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# OBESITY, PUBLIC HEALTH, AND THE FOOD SUPPLY

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*The epidemic of obesity is a vast and growing public health problem. . . . "Personal responsibility surely . . . play[s] a role, but we also live in a 'toxic environment' that in many ways discourages healthy eating . . . . There's the incessant advertising and marketing of the poorest quality foods imaginable. To address this epidemic, you'd want to make healthful foods widely available, inexpensive, and convenient, and unhealthy foods relatively less so. Instead we've done the opposite."*<sup>1</sup>

## I. INTRODUCTION

It is undisputed that obesity is one of the major public health concerns of our day. Obesity is plaguing the nation in unprecedented and staggering numbers. According to the Centers for Disease Control ("CDC"), approximately thirty percent of American adults are obese.<sup>2</sup> An estimated sixty-five percent

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<sup>1</sup> Craig Lambert, *The Way We Eat Now: Ancient Bodies Collide with Modern Technology to Produce a Flabby, Disease-Ridden Populace*, HARV. MAG., May-June 2004, at 50, 51-52 (quoting David Ludwig, Associate Professor of Pediatrics, Harvard Medical School).

<sup>2</sup> CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVS., FACTS ABOUT OBESITY IN THE UNITED STATES 1 (2005), available at [http://www.cdc.gov/PDF/Facts\\_About\\_Obesity\\_in\\_the\\_United\\_States.pdf](http://www.cdc.gov/PDF/Facts_About_Obesity_in_the_United_States.pdf) [hereinafter FACTS

are overweight or obese.<sup>3</sup> Childhood obesity is also on the rise, as are diseases, such as Type 2 diabetes, that are often linked to obesity.<sup>4</sup> The CDC estimates that obesity contributes to 112,000 deaths per year,<sup>5</sup> and it explains that, “[o]ver the past two decades obesity rates have doubled in adults, and the percentage of children who are above their normal weight has doubled during the same period. The percentage of adolescents who are above their normal weight has tripled.”<sup>6</sup> As a result of the staggering increase in obesity, it is predicted that for the first time in history, this generation will have a shorter life expectancy than its parents.<sup>7</sup>

The toll that obesity takes on society is measured not only in terms of the deaths it causes, but also in terms of the quality of life for those living with the disease. In addition to diabetes, obesity “is an important risk factor for serious diseases like . . . heart disease, some cancers, and arthritis,”<sup>8</sup> and is associated with a variety of mobility challenges. Thus, obese individuals are likely to miss more days of work, incur greater health care costs, and undergo family disruptions as a consequence.<sup>9</sup>

The steep rise in obesity follows closely on the heels of significant changes to the food supply. Ingredients like trans fat and high fructose corn syrup are of relatively recent vintage. Typical grocery store fare now consists largely of preservative laden processed foods that are not particularly healthy. Even unprocessed foods like fruits and vegetables are likely to contain pesticides, unless the consumer pays a premium for organic alternatives.<sup>10</sup> Meat and

ABOUT OBESITY]. This constitutes approximately sixty million adults. *Id.* See *infra* note 14 and accompanying text.

<sup>3</sup> Ctrs. for Disease Control & Prevention, U.S. Dep’t of Health & Human Servs., Overweight and Obesity: Frequently Asked Questions, <http://www.cdc.gov/nccdphp/dnpa/obesity/faq.htm> [hereinafter Overweight and Obesity] (last visited Apr. 11, 2007).

<sup>4</sup> Pub. Health Serv., Office of the Surgeon Gen., U.S. Dep’t of Health & Human Servs., The Surgeon General’s Call to Action to Prevent and Decrease Overweight and Obesity, [http://www.surgeongeneral.gov/topics/obesity/calltoaction/fact\\_adolescents.htm](http://www.surgeongeneral.gov/topics/obesity/calltoaction/fact_adolescents.htm) [hereinafter Surgeon General’s Call] (last visited Apr. 11, 2007). See *infra* notes 15-19 and accompanying text. The Surgeon General’s report indicates that the incidence of overweight adolescents tripled during the preceding two decades. Surgeon General’s Call, *supra*.

<sup>5</sup> CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP’T OF HEALTH & HUMAN SERVS., FREQUENTLY ASKED QUESTIONS ABOUT CALCULATING OBESITY-RELATED RISK 1-2 (2005), available at [http://www.cdc.gov/PDF/Frequently\\_Asked\\_Questions\\_About\\_Calculating\\_Obesity-Related\\_Risk.pdf](http://www.cdc.gov/PDF/Frequently_Asked_Questions_About_Calculating_Obesity-Related_Risk.pdf) [hereinafter CALCULATING OBESITY].

<sup>6</sup> *Id.* at 2.

<sup>7</sup> See *infra* note 19 and accompanying text.

<sup>8</sup> CALCULATING OBESITY, *supra* note 5, at 2.

<sup>9</sup> See generally *infra* notes 27-28 and accompanying text.

<sup>10</sup> The common understanding of the term “organic” is that it refers to foods that are free of chemicals and pesticides. There has been confusion surrounding the word “organic”, and it has been defined differently by different organizations. The International Federation of Organic Agriculture Movements (“IFOAM”), for example, provides the following definition: “‘Organic agriculture is an agricultural system that promotes environmentally, socially, and economically sound production of food . . . . In this system, soil fertility is seen as the key to successful production. Working with the natural properties of plants, animals, and the landscape, organic

poultry animals have often been fed diets of hormones and antibiotics, unless the consumer can find organic or free range products that, like organic fruits and vegetables, are generally more expensive than their conventionally fed counterparts.<sup>11</sup> Thus, one of the challenges we face in eradicating obesity is improving the quality of the food supply. Arguably, the food supply needs a fundamental restructuring.

This Article proposes a three-part approach to improve the food supply. Specifically, it explores government taxing and spending, two traditional public health tools, and suggests that both of these governmental powers can be used to make healthier foods more readily available at reasonable prices, while increasing the cost of less healthy alternatives. Finally, it proposes that we promote a true “food democracy”<sup>12</sup> through the creation of an education and awareness campaign. This campaign would not only better educate Americans about proper nutrition but would also focus on how we can change our entire relationship with food. It would encourage consumption of locally grown whole foods and sensitize individuals to the need for sustainable agriculture. It would also address the benefits of taking the time for balanced, sit-down meals rather than eating on the run.

Part II of this Article outlines the problem of obesity in America. Part III explores the current state of our food supply. Part IV proposes the implementation of 1) taxing, 2) spending, and 3) educational and awareness modifications to improve the food supply and to begin to shift our consciousness surrounding food.

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farmers aim to optimize quality in all aspects of agriculture and the environment.” MICHAEL SLIGH & CAROLYN CHRISTMAN, RURAL ADVANCEMENT FOUND. INT’L—USA, WHO OWNS ORGANIC? THE GLOBAL STATUS, PROSPECTS, AND CHALLENGES OF A CHANGING ORGANIC MARKET 1 (2003), available at <http://www.rafiusa.org/pubs/OrganicReport.pdf> (quoting the IFOAM definition). Due to uncertainty surrounding the definition of “organic,” in 1990 Congress enacted the Organic Foods Production Act, 7 U.S.C. §§ 6501-6522 (2000). One of the purposes of the Act is to create “national standards governing the marketing of certain agricultural products as organically produced products . . .” *Id.* § 6501. There now exists a National Organic Program, 7 C.F.R. pt. 205 (2006), that establishes a list of approved and disapproved substances associated with organic farming.

<sup>11</sup> The added cost of organic alternatives has been coined by the food industry as the “price premium.” SLIGH & CHRISTMAN, *supra* note 10, at 13.

<sup>12</sup> E.g., Neil Hamilton, *Food Democracy and the Future of American Values*, 9 DRAKE J. AGRIC. L. 9, 12, 19, 23 (2004). I thank Professor Hamilton for the term “food democracy.” For a description of food democracy, see *infra* notes 120-22 and accompanying text.

## II. OBESITY IN AMERICA

“[O]besity is America’s fastest-growing health problem . . . .”<sup>13</sup>

According to the CDC, approximately sixty million adults are obese.<sup>14</sup> While the CDC does not report the percentage of *obese* children and adolescents, it does state that the rate of *overweight* children has doubled since 1980 and has tripled among adolescents during the same time period.<sup>15</sup> Our overweight youth are therefore at risk of spending the rest of their lives exposed to the health risks of obesity.<sup>16</sup> In fact, more than half of the overweight children between the ages of five and ten show signs of being at risk for heart disease.<sup>17</sup>

<sup>13</sup> Paul Krugman, *Free To Choose Obesity?*, N.Y. TIMES, July 8, 2005, at A23. See also FACTS ABOUT OBESITY, *supra* note 2 [hereinafter Krugman, *Free To Choose Obesity?*] (“Obesity rates are soaring in the U.S.”).

<sup>14</sup> FACTS ABOUT OBESITY, *supra* note 2. See also Paul Krugman, *Girth of a Nation*, N.Y. TIMES, July 4, 2005, at A13 [hereinafter Krugman, *Girth of a Nation*]. For adults, obesity is defined as having a body mass index (“BMI”) of thirty or higher. Overweight and Obesity, *supra* note 3. Morbid obesity, also referred to as severe or extreme obesity, is defined as having a BMI of forty or more, which generally equates with being approximately 100 pounds more than one’s ideal weight. Am. Obesity Ass’n, AOA Fact Sheets, <http://www.obesity.org/subs/fastfacts/morbidobesitys.html> (last visited Apr. 11, 2007). Overweight in adults is defined as having a BMI between 25 and 29.9. Overweight and Obesity, *supra* note 3.

<sup>15</sup> CALCULATING OBESITY, *supra* note 5; Surgeon General’s Call, *supra* note 4. The BMI of children and adolescents is interpreted differently from that of adults. “For children and teens, BMI ranges above a normal weight have different labels (at risk of overweight and overweight). Additionally, BMI ranges for children and teens are defined so that they take into account normal differences in body fat between boys and girls and differences in body fat at various ages.” Overweight and Obesity, *supra* note 3. Cf. Lisa Smith & Bryan A. Liang, *Childhood Obesity: A Public Health Problem Requiring a Policy Solution*, 9 J. MED. & L. 37 (2005) (suggesting that broad-based policy measures are needed to address the growing problem of childhood obesity); Heather L. Hinds, *Pediatric Obesity: Ethical Dilemmas in Treatment Prevention*, 33 J.L. MED & ETHICS 599 (2005) (examining the ethical dilemmas posed by using adult obesity treatments on children); Alan J. Zametkin, Christine K. Zoon, Hannah W. Klein & Suzanne Munson, *Psychiatric Aspects of Child and Adolescent Obesity: A Review of the Past 10 Years*, 43 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 134, 134-50 (2004); Marshall L. Wilde, *Bioethical and Legal Implications of Pediatric Gastric Bypass*, 40 WILLIAMETTE L. REV. 575 (2004) (looking at the complexity of issues faced in determining the propriety of gastric bypass surgery for children); William H. Dietz, Mary Groves Bland, Steven L. Gortmaker, Meg Molloy & Thomas L. Schmid, *Policy Tools for the Childhood Obesity Epidemic*, 30 J.L. MED. & ETHICS 83 (2002) (advocating for a range of policy changes to address childhood obesity).

<sup>16</sup> See Surgeon General’s Call, *supra* note 4 (“Overweight adolescents have a seventy percent chance of becoming overweight or obese adults.”). Cf. Abby Ellin, *For Overweight Children, Are ‘Fat Camps’ a Solution?*, N.Y. TIMES, June 28, 2005, at F1 (examining the potential for long-term weight loss through summer camps dedicated to educating children on how to eat right and exercise).

<sup>17</sup> FACTS ABOUT OBESITY, *supra* note 2 (“Sixty-one percent of overweight 5- to 10-year-

Moreover, Type 2 diabetes, which was once thought to affect only the adult population, is now appearing in our youth in alarming numbers.<sup>18</sup> As one scholar noted, “our children are projected to have a shorter life expectancy than their parents . . . they are being harmed more by poor diet than by exposure to alcohol, drugs, and tobacco combined.”<sup>19</sup>

The CDC estimates that obesity contributes to 112,000 deaths in the United States per year.<sup>20</sup> This figure is substantially lower than the CDC’s previous estimate of 365,000 obesity-related deaths per year.<sup>21</sup> The CDC revised its estimates based on a nationally representative study of adults. Although it is clear that obesity increases the chance of death,<sup>22</sup> prior estimates correlated the number of obesity-related deaths to the reported 400,000 annual tobacco-related deaths. Some suggest that the new lower figure reflects better treatment and management of obesity-related illnesses.<sup>23</sup> Whatever the correct figure, obesity remains a major and growing problem in the United States.

The health risks associated with obesity range from heart disease and diabetes, mentioned above, to hypertension, stroke, breast cancer, colon cancer, gallbladder disease, arthritis, sleep disturbances, breathing problems, and physical disability.<sup>24</sup> Obesity also increases the likelihood of back problems, knee problems, and other ailments associated with movement and dexterity.<sup>25</sup>

The facts about obesity in the United States raise several concerns. First, the number of obese individuals is staggering. Second, the rate has been growing rapidly since 1980. Third, the increased rate of overweight children and

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olds already have at least one risk factor for heart disease, and 26% have two or more risk factors.”).

<sup>18</sup> See, e.g., Ctrs. For Disease Control & Prevention, U.S. Health & Human Servs., Diabetes Projects, [www.cdc.gov/diabetes/projects/cda2.htm](http://www.cdc.gov/diabetes/projects/cda2.htm) (last visited Apr. 11, 2007); Marcelle S. Fischler, *No More Mystery Meat*, N.Y. TIMES, Oct. 8, 2006, at § 14CN, at 1; Smith & Liang, *supra* note 15, at 41. Children who suffer from Type 2 diabetes are at risk for other complications including “kidney disease, blindness, and amputations.” FACTS ABOUT OBESITY, *supra* note 2.

<sup>19</sup> Smith & Liang, *supra* note 15, at 42 (statement of Professor David Katz of the Yale University School of Medicine).

<sup>20</sup> CALCULATING OBESITY, *supra* note 5.

<sup>21</sup> *Id.* at 1. These deaths were based on estimates of poor nutrition and physical inactivity. *Id.*

<sup>22</sup> See *id.* See also Katherine M. Flegal, Barry I. Graubard, David F. Williamson & Mitchell H. Gail, *Excess Deaths Associated with Underweight, Overweight, and Obesity*, 293 J. AM. MED. ASS’N 1861, 1864 (2005), available at <http://jama.ama-assn.org/cgi/content/full/293/15/1861?eaf>. The study found that being overweight with a BMI of between 25 and 29.9 did not cause excess deaths overall. *Id.* at 1863.

<sup>23</sup> See, e.g., Flegal, Graubard, Williamson & Gail, *supra* note 22, at 1861 (“The impact of obesity on mortality may have decreased over time, perhaps because of improvements in public health and medical care.”); Krugman, *Girth of a Nation*, *supra* note 14 (citing a new study that appeared to reject the view that obesity has a large effect on life expectancy).

<sup>24</sup> CALCULATING OBESITY, *supra* note 5.

<sup>25</sup> See *id.* (“Obesity . . . is linked to . . . negative effects on physical ability, mobility, and other quality-of-life measures.”).

adolescents raises concerns about the long-term consequences to this population.<sup>26</sup> Finally, the costs, both financial and societal, of the obesity epidemic cannot be ignored. An estimated fifty-two billion dollars in 1995 and seventy-five billion dollars in 2003 were spent on direct health care costs attributable to obesity.<sup>27</sup> Societal costs, including disruptions in family and employment relationships, also cannot be ignored. Therefore, even if the *mortality* rates associated with obesity are in dispute, the *morbidity* rates remain serious and costly.<sup>28</sup>

The causes of obesity are twofold. Some have a genetic condition that leads to obesity. Genetically caused obesity, however, represents only a small fraction of the obese population.<sup>29</sup> The more common causes of obesity are behavioral, or a combination of genetic and behavioral factors.<sup>30</sup> Some people eat too much, others eat the wrong kinds of foods, and some do both.<sup>31</sup> Another behavioral cause of obesity is the lack of adequate exercise.<sup>32</sup> Nonetheless, the

<sup>26</sup> See Smith & Liang, *supra* note 15, at 47.

<sup>27</sup> FACTS ABOUT OBESITY, *supra* note 2. Indirect costs, of course, are even greater.

<sup>28</sup> Krugman, *Girth of a Nation*, *supra* note 14 (“[M]ortality isn’t the only measure of health. There’s no question that obesity plays an important role in many diseases that diminish the quality of life and, crucially, require expensive treatment.”).

<sup>29</sup> See Surgeon General’s Call, *supra* note 4. While acknowledging that genetics can be an important factor in obesity, the Surgeon General’s Report states that “[o]verweight in children and adolescents is generally caused by lack of physical activity, unhealthy eating patterns, or a combination of the two.” *Id.* Cf. ObesityinAmerica.org, *Recent Advances in Obesity Research*, [www.obesityinamerica.org/PDF/whyarepeopleobese.pdf](http://www.obesityinamerica.org/PDF/whyarepeopleobese.pdf), at 62 (last visited Apr. 11, 2007) (discussing the relationship between leptin, a hormone secreted by fat cells, and obesity, and noting that many overweight individuals have high leptin levels in their blood). Ultimately, “[o]besity is truly multifactorial.” *Id.*

<sup>30</sup> Brooke Courtney, *Is Obesity Really the Next Tobacco? Lessons Learned from Tobacco Obesity Litigation*, 15 ANN. HEALTH L. 61, 69 (2006) (“The Surgeon General has emphasized that behavioral and environmental factors play significant roles in the [obesity] epidemic.”).

<sup>31</sup> This can include emotional overeating and other eating choices that are not entirely rational. Prevention.com, *Psychological Reasons for Emotional Eating*, [www.prevention.com/topic/0,5768,s1-4-64-185-0-0,00.html](http://www.prevention.com/topic/0,5768,s1-4-64-185-0-0,00.html) (last visited Feb. 22, 2007) (providing a list of over twenty-five articles written on the psychological reasons for emotional eating). See also Krugman, *Free To Choose Obesity?*, *supra* note 13 (“[A]t least some food consumption is almost certainly not rational.” (quoting David Cutler, Edward Glaeser, and Jesse Shapiro of Harvard University in a 2003 paper that provides an economic analysis of obesity)). Irrational food choices may be particularly prevalent among children and adolescents, where the rise in obesity is at its greatest. *Id.*

<sup>32</sup> This is of special concern in our increasingly sedentary lifestyle that often centers on sitting before a screen, whether that screen is a television screen, a computer screen, Playstation 2, Playstation 3, Gameboy, Nintendo DS, X-Box 360, a Blackberry, or a cell phone screen. We have moved from a largely agrarian society where physical field work was the norm to an industrialized society that involves sitting at a desk and computer. On the whole, therefore, we have become less physically active. Experts generally agree that a sedentary lifestyle is another major factor in the obesity picture. See NAT’L INST. OF ENVTL. HEALTH SCIENCES, U.S. DEP’T OF HEALTH & HUMAN SERVS., *OBESITY AND YOUR ENVIRONMENT: A “WEIGHTY” SUBJECT!* (2006), <http://www.niehs.nih.gov/kids/weight.htm>.

focus of this Article is on the food supply and specifically, the difficulty accessing healthy, affordable food choices.

### A. The Food Supply

*What we eat has changed more during the past thirty years than in the previous thirty thousand. Trans fats, genetically engineered soybeans, livestock pumped with growth hormones and fed slaughterhouse waste, Chicken McNuggets—nobody's ever eaten this stuff before. We've become a nation of guinea pigs, the subjects in a vast scientific experiment, waiting to see what happens when human beings eat too much industrialized food. Much of it tastes and smells pretty good. The pleasure, however, doesn't last long. Learning where our modern mcfood comes from and how it's made and what it's doing to the world leaves a bitter aftertaste.*<sup>33</sup>

The food supply in America is largely unhealthy. A walk through a typical grocery store demonstrates this fact. Whether you walk through the sugar-laden cereal aisle, cookie and cake section, or jelly and jam section, or you peruse the high-sodium and often high fat pretzel, potato chip, and snack aisle, you are inundated largely with processed, unhealthy choices. A turn to the frozen food section further highlights the problem. Here you will find an assortment of processed foods that are largely filled with sugar, sodium, fat, or all three.<sup>34</sup> Moreover, many products include numerous additives that are not only difficult to pronounce but have no apparent connection to a natural food substance.<sup>35</sup>

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<sup>33</sup> Eric Schlosser, *Forward to ANNA LAPPÉ & BRYANT TERRY, GRUB: IDEAS FOR AN URBAN ORGANIC KITCHEN*, at xiii (2006) [hereinafter Schlosser Forward].

<sup>34</sup> On the other hand, the frozen food section typically includes some relatively healthy alternatives to the traditional meat and potatoes frozen dinner. These include unprocessed frozen fruits and vegetables. Much greater attention is now being given to the concerns associated with the food supply than in the past. Perhaps the movie "Super Size Me" brought the greatest degree of public awareness to the high fat, high sugar, high sodium and extensive use of chemicals in our food supply. *SUPER SIZE ME* (Morgan Spurlock 2004). Another publication that has had mass market appeal concerning obesity is the book "Fast Food Nation." ERIC SCHLOSSER, *FAST FOOD NATION: THE DARK SIDE OF THE ALL-AMERICAN MEAL* (2001). See also ERIC SCHLOSSER & CHARLES WILSON, *CHEW ON THIS: EVERYTHING YOU DON'T WANT TO KNOW ABOUT FAST FOOD* (2006); MARION NESTLE, *FOOD POLITICS: HOW THE FOOD INDUSTRY INFLUENCES NUTRITION AND HEALTH* (2002). Not all products at the traditional grocery store are unhealthy. A variety of healthy alternatives exist, and consumer demand is enhancing the quality of grocery store fare. See *infra* notes 69-73 and accompanying text.

<sup>35</sup> See, e.g., Whole Foods Market, Quality Standards: Unacceptable Food Ingredients, <http://www.wholefoodsmarket.com/products/unacceptablefoodingredients.html> (last visited Feb.

A savvy consumer, aware of the pitfalls of frozen and other processed foods, may instead approach the produce, meat, poultry, and fish sections of the supermarket, where unprocessed items are readily available. The choices in these departments, while perhaps healthier than some processed alternatives, are likely to yield another set of health risks. The fruits and vegetables in the produce section are likely to be laden with pesticides.<sup>36</sup> At the meat and poultry counter, the consumer may select animal products that were injected with hormones and antibiotics, chemicals that can easily pass through to the human body.<sup>37</sup> Of course the fish department must be meandered carefully, lest the consumer come home with mercury-contaminated selections.<sup>38</sup> The dairy section, which offers items like milk, juice, and cheese, suffers from the same ailments as the produce and meat sections because these products are derived

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22, 2007). Among Whole Foods' list of unacceptable food ingredients are caprocaprylobenhenin, dimethylpolysiloxane, and ethoxyquin. *Id.*

<sup>36</sup> See LAPPÉ & TERRY, *supra* note 33, at 8-16. The authors note that "[b]y 1969, 60,000 different pesticide products had been licensed by the [United States Department of Agriculture]. But licensed didn't necessarily mean safety-tested . . ." *Id.* at 9. Moreover, the use of pesticides arguably has not made food growing easier or more efficient. "Though we're blanketing the country with insecticides, we're having no easier time with insects. While the volume of insecticide applied has increased tenfold since 1945, crop loss to insects has nearly doubled, up from 7 percent to 13 percent, according to the [United States Department of Agriculture's] own data." *Id.* at 17. The reason for this is that insecticides create resistant insects. *See id.* Thus, farmers use more and stronger forms of insecticides to combat the problem. *See id.* Additionally, the Environmental Protection Agency also acknowledges that, depending on consumption patterns, "[l]aboratory studies show that pesticides can cause health problems, such as birth defects, nerve damage, cancer, and other effects that might occur over a long period of time." U.S. Env'tl. Protection Agency, Pesticides and Food: Health Problems Pesticides May Pose, [www.epa.gov/pesticides/food/risks.htm](http://www.epa.gov/pesticides/food/risks.htm) (last visited Apr. 11, 2007); *cf.* TECHNICAL DIV., PUB. SERV. PROJECT DEP'T, CONSUMERS UNION OF U.S., INC., DO YOU KNOW WHAT YOU'RE EATING? AN ANALYSIS OF U.S. GOVERNMENT DATA ON PESTICIDE RESIDUES IN FOODS *passim* (1999), [http://www.consumersunion.org/pdf/Do\\_You\\_Know.pdf](http://www.consumersunion.org/pdf/Do_You_Know.pdf) (looking at the toxicity index of various foods measured by the frequency of pesticide detection).

<sup>37</sup> See LAURIE GARRETT, BETRAYAL OF TRUST: THE COLLAPSE OF GLOBAL PUBLIC HEALTH 467-69 (2000). Garrett points out that the United Kingdom and most of Europe banned the use of antibiotics as growth promoters. *Id.* at 468. The United States' Centers for Disease Control conducted a study over the period of 2001-2002 and found 148 chemicals in human blood and urine. CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVS., THIRD NATIONAL REPORT ON HUMAN EXPOSURE TO ENVIRONMENTAL CHEMICALS 1 (2005), available at [www.cdc.gov/exposurereport/3rd/pdf/thirdreport.pdf](http://www.cdc.gov/exposurereport/3rd/pdf/thirdreport.pdf) ("Blood and urine levels reflect the amount of the chemical that actually gets into the body from the environment."). *See also* LAPPÉ & TERRY, *supra* note 33, at 34 ("[O]veruse of antibiotics in [animal] factory farms is leading us toward a precarious future in which our best (and sometimes only) defense against certain bacteria will be dramatically reduced, if not rendered useless, by antibiotic resistance.").

<sup>38</sup> U.S. ENVTL. PROTECTION AGENCY, U.S. DEP'T OF HEALTH & HUMAN SERVS., WHAT YOU NEED TO KNOW ABOUT MERCURY IN FISH AND SHELLFISH 1 (2004), available at <http://www.cfsan.fda.gov/~acrobot/admehg3b.pdf> ("[N]early all fish and shellfish contain traces of mercury. . . some . . . contain higher levels of mercury that may harm an unborn baby or young child's developing nervous system."). The report also notes that risks to others depend upon the level of fish and shellfish consumption. *Id.*

from fruit, vegetable, and animal products. It is very difficult, then, even for a health-conscious consumer, to find sufficiently healthy food choices at the local grocery store. “[G]iven that we are expected to monitor salt . . . and other potential dangers, a trip through the supermarket is . . . beginning to resemble taking the SAT.”<sup>39</sup>

The food challenges at the grocery store pale in comparison to those at other establishments. Fast food restaurants, for example, serve notoriously unhealthy foods. The 2004 film, “Super Size Me” highlighted the poor quality of food at McDonald’s along with inappropriately large portion sizes.<sup>40</sup> Although McDonald’s has since introduced some healthier food choices including salads, yogurt with fruit and granola, and sliced apples with low fat caramel, and has eliminated its super-sized portions altogether, its traditional offerings are still high in fat and calories.<sup>41</sup> Also, the McDonald’s “dollar menu” is still alive and well, rendering many traditional offerings high in fat and calories more affordable.

The food quality at conventional restaurants, however, is more difficult to assess because there is no requirement that restaurants provide nutritional information to their patrons.<sup>42</sup> Congress has adopted limited regulations of the ingredients and nutritional value of assorted restaurant menu items.<sup>43</sup> For now, the consumer who chooses to dine out can inquire about the ingredients used in various menu selections and choose restaurants that he or she believes will prepare healthy, nutritious foods.

Food establishments, such as movie theatres, sports stadiums, and amusement parks, continue to adhere to some of the unhealthiest of food choices. For example, amusement parks typically sell cotton candy, which is pure sugar,<sup>44</sup>

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<sup>39</sup> Nina Teicholz, Op-Ed., *Nuggets of Death*, N.Y. TIMES, Apr. 16, 2006, § 4, at 13.

<sup>40</sup> SUPER SIZE ME, *supra* note 34 (documenting filmmaker Morgan Spurlock’s weight-gain journey of eating a McDonald’s-only diet for a month and gaining more than twenty pounds). This film also touched on the poor quality of food at many of America’s schools. It was perhaps this film that initiated a reevaluation of food in society.

<sup>41</sup> See, e.g., MCDONALD’S QUALITY & NUTRITION INFO., MCDONALD’S INC., MCDONALD’S USA NUTRITIONAL FACTS FOR POPULAR MENU ITEMS (2007), available at <http://app.mcdonalds.com/countries/usa/food/nutrition/categories/nutritionfacts.pdf>. A Quarter Pounder with Cheese, for example, contains 510 calories, 26 grams of fat, 1190 milligrams of sodium, and 1.5 grams of trans fat. *Id.* A large order of McDonald’s French Fries has 570 calories, 30 grams of fat, 330 milligrams of sodium, and 8 grams of trans fat. *Id.*

<sup>42</sup> Smith & Liang, *supra* note 15, at 49.

<sup>43</sup> *Id.* (“[T]hese labels are extremely limited; for example, they often include only a picture of a heart to define that the meal is heart healthy or a special section of the menu that is designated to be ‘light fare.’”). See also Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 343(q)(5)(A)(i) (2000) (“FDCA”). Several of the FDCA’s food labeling requirements do not apply to “food which is served in restaurants or other establishments in which food is served for immediate consumption.” *Id.* Restaurants rarely have nutritional information available. See Smith & Liang, *supra* note 15, at 49.

<sup>44</sup> Part of the attraction of cotton candy is watching it being converted from sugar granules to its “cotton” consistency.

and funnel cakes, which are deep fried,<sup>45</sup> among other unhealthy foods. Movie theatres are known for popcorn which reportedly has 910 calories and seventy-one grams of fat in a medium-sized portion,<sup>46</sup> and sports stadiums are associated with hot dogs<sup>47</sup> and peanuts. Aside from peanuts, these offerings are not a model for healthful eating, and even peanuts need to be eaten in moderation because they are high in fat and calories.<sup>48</sup> Additionally, virtually all eating establishments sell Coca-Cola, Pepsi, and other soft drinks, which are not particularly healthy food choices either.<sup>49</sup>

Another food venue that has received a great deal of attention, particularly given the significant rate of overweight children, is schools.<sup>50</sup> Pursuant to the National School Lunch and Breakfast Programs, millions of children are eating up to two meals per day at school.<sup>51</sup> Therefore, it is imperative that those meals provide safe and adequate nutrition.

A 1992 study found that school lunches failed to adhere to healthy standards of fat, saturated fat, carbohydrates, and sodium.<sup>52</sup> As a result the National

<sup>45</sup> Fried foods are high in fat and can lead to heart disease. Bobbie Hasselbring, *How Do Fried Foods Affect My Risk?*, in HEART HEALTH: CHOLESTEROL (2001), [http://health.discovery.com/centers/articles/articles.html?chrome=c14&article=LC\\_25&center=05](http://health.discovery.com/centers/articles/articles.html?chrome=c14&article=LC_25&center=05) (last visited Feb. 22, 2007) (“You’re at greater risk for high blood cholesterol and heart disease if you eat a diet that often includes deep-fried or breaded foods, which are high in fat.”).

<sup>46</sup> DietFacts.com, *Movie Theatre Popcorn, Buttered, Medium Sized (11 Cups), Popped in Coconut Oil*, [www.dietfacts.com/html/items/23660.htm](http://www.dietfacts.com/html/items/23660.htm) (last visited Apr. 18, 2007). See also Karen Collins, *Ins and Outs of Popcorn*, [www.keepkidshealthy.com/nutrition/ins\\_outs\\_popcorn.html](http://www.keepkidshealthy.com/nutrition/ins_outs_popcorn.html) (last visited Apr. 11, 2007) (“[T]he fat content in . . . [a large bucket of movie popcorn with added butter is] comparable to three to five Big Macs or six to ten candy bars.”).

<sup>47</sup> Dodger Stadium hot dogs reportedly contain 190 calories and twenty-one grams of fat, eight grams of which are saturated fat. DietFacts.com, *Dodger Stadium Dodger Dogs: Extra-Long Meat Wieners*, [www.dietfacts.com/html/items/12472.htm](http://www.dietfacts.com/html/items/12472.htm) (last visited Feb. 24, 2007).

<sup>48</sup> An ounce of dry roasted salted peanuts contains 166 calories and 14.1 grams of fat. The Peanut Inst., *Peanuts—Mother Nature’s Whole Food*, [www.peanut-institute.org/NutritionBasics.html](http://www.peanut-institute.org/NutritionBasics.html) (last visited Feb. 24, 2007). The fat in peanuts is largely unsaturated rather than saturated. *Id.* Peanuts are also a good source of protein and minerals. *Id.*

<sup>49</sup> On its Web site, Coca-Cola gives nutritional information based on an eight ounce serving size, which is much smaller than the typical twenty ounce bottle or twelve ounce can. Eight ounces of Coca-Cola contains ninety-seven calories, thirty-three milligrams of sodium, twenty-three milligrams of caffeine, and twenty-seven grams of carbohydrates. THE COCA-COLA COMPANY, *SOFT DRINK NUTRITIONAL INFORMATION FOR CARBONATED BEVERAGES*, [www2.coca-cola.com/mail/goodanswer/soft\\_drink\\_nutrition.pdf](http://www2.coca-cola.com/mail/goodanswer/soft_drink_nutrition.pdf) (2006) (last visited Apr. 11, 2007). Absent from the list are the number of grams of sugar per serving. *Id.*

<sup>50</sup> Susan Lynn Roberts, *School Food: Does the Future Call for New Food Policy or Can the Old Still Hold True?*, 7 DRAKE J. AGRIC. L. 587, 588 (2002) (examining the history of school food programs and revealing some of their nutritional shortcomings).

<sup>51</sup> *Id.* (“In the Fiscal Year 2000, over 27.4 million children were fed lunch each day (with over 14 million free or reduced cost) at a yearly cost of \$5.56 billion. . . . In the Fiscal Year 2000, an average of 7.55 million children (6.4 million at free or reduced cost level) were fed breakfast each day.”) See generally National School Lunch Act, 42 U.S.C. §§ 1751-1769 (2000).

<sup>52</sup> JOHN BURGHARDT & BARBARA DEVANEY, *FOOD & NUTRITION SERV., U.S. DEP’T*

School Lunch and Breakfast Programs initiated changes aimed at making school fare more nutritious. As of 1996, Congress required that school lunch and breakfast programs comply with the Dietary Guidelines for Americans in order to receive federal reimbursement for the meals.<sup>53</sup>

Regardless of the venue, there are two ingredients that permeate the food supply to such an extent that they are difficult to avoid: high fructose corn syrup and trans fat.<sup>54</sup>

Developed in the early '70s . . . high-fructose corn syrup instantly became a hit among food industry CEOs because . . . it can be six times as sweet as cane sugar and is cheaper to produce in part because it's made from corn, which is heavily subsidized by our taxes.<sup>55</sup>

Studies suggest that we metabolize high fructose corn syrup differently than ordinary sugar, and consumption of high fructose corn syrup is a major factor in weight gain.<sup>56</sup> "Scientists have also shown that . . . [high fructose corn syrup] doesn't send the same 'I'm full' signal to the brain as when we consume sugar."<sup>57</sup> It also raises several other health concerns, including the way in which it is metabolized by the liver<sup>58</sup> and its association with irritable bowel syndrome.<sup>59</sup>

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AGRIC., THE SCHOOL NUTRITION DIETARY ASSESSMENT STUDY: SUMMARY OF FINDINGS (1993), available at [http://eric.ed.gov/ERICDocs/data/ericdocs2/content\\_storage\\_01/0000000b/80/23/3c/4a.pdf](http://eric.ed.gov/ERICDocs/data/ericdocs2/content_storage_01/0000000b/80/23/3c/4a.pdf).

<sup>53</sup> See National School Lunch Act, 42 U.S.C. §1753 (2000); National School Lunch Program, 7 C.F.R. § 210.2 (2006) ("Lunch means a meal service that meets . . . applicable nutrition standards."). Not surprisingly, fast food has also infiltrated America's hospitals. A 2002 study found that four out of ten hospitals have a fast food restaurant on-site. Andrew Weil, *Surgery With a Side of Fries*, N.Y. TIMES, July 6, 2006, at A21.

<sup>54</sup> See Dayna Winter, *Are These Foods Really Healthy?*, PREVENTION.COM, <http://www.prevention.com/article/0,5778,s1-3-58-135-4835-1-P,00.html> (last visited Feb. 24, 2007) ("These two ingredients – trans fat and high fructose corn syrup – are in 40 percent of the foods Americans eat everyday."). The number of foods with trans fat has presumably gone down since the FDA implemented regulations that require trans fat to be separately labeled on most packaged foods. Nutrition Labeling of Food, 21 C.F.R. § 101.9(c)(ii) (2006).

<sup>55</sup> See LAPPÉ & TERRY, *supra* note 33, at 35.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* (quoting Sharon S. Elliott et al., *Fructose, Weight Gain, and the Insulin Resistance Syndrome*, 76 AM. J. CLINICAL NUTRITION 911, 911-22 (2002)).

<sup>58</sup> See *id.* High fructose corn syrup can result in higher levels of triglycerides, which are associated with heart disease and stroke. *Id.*

<sup>59</sup> *Id.* In addition to trans fat and high fructose corn syrup, there is currently a debate about the safety of genetically modified foods. "In 2003, about 167 million acres . . . grown by 7 million farmers in 18 countries were planted with transgenic crops . . ." Human Genome Project Info., *What are Genetically Modified (GM) Foods?*, [http://web.ornl.gov/sci/techresources/Human\\_Genome/elsi/gmfood.shtml](http://web.ornl.gov/sci/techresources/Human_Genome/elsi/gmfood.shtml) (last visited Feb. 24, 2007). While not directly tied to the issue of obesity, genetically modified foods, the use of pesticides and other food hazards arguably reflect a failure to adhere to a principle espoused by some environmental-

Trans fat, or trans fatty acids, were developed in the 1940s.<sup>60</sup> When vegetable oil is hydrogenated, the result is trans fat.<sup>61</sup> Trans fat converts unsaturated fats into saturated ones.<sup>62</sup> Trans fat lowers good cholesterol and raises the bad cholesterol, heightening the risks for heart disease.<sup>63</sup> Therefore, it is advisable to eliminate as much trans fat as possible from one's diet.<sup>64</sup> For the food industry, though, trans fat is appealing because it gives products a longer shelf life and is cheaper than traditional butter or lard.<sup>65</sup> Because of its unhealthful characteristics, the United States Food and Drug Administration ("FDA") now requires that food products separately identify the amount of trans fat they contain.<sup>66</sup> It is this labeling requirement, along with growing consumer demand for healthier products, that is prompting food manufacturers to seek alternatives to trans fat.

Another challenge faced by the health conscious consumer is labeling. Labeling may be misleading. For example, foods labeled as "reduced sugar" may not be lower in calories than those with higher sugar contents. Consumers may also be confused, though perhaps not misled, if they fail to note the serving size when examining a product's nutritional information. Worse yet, labeling may constitute a complete falsehood. A label may falsely indicate, for example, that a product is organic or kosher<sup>67</sup> when in fact it is not. Labeling may also fail to make clear precisely what ingredients the product contains.<sup>68</sup>

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ists called the "precautionary principle." Sci. & Env'tl. Health Network, Precautionary Principle, [www.sehn.org/precaution.html](http://www.sehn.org/precaution.html) (last visited Feb. 24, 2007). The Science and Environmental Health Network advocates for the use of the "precautionary principle" in matters pertaining to environmental health, which essentially embraces the idea that it is better to be safe than sorry. *Id.* Thus, "precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically." *Id.* (quoting the Wingspread Statement on the Precautionary Principle (Jan. 1998)). Applying the precautionary principle to the food industry arguably would have prevented the original inclusion of trans fat, high fructose corn syrup, and some chemicals from the food supply.

<sup>60</sup> LAPPÉ & TERRY, *supra* note 33, at 36.

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

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*; see also *Trans Fats: The Story Behind the Label*, HARV. PUB. HEALTH REV., Spring 2006, [http://www.hsph.harvard.edu/review/rvw\\_spring06/rvwspr06\\_transfats.html](http://www.hsph.harvard.edu/review/rvw_spring06/rvwspr06_transfats.html).

<sup>64</sup> Teicholz, *supra* note 39 ("[T]he only safe amount of trans fats in the diet is zero."). See also *Trans Fats: The Story Behind the Label*, *supra* note 63 ("A healthy goal is to trim trans fat intake to less than 1 percent of total calories.").

<sup>65</sup> See LAPPÉ & TERRY, *supra* note 33, at 36.

<sup>66</sup> Nutrition Labeling of Food, 21 C.F.R. § 101.9(c)(ii) (2006) (effective Jan. 1, 2006). See also Laura E. Derr, *When Food is Poison: The History, Consequences, and Limitations of the Food Allergen Labeling and Consumer Protection Act of 2004*, 61 FOOD & DRUG L.J. 65, 115 (2006) (noting that for individuals with food allergies, comprehensive labeling is critical).

<sup>67</sup> See, e.g., Joseph P. Fried, *State Offers Details Online to Help Determine if Food Is Truly Kosher*, N.Y. TIMES, Feb. 27, 2005, § 1, at 38 (describing New York's law that requires those who produce, distribute, or sell kosher foods to register the source of certification to help determine whether kosher-labeled products are genuine).

<sup>68</sup> A can of Seagram's ginger ale, for example, states that it contains "high fructose corn syrup and/or sucrose," making it impossible to know, in any given can, whether it contains one

Fortunately, healthier food alternatives are being mainstreamed into the marketplace. As awareness of proper nutrition grows, consumers are demanding a better quality food supply.<sup>69</sup> For example, it is more common today than it was twenty years ago to find a health food store in many communities.<sup>70</sup> In addition, larger chain stores like Whole Foods have expanded.<sup>71</sup> Recent improvements in traditional grocery store offerings are not to be overlooked.<sup>72</sup> Some traditional grocery stores offer organic produce along with organic milk, cheese, and other dairy items. As consumers continue to demand healthy food choices and exercise their buying power accordingly, the availability of healthier foods should also increase.<sup>73</sup>

While these healthier food choices are an improvement, they do not go far enough. First, traditional grocery stores still have limited selections of healthy food choices and far too many unhealthy ones. Second, the typical consumer

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or the other ingredient or some combination of the two.

<sup>69</sup> See Melanie Warner, *Low Carbs? Who Cares? Sugar is Latest Supermarket Demon*, N.Y. TIMES, May 15, 2005, §1, at 1 [hereinafter Warner, *Sugar is Latest Supermarket Demon*] (describing a survey conducted by the Grocery Manufacturers Association in which “almost 50 percent of all grocery shoppers said they were looking for products with reduced sugar”).

<sup>70</sup> See, e.g., Organic Consumers Ass’n, *Whole Foods Killing off Small Natural Food Stores*, [http://www.organicconsumers.org/organic/whole\\_foods\\_market.cfm](http://www.organicconsumers.org/organic/whole_foods_market.cfm) (last visited Feb. 24, 2007) (noting that despite the difficulties faced by small independent health food stores, such stores had grown by nearly twenty-five percent since 1998).

<sup>71</sup> Whole Foods does not stock any product containing trans fat or artificial sweeteners. Whole Foods Market, *Products, Our Quality Standards*, <http://www.wholefoodsmarket.com/products/unacceptablefoodingredients.html> (last visited Mar. 2, 2007). Moreover, it offers organic produce and meats that have not been fed hormones or antibiotics. Whole Foods Market, *Farm Animal and Meat Quality Standards Program Requirements*, [http://www.wholefoodsmarket.com/products/meat-poultry/qs\\_programrequirements.html](http://www.wholefoodsmarket.com/products/meat-poultry/qs_programrequirements.html) (last visited Feb. 25, 2007). It does, however, offer foods high in sugar content and non-organic produce along with the organic options. See generally *Whole Foods Market*, <http://www.wholefoodsmarket.com/products/index.html>. Trader Joe’s is another chain store that offers a range of organic food choices. Trader Joe’s Home Page, [http://www.traderjoes.com/product\\_categories.html](http://www.traderjoes.com/product_categories.html) (last visited Feb. 25, 2007). Many smaller health food stores stock only organic produce and free-range meats that have no hormone or antibiotics.

<sup>72</sup> See, e.g., The Food Emporium, *Good For You*, [http://www.thefoodemporium.com/good\\_for\\_you.asp](http://www.thefoodemporium.com/good_for_you.asp) (last visited Feb. 25, 2007). The Food Emporium claims to be the “supermarket leader” in organic and natural foods. *Id.* See also Warner, *Sugar is Latest Supermarket Demon*, *supra* note 69 (“[O]rganic and low or no sugar [products are] the two ‘good . . .’ food segments that will get products noticed by consumers and generate the strongest sales growth.”). As a result of this demand, 2,225 sugarless or reduced sugar products were introduced to the market in 2004. *Id.*

<sup>73</sup> See *Food Politics*, THE ECONOMIST, Dec. 7, 2006, available at [http://www.economist.com/world/international/displayStory.cfm?story\\_id=8380592](http://www.economist.com/world/international/displayStory.cfm?story_id=8380592). Wal-Mart recently announced that it would sell organic foods. See Pallavi Gogoi, *Wal-Mart’s Organic Offensive*, BUS. WK. ONLINE, Mar. 29, 2006, [http://www.businessweek.com/bwdaily/dnflash/mar2006/nf20060329\\_6971.htm](http://www.businessweek.com/bwdaily/dnflash/mar2006/nf20060329_6971.htm) (noting the concern that many organic farmers have over the possibility that Wal-Mart’s introduction into the organic food market will drive prices down to the point that it will be financially difficult for them.).

must travel farther to shop at specialty stores.<sup>74</sup> Third, the prices of healthier foods tend to be higher than those of standard grocery store fare. Accordingly, for a vast sum of the populace, the reality is that the readily available, affordable food supply consists of the products available at a traditional grocery store along with fast food establishments.<sup>75</sup>

Moreover, not all of the grocery store products that appear to be healthy actually are. Some of the new products are simply packaged to look healthier but are not necessarily healthier than the old products. For example, in the effort to satisfy consumer demand for products with less sugar,<sup>76</sup> chemically-sweetened substitutes that may be even more dangerous than sugar are sometimes used as alternatives.<sup>77</sup> A number of experts have voiced concern about the safety of these artificial sweeteners.<sup>78</sup> Others have questioned whether the use of artificially sweetened foods actually helps in the effort to fight obesity. Their concern is that it does nothing to eliminate sugar cravings.<sup>79</sup> Thus, artifi-

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<sup>74</sup> In New York, where food choices of all varieties are plentiful, healthy alternatives have begun to crop up in neighborhoods that traditionally have been left out. See Florence Fabricant, *More Good Eating for Harlem*, N.Y. TIMES, June 15, 2005, at F5 (noting the opening of a new health food store in Harlem).

<sup>75</sup> As noted above, this may change with Wal-Mart now in the organic food business. See *supra* note 73.

<sup>76</sup> Consumers spent one billion dollars on low sugar products in 2004. Warner, *Sugar is Latest Supermarket Demon*, *supra* note 69.

<sup>77</sup> *Id.* (“While many nutritionists champion artificial sweeteners as a way to cut calories and reduce sugar, others say these products are not the answer to America’s weight and health problems. Some critics voice concern about the increased consumption of what are essentially chemical sweeteners, especially among children.”).

<sup>78</sup> *Id.* One physician notes that sucralose, one of the most popular sugar substitutes has been shown to cause minor genetic damages or mutagen in mice. *Id.* This physician explains, “[t]he sucralose[,] people keep saying, ‘it’s just a little bit of a mutagen,’ . . . ‘Well I don’t want a little bit of a mutagen in my food supply. How do you know what happens in a long life span or to the next generation or to your eggs and sperm? I don’t feel like the issues have been answered.’” *Id.* (quoting Dr. Susan Schiffman, a professor of medical psychology at Duke University Medical Center and sweetener specialist). For these reasons, Whole Foods and many other health food stores refuse to stock any product containing artificial sweeteners. See Whole Foods Market, Products, Our Quality Standards, <http://www.wholefoodsmarket.com/products/index.html> (last visited Feb. 25, 2007).

<sup>79</sup> Warner, *Sugar is Latest Supermarket Demon*, *supra* note 69 (“[A]rtificial sweeteners do nothing for a person’s ‘overall health’ because they perpetuate cravings for sweet foods.”) (quoting Dr. Stuart Fischer, a former specialist in low-carb diets who currently has a nutrition practice in New York). Yet another physician found that people who continue to eat artificially sweetened foods end up eating more foods with sugar than others. *Id.* (quoting Dr. David Katz, a professor of public health at the Yale University School of Medicine and a nutrition specialist). There is an argument on the other side, though, that the use of sugar substitutes does assist with weight loss, but only to the extent of no-calorie drinks. *Id.* Sugar free cookies, for example, may have as many calories as the original product. *Id.* This is because more flour may be added to the product to add the bulk lost from removal of the sugar. *Id.* Thus, the caloric content may not be significantly different, and may even be worse, compared with the original sugar product. *Id.*

cially sweetened products raise overall health concerns about the chemicals that are replacing sugar and concerns about whether these products promote healthier eating habits and overall weight control.<sup>80</sup>

Obtaining healthy foods can be a challenge, particularly for those who live far from major metropolitan centers, those who have limited access to transportation, and for those who have a limited food budget, which is presumably most of the population.<sup>81</sup> Nonetheless, the causes of obesity are not limited to the food supply. They include the lack of adequate exercise, emotional overeating, genetics, and other environmental factors. Even so, part of the solution for combating obesity will include addressing the food supply by creating easier and more affordable access to healthier foods.

One of the likely obstacles to reforming America's weight problem is the food industry itself. The politics of food cannot be underestimated.<sup>82</sup> For example, farmers do not want to lose their corn subsidies, which keep the price of corn remarkably low.<sup>83</sup> In turn, this arguably contributes to the use of high-fructose corn syrup in many of our foods.<sup>84</sup> The food industry has also been proactive in its efforts to ensure that the tobacco litigation experience will not

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<sup>80</sup> One might argue that these products are misleading consumers into believing that they are healthy food choices and additionally, that they are appropriate ways to facilitate weight loss. A consumer, for example, might believe that reduced sugar cereals are lower in calories than those with a higher sugar content, when this is not necessarily the case. *Id. Cf. Stop Labeling Lies Home Page*, [www.stoplabelinglies.com](http://www.stoplabelinglies.com) (last visited Feb. 25, 2007) (providing, among other things, information to consumers on products that are falsely labeled); H. David Gold, *Legal Strategies to Address the Misrepresentation of Vermont Maple Syrup*, 59 *FOOD DRUG L.J.* 93, 95-100 (2004) (focusing on misrepresentation on labels regarding the place of origin of foods).

<sup>81</sup> The large and ever-growing income gap between the rich and poor and between the upper-class and middle-class leaves most of the wealth in this country in relatively few hands. The rest of the population, therefore, must spend carefully. John W. Lee, III, *Class Warfare 1988-2005 Over Top Individual Income Tax Rates: Teeter-Totter from Soak-the-Rich to Robin-Hood-In-Reverse*, 2 *HASTINGS BUS. L.J.* 47, 76 (2006) (“[T]he forgotten middle-class – those people who work hard and play by the rules – [are taking] it on the chin.”); Bob Herbert, *Working Harder for the Man*, *N.Y. TIMES*, Jan. 8, 2007, at A19 (noting that while ordinary workers contributed to an eighteen percent increase in productivity between 2000 and 2006, their pay increased only one percent, while the pay of the super rich skyrocketed).

<sup>82</sup> *Cf. Krugman, Girth of a Nation*, *supra* note 14. While analogizing the obesity conflict to a red-blue political conflict, Krugman notes, by comparing the much higher levels of obesity outside of metropolitan areas and in the south and Midwest, that “[m]ore important, however, is the role of the food industry. The debate over obesity, it turns out, is a lot like the debate over global warming. In both cases, major companies protect their profits not only by lobbying against policies they don’t like, but also by financing advocacy groups devoted to debunking research whose conclusions they don’t like.” *Id. See also NESTLE*, *supra* note 34.

<sup>83</sup> *Cf. Adam Benforado, Jon Hanson & David Yosifon, Broken Scales, Obesity and Justice in America*, 53 *EMORY L.J.* 1645, 1792-94 (2004) (examining the government’s failure to recognize the connection among corn subsidies, high fructose corn syrup, and obesity).

<sup>84</sup> *Id.* at 1794.

be repeated in the food industry.<sup>85</sup> Plaintiffs in the tobacco litigation sought to hold tobacco companies liable for illnesses associated with smoking, like lung cancer.<sup>86</sup> Lobbying is taking place to urge states to enact laws that prevent lawsuits for personal injuries related to obesity. These “commonsense consumption” laws would place accountability for obesity on the consumer, making it more difficult to sue food manufacturers.<sup>87</sup> A number of advocacy groups, in particular, the National Restaurant Association, have advocated for this legislation.<sup>88</sup>

The United States’ food supply needs to be re-examined. While the current trend shows an increase in healthier food alternatives, processed foods that are high in fat, sugar, and/or sodium still dominate the food supply. Expanded consumer choice of healthy, affordable foods is critical.

### III. FOOD DEMOCRACY

*“The fast food giants are becoming obsolete, and they know it. They’re like angry, dying beasts lashing out. The twenty-first century doesn’t belong to them.”<sup>89</sup>*

Since the food supply is a significant cause of the large scale obesity problem, what legal tools can be used to improve it? Obesity has become a major public health problem only within the past fifty years. During this time, the food supply underwent a dramatic shift from locally grown whole foods to commercially produced processed foods.<sup>90</sup> From a legal perspective, a number of strategies can be implemented to help improve the quality of the food supply. This Article suggests a three-pronged approach to both improve the food supply and to begin to change the way society relates to food.

First, the government can use its taxing power to tax unhealthy food choices. Second, it can use its spending power to subsidize healthy choices. Taxing and spending are public health law tools that have been used effectively

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<sup>85</sup> Forest Lee Andrews, *Small Bites: Obesity Lawsuits Prepare to Take on the Fast Food Industry*, 15 ALB. L.J. SCI. & TECH. 153 (2004) (explaining why lawsuits directed at the fast food industry may be justified).

<sup>86</sup> Courtney, *supra* note 30, at 84-91 (2006) (describing the history of tobacco litigation in the United States).

<sup>87</sup> Lorraine M. Buerger, *The Safe Games Illinois Act: Can Curbs on Violent Video Games Survive Constitutional Challenges?*, 37 LOY. U. CHI. L.J. 617, 659-60 (2006) (focusing on the dangers of violent video games, the author also notes that video games may contribute to obesity and that the commonsense consumption laws’ focus on individual responsibility makes legal recourse difficult).

<sup>88</sup> Jason A. Smith, *Setting the Stage for Public Health: The Role of Litigation in Controlling Obesity*, 28 U. ARK. LITTLE ROCK L. REV. 443, 452-54 (2006) (arguing that individuals should be personally responsible for poor eating choices).

<sup>89</sup> Schlosser Forward, *supra* note 33, at xiv.

<sup>90</sup> See generally *supra* text accompanying notes 33-66.

for more than a century to serve the public good.<sup>91</sup> Together, they create monetary incentives and disincentives that can profoundly impact public health. Third, a bold offensive is needed to educate consumers and heighten their awareness not only of what to eat but how to eat. This educational and awareness campaign needs to permeate popular culture so that we reach the point where there is widespread demand for healthier foods.

### A. Taxing Unhealthy Foods

Taxing is a traditional public health tool that has been used in a variety of contexts to deter unhealthy behaviors and choices.<sup>92</sup> The imposition of significant taxes on cigarettes, for example, is a result of efforts to reduce the number of smokers and presumably, the number of deaths due to lung cancer.<sup>93</sup> Taxes have also been imposed on firearms and alcoholic beverages.<sup>94</sup> Gambling, asserted by some as potentially addictive, is also subject to separate taxation.<sup>95</sup> While taxing may be used to deter behaviors, however, it may also be used to encourage certain positive behaviors through tax breaks and other financial incentives. For example, it has been used to encourage businesses to behave in environmentally responsible ways.<sup>96</sup> Because the federal government's taxing authority is so broad, the range of tax incentives and disincentives is similarly broad.<sup>97</sup>

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<sup>91</sup> The Federal Government's power to tax is derived from the United States Constitution, which provides that "Congress shall have Power To lay and collect Taxes . . . and provide for the common Defence and general Welfare of the United States." U.S. CONST. art. I, § 8. Cf. LAWRENCE GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 3-4 (University of California Press 2000). Gostin summarizes the function of public health law as the use of "powers and duties of the state to assure the conditions for people to be healthy." *Id.* at 4.

<sup>92</sup> GOSTIN, *supra* note 91, at 37.

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

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 37-38. Tax incentives, for example, have provided incentives for companies to build low-income housing. *Id.* at 37. Additionally, non-profit organizations that are operated exclusively for charitable purposes are not taxed on their income and can receive donations that are tax-deductible for the donor. 26 U.S.C. § 501(c)(3) (2000). This enables nonprofits, some of which are engaged in public health activities, also to focus specifically on obesity. *See, e.g.*, Dr. Susan Love Research Found. Home Page, [www.susanlovemd.org](http://www.susanlovemd.org) (last visited Feb. 25, 2007) (researching women's health issues with a focus on breast cancer and menopause); The Inst. for Applied Biomedicine Home Page, [www.appliedbiomed.org](http://www.appliedbiomed.org) (last visited Feb. 25, 2007) (developing drugs to treat immune diseases including AIDS). *See also* Am. Obesity Ass'n, About the AOA, <http://www.obesity.org/subs/about.shtml> (last visited Feb. 25, 2007) (seeking to change public policy and perceptions surrounding obesity); ObesityinAmerica.org, Support Groups and Patient Advocacy Organizations, <http://www.obesityinamerica.org/support.html> (last visited Feb. 25, 2007) (advocating for obese individuals).

The government's taxing power can be used to create healthier, affordable food choices. Food constitutes a significant portion of the average American's budget.<sup>98</sup> Therefore, it is probable that many individuals are sensitive to food prices. A tax on unhealthy foods will increase the price of those items, and if the prices become sufficiently high, consumers will likely shift to other alternatives.

One challenge will be to define unhealthy foods. In other words, which foods will be subject to the "unhealthy food tax" ("UFT")? All foods that contain trans fat, for example, could be subject to the UFT. Since there is no safe level of trans fat consumption, taxing this ingredient would help reduce the demand for products that contain it. A UFT might also be imposed on foods that exceed a specified number of grams of salt, sugar, or fat per serving.<sup>99</sup> A UFT could similarly be imposed for displaying unhealthy foods in places that are readily accessible to children under the age of five.<sup>100</sup> Likewise, it might apply to foods that exceed a certain caloric count per serving. In addition, the UFT can be imposed on foods that might not qualify when looking at each of these factors individually but when combined exceed healthful limits.

UFTs could also be imposed on meat and poultry items unless the animals are grown without the use of antibiotics and growth hormones. Similarly, fruits and vegetables that are grown with a certain level of pesticides might be subject to the UFT. Use of other chemicals may also warrant imposition of the UFT.<sup>101</sup>

Taxing unhealthy foods enhances the quality of the food supply in two ways. First, increased costs will decrease consumer demand. Second, decreased consumer demand will give manufacturers an incentive to reformulate products to make them healthier. Taxes, then, can begin to alter the food landscape.

### *B. Using the Spending Power to Subsidize Healthy Eating*

In addition to taxing unhealthy foods, the government can use its spending power to create a "health food subsidy" ("HFS") for healthy foods that it wants to promote. Like taxing, government spending has been used in many contexts to promote public health.<sup>102</sup> Two of the largest publicly funded health care pro-

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<sup>98</sup> The average household spends almost fourteen percent of its budget on food. U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CONSUMER EXPENDITURES IN 2004, at 4 (2006), available at <http://www.bls.gov/cex/csxann04.pdf>.

<sup>99</sup> A serving size would have to be defined to reflect a normal serving size.

<sup>100</sup> What parent has not felt frustration at the checkout counter of a grocery store or drug store where candy and gum are prominently displayed within reach of even a two-year-old?

<sup>101</sup> See, e.g., <http://www.wholefoodsmarket.com/products/unacceptablefoodingredients.html>. Among its more than eighty unacceptable food ingredients are ammonium chloride, benzoyl peroxide, butylated hydroxytoluene (BHT), MSG, nitrates, nitrites, and saccharin.

<sup>102</sup> "Closely connected to the power to tax, the spending power has two purposes. First, it

grams—Medicare and Medicaid—are examples of government spending to improve public health.<sup>103</sup> In addition, several state governments have also spent money on contraception devices, such as condoms, in an effort to stunt the spread of AIDS or other sexually transmitted diseases.<sup>104</sup> Free, clean needles have also been purchased and given to intravenous drug users in order to prevent drug addicts from sharing needles that could pass tainted blood from one addict to another. The list goes on.<sup>105</sup>

Subsidies can also be used to promote a healthier food supply. Just as parameters must be established to determine what foods to tax, parameters must also be established to classify those foods that should benefit from a HFS. For example, subsidizing organic farming could reduce or eliminate the price premium of organic foods.<sup>106</sup> Instead of continuing with the controversial corn subsidy, a HFS should be provided for organic farmers and for small local farmers. This would enhance the food supply and sustain local agriculture. These subsidies might then shift the way food is grown. For example, a HFS for organic farmers will make organic farming more feasible for a larger portion of the farming population. Similarly, a HFS for local farmers will help sustain local agriculture that might otherwise disappear. Overall, a HFS for locally grown and unprocessed nutritious foods will help sustain diversity in land use and contribute to a healthier food supply.<sup>107</sup>

Since we live in a society in which we eat out more than ever, consumers also need to have healthy choices when eating out. Local governments, therefore, could offer another type of HFS. This type of HFS would encourage business establishments to provide healthy food choices.<sup>108</sup> Through reducing the price of healthy foods via a HFS regime, consumer demand for such foods will increase. When consumers purchase healthier foods overall public health will begin to improve.<sup>109</sup>

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authorizes expenditures expressly for the public's health, safety, and well-being. Secondly, it effectively induces state conformance with federal regulatory standards." GOSTIN, *supra* note 91, at 38.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 39.

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

<sup>106</sup> In the news article "It's Not Easy Being Organic," a backyard gardener laments the difficulty and expense of trying to grow organic food and questions whether dousing produce with organically permitted chemicals is really preferable to using smaller quantities of other chemicals. William Alexander, *It's Not Easy Being Organic*, N.Y. TIMES, May 27, 2006, at A13.

<sup>107</sup> In addition to sustaining land use diversity, keeping local farmers in business also helps to maintain a more nutritious food supply. For example, a consumer in New York eating an apple from New Zealand is likely to receive fewer nutrients from that apple than from a locally grown apple simply because nutrients will be lost in transit between the time the apple is picked in New Zealand and the time it arrives on the shelf in New York. *National Public Radio* (May 2006).

<sup>108</sup> Local governments could also encourage new businesses that promote healthy eating to settle within their jurisdictions.

<sup>109</sup> Another approach to the obesity problem would be for private parties to sue food

### C. Education and Awareness of Healthy Food Choices

In addition to using government money via taxing and spending, private and public partnerships can be forged in which the private industry contributes, for example, to an educational and awareness program. The incentive is clear. When individuals understand more about healthy eating, and when healthy, affordable foods become as accessible as unhealthy ones, the level of obesity is more likely to decline. Along with obesity, other diseases related to unhealthy eating habits, such as high blood pressure and heart disease are also likely to decrease. This is likely to help private industry in two ways. First, a healthier workforce will mean fewer days of absenteeism, and second, it may help to reduce corporate health care costs. For corporate America, then, investing in educational and awareness programs that promote healthy eating would be a

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companies for manufacturing and selling unhealthy foods. See generally Alyse Meislik, Note, *Weighing in on the Scales of Justice: The Obesity Epidemic and Litigation Against the Food Industry*, 46 ARIZ. L. REV. 781 (2004) (examining obesity legislation to date and exploring its chance of future success); Courtney, *supra* note 30. This would embrace one tool used in the tobacco model and could, in the long run, have some success. It took many years, however, before plaintiffs prevailed in any of the tobacco cases. *Id.* at 84 (“[T]he first forty years of tobacco litigation resulted in a ‘total lack of success’ for plaintiffs.”). While there were some later successes, Courtney concludes that tobacco litigation has not been easy for plaintiffs or their lawyers. *Id.* at 90-91. There are significant differences between obesity and tobacco that could make obesity litigation even more difficult for plaintiffs than tobacco litigation. First, everyone needs to eat; smoking, however, is optional. Tobacco companies were sued in part because they misrepresented the dangers associated with smoking and created the most addictive products they could. While some food labeling is arguably misleading, it is unclear whether the litigation model would be effective in the obesity context. Perhaps it would be more effective to impose the UFT on corporations like McDonald’s for marketing Happy Meals to young children.

To the extent that public opinion is relevant, there is a greater sense that personal responsibility, rather than corporate liability, governs in obesity cases. When two McDonald’s consumers sued claiming that McDonald’s caused their obesity, see *Pelman v. McDonald’s Corp.*, 237 F. Supp. 2d 512, 516 (S.D.N.Y. 2003), many individuals were outraged, arguing that we are each responsible for what we choose to consume. Cf. Letters to the Editor, *Fast Food and Obesity in America*, N.Y. TIMES, July 7, 2005, at A22 (responding to Krugman’s news article “Girth of a Nation,” *supra* note 14). Krugman wrote two editorials about obesity within a four day period. It was after the first one, “Girth of a Nation,” in which he suggested that the obesity epidemic is caused in part by the food industry, that a number of readers expressed the opinion that the problem lies with the food choices of the individual consumer rather than with external forces. Carl N. Steeg, Letter to the Editor, *Fast Food and Obesity in America*, N.Y. TIMES, July 7, 2005, at A22 (“Controlling obesity is not the responsibility of the food industry.”); Joseph Kellard, Letter to the Editor, *Fast Food and Obesity in America*, N.Y. TIMES, July 7, 2005, at A22 (“Paul Krugman . . . should accept that people are responsible for their own eating habits.”). See also Krugman, *Free to Choose Obesity*, *supra* note 13 (writing just four days after “Girth of a Nation,” Krugman attributes this attitude in part to the sophistication of the food industry in manipulating public opinion). Another concern with a litigation model is that litigation often takes many years before the trial and appeals run their course. Taxing, spending, and education, on the other hand, can be implemented fairly quickly if the political will is strong enough.

wise investment.<sup>110</sup>

Hence, the third part of the proposal to combat obesity is to implement an extensive educational and awareness program about food and our relationship to it.<sup>111</sup> Education and awareness programs, when done right, have proven very effective. For example, when health risks associated with smoking became a matter of common knowledge, societal thinking about smoking shifted. Cigarette smoking, which was once considered sophisticated, no longer is. Instead, cigarette smokers are stigmatized rather than admired.<sup>112</sup> Moreover, cigarette smoking is banned in airplanes, many restaurants and hotel rooms, and an increasing number of office spaces.

By further analogy, when it was first determined that the HIV virus that causes AIDS could spread through sexual intercourse or the exchange of bodily fluids, educational and awareness programs were successful in getting many individuals to use condoms.<sup>113</sup> There were also successful programs aimed at getting intravenous drug users to use clean needles rather than sharing unsterilized, used needles with other addicts.<sup>114</sup>

Another example of the potential success of educational and awareness programs, and one more directly connected to food, relates to teaching diabetics how to manage their disease.<sup>115</sup> For example, an educational program at New York's Beth Israel Medical Center taught individuals with Type 2 diabetes how to check their blood sugar levels, "count calories[,] and exercise with discipline."<sup>116</sup> The program folded a few years later, however, essentially because of its success. As diabetics in the program embraced healthier lifestyles, their need for care decreased. The program was the "victim[] of the byzantine world of American health care, in which the real profit is made not by controlling chronic diseases like diabetes but by treating their many complications."<sup>117</sup>

The educational and awareness program related to food would, as noted

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<sup>110</sup> For a number of years, many corporations have built gyms for employees or subsidized employee memberships in health clubs, recognizing that both employees and employers benefit from a healthy workforce.

<sup>111</sup> To the extent that spending on these programs is required, this is arguably another example of how government spending can be directed to help combat obesity and promote health.

<sup>112</sup> Cf. THANK YOU FOR SMOKING (Content Film, Room 9 Entertainment, L.L.C. 2006) (illustrating a satire on this argument where a young boy whose father works for a tobacco corporation grows to admire and want to be like him when he grows up).

<sup>113</sup> Linda C. Fentiman, *AIDS as a Chronic Illness: A Cautionary Tale for the End of the Twentieth Century*, 61 ALB. L. REV. 989, 995-96 (1998). Perhaps the educational and awareness campaign surrounding AIDS needs to be revived. Those who are just now becoming sexually active were not born when AIDS awareness was perhaps at its peak.

<sup>114</sup> *Id.*

<sup>115</sup> Ian Urbina, *In the Treatment of Diabetes, Success Often Does Not Pay*, N.Y. TIMES, Jan. 11, 2006, at A1.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

above, focus both on what to eat and how to eat. With respect to what to eat, teaching children about the food pyramid on sporadic occasions in primary and secondary school is not sufficient instruction. Food education should be ongoing. Instruction needs to encompass information about general food groups and the amount of each that should be consumed, as well as information about foods that should be avoided or consumed only in limited quantities. In addition, systemic enhancements in culinary education, such as training chefs to cook healthier foods, would gradually result in healthier foods in restaurants and other establishments.

The educational and awareness plan should also encompass advertising restrictions similar to those applied to the tobacco industry. The same foods that would be subject to the UFT discussed above,<sup>118</sup> for example, may be barred from television advertisements, especially those directed at children. Movie advertisements should also change. Coca-Cola ads in theaters could be replaced with advertisements for healthy snack foods. Advertisements can also target parents, who are perhaps in the best position to help overweight and obese children. Just as there was once a commercial that reminded parents to be responsible for the whereabouts of their children, a similar commercial could remind parents to take responsibility for helping their children to eat healthfully.<sup>119</sup>

Education and awareness can shift our entire relationship to and mentality about food. At some level, we need a cultural shift in the way we think about food. The increasing price of oil, some argue, is a major reason why we will begin to demand alternative energy sources. It is only when the price is too high that we will demand fuel-efficient cars, solar and wind power, ethanol, and the like. Arguably, the food supply has already become unhealthy enough and over-processed to the point that consumers are beginning to demand better and healthier food choices. In other words, what one commentator describes as the “food democracy” may be taking hold.<sup>120</sup> The food democracy movement “reject[s] the industrialized and degraded values of cheap food and replace[s] them with concern for the needs of the people and the land, [and] with human focused values that weigh satisfaction and sustainability.”<sup>121</sup> It also addresses the need for more information and the desire of eaters for “better tasting, fresher,

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<sup>118</sup> See *supra* Part III.A.

<sup>119</sup> This author recalls a television commercial that would come on in the evening asking “It’s 8:00 p.m. Do you know where your children are?” In the context of food, a similar commercial might ask, “It’s 10:00 p.m. Do you know what your children ate today?” *But see* Jodi Kantor, *As Obesity Fight Hits Cafeteria Many Fear a Note Home From School*, N.Y. TIMES, Jan. 8, 2007, at A1 (noting anxiety provoked by providing a BMI report card to parents of school children).

<sup>120</sup> Neil Hamilton, *Food Democracy and the Future of American Values*, 9 DRAKE J. AGRIC. L. 9, 9-16 (2004), *subsequently published in* NEIL HAMILTON, *FOOD DEMOCRACY* (2005).

<sup>121</sup> *Id.* at 16.

more wholesome and more nutritious food.”<sup>122</sup>

### 1. *The Food Democracy Movement*

The growth of the food democracy movement is becoming more apparent everyday. The movement is fueling the growth of more organic foods, more stores that sell such foods, and more information about the food supply in general.<sup>123</sup> Advancement is also demonstrated by the growing demand for healthier foods in schools and on many college campuses.<sup>124</sup> Corporate America has begun to respond to these demands. For example, the top three soft drink companies, Coca-Cola, Pepsi, and Cadbury Schweppes, recently announced that they will remove sweetened soft drinks from school cafeterias and vending machines.<sup>125</sup> Instead, only bottled water, 100% fruit juice, and low-fat and nonfat milk will be available.<sup>126</sup> While some suggest that this voluntary agreement was the result of the threat of litigation, it shows the companies' recognition that a shift in food mentality is well underway.

The growing consumer demand for healthier foods has also been recognized by others. For example, Wal-Mart has announced its intent to begin selling organic foods.<sup>127</sup> It is anticipated that Wal-Mart's introduction into the organic food market will lower the prices for organic foods.<sup>128</sup> In New York City two new outdoor, European style food markets that offer a diverse range of fresh foods opened in June 2006.<sup>129</sup> In addition, food manufacturers are making efforts to make many of their existing products healthier, like looking for alternatives to trans fat.<sup>130</sup> Consumer demand for healthier and more diverse

<sup>122</sup> *Id.*

<sup>123</sup> See *supra* notes 69-73 and accompanying text; *infra* notes 124-27.

<sup>124</sup> Yale Univ., Organic Options Growing Across Yale, <http://www.yale.edu/sustainability/foodproject.htm> (last visited Feb. 25, 2007) (describing use of locally obtained organic foods for part of the Yale University community); Weena Pun, *No More Frankenfruit: Organic Dining Picks Up at Stanford*, THE STANFORD DAILY, May 4, 2006, <http://daily.stanford.edu/article/2006/5/4/noMoreFrankenfruitOrganicDiningPicksUpAtStanford> (discussing Stanford University's growing use of organic foods obtained from local sources); Princeton Univ., University Health Services, [http://www.princeton.edu/uhs/hi\\_nutrition.html](http://www.princeton.edu/uhs/hi_nutrition.html) (last visited Feb. 25, 2007).

<sup>125</sup> Marian Burros & Melanie Warner, *Bottlers Agree To a School Ban On Sweet Drinks*, N.Y. TIMES, May 4, 2006, at A1.

<sup>126</sup> *Id.*

<sup>127</sup> Melanie Warner, *Wal-Mart Eyes Organic Foods, And Brand Names Get in Line*, N.Y. TIMES, May 12, 2006, at F1.

<sup>128</sup> *Id.*

<sup>129</sup> Julia Moskin, *Farmers' Markets Go Beyond Green*, N.Y. TIMES, May 24, 2006, at A1.

In addition to offering organic foods, there will be a variety of food offerings, allowing the consumer to purchase everything he or she needs to prepare an evening meal. *Id.*

<sup>130</sup> See generally Wikipedia.org, Trans Fat, Food Industry Response, [http://en.wikipedia.org/wiki/Trans\\_fat#Food\\_industry\\_response](http://en.wikipedia.org/wiki/Trans_fat#Food_industry_response) (discussing efforts by Kraft, KFC, McDonald's and other companies to find alternatives to trans fat); *Starbucks Cuts Use of Trans Fat*, N.Y.

foods is therefore having a clear impact on the marketplace.

The “human focused values”<sup>131</sup> that are part of the food democracy movement can also attempt to create a change in the way we, as a society think about food. The goal would be to change our entire relationship to food. Americans, for example, are more likely than people in other cultures to eat on the run rather than to take the time to sit down and enjoy a meal.<sup>132</sup> When we eat on the run, our brains may not process the fact that we have had an eating experience. Emotionally, we may feel like we have not really eaten at all. Therefore, we are more likely to want to eat again, regardless of hunger, in order to get that experience.<sup>133</sup> Our lack of balance surrounding food arguably reflects our lack of balance in the way we live our lives more generally. Recently, the Journal of the American Medical Association (“JAMA”) reported that Americans are much sicker than Britains.<sup>134</sup> In explaining why he believes this may be so, New York Times columnist and Princeton Professor Paul Krugman writes,

[One] possibility is that Americans work too hard and experience too much stress. Full-time American workers work, on average, about 46 weeks per year; full-time British, French and German workers work only 41 weeks a year. . . . [O]ur workaholic economy is actually more destructive of the “family values” we claim to honor.<sup>135</sup>

If we can restructure our days to fit time in to sit down and eat our meals slowly with greater awareness, we are more likely to pay better attention to what we eat. In this changed environment, we are more likely to eat less, enjoy our food more, and feel more content throughout the day.

Embracing the principles of food democracy will lead to a healthier, slim-

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TIMES, Jan. 3, 2007, at C7 (discussing the reduction in the amount of trans fat in Starbuck’s doughnuts, muffins and other treats). Of course, this effort is arguably because of consumer awareness about the dangers of trans fat and the increased refusal of customers to purchase foods that contain it. As the food industry begins to recognize that health and wealth are not mutually exclusive, and in fact are quite compatible when it comes to food offerings, better choices will begin to permeate society.

Local governments have also entered the food safety landscape. New York City, for example, now bans trans fat in restaurant food. See Kim Severson, *Go Ahead, Congress, Pick at Our Dinner*, N.Y. TIMES, Dec. 31, 2006, § 4, at 3. Other cities are considering similar bans. *Id.*

<sup>131</sup> See *supra* text accompanying note 121.

<sup>132</sup> MIREILLE GUILLANO, *FRENCH WOMEN DON’T GET FAT – THE SECRET OF EATING FOR PLEASURE* 68 (2005) (comparing French and American eating habits to point out the “importance of not multitasking while you eat.”).

<sup>133</sup> *Id.*

<sup>134</sup> James Banks et al., *Disease and Disadvantage in the United States and in England*, 295 J. AM. MED. ASS’N 2037, 2044 (2006).

<sup>135</sup> Paul Krugman, Op-Ed., *Our Sick Society*, N.Y. TIMES, May 5, 2006, at A23.

mer society, including reduced levels of obesity because food democracy includes the ability to have greater, healthier, and affordable choices in the food supply. Once individuals are empowered with these expanded and healthier choices, many will choose them. For now, though, McDonald's, Burger King, KFC, and similar fast food restaurants still permeate the American landscape. While healthier foods are also beginning to dot the scene, more intervention is necessary to improve the quality and affordability of the food supply on a broader scale.

#### IV. CONCLUSION

The obesity epidemic is taking a toll on America. It results in hundreds of thousands of deaths each year, reduces life expectancy, and contributes to a host of health related ailments. In addition, obesity rates soared following unfortunate changes to the food supply, such as the increased use of high fructose corn syrup. The three part approach of 1) taxing unhealthy foods, 2) increasing government spending for healthier foods, and 3) implementing a broad-based educational and awareness program can speed up the process by which we can begin to improve the health of our nation.

