

Seed Sovereignty, Food Security

**WOMEN IN THE VANGUARD OF THE
FIGHT AGAINST GMOs AND
CORPORATE AGRICULTURE**

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Food Politics, the Food Movement, and Public Health

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The principal theme of any discussion on food politics is that food choices are political as well as personal. That notion, perhaps surprising when my book *Food Politics* was first published in 2002, is now well recognized. Then, personal responsibility was assumed to be the primary determinant of food choice. Today, it is widely accepted that food marketing influences food choices and that our “eat more” food environment—one that promotes food that is highly varied, ubiquitous, convenient, close at hand, inexpensive, presented in large portions, and eaten frequently—encourages “mindless” consumption of more calories than are needed or noticed.¹

Also increasingly recognized are the contradictory results of this environment. On the one hand, overweight has become *normal* among adults and children—in all but the poorest or war-torn countries of the world, increasing proportions of the population are overweight. On the other hand, we are witnessing the development of an international movement to reverse obesity trends and to promote more healthful diet and activity patterns, especially among children. This movement is expressed most forcefully in demands for restrictions on food marketing to children and for legal and legislative actions to ensure such restrictions, particularly in schools.

These restrictions are opposed even more forcefully by food companies. One example is the efforts of the sugar industry to prevent international agencies from suggesting that populations would be healthier if they ate less sugar. Because science provides circumstantial,

but not definitive, evidence for an association between sugar intake, obesity, and other health problems, “science-based” standards in the United States allow up to 25 percent of daily calories from added sugars, an upper limit that sugar trade associations prefer to interpret as a recommendation. In the early 2000s, the World Health Organization (WHO) began developing a global strategy to reduce risk factors for chronic disease, obesity among them. In 2003, it published a research report that advised restricting intake of “free” (added) sugars to 10 percent or less of daily calories. Although this percentage was similar to that embedded in the United States Department of Agriculture (USDA)’s 1992 Pyramid (7–13 percent of calories depending on total intake), sugar industry groups strenuously objected, enlisted senators to pressure the Department of Health and Human Services (DHHS) secretary to withdraw funding from WHO, and induced the DHHS chief counsel to send a critique of the report to WHO that had essentially been written by industry lobbyists. When released in 2004, WHO’s “Global Strategy on Diet, Physical Activity and Health” omitted any mention of the background report or the 10 percent recommendation.²

The Anti-Obesity Movement

In seeking to reverse rising rates of overweight, especially among children, health advocates as well as lawyers, legislators, and investment bankers have singled out food-industry marketing as a significant influence on food choice. They have put food companies on notice that selling junk foods to children is no longer acceptable. Food companies, they say, must improve their products and marketing practices or face losses of sales, legal challenges, and regulatory restrictions.

Food Politics was not alone in predicting this reaction. By 2003, three British investment banking firms had warned food industry clients that obesity posed a threat to company profits. UBS Warburg, for example, advised food companies to stop hiding behind personal

responsibility. With sales of organics and healthier foods growing rapidly, “The issue for food and drink companies is whether they can adapt to these changes (or even lead them) or will they be left behind promoting anachronistic processed foods and sugary drinks while their target customer has moved on.”³ Investment banks advised companies to produce healthier foods and market them more responsibly—or face lawsuits and regulations.

Investment analysts view marketing to children as the industry’s Achilles’ heel. As *Food Politics* explains, the personal responsibility argument does not apply to children too young to distinguish sales pitches from information. Marketing junk food to young people crosses ethical boundaries and makes companies vulnerable to advocacy challenges.

Since 2002, academic researchers, national government agencies, and international health agencies have thoroughly documented the effects of food marketing on children’s food attitudes and behavior.⁴ In the United States, the Institute of Medicine (IOM) summarized this research in three reports published from 2004 to 2006;⁵ the second of these reports focused on food marketing. It makes chilling reading. The IOM considered 123 peer-reviewed studies examining how food marketing affects children’s food preferences and requests, eating habits, and body weight. Its cautious conclusion: the idea that food marketing increases the risk of obesity “cannot be rejected.” Attribute the caution to politics. In preparing this report, the IOM operated under a handicap. Because Congress requires government-sponsored committees to make public all documents used in deliberations, food companies refused to reveal proprietary information about their marketing practices. Even so, the report describes the extent of the research enterprise devoted to selling foods to children; the methods food companies use to identify the psychological underpinnings of children’s food choices; the ways these methods affect children’s requests for brands; and the effects of such choices on health. Selling food to children is big business and much effort goes into it.

One key observation of this and other reports is the shift in marketing methods from those that are visible to parents to those that are not. Television remains the dominant method for reaching children, but the balance is shifting to product placements in toys, games, educational materials, songs, and movies; cartoon licensing and celebrity endorsements; and stealth methods such as “advergaming” and “viral” campaigns involving word of mouth, cell-phone text messages, and the internet—methods largely invisible to today’s busy and sometimes electronically challenged parents.⁶

The IOM food marketing report warned companies to voluntarily regulate themselves or “Congress should enact legislation mandating the shift.” It summarized the policies of at least fifty other countries that regulate television advertising aimed at children, based largely on a 2004 WHO report.⁷ In the United States, decades of attempts to regulate marketing to children have been blocked by industry invocations of self-regulation and of First Amendment protections of commercial speech.

For a long time the Supreme Court has interpreted this protection as applying to “commercial” speech—advertising and marketing—as much as to political, artistic, and religious speech;⁸ thus, the IOM “or else” demand that Congress regulate food marketing must be viewed as a call for reinterpreting First Amendment protections to allow policy change. In the meantime, lawyers and legal advocacy groups are exploring ways to use legal strategies to address childhood obesity.⁹

For all of the reasons why food marketers are in schools in the first place—a large, captive, impressionable audience with influence—schools are prime targets for obesity intervention. Parents, teachers, and food service directors in schools across the country have transformed meal programs to deliver healthier food along with a curriculum that teaches children about where food comes from and how it is produced.¹⁰ As effective and important as these grassroots efforts may be, they must be instituted school by school and depend on individuals rather than policy. This makes statewide approaches seem attractive.

Although more than thirty states have considered or enacted laws related to nutrition standards, nutrition education, reporting of body weights, or physical activity,¹¹ intense lobbying by industry prevents the passage of most of these bills or dilutes their impact. In 2004, as part of reauthorization of the Women, Infants and Children (WIC) program, Congress required local school districts to establish wellness programs by 2006, but provided only minimal funding for this purpose; the programs remain local and voluntary.¹²

In December 2006, the New York City Board of Health ruled that fast-food restaurants and places like Starbucks, which sell uniformly sized foods *and* already provide nutrition information, must post calories on menus and menu boards.¹³ This precedent-setting action occurred because New York City has exceptionally high rates of obesity and heart disease, and its health commissioner and mayor wanted to do something about them. A provision to make calorie labeling national was included in the health care reform act signed into law in 2010, despite initial opposition by the National Restaurant Associations.¹⁴ Its provisions become effective late in 2016.

Food-Industry Strategies

Obesity poses difficult challenges for food companies, caught as they are between the demands of advocates and those of stockholders. Pressures from advocates, regulators, lawyers, and Wall Street put food companies in an impossible dilemma. If they stop marketing junk food to children, they lose sales. Food companies first dealt with this dilemma by denying responsibility for contributing to an “eat more” food environment. Later, while they continued lobbying, attacking critics, and promoting physical activity, they also adopted additional strategies. They pressed states to pass laws protecting them from legal liability. At the same time, they reformulated products to make them appear “better-for-you,” identified the “healthier” versions through self-endorsements, and pushed for use of a greater range of health and

structure/function claims to market those products. To address concerns about marketing, they invoked voluntary self-regulation as the primary strategy.¹⁵

Virtually all major food companies have tweaked the contents of existing products or created new products to make them appear healthier. PepsiCo advertised snack foods with “0 grams trans fat.” General Mills added whole grains to all of its cereals, thereby creating Whole Grain Count Chocula, increasing the fiber content from zero to one gram per serving. The company also replaced some of the sugars in Cocoa Puffs with the artificial sweetener Splenda, but these products failed to sell and were withdrawn at the end of 2006. Post/Kraft improved Fruity Pebbles by reducing sugars from twelve to nine grams per serving and adding three grams of polydextrose “fiber.” Although the labels on these products are easily interpreted as advertising them as health foods, the companies make no such claim; instead, they offer the products as “better-for-you” options. This strategy assumes that making small improvements will make the products, as well as the children and adults who consume them, “healthier.” It remains uncertain whether artificial sweeteners and polydextrose are better for children or whether such products produce measurable health benefits.¹⁶

Most major food companies have established their own criteria for nutritional evaluation of their own products. PepsiCo identifies its self-identified “better-for-you” products with green Smart Spots. General Mills cereals sport Goodness Corners. Kellogg cereals have flags, and Kraft’s “healthier” products are Sensible Solutions. The companies’ criteria allow many products high in sugars, fat, and calories to qualify. In 2006, Hannaford, a supermarket chain in the Northeast, recruited a group of independent nutrition scientists to develop a “Guiding Stars” program based on nutritional standards for awarding one, two, or three stars. By these independent criteria, less than 25 percent of the store’s 27,000 products, and virtually none of the food companies’ self-endorsed products, qualified for even one star.¹⁷ By independent criteria, therefore, junk foods are not health foods.

Health claims sell foods and food companies care little about scientific substantiation. When the FDA denied claims on the basis of lack of scientific substantiation, companies sued—and usually won. The courts told the FDA it could not require companies to base health claims on science, on First Amendment grounds. Although FDA research demonstrates that consumers tend to interpret health claims as backed by science, the court decisions convinced it to begin allowing “qualified” health claims (those lacking in significant substantiation); the FDA began considering such claims in 2003 and has permitted them ever since.

The result of the current free-for-all in health claim regulation is most evident in supermarket cereal aisles. In 2006, you could buy Kellogg’s Smart Start, “healthy heart with oat bran, potassium, and low sodium” that “contains ingredients that can help lower BOTH blood pressure & cholesterol,” despite an ingredient list that includes sugars in eleven places. Post/Kraft Honey Nut Shredded Wheat was labeled “Lose 10 Lbs. The Heart Healthy Way!” Cereals from several makers say their products help “support a healthy immune system,” a “structure/function” claim like the ones allowed for dietary supplements. Kellogg’s sugar-sweetened cereals are advertised in India as “containing the goodness of chapattis,” and appear in Panama with endorsements by the Pediatric Association of Guatemala.

In August 2006, Tim Lang and his colleagues at City University London published an evaluation of statements made by the world’s twenty-five largest food companies about diet, physical activity, and obesity prevention. Their report examined the companies’ published positions on twenty-eight questions such as “Is there a commitment on sugar?” “Is there a commitment on portion size?” “Is there a policy specifically focused on children and food marketing?” Because they found few companies making such commitments, they concluded that this industry is “not yet fully engaged with the seriousness and urgency” of the challenge of childhood obesity. I supervised related case studies of McDonald’s and Kraft that supported this conclusion.¹⁸

That year, the American Academy of Pediatrics (AAP) said self-regulation wasn't working and called for federal regulation of food marketing to children. The First Amendment allows "advertisements [to] be restricted or even banned if there is a significant public health risk. Cigarette advertising and alcohol advertising would seem to fall squarely into this category, and ads for junk food could easily be restricted." The AAP told pediatricians to counsel patients to limit children to no more than two hours a day of television and to lobby for outright bans on advertising junk foods in schools and on children's television as well as for a 50 percent decrease in the time allowed for commercials during those programs.

Looking Forward

Advocates as well as investment analysts, lawyers, and legislators have placed food companies on notice that they will have to change business practices in response to childhood obesity, but efforts to get companies to do so meet with industry lobbying efforts that appear nothing less than ferocious.¹⁹ The ferocity, along with alliances to defend the right to market to children and lobbying to be kept free of liability, are largely invisible to the public. What the public sees is the public relations—the tinkering with product formulas and the promises about marketing practices. The "healthier" versions may be *better* choices, but they are not necessarily *good* choices. Children would be much better off eating fruits, vegetables, and whole grains, not "better-for-you" highly processed junk foods. Food companies cannot resolve the impossible dilemma on their own. For business reasons, they cannot—and will not—stop making nutritionally questionable food products and marketing them to children. Because sales of processed foods are stagnant in America, companies such as Kraft, McDonald's, Coca-Cola, and Pepsi-Cola have turned their attention to the developing world. Obesity is a global problem and its solution must also be global.

Endnotes

- ¹ B. Wansink, *Mindless Eating: Why We Eat More Than We Think* (New York: Bantam, 2006); B. Wansink and J. Sobal, "Mindless Eating: The 200 Daily Food Decisions We Overlook," *Environment and Behavior* 39 (2007): 106–123.
- ² WHO, *Diet, Nutrition, and the Prevention of Chronic Disease*, WHO Technical Report Series 916, Geneva, 2003, http://whqlibdoc.who.int/trs/WHO_TRS_916.pdf; WHO, "Global Strategy on Diet, Physical Activity and Health," April 24, 2004, www.who.int/dietphysicalactivity/strategy/eb111344/strategy_english_web.pdf. See also: A. Waxman, "The WHO Global Strategy ... the Controversy on Sugar," *Development* 47 (2004): 75–82; and J. Zarocostas, "WHO Waters Down Draft Strategy on Diet and Health," *Lancet* 363 (2004): 1373.
- ³ J. Streets et al., "Absolute Risk of Obesity," UBS Warburg Global Equity Research, November 27, 2002, and March 4, 2003; S. Massot and R. Fujimori, "Obesity: A Lingering Concern," Morgan Stanley Global Equity Research, October 31, 2003; A. Langlois et al., "Food Manufacturing: Obesity: The Big Issue," JP Morgan European Equity Research, April 16, 2003. And see follow-up report by A. Langlois et al., "Obesity: Re-shaping the Food Industry," January 24, 2006.
- ⁴ S. Linn, *Consuming Kids: The Hostile Takeover of Childhood* (New York: New Press, 2004); J. B. Schor, *Born to Buy: The Commercialized Child and the New Consumer Culture* (New York: Scribner, 2004). See, for example, G. Hastings et al., "Review of Research on the Effects of Food Promotion to Children," Food Standards Agency (UK), September 2003; and World Health Organization, "Marketing of Food and Non-alcoholic Beverages to Children," report of a WHO Forum and Technical Meeting, Geneva, 2006.
- ⁵ Institute of Medicine, "Preventing Childhood Obesity: Health in the Balance," 2005; "Food Marketing to Children and Youth: Threat or Opportunity?," 2005; and "Progress in Preventing Childhood Obesity: How Do We Measure Up?," 2006. All from National Academies Press, Washington, DC, www.nap.org.
- ⁶ "Out of Balance: Marketing of Soda, Candy, Snacks and Fast Foods Drowns Out Healthful Messages," Consumers Union and California Pan-Ethnic Health Network, September 2005; E. S. Moore, "It's Child's Play: Advergaming and the Online Marketing of Food to Children," Kaiser Family Foundation, July 2006.
- ⁷ C. Hawkes, "Marketing Food to Children: The Global Regulatory Environment," World Health Organization, Geneva, 2004, <http://whqlibdoc.who.int/publications/2004/9241591579.pdf>.
- ⁸ W. E. Parmet and J. A. Smith, "Free Speech and Public Health: A Population-Based Approach to the First Amendment," *Loyola Law Review* 39 (2006): 363–446; M. M. Mello, D. M. Studdert, and T. A. Brennan, "Obesity—The

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New Frontier of Public Health Law," *New England Journal of Medicine* 354 (2006): 2601–2610.

- ⁹ See H. K. Gordon, "Eat, Drink, and Sue: A New Mass Tort?," *New York Law Journal Corporate Update*, March 30, 2006; J. Alderman and R. A. Daynard, "Applying Lessons from Tobacco Litigation to Obesity Lawsuits," *American Journal of Preventive Medicine* 30 (2006): 82–88; and S. Gardner, "Litigation as a Tool in Food Advertising: A Consumer Advocacy Viewpoint," *Loyola Law Review* 39 (2006): 101–120. For reasons why legal strategies are worth pursuing, see E. Fried, "Obesity: The Sixth Deadly Sin," *Gastronomica*, Winter 2007: 6–10.
- ¹⁰ US Government Accountability Office, "School Meal Programs: Competitive Foods Are Widely Available and Generate Substantial Revenues for Schools" (GAO-05-563), August 2005, www.gao.gov/new.items/do5563.pdf. For examples of the school food movement in action, see Alice Waters, "Edible Schoolyard," www.edibleschoolyard.org/homepage.html; Center for Eco-Literacy www.ecoliteracy.org/programs/rsl.html; R. W. Surles, *Chef Bobo's Good Food Cookbook* (Des Moines, IA: Meredith Books, 2004); and A. Cooper and L. M. Holmes, *Lunch Lessons: Changing the Way We Feed Our Children* (New York: Collins, 2006).
- ¹¹ Several groups track obesity legislation. See National Council of State Legislatures, *Childhood Obesity—2005 Update and Overview of Policy Options*, www.ncsl.org/programs/health/ChildhoodObesity-2005.htm; National Association of State Boards of Education, "Healthy Schools: State-Level School Health Policies," www.nasbe.org/HealthySchools/States/Topics.asp?Category=C&Topic=1; Health Policy Tracking Service, "State Actions to Promote Nutrition, Increase Physical Activity and Prevent Obesity: A Legislative Overview," Robert W. Johnson Foundation, July 11, 2005, <http://www.rwjf.org/en/library/research/2005/07/state-actions-to-promote-nutrition--increase-physical-activity-a.html>; and follow-up report in July 2006, www.rwjf.org/files/publications/other/Balance072006.pdf.
- ¹² Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108-265, § 204, 118 Stat. 729 (2004).
- ¹³ The New York City ruling of December 5, 2006, www.nyc.gov/html/doh/downloads/pdf/public/notice-adoption-hc-art81-50.pdf.
- ¹⁴ New York State Restaurant Association, New York City legislative update, December 7, 2006, www.nysra.org.
- ¹⁵ M. Simon, *Appetite for Profit: How the Food Industry Undermines Our Health and How to Fight Back* (New York: Nation Books, 2006).
- ¹⁶ M. Nestle, *What to Eat* (New York: North Point Press, 2006).
- ¹⁷ Hannaford describes and summarizes media reports about its Guiding Stars program www.hannaford.com/home.shtml.
- ¹⁸ T. Lang, G. Rayner, and E. Kaelin, "The Food Industry, Diet, Physical Activity and Health: A Review of Reported Commitments and Practice of 25 of the

World's Largest Food Companies," City University London, 2006, www.city.ac.uk/press/The%20Food%20Industry%20Diet%20Physical%20Activity%20and%20Health.pdf. See also: A. Lewin et al., "Food Industry Promises to Address Childhood Obesity: Preliminary Evaluation," *Journal of Public Health Policy* 27 (2006): 327-348.

- ¹⁹ D. J. Wood, "Top Legal Issues for 2007," *Advertising Age*, December 18, 2006: 8. See F. Lawrence, "Food Agency Takes on Industry over Junk Labels," *Guardian*, December 29, 2006, www.guardian.co.uk/frontpage/story/0,,1979245,00.html.