The department focuses its general inspection work on routine inspections

of food processors and distributors as well as on food borne outbreak investigations, major recalls, and multi-jurisdictional issues that occur.

We, of course, partner very closely with our peers over at the Department of Food and Agriculture who have a piece of the pie as well. They oversee milk and dairy food safety as well as some of the issues involved in the produce marketing agreements and animal feed. Our peers at the U.S. Department of Agriculture actually have primary responsibility for routine inspection of meat and poultry facilities and slaughter houses. The extent that CDPH gets involved in meat and poultry facilities is somewhat limited to the times when we have outbreaks associated with those commodities of those facilities or major recalls and then we coordinate with USDA and team up to do those investigations.

FDA has some level of overlapping jurisdiction with CDPH in the area of processed food, manufacturing and distribution within the state. FDA's jurisdiction is limited to products that are in interstate commerce. They actually depend in large part on us to conduct the majority of inspections of food processors within the state, in fact, contract with CDPH on an annual basis to conduct a number of those inspections on their behalf. We work very closely with FDA and actually have a joint California Food Emergency Response Team that responds to food borne outbreaks and major recalls and reports of product contamination events. We actually jointly work on a lot of those activities together.

In carrying out our responsibilities, our food safety program has several primary mandates that we do. One of them, of course, is prevention. We focus a lot of those efforts on doing routine inspections and investigations of our food processors and distributors in the state, and it's during that process that we oftentimes already engage in label reviews for existing statutory and regulatory requirements on food labels. We will also, of course, respond, as I mentioned previously, to food borne outbreaks, product contamination events, product tamperings, and a host of other issues associated with product contamination. We also have an industry education and training unit that provides food safety training to industry in an effort to try and reduce the incidence of food borne illness and food contamination through the processes that they produce in the facilities.

As mentioned by the LAO, our primary authority is derived from the Sherman Food, Drug, and Cosmetic Law, which is a provision of the Health and Safety Code

which ostensibly provides broad overreaching authority for the department to ensure the safety of food—to ensure that it’s not adulterated, misbranded, or falsely advertised. It does provide a variety of remedies, be it criminal sanctions. Most of the offenses in Sherman are misdemeanor offenses and upon conviction can be charged as felonies as well. We do have civil authority and injunction authority that we can work through the district attorney’s office or the attorney general’s office to seek and ensure that we can enforce these provisions on companies that are not interested in cooperatively complying with the rules and the requirements. We have administrative detention authority called “embargo,” which can stop products that are misbranded or adulterated from moving in commerce until such time as the companies have had an opportunity to correct the deficiencies and ensure the products are properly labeled or properly represented and safe.

During our routine inspections, the way we typically handle label reviews currently is we will select a series of labels to review during these inspections. Understand that some of these companies may have hundreds of different products that they produce—a single product that they produce. If you look at a dietary supplement company as an example, they may have vitamin C in counts of 50, counts of 100, counts of 250, 500, so all these different sized bottles. Of course, each generates a different label. So we tend not to review every single label while we’re at the facility, but we pick several focus commodities while we’re there. We pull those labels and we do a fairly extensive review of those labels. Again, the process is intended to inform the operator of the deficiencies and then ask them, if we do find deficiencies, to go back and look at the remainder of their label stock and apply any corrective action that we’ve identified for them to all labels. If we find de minimis violations, we issue them a notice of violation and work with them to correct the deficiency. We ask them to submit a corrective action plan to us so that we can review and determine that it’s sufficient to warrant the correction of the deficiency and moving the products forward such that they’re not misbranded any longer. If we have significant deficiencies, such as allergens not being disclosed, intentional false and misleading information on the labels, we would, of course, start having discussions with the company about initiating a recall for those products for bringing them back to the facility and relabel them properly. In those types of situations we might also seek penalties or sanctions against the companies for any intentional or willful violations of

the rules. If we have a company that gets into a situation where we've noticed them of the violation of the labels and they fail to take corrective action, they basically just want to stand their ground and say, "We're not going to correct the deficiency,"—sometimes we'll have this in areas of fraud where they know the product's out in the marketplace and the extent to bring it back is going to cost them a lot more than hoping to get a few more sales out there in the marketplace.

We do have the ability, again, to place embargos on stockpiles of product. We have the ability to go through the courts and get seizure orders and condemnation orders from the courts, ordering for the products to be destroyed if they're adulterated or misbranded. In most cases of misbranding, you know, simply correcting the label violation removes the misbranding violation and could allow the products to go forward, but the company, of course, has to be willing to do that. Penalties for most of the misbranding issues are not typically levied because most of them, number one, are fairly de minimis and unintentional. What we have found over the years is that labels have gotten fancier and fancier. It's really marketing organizations that are putting the labels together and they're not always the most knowledgeable of food safety requirements. And there's a very extensive patchwork of food safety regulations in regard to food labeling.

The federal regulations in Title 21, Code of Federal Regulations, part 101, is actually adopted statutorily in California as California's food labeling regulations. That's over 100 pages of very in-depth labeling requirements; everything from the size of font of the common or usual name to placement of the net weight statement on the principal display panel. So it's understandable how some, especially small operators, that don't have highly professional staff on board that understand all the rules and regulations can make some small minor mistakes with regard to labels. So we understand that. We work with them.

The vast majority of our operators in California want to do the right thing and are very, very quick to respond to correct deficiencies when they're brought to their attention. And given the cost associated with reprinting labels and revising the labels, we tend to work with them and if they're cooperative—and again, it's an unintentional violation—we'd rather have them invest their cost in correcting the labels and making sure consumers have accurate information than going and issuing them fines and penalties, because they're still going to have to go and lay out those costs for the

labels, which can run from thousands to tens of thousands of dollars depending on how sophisticated their labels are and how many they have to replace.

I think, overall, the larger issue becomes a problem when we have someone that is intentionally engaging in fraud. In those situations we will work with the district attorney's office and bring those cases forward.

There were some questions earlier with regard to our cost recovery. Generally speaking, now under Sherman, we do have the ability to obtain cost recovery if we get a conviction. In most of our civil cases we work with the district attorney's office part of any settlement discussions and adjudication processes, of course, reimbursement of the cost to the department, so we would be able to return some of that funding to the State. It's not always complete. It's oftentimes partial funding returned during those negotiations but at least we're able to bring some money back in to recover those costs.

I think with regard to implementation of Prop 37, should the voters pass the measure, we've got about a year or a little over a year to do a lot of educational efforts and make sure that the industry and the retailers and the consumers understand what the requirements of the new proposition and the new language is going to be. We'll do that, of course, through a variety, probably, of public meetings and hearings as well as through informational fliers and website dissemination of information that we will do.

We will certainly add the GMO requirements to our routine inspections. Again, as we spoke previously, most of our inspections are occurring at the processors or distributors but that's where the formulation of these products in large part is taking place. Retail facilities, 90 percent or better of the products that are coming into the facilities (probably close to 99 percent) are already prepackaged and labeled once they receive them. There are provisions under Prop 37 where they can rely on a certification from their supplier that the product has not been knowingly or intentionally exposed to GMOs or produced through GMOs and they can rely on that and use it in their defense, you know, against any prosecution that might come forward. Ultimately, though, if you have a wholesaler or distributor that intentionally chooses to mislead the retailer and give them that type of a statement, we're still looking at this language and whether or not we would really have effective authority to go after somebody that's providing that type of a statement knowingly and

intentionally to be false. That's going to be probably the biggest thing that we have to look at in terms of that because we may have to look at existing law for the wholesalers and processors because the largest scope of this deals with the actions of the retail facility.

What we'll do with the retail facilities as we go into this is we'll probably have a variety of different sweeps where we go through looking for products that may be subject to GMO labeling requirements and are not labeled with the GMO warnings. For products that are already labeled with one of the warning statements, we're really probably not going to spend much time because it's really in the disinterest to the processor or distributor to label that on there if it's not required. So our focus, of course, is going to be on those products that we look at and look at the ingredients statement. And we see corn, or we see soy, or we see these high volume GMO type ingredients in there—high fructose corn syrup—those are the types of things, if we see that and we don't see the GMO warning, then those are the ones we're going to focus our efforts on; working our way back to the processors and distributors to pull the records and actually look at the invoice and determine whether or not these ingredients that were used to produce the products were produced from something that was genetically modified. And then, of course, as we find those, then we'll take the appropriate enforcement actions and steps necessary to move that forward. A retailer relying on a sworn statement from a processor or distributor, of course, has got some protection under the provisions of Prop 37 from this, and ultimately what will probably happen is the retailers will be suing and going after recovery for any damages against the wholesalers and the distributors that falsely provided them these sworn statements and providing them with false information. But again, our ability to go after them, we're going to have to continue to look at that.

Penalties for Prop 37 have been discussed. In large part, are civil penalties up to a thousand dollars. A civil penalty per violation per day can be administered by the department or through the civil litigation process. Injunctions can also be sought through the court process. And because these provisions were placed in the Sherman Act, all of the provisions that are in Sherman are actually misdemeanor offenses (as I mentioned previously) so criminal provisions can actually be brought through the district attorney's office or attorney general, as well, for any violations of the provisions.

So with that, I think that's our general overview of how we currently pursue things and deal with it. I'd be happy to answer any questions.

**ASSEMBLYMEMBER GALGIANI:** The way you described the current process for the reviews, I like the approach in that it's planned to help wholesalers and distributors come up with a good plan of action—a corrective plan of action to correct the deficiencies. Do you believe that the way that this proposition is constructed now that it would allow that same approach, where you're allowed to help them come into compliance as opposed to being punitive in nature?

**MR. KENNELLY:** Yes, I do. There's actually a provision in the Sherman Law that actually allows the department the discretion for de minimis violations to not pursue prosecution and instead to work with the companies on remedies that benefit the public and moving those corrective actions forward. Because this is being placed in the Sherman Law, we would have the same opportunity to do that here for, again, de minimis, none intentional violations. You know, we take intentional violations very seriously and deal with them very aggressively. But again, for an operator that just needs a little bit of education—made a mistake—you know, and it's clear through our investigation that that's what occurred, we're more than happy to educate them and work with them and get them into compliance. Because ultimately, they may have one product label that we find an issue with but they're going to be reprinting product labels over the next five years, so if we can educate them on the one, the rest of their product line over time is going to make sure that we have those products in compliance as well.

**ASSEMBLYMEMBER GALGIANI:** Okay. And as you see it, do you have fee authority under this?

**MR. KENNELLY:** We do not have specific fee authority for Proposition 37. We do register food processors and distributors, a part of our registration and permitting program. We do have the ability to issue civil penalties as an agency for violations of the rules, as I mentioned before. And our cost recovery provisions are limited to upon conviction, so whether it's criminal conviction or we're successful in a civil process, we would have the ability to recover costs through that statutorily.

**ASSEMBLYMEMBER GALGIANI:** Okay. Do you believe that you have enforcement authority for out of state products that are imported and that compete with California products?



**MR. KENNELLY:** We have the authority to take action on the products here in California if they are at retail and they are misbranded. We will not, obviously, have authority to go to the foreign manufacturer and take actions on them for not labeling it properly. And Prop 37 doesn't really setup violations for manufacturers and distributors not to label it properly; it sets it up that if it's being offered for sale at retail and it's not labeled, that that's when the violation occurs. So we can certainly go back to the manufacturers and distributors and out-of-state companies and work to compel them to provide information. The vast majority of them are very cooperative because we do this now in the area of recalls and food borne outbreaks and trace backs and we typically get a very good response. It's been a rare situation that we've had to engage the attorney general's office to assist us in obtaining information from a company that's out of state. And usually, our partner agencies, if we need assistance in gaining records, you know, the FDA or the USDA, are there to assist us in getting those documentations from out of state. The purpose of those out-of-state documents, of course, are going to be to establish the lineage of the ingredients used in that processed food to determine whether or not it has GMO origin.

**ASSEMBLYMEMBER GALGIANI:** Okay. Thank you. You've answered my follow-up questions as well. Thank you very much.

**SENATOR CANNELLA:** So the Sherman Law, so that's where you get your authority to do whatever you need to do. Are there any other cases where there's a private right of action with the Sherman Law where they work hand-in-hand together?

**MR. KENNELLY:** Yes. Actually, the organics rules under the Sherman Act. California is a state organic program under the USDA's National Organic Program Rules, so that means CDFA and the Department of Public Health jointly work to do enforce the organic regulations here in California on organic foods. There is a similar right of private party lawsuit to bring an action to correct deviation violations for organic violations and we have seen a few of those over the years.

**SENATOR CANNELLA:** How often does your department work with the farmer or whoever is claiming they're organics, to try to get compliance rather than be punitive and then you see the Private Right of Action kind of come around and say, "We don't care if you're trying to work with these folks. We have an ability to take this other course." How often does that happen?

**MR. KENNELLY:** I don't recall a situation where we've been working with a company and had somebody come in and try to file a private right of action in the process of us working with them. What we tend to see happening with these, is they will go and do this kind of very quiet behind the scenes review and collection of products and identification of what they believe are violations and just file their lawsuit.

**SENATOR CANNELLA:** Okay. So they don't ever come to you and say, "Look, we have a violator. We need to make sure we correct this because we're misleading the public. Can you please pursue it?" They take their own course and just go to court, typically is what you've seen?

**MR. KENNELLY:** Correct. They do not come to us. In fact, that's the first call I usually make when I see the lawsuit filed is, "Okay, you knew about these violations; why didn't you bring it to our attention so we could go out and do something about it?"

**SENATOR CANNELLA:** What do they say?

**MR. KENNELLY:** They don't really want to answer the question. I think ostensibly it comes down to if we go in and address the problem obviously it minimizes the action that they can bring forward, so it's in their interest to go ahead with their action. Unfortunately, you know, as we've seen with some of these inorganics, they don't always have the evidence. As was mentioned previously by, I think, LAO, they can bring these actions and make allegations without a lot of documentation evidence. We have the authority to go in and get documentation; look at product formulations; get records. Private parties don't until the litigation is filed and they start doing the subpoenas and things. So a lot of times these would be filed before they really have a lot of documentary evidence.

**SENATOR CANNELLA:** Which is necessary to file a lawsuit, obviously. Okay, so the question I asked the previous panel: There seems to be some confusion. We've got some pretty smart people as far as staff goes and as the Assemblywoman goes and nobody can figure out exactly what "natural" means. How are you going to do your job if you don't have a clear understanding? Because I can see a scenario where you think you know what the proposition says. You go out, and as you state that you do and I believe, you go try to work with these companies to try to get corrective action done but you're misreading; or you don't really know exactly what the proposition is

going to do. Is there some confusion in your mind what “natural” is as far as this proposition lays it out?

**MR. KENNELLY:** I don’t think there’s quite as much confusion in my mind because “natural” has been an issue with the department and with federal agencies for years. It’s an undefined term is the basic problem. While we define terms like “light” and “sodium free” and “low calorie,” we don’t define the term “natural” in regulation. But it’s commonly looked at, and we look at it under general principles of false and misleading representation. So if you have a product that’s of agriculture commodity and then it’s subjected to some type of a chemical process to extract something, the resulting product is not going to be something that we consider “natural” because it’s been subjected to an artificial process. Simply taking a product and heating it or cooking it does not in turn make it unnatural. So if you have a can of green beans, as an example, the green beans are natural. They’re naturally produced. Simply by the act of putting it into a can and cooking it and they want to label it as “natural,” we would not deem that as a violation or misleading the consumers.

I think under the provisions of this the way that the language reads, it ties it back that you can’t use these defined terms “natural,” “naturally grown,” and so forth if it meets the definition of a genetically modified organism or processed food, but it’s also tied to the fact and it doesn’t meet one of the exemption criteria. I look through most of the exemption criteria. I think in large part most processed foods that are not using GMOs as ingredients in large part are going to meet one of the exemption criterions and still be able to label it “natural” if it would normally fall in between that test of does it pass that false and misleading, you know, kind of look at it. If it’s not generally false and misleading in the way that you’re presenting it—because of how the product is processed—we would probably deem that to be an acceptable practice.

**SENATOR CANNELLA:** You will. The state of California will. But that’s not necessarily spelled out exactly in the proposition, so there could be a situation where it has to go to court to define exactly what “natural” is.

**MR. KENNELLY:** It could be litigated in court, or it could be something that could be the subject of regulations by the department to try and clarify that. We are going to have to issue regulations on the sampling and analysis protocol for third parties to certify the products are GMO free. So we may very well at this time, you know, we have the authority under the proposition to issue other regulations if there’s

that much ambiguity there. We could potentially bring in some clarification through the regulatory process and hopefully clarify that and thus minimize any resulting court actions down the road.

**SENATOR CANNELLA:** I thought I heard you say that you don't have the authority to prosecute potentially for purposely mislabeling; did you say that?

**MR. KENNELLY:** At the processor level, if a company were to do ... no, for intentional mislabeling we absolutely have the authority to do that.

**SENATOR CANNELLA:** Okay.

**MR. KENNELLY:** What I was trying to get at is if a company that is distributing to a retailer provides a sworn statement to them attesting that this product is GMO free—intentionally does that falsely—this proposition doesn't give me a penal provision to go after that company for intentionally providing them a false statement.

**SENATOR CANNELLA:** So it would have to be civil.

**MR. KENNELLY:** So it would have to be civil or I'd have to find some other provision of existing law to go towards this company providing a false statement. Most of our laws are geared toward the product. So when we talk about them intentionally providing a false statement ... now the retailer is fine because they're relying on a statement they believe to be true. They got the sworn statement from their supplier. But if we find that that supplier is bringing in GMO corn and that's what's going into that product and they knew it, they had documents about it, they may have email discussions amongst themselves about it, and they provide that sworn statement anyway; that's what we have to look at. We have some intentional misconduct there. We have a company that's really engaging in some fraudulent activity. But there's really not a provision of Proposition 37 that addresses that type of intentional misconduct with regards to those sworn statements. So again, we're going to have to look at existing law and determine the best way to be able to deal with that if that situation arises.

**SENATOR CANNELLA:** Okay. I'm just curious and you probably can't answer this; but if there is an out-of-state vendor or out-of-country vendor that sends things in and it is mislabeled and they provided this statement and it goes to the grocery store and the grocery store can't verify it, it seems to me like they're the ones that are going to get sued, not the providers down the line. Probably if you're an in-state

farmer or processor or whatever you do, then you would be held liable, so this could set up an inequity between out-of-state/out-of-country providers.

**MR. KENNELLY:** It could. I mean, you know, we've certainly taken action on a number of out-of-state and out-of-country manufacturers over the years with the attorney general's office. Going out-of-country becomes very complicated. There's things in the Geneva Convention that the attorney general has to do in order to be able to attach assets and get at foreign company assets. Out-of-state companies, of course, you know, a little bit easier within the United States. But if they don't have assets within California, again, it can be a little bit problematic once we actually get a settlement and try to recover.

**SENATOR CANNELLA:** Okay. Thank you. You've answered all my questions. That was a very thorough testimony. I appreciate it. Any questions? Yes, sir.

**MR. HAALAND:** Thank you, Senator. Following your trail of certification; you say the retailer gets certification from the wholesaler. He has reliance on that and he's free from your end of things. Who does the wholesaler rely on?

**MR. KENNELLY:** Well, ultimately the wholesaler has to rely on who they're receiving the products from.

**MR. HAALAND:** Okay. Then if I'm the grower of corn and I provide you corn to make the product, do you have to get a certification from me that my product that I'm providing you is GMO free?

**MR. KENNELLY:** Absolutely not. No provision in the law that would require that.

**MR. HAALAND:** Then how does ...

**MR. KENNELLY:** I as a businessman would certainly want to protect myself from that eventuality. And if I know that I have to provide to Safeway or to Walmart or to my companies that are saying "I'm only buying your product if you certify it as GMO free. If you don't give me that certification statement you can just leave it on your truck. I'm not going to take it and we're not going to bring it into our facility." I know that I have to provide that, so if I have to provide that—and I got to protect myself—I'm going to require that of my suppliers just as they're requiring that of me.

**MR. HAALAND:** Right. I think that goes to the point, then, from the seed producer to the farmer to the producer to the wholesaler to the retailer, everyone

should be prepared to certify that their materials are GMO free in order to be free under Prop 37 language.

**MR. KENNELLY:** I think you're going to see probably a twofold process. I think you're going to see a lot of companies using that self-certification and requesting that type of certification. We see that now in the area of bacterial pathogens where they'll ask for certificates of analysis, "Send in a sample; give me a lab report showing me that it's salmonella free or that it doesn't contain E-coli;" I think you'll see the same type of thing here. You're going to see that.

The other provision that's actually in the proposition which we'll be issuing regulations on are procedures for third parties to actually sample and provide certification that the GMO has not been intentionally added to the product. And I think that there are a lot of companies already that require third-party audits and inspections of facilities. Pretty much every major chain requires that of a lot of their suppliers. So adding this to the list could very well be something that they do as a part of that. Unfortunately, that's going to put an extra burden or an extra cost back on the producers.

**MR. HAALAND:** Which is where I was going: The consumer can expect that all products produced under this scheme will increase in price?

**MR. KENNELLY:** I would think that would be a reasonable determination.

**MR. HAALAND:** Thank you. Thank you, Senator.

**MS. ANNE MEGARO:** Hi. I have a quick follow-up question on that. You mentioned that some foods will be tested for pathogens and for food safety and then they have that certificate to show. Would there be something like that for genetically engineered foods to have that proof that it was?

**MR. KENNELLY:** As I was just describing; there is a provision in Proposition 37 that the department is going to have to develop regulations which describes the sampling and analytical methodologies for food products. So a third-party organization can go and collect those samples; send it to a lab; analyze it and have that analysis report certified that they are ostensibly not intentionally exposed to GMOs or containing GMOs. So that process exists here. Those are typically driven by the end purchaser. What we tend to see currently in the retail industry is the largest corporations, of course, want to protect themselves from all the lawsuits associated with food borne illness outbreaks and everything else. They require third-party audits

of the processing facilities. They may very well require these types of third-party tests on certain products, especially if they contain a large amount of an ingredient that we know has a very high volume of GMO production in the United States, such as corn or any derivatives from corn, like high fructose corn syrup and other things—soybeans and so forth. If you see a large quantity—it's high on your ingredients list because your ingredients are listed in descending predominance of order so your highest amount is at the top—you see those types of ingredients up at the top, there's no GMO statement on it; if I were a retailer I would certainly be saying "I need a certification from you. Or I need a third-party audit and test on this to certify that this does not contain GMOs," and so I'm not going to get fined or get sued because there's no GMO statement on there.

**MS. MEGARO:** Do you have an idea of a cost estimate that that would happen?

**MR. KENNELLY:** No. I don't at this point.

**SENATOR CANNELLA:** Okay. Any other questions? All right. Thank you very much for your testimony.

I want to remind anyone that's come in late, if you do want to address us at the public comment section you need to go talk to the sergeants and fill out a card.

Next, we have the proponents of proposition 37. If they would come forward and just state your name and where you're from that would be great.

**MS. REBECCA SPECTOR:** Good morning. Thank you, Madam Chair and Mr. Chairman and Members and Staff, the Committee. My name is Rebecca Spector. I'm the West Coast Director of the Center for Food Safety.

One of the great freedoms we have as Americans is the basic right to choose from a different variety of foods in the marketplace. If we want to know if our food contains gluten, high fructose corn syrup, trans fats, or MSG, we can simply read the label. This information has empowered millions of consumers to take control of what we eat and feed our families for health, religious, environmental, or ethical reasons. However, these freedoms are being denied to the more than 90 percent of Americans who want to know if their food contains genetically engineered or GE ingredients because these are not required to be labeled in the U.S.

The intention of Prop 37 is simple. It merely requires that foods that are produced using genetic engineering be labeled as such. The initiative is intended to

provide California consumers with information about the foods they purchase that is currently hidden. Because more than 80 percent of all processed foods contain genetically engineered ingredients, such as corn and soy, this information is not provided on the food label or made available to consumers in any way.

Unlike nearly 50 other countries, including the European Union member states, Japan, Brazil, Russia, and China, the U.S. has no law requiring labeling of genetically engineered foods. As a consequence, millions of consumers are unknowingly purchasing and consuming unlabeled genetically engineered foods every day despite the fact that the U.S. Food and Drug Administration does no independent testing of their safety. In fact, documents that we uncovered in our previous litigation against the agencies, shows that scientists within FDA have indicated that GE foods could pose serious health risks. Nonetheless, FDA only holds a voluntary and confidential meeting with industry before allowing commercialization of these foods and relies entirely on the data of the industry that the industry chooses to show them. The agency does none of its own testing and makes no findings of safety.

The American Medical Association and World Health Organization have said mandatory safety studies should be required, a standard that the U.S. fails to meet. And the National Academy of Sciences report concludes that products of genetic engineering carry the potential for introducing unintended compositional changes that may have adverse effects on human health.

Numerous studies document adverse effects on lab animals fed genetically engineered foods, including allergenicity and immune system responses, inflammation and damage to the liver, kidney, testes, and other organs. Unfortunately, because there's no mandatory labeling of GE foods, consumers, health professionals, and government officials have no way of tracking if these foods are causing allergic reactions or other health effects. And I really want to stress that point: That without labeling, we have no way of knowing if these foods are causing allergies or adverse health effects. In addition to these health concerns, there are numerous documented impacts of GE crops effects on our environment, our agricultural lands, and our farm economies.

Since the onset of GE crops, more than 100 million pounds of additional herbicides have been used on U.S. farms (and that's according to USDA data). And the reason for this is simple: the majority of GE crops are designed for one purpose



and that's to be resistant to herbicides, such as Monsanto's Roundup, so that the crops can withstand greater amounts of herbicide spraying. These pesticide promoting GE crops only lead to more herbicide use causing damage to our agricultural areas and our drinking water, pose health risks to farmworkers, to wildlife, and to consumers.

Conventional and organic farmers choosing not to grow GE crops and who export to countries, such as Japan that have restrictions on GE goods, are faced with loss of their markets if their foods are unintentionally contaminated by GE material.

California consumers should have the choice to avoid purchasing foods produced in such an unsustainable manner and that are damaging to their environment and their local farm economies.

So why has the FDA not acted to require labeling? Almost 20 years ago, the FDA determined that GE foods need not be labeled because they were not materially different from other foods. In 1992, at the time the first GE crops were being commercialized, FDA limited what it considered material to only changes of food that could be noted by taste, smell, or other senses. Since GE foods can't be sensed in this way, FDA declared them to be of no material difference to conventionally produced foods and so no labeling was required. This policy was set by Michael Taylor, a former Monsanto employee, and it was and remains a political decision, not a scientific one.

In the spring of 2000, FDA announced that labeling of GE foods would remain voluntary, even though there was no indication that any company would voluntarily label genetically engineered foods. And in the eleven years since, no companies have labeled. Companies that have eliminated GE ingredients and used non-GE labels on their products have faced strict regulations while the FDA lets other companies continue to use GE ingredients in secret.

Despite what critics say, labeling of GE foods is not an effort to shut down the advance of science and technology. Rather, it's an effort aimed at offering the public full disclosure, preserving the right of free choice in the marketplace, and creating a better food industry.

Requiring GE foods to be labeled should have no adverse impact on a company's ability to create new forward thinking research. In fact, if future GE products claim to offer consumer benefits, such as increased nutrition, labeling offers

these companies an opportunity to distinguish their beneficial products from other ones in the marketplace. But currently, none of these products exist.

GE labeling will not harm California farmers. Currently, the majority of GE food crops grown in the state are GE corn and GE alfalfa used for livestock feed, and foods derived from animals fed GE foods are exempt from the initiative. So for example; milk or cheese from dairy cows fed GE corn or GE alfalfa are not required to be labeled using genetic engineering.

Remember, there are only a handful of crops that are currently genetically engineered. And other than corn and alfalfa, California is not a large producer of other GE food crops, which include soy, canola, papaya, sugar beets, and small amounts of summer squash.

I also wanted to add here just a comment about the “natural” provision. The intention of the act is very clear. The title of the section is *Misbranding of Genetically Engineered Food as Natural*. So if this ever did get to a court, I think that would be clarified pretty quickly, that in addition to that, currently because USDA does not have a definition for “natural,” there are currently lawsuits, so people are already suing companies for labeling GE foods as “natural.” This would actually offer clarity. So if this law says genetically engineered foods can’t be labeled as “natural,” it would actually reduce lawsuits in that area because it would provide clarification.

Opponents claim that the initiative is burdensome to farmers and producers by requiring an affidavit from the farmer or processor that the crop or product was not genetically engineered. But farmers and suppliers are required to keep track of all kinds of information, including where their seed comes from, what pesticides are used on their crops, and what food safety procedures have been used. Keeping track of how our food is produced is a standard safety requirement that should be practiced by all farmers and food processors. It’s one of the only ways we have to trace food borne illness outbreaks, pesticide use, or to recall contaminated materials.

Here in America, we pride our self on having choices and making informed decisions. Under current FDA regulation, unlike most of the rest of the world, we don’t have that choice when it comes to GE ingredients in the foods we purchase and feed our families.

Since FDA has to date, refused to label GE foods, it is up to individual states to lead the way and protect our state’s interests, including public health, consumer right

to know, our farmers and our agricultural lands. Prop 37 is a step toward protecting these state interests.

Thank you.

**SENATOR CANNELLA:** Thank you.

**MR. TOM FENDLEY:** Thank you. My name is Tom Fendley. I'm the political director for California Right to Know. I would like to thank you, the Committee, again, for inviting us to discuss this really important issue.

We at Prop 37 are thrilled to have already received the endorsements of 2,000 public health organizations, scientists, consumer protection organizations, environmental groups, and unions, as well as elected officials, including this morning we're happy to receive the official endorsement of one of your colleagues—Assemblywoman Yamada. We're also endorsed, perhaps more pertinent to this committee, by more than 2,000 farmers and food processors in California.

As we've learned—and I'll be quick on this in just reviewing the two key features because I know we've covered it—just to review: The measure at the end of the day is pretty simple. It has two key provisions. One, it requires certain foods that are genetically engineered to have a label indicating them as such. The core principle behind this requirement is simply that we believe consumers have the right to know what we are eating and what we are feeding our children. This is particularly important when one considers, indeed, that there are no long-term health studies that show these foods to be safe.

The second key feature, again, that we've discussed is that it prohibits companies from marketing a product as “natural” if it has been genetically engineered. Again, this, really, at the end of the day, is simple and the language in the measure we think will be clear to any court where it ends up if it ends up. If something has been engineered in a laboratory by inserting genes from one species into another species, it is not natural and it should not be labeled as such. It's hard to conceive of something that is more unnatural than that process. So those are the two core principles. But perhaps the more important thing to appreciate is the larger context that put Prop 37 on the ballot here in California.

Across the country and in California, we are becoming more and more conscious about the food that we are eating and we're feeding our families. Californians are amazed when they learn that most of the products on our

supermarket shelves have been genetically engineered, even including, indeed, some that are labeled “natural.” And they are equally amazed when they learn that no long-term human health studies have been made on these products. And when Californians learn that some of the same companies spending millions of dollars to oppose Prop 37 are the very same companies that already put these labels on their products in 49 other countries around the world, they wonder why Californians... why those consumers have the right to know but Californians do not.

So it's those concerns that gave birth to Prop 37 and gave birth to a very significant and grassroots movement—genuine grassroots movement in this state. Mothers, grandmothers, farmers, farmworkers, scientists, those are the people that put Prop 37 on the ballot. And after November, those are the same people that will be working with millions of people across the country to improve Citizens Right to Know elsewhere.

I would like to take just a few minutes to talk about some of the companies that are opposing Prop 37 as context not only for what we'll be hearing for the next couple of months via TV ads, but also, you know, that we've already been hearing and will soon be hearing in this very room.

The pesticide manufacturing giant—Monsanto—has already spent more than \$4 million against Prop 37. Why are they opposing Prop 37, and are their claims credible? I offer a few things to consider.

Monsanto makes most of its money selling pesticides and genetically engineered seeds. Unlike the human beings who eat their pesticide laden foods, their seeds and crops are engineered to withstand their pesticides. In fact, some of their seeds have an insecticide engineered into the seed. So when you hear the “No on 37” campaign falsely claim that genetically engineered crops mean less pesticides, please consider the source of this claim.

Dow Chemical, also a maker of GMO seeds and pesticides, has already spent more than one million dollars opposing Prop 37. They also manufacture ...

**SENATOR CANNELLA:** I'm going to interrupt you. I don't know if this germane to what we're trying to do here. This isn't a political battle. We're not arguing whether we should vote for this or not. This is a hearing by a joint committee to understand the proposition, not to get into political discussion. There's plenty of time to do that. So if you'd like to speak to Prop 37 and what it does and why you think it's important,

that's great. But I think it's counterproductive to get down the line that you're getting down now.

**MR. FENDLEY:** I would respectfully submit that the credibility of some of the arguments that are going to be made after our panel leaves...

**SENATOR CANNELLA:** Believe me. We are not carrying the water for either side. We are trying to understand the proposition. And if they get into that level of discourse, we will ask them the same thing. So I'm telling you that you're off track as far as your testimony. If you would like to bring it back to the merits of Prop 37, continue. If not, then we're going to end the discussion with you.

**MR. FENDLEY:** Let me just ask you a question. It's an honest question for you about what you consider valid testimony and what you do not. Would you consider it valid testimony to note that some of the same companies opposing Prop 37 support labeling in the past in other countries?

**SENATOR CANNELLA:** Again, your job, you're the proponents of Prop 37, and this is an informational hearing, so we want to understand why you believe Proposition 37 is important for the citizens of California so we can properly do our job as defined by the Constitution. Getting into a political discussion really is not relevant to this hearing or quite frankly, to the Legislature in general.

**MR. FENDLEY:** Well, okay. Well, then perhaps I'll close with this. There have been remarks already made here today, and there will be more remarks made about the cost of labeling and whether or not we can expect to see cost increases, and so, I'll just offer a couple of thoughts on that subject.

**SENATOR CANNELLA:** Sure.

**MR. FENDLEY:** In Europe a few years after GMO labeling laws went into effect, one grocery store chain spokesman said (quote) *"In fact, no real world experience backs high cost estimates across the, then, 38 countries where mandatory labeling of GE foods has already been implemented. There is no evidence of GE labeling leading to any consumer price increase whatsoever let alone a huge increase."* (end quote)

Similarly, David Byrne, then the European commissioner for Health and Consumer Protection said, (quote) *"When the current labeling regime was introduced in 1997 it did not result in increased costs despite the horrifying double-digit prediction of some interests. Similarly when Norway introduced its current labeling regime, it did not provoke any price increase or disruption in trade."*

As to the safety of these foods I'll offer another quote: As the editors of *Scientific American* stated, (quote) "*Agritech companies have given themselves veto power over the work of independent researchers. Research on genetically modified seeds is still published, of course, but only studies that these seed companies have approved ever see the light of a peer reviewed journal.*"

Whereas one UC Davis professor commented, (quote) "*I feel biotech companies—how can I say this—are influencing the way we do research.*"

Several cost analyses assume a total shift away from genetically engineered ingredients. That's a flawed premise. Prop 37 is only a label; it is not a ban on genetically engineered foods. If food producers decide to shift away from GMOs, that will be their choice. Presumably, this decision will be dictated by consumers. If they find genetically engineered food is good value, they will continue buying it.

In closing, I'll just remind us of the basics. After all is said and done, Prop 37 is very simple. It will empower Californians with the right to know what's in their food just as consumers already have in 49 other countries. They can then make an informed buying decision. Meanwhile, farmers and food manufacturers will retain their choice whether or not to use genetically engineered seed and ingredients.

Thank you.

**SENATOR CANNELLA:** Thank you very much. Do you have any testimony?

**MS. JESSICA LUNDBERG:** Yes, I do. Thank you. Good morning.

I'm Jessica Lundberg with Lundberg Family Farms. I'm a member of our family farm. And we have a food business that makes organic and specialty rice products which sell into the market under our family name. We're entering our fourth generation as rice farmers in California. I currently serve as the vice president of People, Planet, and Process and I also oversee our seed nursery. Lundberg Family Farms supports the California Right to Know initiative, Prop 37.

Let me tell you why we support Prop 37. And it's wrapped up in our company history. But before I do that, let me just remind us what genetic engineering is.

Genetic engineering is the combination of species that would not be combined in the environment, such as a snake and an apple, through methods which require the removal and recombination of DNA material in a laboratory. This has only been done in the last 30 years. The standard or conventional farming practices have been done for over 3,000 years. This is a new technology that we don't know a lot about.

Why we've taken a stance on this issue fits into our company and our family history. We moved out from Nebraska in 1937 during the Dust Bowl. It was also the Depression. When my family moved out to California to grow rice, they wanted to do two things: They wanted to farm in a way that helped build and improve the soil; and they wanted to also provide a good stable income for the family.

We started to raise rice and incorporated the process of resting the fields, growing crops that would build the soil, and turn the straws that were left after harvest back into the ground. Because of these practices in the late 1960s, we had families come to us who wanted to buy our rice because they knew how we grew it. My family decided it was a great idea to start selling directly to these families and others because they wanted to make that connection with the consumer. We built a rice mill and storage bins and started to market our own product. Through that, we did make a strong connection with the consumer and we started to understand what was important to them. The consumer was concerned about the purity of their food, the nutrition of the food, and also how it was grown. All of these ideas worked into the concern and focus that we have at Lundberg Family Farms.

So in the late eighties when this technology—genetic engineering—was starting to be developed, we started to have some real concerns because we could see that it would lead to simplified chemical dependent practices based on this genetic engineering technology. We also understood that it was a new technology. We didn't know the long-term impacts on human health or the environment and it would challenge purity because there wasn't a good way to keep engineered varieties separate or see the differences in the fields. Because of this, we had concerns.

Then there were events that crystalized our commitment to this issue. It occurred in 2006. Bayer Crop Science was developing an herbicide resistant rice called LL601. They had the rice on research plots following research protocols and said that it was under tight security and would not get out and spread in the southern rice industry. But what happened was that it did get out of control. It escaped from research trials and it contaminated the whole southern rice industry, and the southern rice industry within a couple of weeks lost the entire European rice markets. And this has been settled for over \$850 million in the courts with Bayer Crop Science. This incident verified to us that this is a new technology. It is also very difficult to control; and it has a lot of challenges to keep it separate.

What we also saw, is that the owners of this technology didn't have to worry about purity and farmers' lost markets. The GE company said they knew how to control their seed but they didn't. Perhaps this is an example that these companies don't know what they're doing. Even on the simplest level of purity and labeling would help us assure that they use best practices to meet consumers and market demands.

We and the rest of the rice industry are now required to provide affidavits of none GMO seed each year to meet our markets. The sellers of the seed have the seed tested and provide the paperwork. It does not cost us as growers to meet this requirement and it allows us to sell our products into the markets to meet our consumers' specifications.

So when the California Right to Know initiative started to develop and the movement progressed, we thought this was a great idea—to label the product. To let the consumer make a choice about what they wanted to eat. That's what got us involved in the "Yes on 37" initiative. It also brings forward a very basic idea—the folks who are selling this technology need to tell the consumers what are the benefits. If we don't have the ability to make that choice because it's not labeled, the consumers don't understand the value and the owners of the technology don't have a way to understand what's valuable to the consumer.

The idea of labeling helps build understanding with the consumer so they can make a choice. Labeling of genetically engineered products is not a ban; it just opens up the conversation to the consumer to give them the choice for value. They haven't been given a choice for value to this technology. Labeling also helps organize the supply to keep purity. The supply will have to keep things separate because it will have to meet the demands of the California market.

The agriculture and food system will organize itself to deliver cost-effective food. We're really excited to be supporters of the "Yes on 37" initiative and we feel it supports our family's history and the principles of none GMO farming.

Thank you.

**SENATOR CANNELLA:** All right. Thank you very much. We do have to take just a brief recess. But I think we both have questions so when we come back, we think around 11:20, we'll resume. And sorry for the inconvenience. We'll be right back. (*short break*)



Thank you for your patience. Thank you for your testimony. We do have a few questions. And I'll start this time.

So, you know, I'm all for more information. I think more information is better. I like a lot of the stuff I read when I order a hamburger—how many calories there are—what's in the food product. I think that's a good thing. My concern with this particular proposition is this private right of action. Why wouldn't the bill have just been, look, it's mandated that any genetically engineered material that's in anything cannot be... you know, just everything except the private right of action. Why did you go that route?

**MS. SPECTOR:** I think that, you know, they really wanted to make sure that the law had teeth, and so, I think that's part of the reasoning behind it. Also, the attorney general's office doesn't always have the resources to pursue these claims. And part of it was also to reduce the costs so that the attorney general wouldn't have to necessarily bring all the costs themselves.

**SENATOR CANNELLA:** Okay. So do you foresee, then, that the AG or state departments or local health inspectors probably won't do this and it will be required to have the right of action in a court? Is that the only way to implement this?

**MS. SPECTOR:** No. One thing I think is important to note is it's very different than Prop 65 in the sense that Prop 65 covers over 800 different chemicals. And a lot of the companies don't know that these chemicals are in their products. They don't know that there's lead in their product, and so, that's part of the reason the attorney general does get involved in some Prop 65 cases. And, as you know, some Prop 65 cases are brought by private party. So right now we're only dealing with a small handful. We know exactly what they are. And a producer of corn chips knows that corn is in their product. So they know that they're going to have to either label their product or get the affidavit. So it's really much more simple. And I think to compare it to Prop 65 is really not accurate. I don't think we're going to see a whole onslaught of lawsuits.

And also, remember, if somebody does file a complaint, then the manufacturer shows their affidavit, presents it to the court, the case is dismissed. It's not going to be this big trial with testing of products. It's about if you use the product. It's not if your product contains GMOs; it's if your product potentially uses it.

**SENATOR CANNELLA:** I understand. But that said; you don't see a lot of lawsuits. But didn't you or someone submit a paper to the LAO that says the government really won't have much involvement because of the ability to sue? So it seems like the whole enforcement mechanism is the lawsuit portion, not the government ability to...

**MS. SPECTOR:** It could go either way. So it just opens it up so that the burden is not solely on the attorney general's office.

**SENATOR CANNELLA:** Okay. So did you submit something that said...

**MS. SPECTOR:** No. I did not.

**SENATOR CANNELLA:** So there was no...

**MS. SPECTOR:** I'm not with the campaign, so I don't know if...

**SENATOR CANNELLA:** All right. Well, do you know if anything was submitted?

**MR. FENDLEY:** Not that I'm aware of. Honestly, I don't know that answer to that question. I could find out.

**SENATOR CANNELLA:** All right. Well, thank you. Are any other states requiring this level of labeling? No. Not yet.

**MR. FENDLEY:** No, Sir.

**SENATOR CANNELLA:** Start with California probably, right? So how do you handle the... because my concern is again—and I don't understand the whole supply chain necessarily—but if something is grown somewhere, processed somewhere, and then ultimately it makes its way to the grocery store and the grocery store, you know, they have people to stock them on the shelves, they put them up there; it seems like the grocery stores are almost going to be the first and last line of defense when it seems like—and I'm not an expert—they would have very little interaction with the labeling. So are you concerned about them receiving the brunt of what's going to happen when they have very little impact on the labeling?

**MR. FENDLEY:** Well, I think the short thing has been addressed—and maybe one of these guys can pile on—but you know, all the retailer needs to show and presumably what they'll... the Department of Public Health, as we learned, you know, has a year to educate retailers and everyone else up the food chain about these rules. Presumably what each of these entities will do along the food chain is ask their supplier—the next person up—to give them an affidavit for any product that they

think may contain genetically engineered ingredients that isn't labeled. They would simply ask for a required affidavit from their supplier saying it is. Once they get that affidavit, they're off the hook. There's no...

**SENATOR CANNELLA:** Are they? So it specifically says...

**MR. FENDLEY:** Yeah, they're off the hook. They are only required to show an affidavit.

**SENATOR CANNELLA:** Okay. So what happens if an out-of-country, you know, for, whatever, we make out-of-country, and it comes in and gets shipped in here and it goes on the grocery store and someone, some very aggressive person says, "This isn't natural and it's claiming to be natural," what happens?

**MR. FENDLEY:** I think the answer is the same. It's just any entity that's getting food from somewhere else, they presumably will want an affidavit from them—a certification saying "this does or does not contain genetically engineered ingredients" as labeled accordingly. When they get that certification, regardless of where it's coming from, they are off the hook. Now in terms of the enforcement, you know, as we learned from the Department of Public Health, yeah, it gets sticky. But either way, there's not a scenario where sort of the unknowing person, entity, down the chain is on the hook legally. Prop 37 takes them off the hook.

**SENATOR CANNELLA:** So Prop 37 clearly defines that if a grocery store gets an affidavit from some provider, wherever they are in the world, and it's shown to be false, Prop 37 would not let... then there would be really a difficult case to prove through a private right of action against that grocery store?

**MR. FENDLEY:** That's right.

**SENATOR CANNELLA:** Because I'm not concerned about the Department of Health...

**MR. FENDLEY:** As I believe the gentleman (whose name I forget) from the Department of Health indicated, that that is, you know, there's no legit... it's unlikely that there's a legitimate claim that would have any merit in any court if any entity has that affidavit.

**SENATOR CANNELLA:** I have two more questions. This question is on the "natural." And I know you talked about it a little bit but again, you've got the Legislative Analyst Office, you've got the Department of Health, other people I've talked to said they said, "We really don't know what "natural" is, so how does that ever get

worked out other than through the courts? If the people that are—their job is to understand what these mean. They don't know what it is. How does it get worked out?

**MS. SPECTOR:** Well, I think the issue is that because USDA does not have a legal definition for “natural”... right now there is a whole onslaught of legal cases against companies for using the word “natural,” period. Some of those cases are specific to genetically engineered foods. Some are foods that contain other things. So again, I actually think that this would clarify, particularly, this issue. That genetically engineered foods cannot be labeled as “natural.” Now, you know, I think the intention and many lawyers that we have talked to, the intention seems very clear. And as you know, in a court, that's the first thing you look at; what is the intention of this? And it's very clear that the intention is just to label genetically engineered foods; that they cannot have a “natural” claim. So it's possible that somebody could take a first case to court. It would go to court and I would certainly hope that, you know, a judge would be able to... I mean, the people at LAO are not judges. There was one gentleman that was an attorney. So I would hope that a court would be able to see that intention very clearly.

**SENATOR CANNELLA:** Okay. But it's not intent to have something that's processed to be ...

**MS. SPECTOR:** Only if it's genetically engineered. I mean, I think that's clear. The title is *Genetically Engineered Foods Cannot be Labeled as Natural*.

**MR. FENDLEY:** It's a really short section. I can even read if it's useful to you.

**SENATOR CANNELLA:** That's okay.

**MS. SPECTOR:** And I think the whole bill, the whole initiative, rather, is about genetically engineered foods. And that section is specific about genetically engineered foods.

So I know a lot of this rhetoric has been going around and I actually think it's just an attempt to confuse the issue.

**SENATOR CANNELLA:** Well, I read it and I'm confused and I'm not affiliated with either side. So I'm just saying it's not totally clear.

**MS. SPECTOR:** Yeah. I understand.

**SENATOR CANNELLA:** So why didn't you just take the route of the Legislature? I mean, why the initiative process rather than the traditional route to change law?

**MR. FENDLEY:** Nineteen other states tried the legislative approach and they failed.

**SENATOR CANNELLA:** Was it ever tried in California, because we are different here?

**MR. FENDLEY:** There was a measure to label genetically engineered salmon that did not make it through and that's just one species. So, yes. There was an indication at the ballot process. And look. To be clear; the other reason is just the nature of this movement. Again, not to get too politically oriented, but, you know, this is a grassroots movement—it's the people's movement—that put this on the ballot and I think that is reflected in the fact that it's a ballot measure.

**SENATOR CANNELLA:** Okay.

**MS. SPECTOR:** Yeah. And I do want to echo that. Because as our organization, we promote labeling of GE foods at the federal and state level, and we are sponsors of Assemblymember Huffman's bill to label GE foods, but this came from the ground up. This did not come from the Center on Food Safety. This did not come from other nonprofits that are working on labeling. This really came from the ground up. And it's really been astonishing for me, from a professional perspective, to watch just thousands of people just coming around and wanting to volunteer and to get this moving and to raise money; and it's all come from the ground up.

**SENATOR CANNELLA:** Okay. Well, thank you very much. You've answered my question. I'll turn it over to Assemblywoman Galgiani.

**ASSEMBLYWOMAN GALGIANI:** So the Natural Products Association has come out with concerns that this will place all of the suppliers, manufacturers, processors at risk. And watching what happened with Prop 65 and the litigation windfall that followed, how would you respond to that?

**MR. FENDLEY:** My colleague can, I think, speak to the Prop 65. But you know, as to the Natural Products Association coming out opposed to Prop 37, you know, I think the first thing, obviously, is they can speak for themselves for their own reason, so I don't want to put words in their mouths. But it is true that there are many companies out there right now that label their products as "natural" that

contain genetically engineered ingredients. They would still like to label their products as “natural.” Prop 37 will prohibit them from doing so. And we think that is a fair and important part of the measure in fact. So it wasn’t very surprising to us that the Natural Products Association came out against Prop 37.

**ASSEMBLYMEMBER GALGIANI:** Do you think that there’s any clear direction or safeguards in the proposition so that small farmers are not hurt?

**MR. FENDLEY:** Maybe you can clarify the... how are you concerned about small farmers being hurt? Maybe you can clarify what your concern is.

**ASSEMBLYMEMBER GALGIANI:** What is there to ensure that there’s clear guidelines about what they can and can’t do, and how does that education process occur? How are we to help them make sure that they’re in compliance so that they’re not being sued and put out of business for unintentional things because of something that’s not quite right?

**MR. FENDLEY:** I’ll make one point and then Jessica, our resident farmer, can perhaps expand on it. But the measure does have an exemption very clearly in it wherein any crops that are inadvertently and unknowingly contaminated by genetically engineered seeds, if that farmer in other words is sort of the victim of someone else’s, you know, crops blowing into their field, they are not required to label. They are exempt from labeling requirements, so they are not on the hook legally yet at any level whatsoever. So this measure was designed to label foods that are knowingly and deliberately containing genetically engineered ingredients, not, sort of, innocent farmer victims. And it’s very clearly... like I say; the innocent victims are very clearly exempted in the measure.

**MS. LUNDBERG:** I think also the provisions of the initiative that state—like the uses of some of the GE crops being fed to livestock, that the animals that are harvested don’t need to be labeled. So when you look at the development of these crops; how they’re being used, how that might directly affect a farmer or a supply chain that’s maybe more of an individual family selling their products into the marketplace with meats or cheeses and things like that, those provisions have been put into the law.

And then the idea of this isn’t a testing base; it’s an affidavit base. So if you’re growing a crop and if a farmer is growing a crop and they know that they’re selling into that system that says “we don’t want it,” or “yes, we’re going to be labeling it,” well,

then, they will go back to their seed supplier and ask for an affidavit. The farmer doesn't have to test the seed. They will get an affidavit from their source of seed. Or they will have an affidavit that they produced their own seed and they didn't plant a GE seed. So it's built into the system to keep it fairly simple and straightforward and to not put that burden on the farmer.

**ASSEMBLYMEMBER GALGIANI:** What about dairy farmers whose cattle may be, perhaps, eating feed that is genetically modified?

**MR. FENDLEY:** They're exempted.

**ASSEMBLYMEMBER GALGIANI:** They are exempted?

**MR. FENDLEY:** Yes. This doesn't exist yet; only if the cow itself were genetically engineered would that meat or dairy from it need to be labeled.

**ASSEMBLYMEMBER GALGIANI:** Okay. Thank you.

**SENATOR CANNELLA:** Thank you very much for your testimony. Sorry for the brief recess. Thank you.

**MR. FENDLEY:** Thank you very much.

**SENATOR CANNELLA:** Oh, wait! I'm sorry. One more question from staff.

**MR. HAALAND:** Thank you, Senator. It's more of a process question. And you indicated that the defense to any action is a certification from a provider. The difference between the Department of Public Health going in and having an issue with a label, is they go in effectively in a fairly nonthreatening "we need you to come along" process. Under the terms of Prop 37, my defense is only offered after the lawsuit is filed. In other words, you take my firm to court because I've mislabeled under the terms of the proposition and my defense is that I have this certification from my wholesaler that there was nothing in this to make me liable. In California, we've now opened the chain through discovery to go to the wholesaler and find out what the basis is for his certification, which then takes us down the path of going down the chain, if you will, to make sure that everybody along the chain is essentially providing truthful labeling information. And the upshot here is, is that it strikes me as being somewhat akin to a fishing expedition. We're going to be able to file the legal action against a retailer who, then, after spending some amount of money—which probably won't be small—defending himself against an action for which he already has certification. The processor now has to go through that same process. And aren't we going to be clogging up—as the Senator indicated—aren't we going to be clogging up

the legal process through this discovery and following the seed trail, if you will, to find out who actually was responsible for the provision of the offending product. So in essence, there is going to be a significant cost to anyone that is subject to this. Because as you indicated, the government is not going to come... they're not going to run through each store and make sure that each product is properly labeled. They don't do that now. So how do you... in as much as DPH has the responsibility to make sure this happens, and this is now very broadly opening up to private rights of action as the Senator noted, you're going to increase some fairly significant legal costs by virtue of the fact that I have to prove my innocence after the accusation is made and then the trail becomes a hot pursuit.

**MS. SPECTOR:** Well, I think it's very clear that there's not really a lot of evidence to be shown. The evidence is an affidavit, which already producers up the supply chain have to provide to suppliers of all kinds of issues, including origin of the product and all these food safety regulations, so it's really not very onerous. They're already doing it for other things. So it's providing a piece of paper—an affidavit—and, yes, it has to follow the product up the chain. This is already done. It will continue to be done. So in essence, the idea is that they would be prepared and have the affidavits. And then if there was a lawsuit filed, they would provide those in their... I would guess—I can't speak for the lawyers that will, you know, defend them—but a motion to dismiss the evidence and that's it. I would find it hard to believe it would go to full trial unless they do not have the affidavits.

**MR. HAALAND:** That wasn't the point of the question. The point was...

**MS. SPECTOR:** But that's how you incur costs, right. I mean...

**MR. HAALAND:** No. You incur costs by being sued in this state. Ask restaurants that have people roll in and say that they're violating ADA, okay. So again, the issue here ...

**MS. SPECTOR:** This cannot be compared to violating ADA. I'm sorry. This is a piece of paper that a company...

**MR. HAALAND:** Well, comparing genetically engineered food to food borne illnesses, which the Department of Public Health is required to track, in which this proposition will take funding away from, I think there's an equation.

But the point here is is that the defense to the individual under the private right of action won't be available until the action is taken.



**MS. SPECTOR:** I understand.

**MR. HAALAND:** And then, each step along the way is going to be required to provide that type of defense. That's where the cost is going to come into play.

Thank you.

**SENATOR CANNELLA:** Just briefly, I have a copy of that letter I was referring to is from James Wheaton. I don't know if he's affiliated with your movement. But it just said that "*the initiative is written to require minimum regulatory oversight*" and just this first paragraph:

*"The initiative is self-enforcing by authorizing a private right of action of citizens and the attorney general's office to file suit for violations similar to California Proposition 65. This provision will serve as a deterrent to noncompliance, mitigating the need for active enforcement by the Administration."*

So again, I think more information is good. I do have faith in our state agencies to enforce, you know, for compliance. But it just seems like, and it may not be your intent, and it sounds like it's not, but it just seems like the entire mechanism is the private right of action. And I just think we've had several of these types of things in California which have been counterproductive. So we'll see. We'll see what the citizens want to do and then we'll see how it's implemented.

Anyway, thank you very much.

All right. Our final panel is Opposition to Proposition 37. If they would come forward. I will just reiterate what I said to this last panel: That this is not a political hearing. This is a legislative hearing. And let's refrain from any political comments. We just want to know about the merits of the proposition: If you're in opposition, why you're in opposition. Not personal or political references to the other side. I think that's counterproductive and I will stop those immediately. So thank you.

Go ahead. Yes. Thank you.

**MR. KENT BRADFORD:** Good morning. Thank you very much for allowing me to be here. My name is Kent Bradford. I'm a professor of bioscience at UC Davis and director of the Seed Biotechnology Center at UC Davis.

I'd like to first just give a little bit of background about plant breeding and how crops are developed and the relationship to genetic engineering. We do many things to create new crops (improve varieties) based on genetics. That is, we genetically modify them all the time by all the techniques we use. That is, standard breeding techniques

and other types of approaches all modify the genetics of our plants in one way or another. That's how we make progress.

Today we have some newer techniques. That is, we can be very targeted, very specific in what we're trying to do. If we need to just enhance one trait, one property of a plant, we have the capability of doing that now.

It's been mentioned earlier about this may involve using properties from different species. I'd like to just mention that all of our tree crops, all of our walnuts, almonds, fruits, citrus, grapes, and so on, we take advantage of multiple species to produce those crops. That is, nearly all of those are produced from grafted plants in which we have one species on the bottom; we put another species on the top. So if you look at all of our walnut orchards, they're black bark on the bottom, they're white bark on the top (Black walnut on the bottom; English walnut on the top). So we're taking advantage of, already, properties of multiple species in ways that stretch back a very, very long time.

What we have the ability to do now is graft, because by grafts we can essentially graft single genes into chromosomes and only move the traits that we need. This, in fact, makes the whole process safer (not less safe), more precise, more controlled because we don't have to go back and cross wild varieties. You know, all of our commercial domesticated crops, in fact, use traits that have been introduced from their wilder relatives. That is, there are mate crosses in almost every major crop with wild relatives and have, through genetic techniques, traditional techniques, and genetic engineering, in some cases, been able to utilize those. So really, the process, most scientists agree, is similar in kind to what we've been doing. They use slightly different methods.

The foods produced from that that the proponents of Proposition 37 want to put warning labels on have in fact been eaten by... in trillions of servings. As we've mentioned, the vast majority of these foods are fed to animals. And we feed and utilize billions of farm animals every year. I think that if there were really serious safety issues, health issues, our livestock producers would have noticed that. That is, the vast majority of corn and soybeans, as we've heard, in the U.S., utilize these products. And it's hard to imagine that we could have the types of potential health issues that have been described occurring without that being known to our livestock industry.

And certainly, we have no documented cases yet of any health issues to humans or animals directly due to genetic engineering.

We have many, many studies around the world indicating the safety of genetically engineered foods. I'll just mention the European Union, which is not in favor of genetic engineering. For over a dozen years they've supported 400 studies, millions of dollars in studies, and in the end they also had to include they had no evidence of any serious health or safety issues. Similarly, the National Academy of Sciences and other organizations in the end that have analyzed these crops, have identified no fundamental issues with the genetic engineering process itself. In fact, as recently as June this year, the American Medical Association stated (quote) "*There is no scientific justification for labeling of bioengineered foods.*" (unquote)

I'd like to also talk a little bit about the issues that have been raised about testing, and so on, and some other issues that are in the Proposition 37. One thing that I'm quite concerned about, frankly, is that initially in 2014 it actually puts a threshold on the content above which a product would need to be labeled. It will go to 0.5 percent in 2014, and apparently to zero in 2019. That's stricter than in any other country in the world. Even the European Union, the threshold is 0.9 percent, slightly less than one percent. The reason that's important is because the procedures needed to achieve a certain minimal level get increasingly expensive as you go lower. We have industries even in the Midwest where a large fraction of our crops are genetically engineered successfully selling non-engineered, non-GM products even into the European Union because they can meet that one percent threshold. But if that threshold goes to zero, the costs go up exponentially. It becomes virtually impossible in open production in the field to meet the zero tolerance.

It was also mentioned a moment ago, that this is not a testing base rule; it's just an affidavit rule. But in the end, if it establishes a threshold, that is, there is a certain threshold above which you need to label, it will inevitably involve testing. I would say it's scientifically virtually impossible to confirm a zero percent rule. That is, you would have to sample the entire product to know that there was nothing there, particularly as we move to very, very low levels, which puts at risk marketers who with one sample may give a zero test, the next sample could give a positive test because it's been sampled. It's like a needle in a haystack. You may get the needle if you sample enough.

The other problem is that all of our tests have a certain fraction of false positives (meaning, that you will get a positive test even if there's nothing there). So this again puts marketers at risk because it's always possible someone will take the test and will find a positive which may be false because we're measuring very, very low levels. That is, we actually have a zero threshold. It becomes very much a difficulty in doing that.

Another point that I would like to make, is that in fact genetically engineered crops have environmental benefits. We've had 15 years now of experience with this. And in fact, the utilization of herbicide tolerant crops has enabled conservation tillage. We have farmers who don't own plows anymore because they can control their weeds in other ways. This has many benefits on reducing soil erosion, in enhancing organic matter and soil, in fact, hopefully, sequestering carbon out of the air into soils if we stop plowing enough. This has been a huge benefit. We have used more of a certain... some certain herbicides but we have replaced herbicides that have a much greater impact on the environment. So the overall impact of herbicides has gone down considerably. Insecticides that are used in corn and cotton have been much more dramatically reduced. There's no question on any side that we have reduced the use of those insecticides which are the ones that tend to have the most likelihood of collateral injury to humans and particularly for workers who are applying these in fields. If we can reduce the application of these insecticides, we would really like to do that. And that has been done. And those crops where it's been used, they have done that.

Again, because the adoption rates of these crops and the acreages on which they're grown are so large, the environmental impact has in fact been enormous. There have been many studies already to show the impacts, the benefits to not only the purchasers... in fact, there was a study in the Midwest that showed that with insect resistant corn, \$2.5 billion of benefit went to the purchasers of those crops. Over \$4 billion of benefit went to those who did not purchase the crops. How? Their use reduced the overall insect pressure so that even those who did not use those crops had lower costs to control their insects. It's been very evident in cotton as well. That overall we've been able to much lower the overall pressure and save costs for everyone using these crops.

The final thing that I'd like to mention is that a labeling requirement such as this, which would certainly push back into the marketing stream for these types of crops, would certainly be a disincentive for further investment in genetically engineered crops, including those that are in the pipeline that would be targeting much more important traits, such as drought tolerance, salinity tolerance, heat tolerance, issues that are very, very important in California. Water use, as I'm sure you're aware, is a key issue in agriculture in California. We have already proof of concept of these types of advances that can be done using genetic engineering. So I just have to ask whether, in fact, this is a strategy that as a society we should pursue. That is, to put additional hurdles, de facto warning labels on a total technology. This is not like saturated fat or calories or something; this is an entire technology. Not specific to the product, an entire technology that we're going to label foods for. I think it's clear to say—with the clear intent to create some fear, some concern in the consumers' minds—that will have an impact on the market. That will have an impact on investment in these scientific advances. And we are going to forego as a society, advances that we need and that the global population needs. We need to feed 9 to 10 billion people in about 30 years and we need these tools.

Thank you very much.

**SENATOR CANNELLA:** Thank you.

**MR. JAMIE JOHANSSON:** Thank you. Thanks for the opportunity to speak with you today. My name is Jamie Johansson and I serve as second vice president of the California Farm Bureau Federation, California's largest agricultural organization with over 70,000 members. More importantly, I farm 80 acres in Butte County, a farm I started with my family in 1993. Primarily, I farm olives for the olive oil market utilizing bulk olive oil sales in a private label that is sold wholesale to retail markets direct off the farm. And currently, I participate in four farmers markets a week.

With California farms currently in full harvest swing, it is always amazing to reflect on the thousands of variables throughout the year that have to go right on a farm just to get to the point of selling your harvest. However, failure on a farm usually only requires one thing to go wrong and without a doubt the smaller the farm the more vulnerable you are. Proposition 37 would only add to those risky burdens that are carried by California farmers to meet consumers' needs.

Proposition 37 as written, does not bring one benefit for any California farmer. It does bring additional economic risk, a financial burden that is disproportionately carried the smaller your farm is.

A recent study at the University of California, Davis estimated Prop 37 will create \$1.2 billion in additional costs for farmers and food processors. Costs that will be paid for by California farmers without returning one benefit to increased food safety for your family, greater nutrition for your family, or a cleaner environment for our communities. This \$1.2 billion does not include the additional costs that will be placed on retailers who help keep California farmers in business. But if there's one thing I've learned in the short 20 years I've been farming, those costs are recovered through lower prices to the farmer and/or higher prices to the consumer.

One misconception is that this initiative will only impact those farmers growing genetically engineered crops. The fact is; there's going to be a high cost for California farmers to comply with Prop 37's requirements even for those who have made a conscious choice not to plant genetically engineered crops.

Based on the July 18<sup>th</sup> final analysis of Prop 37 by the Legislative Analyst's Office concerning verification of being GE free, California farmers should expect to pay more in record keeping, in costly third-party verification that retailers will require of their farmers and food processors. All will be necessary to avoid frivolous lawsuits that enforcement of Prop 37 can lead to. A very real example of these costs is experienced by farms with their own product label when it comes to a legitimate concern like food safety.

On my farm we pay nearly \$500 a year to California's Department of Public Health to have an inspector visit our farm and ensure our farm products meets health and safety requirements and we have the appropriate paperwork in order to obtain a license. Under certain circumstances throughout the year, a farm may be required to have an inspector revisit their farm for an additional hourly cost. However, most retailers do not treat a health license by the state of California as an end in reducing their legal exposure. In addition, my farm is required by retailers to purchase product liability insurance that costs an additional \$1,000 per year. These types of costs are very real barriers to small farms and businesses, so much so that this year this Legislature sent a cottage food bill the governor's desk which seeks to lower those

barriers for small businesses trying to enter the marketplace. Prop 37 only increases the size of that barrier.

The text of Prop 37 makes clear that documentation will be required to prove that unlabeled products are free of GE ingredients. Grocers, retailers, and farmers will have to track and keep records for tens of thousands of food products, which will be a logistical nightmare. Without a clear paper trail, farmers are exposed to potential liability.

And as Ron Fong will get into in more detail, Prop 37 contains a private cause of action enforcement mechanism that makes these lawsuits all the more likely to occur.

Prop 37 requires certification record keeping, maintaining separate production channels for California versus other destinations, all of which would be a significant burden on the food industry in California. Food processors in California and national food processors serving California consumers would be required to certify that all their ingredients were GE free, including ingredients from farm commodities that are not grown using genetic engineered seeds. This is complicated when you consider how many non GE farm commodity crops are used in processed foods.

For example; a dairy cooperative that blends sugar or corn sweetener into yogurt or ice cream could face legal action unless they could fully document that all the ingredients used in the California product were GE free.

California cooperatives that serve the national market would face higher ingredient costs and the competitive disadvantages in that market, or would have to incur costs of segregating ingredients and processing batches separately for the California market only. Again, we estimate these additional costs would total about \$1.2 billion for farmers and food processors.

Prop 37 would also hurt farmers as a result of a provision that would prohibit processed food products that have been cooked, baked, frozen, dried, or processed in some other way, from being labeled or advertised as “natural,” even if they do not contain a GE ingredient.

I grow olives and make olive oil. Olives are not a genetically engineered crop. Under Prop 37, it has been interpreted by many entities, including a superior court judge, the attorney general, and the Legislative Analyst’s Office, I could not simply

label my olive oil as “natural” under Prop 37. There is a potential that I could not use the word “natural.”

Under Prop 37, a raw almond could be marketed as “natural,” but the same almond that has been salted and canned could not. Apples could be labeled “naturally grown” but applesauce made from the same apples potentially could not be advertised as “natural applesauce” simply because the apples were cooked. It makes no sense.

The ultimate goal of the initiative’s funders is to prevent the use of modern biotechnology in farming and essentially ban foods that have any GE ingredients. They see labeling and aggressive litigation as a means of accomplishing this goal.

The initiative would close off opportunities for farmers and food producers who might want to take advantage of future advances in crops bred for disease and pest resistance, drought tolerance, improved growth, nutrition, taste, as well as other benefits.

Putting a de facto warning label—which is the words of the proponents of Prop 37—putting a de facto warning label on foods that are perfectly safe does not benefit consumers. The only people who will benefit are the trial lawyers who helped to write Proposition 37.

The impacts to California’s farm community are why California Women for Agriculture, Western Growers, the Agricultural Council of California, and dozens of other ag groups representing California farmers, have joined California Farm Bureau to oppose Prop 37.

Thank you.

**SENATOR CANNELLA:** Mr. Fong.

**MR. RON FONG:** Good morning, Mr. Chairman, Madam Chair. My name is Ron Fong. I’m the president and CEO of the California Grocers Association. Our membership is quite diverse. We represent the large grocery retailers, a broad base of independent grocers, wholesalers, and a wide variety of manufacturers and suppliers that sell groceries to consumers. You can probably imagine that Prop 37 has been a high priority and a topic of a lot of debate within our association.

According to the state legislative analyst, retailers, such as grocery stores, would be primarily responsible for complying with the measure by ensuring that their food products are correctly labeled.



Now I think I'll focus the bulk of my testimony on that portion of the discussion as we've heard from many smart people ahead of me about the farming and the technology of the initiative.

I heard from earlier testimony that this is a simple initiative. I think I even heard that the legal process would be quite simple. Somebody sues a grocery store; all we have to do is show, you know, the disclaimer from the manufacturers and all would be said and done. I would submit to you that that is not how the legal process works related to these types of lawsuits; and we know that by defending many lawsuits from Prop 65.

Grocers would be responsible for a paper trail on every ingredient of every product that we sell and that's potentially hundreds of thousands of products requiring paperwork down to the seed level. An average grocery store, 50,000 square-foot grocery store, that you probably shop at on the weekends, contains over 100,000 SKUs in different varieties of categories coming from different suppliers. So at this point, you know, we submit that it would not be a simple process to keep a simple trail of paperwork. Is it the retailer that keeps the paperwork? Is it the supplier that keeps the paperwork? The wholesaler? Is it the store? Do you have to keep the paperwork with each delivery that you come? That's just going to amount to a nightmare of potential paperwork and record keeping.

Prop 37 would create a litigation nightmare (no doubt about it) for grocers who would need to comply with all of its requirements. The proposition in our opinion is not a right to know; it's a right to sue. And when it comes time to sue, grocery retailers will be on the frontline, no doubt about it.

As a colleague of mine aptly put it: When lawsuits are filed the lawyers might not be able to figure out where your Cheerios come from but they sure as heck will know where they bought it, and that's us, the grocery retailers.

I feel that grocery retailers have lived and learned from Proposition 65. In the last two decades, Prop 65 has been abused by lawyers seeking to shake down grocers into paying huge settlements that benefit only the trial lawyers. Similar to Prop 65, the food labeling proposition creates a new category of lawsuits allowing private citizens a right to sue, claiming that a food company, a grocer, or a farmer has violated the labeling provisions. Like Prop 65, the food labeling measure would require

businesses to pay attorney fees and other legal costs incurred by the plaintiff lawyers, and we've seen plenty of that with Prop 65 lawsuits.

I was just listing a few in recent memory over the past couple of years, Prop 65 lawsuits, and I can name five or six: acrylamide in potato chips, caffeine in different products, lead in fruit juices, plastics on sandals that we sell in the general merchandise department, naturally reoccurring mercury in seafood, so that is just the tip of the iceberg on lawsuits that we have faced in the past.

Prop 37 does little to inform consumers on whether or not the food that they are eating is genetically engineered. That's because Prop 37 is full of loopholes and exemptions that really make no sense. For example; soy milk requires a label but cow's milk does not. Dairy products, eggs, meat and poultry are all exempt even though those animals are fed GE grain. Dog food with meat requires a label, but meat for human consumption does not. Fruit juices require a label but alcohol made with some of the same GE ingredients are exempt. Food in grocery stores, you have to label, but the same food in restaurants are exempt. If the proponents of 37 were so concerned about the right to know, why would they exempt so many of these categories?

The reality is, Prop 37 is not a simple labeling measure as was described by previous witnesses. It's filled with lawsuits, loopholes, increased costs for the consumers, and that's the bottom line.

Thank you very much.

**SENATOR CANNELLA:** All right. Thank you. I'll start with Assemblywoman Galgiani, if she would like to start the questions.

**ASSEMBLYMEMBER GALGIANI:** Can one breed a new non-GMO crop variety that could cause health or allergenicity problems—concerns?

**MR. BRADFORD:** Well, it's possible. In normal breeding, non-transgenic breeding, we do go back and use wilder versions of some crops. Some of those do in fact have higher levels of certain toxins or things like that. Those things have been removed through domestication. But when we have to go back and use those earlier types in order to breed in traits, it is possible for that to happen. It hasn't been demonstrated yet. That is, we haven't done that in most cases, or virtually in any case. But the threat is always there. That's why it's much better to just make a small

change in a crop that we already know is safe—that is nontoxic—and make a change that we’ve already characterized.

We have a project, for example, to move a disease resistance from peppers in to tomatoes. Peppers and tomatoes are very closely related. But we can’t actually use traditional breeding between them. We are already eating these genes in peppers. If we could just get it in a tomato, we wouldn’t have to use pesticides, like copper, to treat those tomatoes and stop that bacterial disease. So it just make a lot of sense then trying to go back, way back into the timeline if you will, and rebreed all those crops.

**ASSEMBLYMEMBER GALGIANI:** Okay. Is there a government process that addresses this that you’re aware of?

**MR. BRADFORD:** A government process of?

**ASSEMBLYMEMBER GALGIANI:** That protects against bioengineered products.

**MR. BRADFORD:** Well, we have a regulatory system that’s been described. That is we have three agencies that evaluate genetically engineered crops before they’re commercialized. The USDA looks at them in terms of their safety as a plant that we would grow, the FDA looks at them from their food safety point of view, and the Environmental Protection Agency looks at them if they involve pest control.

It’s been mentioned that the FDA does not require this consultation. That’s true but it’s true for every whole food. That is, the FDA does not require any whole food product to be put through their process. It’s always a consultation. And the FDA does not sanction or rule that any foods are safe. It’s always the liability of the manufacturer, and the marketer retains that liability. You will find no food where the FDA absolutely declares “this is safe” and they take the responsibility on themselves. So the process is exactly the same that is used for any other whole food product. And in fact, all genetically engineered products on the market have gone through that consultation.

**ASSEMBLYMEMBER GALGIANI:** Okay.

**SENATOR CANNELLA:** A question. So genetically engineered, would you consider that “natural?” I mean, you talked about how wine grapes are made and oak trees and various things, but would you consider genetically engineered food to be “natural?”

**MR. BRADFORD:** I think defining “natural” is very difficult. I think you could take it two ways. You can say none of the foods we eat are natural because they’re all domesticated crops. That is, we’ve only recently discovered where corn came from. It’s very difficult to identify its progenitor because it’s so changed through the domestication process. So is that natural because it’s been changed over 3,000 years rather than the last 30? It’s very difficult to say.

My own view though, is that the use of these technologies is as natural as other breeding technologies and is beneficial. I think it would be a great boon for organic production myself, my own view. For example; the BT products we have, that same product can be applied as a spray in organic production. It’s organically improved. If we allow the plant to make that exact same protein itself and protect itself from the insects, now we encounter regulatory issues, labeling and all these other issues. So my own view is, I believe it’s equally natural myself.

**SENATOR CANNELLA:** Okay. So if on the packaging it’s just “natural” is taken off, are you exempt from all the provisions of this proposition or do you have to also label “genetically engineered” on the label?

**MR. JOHANSSON:** If you used genetic engineered products \_\_\_\_\_ you would have to. Or if you didn’t want to put it on there, you would have to prove. It’s just another aspect...

**SENATOR CANNELLA:** So it’s not just to be able to call it “natural,” if there is any genetically engineered...

**MR. JOHANSSON:** Certainly you couldn’t be labeled “natural” if you utilized genetic engineering.

**SENATOR CANNELLA:** I got that part. But I’m just wondering if you just take “natural” off it, are there any other—and maybe you’re not the right person to ask—but are there any other things you have to do? Do you have to label it “this product is genetically engineered,” or something? Or is it you just can’t use the term “natural?”

**MR. JOHANSSON:** You would have to prove one way or the other. It’s interesting, you know, in the labeling thing it actually, you know... the proponents of Prop 37 and those people generally opposed to genetic engineering, Prop 37 actually makes it more difficult for those farmers—conventional farmers—who chose not to use genetic engineering in terms of they now have to pay the cost to prove that.

**SENATOR CANNELLA:** Really? You have to prove you’re not using...

**MR. JOHANSSON:** If you're not certified organic and you do not want to put on "it may have been made with genetically engineered products," you will have to back that up and you will have to show that it went through the proper channels that you're clean.

**SENATOR CANNELLA:** So is that the understanding of staff as well? It's not just you can't call it "natural," if you don't put that "this is genetically engineered," you have to prove that it's not genetically engineered? Wow! Okay. It seems like a lot there.

So practically what happens? Let's say no other state follows suit. Nobody else follows our lead, which typically happens, by the way, in the California. We do something and nobody follows. Could you see a scenario where just all of our food goes out of state? They say, "Fine, we've got plenty of consumers. We feed the world in general. If California is going to make it so difficult we'll just ship most of this to other states." Is that a scenario?

**MR. FONG:** I can tell you from a manufacturer's standpoint (I can't speak for the farmers) but we did get some counsel from some of our products that are manufactured out of state. Take cereal. You would literally have to stop the line and start a new line for the California packaging, right, because it has to have a different type of label, which is different than the 49 other states. So that is possible in that can be done, obviously, through technology, but it's going to raise your cost of goods sold and in California we're going to pass it onto the consumers.

**SENATOR CANNELLA:** Is there an estimate on how much that could increase that? Maybe someone mentioned something. But do we know how much that could increase the cost?

**MR. FONG:** I don't have that figure for you, Senator. I'm sorry. I could probably get it to you, though.

**SENATOR CANNELLA:** Okay.

**MR. JOHANSSON:** I think the important thing, Senator, is that when it comes to that market determination what farmers will do, really, they'll read the market like they do now. There already is the opportunity for those farmers willing to participate in a market that is GE free. Either they can do that through the certification process of being organic, or they can actually volunteer and go through a third-party verification that they are GMO free. So I think the ultimate outcome of Prop 37 is

farmers, as they do now, will just weigh the cost of doing business either in state or out of state. And it's a great unknown.

**MR. BRADFORD:** Could I follow up with a comment? For example, 95 percent of our sugar beets grown in the U.S. are genetically engineered. So that's beet sugar made in the USA, that if someone produced a non-GE product but in fact added a little sugar to it, now it would be captured and have to be labeled. If we decide not to use that beet sugar, then the other source is sugar cane sugar of which we grow very, very little. So in a sense, we're exporting our supplies of sugar out of the country because we can grow a lot of sugar beets but we don't have the climate for growing much sugar cane.

**SENATOR CANNELLA:** And I should have asked the previous panel. I apologize. But what would the label look like? I mean, the font, does that specify what it has to be? I mean, is this all identified so that if this passes people can start doing it? Do we know those parameters?

**MR. FONG:** I believe that would be promulgated through regulations at some point when we get to that point. But it hasn't been determined yet.

**MR. JOHANSSON:** There is the potential that that itself would even be litigated as far as what people wanted to see and what was appropriate. So again, even getting to the point of being able to put on a label, this will be run through courts.

**SENATOR CANNELLA:** Okay. All right. Thank you very much. No further questions? No. Oh, wait!

**ASSEMBLYMEMBER GALGIANI:** I had one question. So you'd be required to go through a third-party certifier; who would that be?

**MR. JOHANSSON:** Well, there already is an organization out there that will do it voluntarily for those businesses wishing to service those consumers who want to be GE free. So, you know, who that will be is yet to be determined. And really, the ultimate will it be just a sworn affidavit, as previously mentioned here, that maybe it is just raise your right hand kind of thing? It just really doesn't work that simply as we see in the food marketplace. But it has to be constantly backed up. And even something as simple as, you know, again, getting a public health license to sell your product isn't good enough for most wholesalers and retailers and vendors. They actually want that backed up by a third party. In this case it would be a product liability insurance. So it's going to be costly one way or the other.

**ASSEMBLYMEMBER GALGIANI:** Thank you.

**MR. HAALAND:** Senator, thank you. For anyone on the panel real quick: As we've seen in Prop 65 issues, and I presume that you will look and you believe that Prop 37 will create the same environment as was noted by one of the witnesses here. There is currently a process or a system whereby consumers can have GE free products. It's called organic farming. And we have quite a national and state infrastructure in place to establish and make sure that those parameters are maintained. You noted that the proponents have indicated that there needs to be a GE warning label. In as much it's impossible to garner complete and full compliance with any law or regulation that's put forward, what do you see the impact—maybe you've already addressed this—but do you see Prop 37 being more of a head hunting tool than a product information or consumer information, since we already have fairly extensive costly systems in place to provide that type of information, as the Senator said, whether it's the calories in your hamburger or the organic nature of your food?

**MR. FONG:** You know, as I stated in my testimony, I mean, the initiative is marketed as a right to know. We see it from the retail side as a right to sue. Because we've lived and learned through Prop 65, I feel like it's an initiative that has already been tested and the real life effect is that retailers are going to feel the brunt of the right to know by having trial attorneys sue us for different types of products and we're the last line of defense, so to speak, so we're going to be left holding the bag—plastic or paper.

**SENATOR CANNELLA:** Okay. Thank you very much. All right, next, we're going to go to the public comment. Again, you'll have two minutes. I think I'll just call you up. There's 12 of you actually. If you just kind of want to go up against the wall and then come up. I think Susan Lang is number one. And keep your comments limited to two minutes. I'll cut you off at two and then we'll get through all the public comments.

**MS. SUSAN LANG:** When I see "trans fats" on a label I don't consider that to be a warning; I consider that to be honest disclosure. I'm the mother of two boys ages 8 and 10. We've had health issues, especially with my younger son. When doctors weren't able to diagnose his problems or help him very well, I did my own research about health and diet. I discovered through research and experience that what I choose to feed my children day-in-and-day-out is the most important factor in keeping

them healthy. I choose wholesome, natural, nourishing foods. And, yes, I am a label reader.

Also through my research I learned about GMOs. I've read enough to know that there are many unanswered questions about these brand new foods and that there have been animal studies pointing to serious health consequences. I learned enough to decide that genetically engineered food is not something I will be feeding my family.

I don't have all the answers about GMOs and I can't say for sure what effects GMOs would have on my children or my children's' children. But neither can anyone else say because the long-term health studies aren't taking place. Actually, we and our children are the subjects in this giant feeding experiment.

In my reading I learned enough to know that I shouldn't trust the companies that are making and patenting genetically engineered seeds and telling us that they are safe. Their motive is clear. It's profit at all costs. My motive is clear too. It's to protect my children. Since the FDA, the USDA, and the ag biotech industry will not proceed according to the precautionary principle, I will. That's why I need labeling at the store so I can choose the best food for my family. I'm already a pretty well informed consumer, probably more so than most of the mothers I meet who have absolutely no idea that they're feeding their children genetically engineered food on a regular basis. I'm doing guessing at the grocery store even so. It's time to take the guesswork out of my shopping and time to let the other less well informed mothers in on the secret of genetically engineered food. And by the way, genetically engineered foods are created by crossing ...

**SENATOR CANNELLA:** That's two minutes, Ms. Lang.

**MS. LANG:** Thank you.

**SENATOR CANNELLA:** Thank you very much for your time. Next is Kristie Stevens.

**MS. KRISTIE STEVENS:** Mr. Chairman and Committee, I'll be brief. Just so you know, I'm a credible witness. I do have a degree in biology. I have a Masters in Ag Education from UC Davis. My degree is from Berkeley.

I come from a long line of farmers. I care about farmers and I care about healthy food tremendously.



I'm pro science. And I think genetic engineering is fine in the medical field where there are strict protocols and strict controls on the product. That doesn't happen with genetically engineered crops.

So why do I think they should be labeled? Most genetically engineered crops are wind pollinated. You talk about organics. Well, organics aren't safe because these crops—as the farmer so nicely pointed out—drift. They've drifted all the way into Mexico and they have infected indigenous corn raises in Mexico. Pollen goes a long way. You can't contain field crops that are wind pollinated.

Transgenic. Even your legislative analyst was talking about, "Oh, it's just a cross-breeding process. And I'm not a PhD plant geneticist, but I can tell you that genetic engineering is very different. As proved by Arpad Pusztai at the Rowett Institute in Scotland, the very process of genetic engineering, where genes from another organism are shot in with a gene gun or they're carried in with a retro virus, actually disrupt genetically the parent genome. It becomes mutagenic (more unstable). The FDA's own scientists, and in fact, Monsanto's own scientists in the early days, said that there are potentially unknown allergenic and mutagenic consequences of the very process of genetic engineering. And it's not grafting. And it's not selective breeding, which has gone on for thousands of years. There are natural barriers to maintain species integrity. Genetic engineering goes way beyond that.

**SENATOR CANNELLA:** That's your two minutes.

**MS. STEVENS:** In your fields you have tomatoes and...

**SENATOR CANNELLA:** That's your two minutes. Thank you very much.

**MS. STEVENS:** I would respectfully request someone else's two minutes.

**SENATOR CANNELLA:** No. Thank you, ma'am. Thank you for your two minutes. Thank you for your testimony. Next up is Nancy Griffith.

**MS. STEVENS:** Thank you so much.

**MS. NANCY GRIFFITH:** Hello. I'm a Sacramentan and a retired teacher. And I'm just here on my own volition because I'm concerned about GMO foods. They are untested on humans so I'm concerned about health. And a lot of things have long-term consequences. For instance, now it's been shown that plastics can cause ADHD in children. So we don't really know what's going to happen in the future.

Some animal studies have shown on hamsters that GMO foods cause reproduction problems and even hair growing in their mouth.

I think I have a right to know right now in order to avoid GMO corn and soy. I have to use products that are labeled “organic.” I think my need to know is greater—my right to know—is greater than corporations wish to hide.

I’m concerned about the environment. Roundup Ready means that you use more Roundup and other toxic chemicals and those find their way into water and aquatic life.

I’m concerned about small farmers because like people have mentioned, the GMO crops drift into other farmers’ fields and then they are sued by Monsanto and put out of business for illegally using their GMO products.

I’m concerned about farmworkers because they are exposed to more toxics.

I’m concerned about the narrowing of diversity as one or two types of corn or soy, for example, are used.

I’m concerned about the cost. Not the cost to the farmer, but the cost to all of us—our health and our environment in the future.

And I’d like to say that Prop 37 only requires labeling.

**SENATOR CANNELLA:** Thank you very much. Next, Michael Greene.

**MR. MICHAEL GREENE:** I am Michael Greene with CDS Consulting and representing the California State Grange. I’m here today to speak in favor of Proposition 37, known as the California Right to Know Act, which will be on the November ballot.

The California Grange is a community-based organization with about 10,000 members of over 200 local granges and is celebrating its 140<sup>th</sup> year of continuous operation in California this year. Our members helped collect almost a million signatures this spring to qualify the initiative for the ballot.

The initiative is straightforward. It will simply require that food sold in California retail outlets, such as supermarkets but not restaurants, be labeled if it contains genetically engineered ingredients. Labeling of genetically engineered foods is standard procedure in the rest of the industrialized world. More than 40 countries, including all of Europe, Japan, and China, already label genetically engineered foods. California should be a leader for this country on this important issue.

The Grange believes that consumers have a right to know what’s in the food they purchase, eat, and feed their children just as we have a right to know how many

calories are in our food or whether food comes from other countries, like Mexico or China.

Polls consistently show the overwhelming majority of voters in the United States and California agree that genetically modified food should be labeled.

Please vote to ensure passage of Prop 37. Thank you.

**SENATOR CANNELLA:** Thank you. And again, this is just an informational hearing. We will take no action today.

Next up we have Rodney Robinson.

**MR. RODNEY ROBINSON:** I am Rodney Robinson. And, I am an eater that wants to know where precisely, or more precisely, what is in my food. Hence, Prop 37 is very important to me.

The California Legislature and legislatures in 19 other states had ample opportunity to enact appropriate laws dealing with the labeling of genetically engineered food. However, all of you have failed to do so. This prompted me to get involved with this initiative effort over a year ago and I vigorously helped to get this initiative on the ballot. I've read it numerous times. I invite all of you to reread it. It's very clear and simple.

To the issue of "natural," and your question regarding almonds: The candied almond, I believe, would be considered "natural" if it used cane sugar for its candying, or if there were no genetically engineered items involved with the candying process. However, if that candied process used high fructose corn syrup or corn sugar or, you know, other such genetically engineered items—beet sugar, for example—then it would require a label and it would not be able to use the term "natural." I think it's pretty simple and clear cut.

Now this gets to an issue. I was recently on a road trip. I stopped late at night into a Safeway to get a quick little snack and I thought, "Ah, peanuts. I'll get a bag of Planter's peanuts or a container of Planter's peanuts," and I noticed that the label indicated that it had used canola oil rather than peanut oil. Well, I can't...

**SENATOR CANNELLA:** Sir, I want to hear the rest of your story. You need to tell me outside after this meeting. But unfortunately, I'm going to have to cut you off at two minutes.

**MR. GREENE:** That's two minutes already?

**SENATOR CANNELLA:** It was.

**MR. GREENE:** I'm sorry. Thank you.

**SENATOR CANNELLA:** Thank you. Next up is Jessica Denning.

**MS. JESSICA DENNING:** Thank you so much, Senator Cannella and Assemblywoman Galgiani, for having this opportunity to speak. I'm a science teacher from the Grant District for 20 years. We had a tire shop, so I identify with people that are businessman, for 60 years in Sacramento.

I just want to know when I go to the store to feed my family which one of these is genetically engineered and which is not so I know what I'm buying. And I'm just asking for a simple label. That started me on \_\_\_\_\_ point person for labeling genetically modified foods in Prop 37 in Sacramento.

John Rowan, who is president of the Vietnam Veterans Association, asked President Obama if he would not allow the approval by the USDA of Agent Orange sprayed corn. In January, this 2-4-D, which is half the chemical (Agent Orange) was approved to spray on corn. So when you're buying corn wouldn't you want to know, wouldn't our Vietnam veterans want to know, whether our land is being crop dusted, whether it's going into our waters, whether we're eating Agent Orange. They have six pages in the Manual for Officers of disorders from Agent Orange and yet the FDA says (sorry, I'm nervous) that there's no long-term effects from having chemically engineered foods. There's pesticide. This is registered as a pesticide with the EPA. It's not tested by the FDA because they take the data from the companies that themselves make it. But we know about PCBs. We know about DDT. They know they lied. We know we have all those lawsuits and damage. So we're just asking for our children to know.

Also, Prop 65 is a bounty hunter thing. There's no bounty. The money goes to the State. It will enrich the State if there's any lawsuit. The people that make lawsuits don't make any money but the cost of the lawsuit. So that goes to you; maybe it should go to public health to help enforce.

And I have a lot more things to tell you.

Think about StarLink corn. Think about L-tryptophan. When you say that there's no known health effects; it killed a lot of people but it was never tracked because we don't label it.

**SENATOR CANNELLA:** That's two minutes. Thank you very much.

**MS. DENNING:** Thank you very much. I really appreciate it.

**SENATOR CANNELLA:** Thank you for the props too. Aaron Crane.

**MR. AARON CRANE:** Good afternoon, Senate. Thank you for being up here and upholding our constitution to protecting the health and welfare of the state's citizens as a state right. I really appreciate this time for allowing us to—the public here to speak. I'm a constituent here in California.

I'm very concerned about this proposition which has come up from the other constituents here in this state. And I'm actually for this. I think it's a very important thing that we vote yes for this.

I have an MBA. I have a triple business degree in international business marketing and finance. I've taken several classes in consumer behavior. I'm an entrepreneur. I'm very busy. And I would like to benefit the state by working and generating jobs and tax revenue, but I need to eat three times a day at least.

And when I go to the grocery store, I need to be quick. I'm all about efficiency. And I'm trying to make a recipe and I'm finding it extremely difficult to find food products that are not genetically modified. Organic is good, but there's not always an organic ingredient available for the recipe. What am I to do? I'm spending hours in the grocery store looking through the aisles reading all the minute script on this box and I could be out making money, generating tax revenue, and eating really good food.

So I would just really appreciate it if anything you guys could do to help get this to pass so I could quickly look at the label while I'm in the grocery store, see that it doesn't have GMO ingredients. Purchase it. Go home happy and eat food without any kind of thought in the back of my head that I don't know exactly if this is safe for me because there have been no studies done long-term.

So that's what I'm asking here today. And I thank you.

**SENATOR CANNELLA:** All right. Thank you, sir. And the last witnesses, you don't have to thank us for being here just because your time is limited—just get right into your testimony.

So Brandon Muth.

**MR. BRANDON MUTH:** All right. What's going on? Due to the time constraint I'm going to make this quick. I've got a couple of bullet points as well as questions that I just want to throw out there for people to think about.

First off: Jamie Johansson, he claims that genetic engineering is perfectly safe. I quoted this from his previous conversation up here. And I find this a little bit

difficult to believe because this has only been around for 30 years and this is too short a time to actually determine if this is safe.

Another thing is, are we just part of their little experiment? That's scary. That's a thought that worries me. You know, I'm a young guy trying to grow up and I'm worried about a billion other things and this is definitely something that's going to have a huge impact for us, our family, our loved ones, and for generations to come. This is our food.

Food is basically what we are. So if we're consuming chemicals and cancer causing agents which are put into our products, like corn, which you find everywhere, it's in cereal, it's actually a main ingredient, it's fed to cows. It's fed to a lot of these other animals that we are actually eating, so indirectly we are poisoning ourselves.

And if you actually look, the cancer rate is exponentially increasing and this isn't a coincidence. This is based off of what has been going on. And I find it crazy that all these companies (like Monsanto) are trying to cover this up. Why are they trying to cover it up if this is claimed as being safe?

And another thing is, it's not that people are trying to say, "Oh, ban this." All they're saying is they want to be visible so people, a consumer, has the decision and the choice to actually purchase a product with their knowledge of knowing, "Okay, I don't want to purchase this because it has GMO in it." Or, "I do want to purchase it." But let's leave that up to the consumer.

So all I'm saying is, I think it's very obvious, and I'm pretty sure that almost everybody would agree...

**SENATOR CANNELLA:** Thank you, sir. You're at two minutes. Thank you very much.

**MR. MUTH:** I have plenty more to say so please see me after.

**SENATOR CANNELLA:** Okay. We will do that. Next, Kevin Pledger.

**MR. KEVIN PLEDGER:** I have to say I'm a bit conflicted. When I came up here I came to this hearing definitely in the pro camp, but at the same time, as a master student in biotechnology, I understand the scientific body of knowledge and I agree that genetically modified organisms are by and large safe. But I am still pro labeling and that is because I believe that in the end the rights of people trump the rights of business and that the right to know trumps all. Even if the data is safe, the consumer still has a right to know what they're putting in their mouth.

Mr. Fong said that it's not a right to know; it's a right to sue and maybe on some level he's right but I have not seen or heard anything so far that indicates where the right to know is going to come from. The gentleman stated that we do have a process for declaring something organic, well, where's the middle ground? What about farmers who want to use genetically engineered seeds but can't do the organic process? They still need to use pesticides. They fall outside the organic labeling system and the genetic modification system so where does the consumer get their knowledge from for that?

One other thing that I wanted to say was that the LAO said this morning that the Assembly may not expand the exemptions beyond what's already written in the law. I would just urge the Assembly to close the exemptions that are already there eventually, especially the one for restaurants, because I don't believe a consumer's right to know ends when they walk into the restaurant. And just because I'm not buying my spaghetti off the shelf doesn't mean I don't want to know what's in it.

**SENATOR CANNELLA:** Okay. Thank you very much. Jay Hearnley.

**MR. JAY HEARNLEY:** Thank you for this time. I just want to kind of piggyback on... I'm a registered industrial engineer. I worked for the state of California for 33 years at the Office of State Publishing and during that time I learned a great deal, of course, about printing. And I know that the labeling process is something that is routinely updated, and so, I'm sure that the cost of actually printing the label won't be a real issue. No one has actually brought that up.

But as far as the affidavit; that did seem to me as a very straightforward way to help minimize false lawsuits and things like that.

Unfortunately, when I discovered that this issue has been around for 20 years and then I began to see some of the documentaries that talk about some of the studies that haven't really been published, I found that it was something I was quite concerned about. And it began to resonate to me that maybe in our desire to have job growth and our desire to have job security, whenever we work for a corporation we don't always... we may not always be unbiased in the way we present information as a scientist.

Right now, we look forward to the FDA's approach. The independent scientists that were there, there were a great number of them that were concerned that this may have some problems. We have the highest rates of cancer, the highest rates of heart

disease and the highest rates of diabetes in our nation compared to other industrialized nations. We also spend the most on healthcare. Somehow, food works into that equation. And we have had 20 years of not knowing that we have genetically engineered foods that we've been eating on a regular basis.

One study that stuck in my mind is that prenatal blood samples show that a woman has 10 to 15 times more Roundup in her blood than we're allowed to have in our drinking water.

**SENATOR CANNELLA:** That's two minutes, sir. Thank you very much for your time.

**MR. HEARNLY:** Thank you.

**SENATOR CANNELLA:** Doni Mae.

**MS. DONI MAE:** One of the things I was concerned about... and I was taking some biotechnology courses at the time and then this came out and I thought, "Well, what about allergies?" I have allergies and I'm scared to death that I'm going to pick up something that has some new product in it that's going to make me sick.

So, I mean, I don't eat corn. A lot of people don't eat corn now they've heard it has BT toxin in it. But I think that's a very serious consideration.

And it's my understanding that the genetic modification is really different from the previous plant breeding things. It's certainly different from grafting. And it disrupts the DNA in the target organism by throwing some other—not just one gene, but they use several genes and then they use maybe antibiotic resistant genes so they know who got the genes and the target organism's genome responds by reorganizing itself. Unpredictably we don't know and sometimes it's unstable.

So the tryptophan that was a really serious toxin and made a lot of people really sick. That's what happened. And that was before people were even thinking GMOs, but that's what it was. So that's a major concern of mine.

And it's my understanding that the lawsuit thing is being overblown because Prop 65 had too many lawsuits because it had some kind of... you can make money by suing people and this is supposed to be different.

The other thing that's occurred to me... and biotechnology is very capable. If you want to find out if something is a GMO, you can test the DNA. It shouldn't be that difficult. It shouldn't be that expensive. There may be a new company or a company would expand a new part of its business just for that. But you can find what



the DNA is. You can find what the other little things... the new proteins that weren't there in the normal parent. So I think that a lot of these issues aren't really that difficult to resolve.

And I really think—basically think—the public has a right to know what's in their food; they really have a right to choose.

**SENATOR CANNELLA:** Thank you, ma'am. That's two minutes. Thank you for your comments. Last up is Zack Marker.

**MR. ZACK MARKER:** I might be reading off my phone, if you guys don't mind. I didn't bring a pencil. So there was a lot of concern about the use of the word "natural" and I just wanted to address that. If that's a word that the government can't define and that the opponents of this proposition can't define then it tells me that it shouldn't be put on our packaging. It's misleading or unnecessary as it is. If you can't define it, you probably shouldn't put it on your package. And if this proposition takes that word out of every single use on packaging I would be completely fine with that. I think it's the dumbest thing I've ever seen.

And then with all due respect to, I believe it's Mr. Fong, me and consumers like me, we bring our own reusable bags. And as of right now, the onus is on us to look and see what's in our food and I don't think it would be a problem to ask the producers of that food to tell us what's in it.

That's all. Thank you.

**SENATOR CANNELLA:** Thank you very much. And we do have one last person. Please come forward. And if you wouldn't mind stating your name, because I don't have it. I'd appreciate it.

**MS. JAN HURST:** Hello. My name is Jan Hurst. And I'm a trained biotechnology lab technician. And part of my training as a biotechnology lab technician was to insert a virus vector consisting of pesticide into a tobacco plant that would kill the insect shortly after consuming the tobacco leaf. Therefore, upon successful insertion of the gene, a tiny tumor occurs at the base of the plant. And because our DNA is not static, rather it is dynamic, and will shift protein arrangements, good or bad, depending upon the right environmental factors, including the food we eat. Since genetically engineered foods have only been around for 30 years, there is not enough studies to conclude that it is completely safe. It may take a

generation or two to see where genetically engineered foods will take our health. Therefore, my position on this is, if it's GMO give me a chance to know.

Thank you.

**SENATOR CANNELLA:** All right. Thank you. Okay. That concludes our hearing. Thank you very much for being here today. And hopefully you found this hearing informative. Thank you very much.

###