

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

THE CORNUCOPIA INSTITUTE)
P.O. Box 126)
Cornucopia, Wisconsin 54827)

DOMINIC MARCHESE)
Manna Farms)
6666 Stoddard Hayes Road)
Farmdale, Ohio 44417)

REBECCA GOODMAN)
Northwood Farm)
E 103 Cty. Hwy. Q)
Wonewoc, Wisconsin 53968)

Plaintiffs)

v.)

CIVIL ACTION NO.16-CV-246

UNITED STATES DEPARTMENT OF)
AGRICULTURE)
1400 Independence Avenue S.W.,)
Washington, D.C. 20250)

TOM VILSACK, in his official capacity as)
SECRETARY OF AGRICULTURE)
1400 Independence Avenue S.W.,)
Washington, D.C. 20250)

Defendants)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The Cornucopia Institute (“Cornucopia”), Dominic Marchese, and Rebecca Goodman (collectively, “Plaintiffs”) seek declaratory and injunctive relief against the United States Department of Agriculture (“USDA”), and Tom Vilsack, Secretary of Agriculture, in his official capacity (collectively, “Defendants”) for appointing

unqualified individuals to the National Organic Standards Board (“NOSB”) in violation of the Organic Foods Production Act of 1990 (“OFPA”), 7 U.S.C. § 6501 *et seq.*

2. Defendants’ conduct resulted in inappropriate influence over the NOSB and left the NOSB without the viewpoint balance required by the OFPA in violation of the Federal Advisory Committee Act (“FACA”), 5 U.S.C. App. 2 *et seq.*
3. The NOSB is a 15-member independent federal advisory committee constituted under subsection 6518(k)(1) of the OFPA that provides recommendations to USDA regarding the implementation of the OFPA.
4. The NOSB is charged with developing the National List of Allowed and Prohibited Substances (“National List”), which identifies exempted synthetic substances and prohibited natural substances for use in organic agriculture and organic food processing.
5. The NOSB’s recommendations to USDA about what should be included on the National List determine what substances can be used in the production of food that is labeled as “organic” under USDA’s organic program.
6. The NOSB also makes recommendations to the USDA about other aspects of implementing the OFPA.
7. As demand for organic foods—free of synthetic ingredients—continues to grow, USDA, through the NOSB, has a responsibility to ensure that food bearing the organic certification has been produced using organic methods.
8. The USDA has an obligation to administer the National Organic Program (“NOP”), and the NOSB, in a way that is faithful to the Congressional intent in crafting the program.

9. Farmers and producers of organic foods have an interest in ensuring the integrity of USDA's standards, as those standards intimately affect the business models of organic farms.
10. The American people have a right to trust that food certified as organic is free of inappropriate or inadequately reviewed synthetic substances that do not comport with the OFPA.
11. USDA has failed this responsibility and has shirked its legal obligations by appointing individuals to the NOSB that violate the OFPA's board composition requirements. Further, USDA's improper appointments violate FACA, which requires that the membership and viewpoints of a federal advisory committee be fairly balanced.
12. USDA's appointments inappropriately influence the NOSB and interfere with the NOSB by deviating from the composition and viewpoint balance required by federal law.
13. A balanced and independent NOSB is critical to the integrity of organic food standards. An unbalanced and USDA-influenced NOSB undermines the public's confidence in organically certified foods.
14. The OFPA includes specific criteria for the composition of the NOSB and sets out binding obligations on USDA to maintain the balance dictated by law. These obligations are enforceable through FACA.
15. USDA also inappropriately influenced the NOSB in violation of subsection 5(b)(3) of FACA, which was designed to protect the independence of advisory committees.
16. USDA disbanded the NOSB's Policy Development Subcommittee, demonstrating inappropriate influence on the NOSB in violation of FACA.

17. USDA allowed for the self-appointment of the NOSB's co-chairperson constituting inappropriate influence on the NOSB in violation of FACA.
18. USDA removed the NOSB's ability to set its own work plan inappropriately influencing the NOSB in violation of FACA.
19. USDA's unlawful meddling with the composition and rules governing the NOSB has created a NOSB hostile to the public interests it was created to protect.
20. The OFPA contains a "Sunset" provision that requires the review of all substances on the National List at least every five years.
21. In 2005, USDA issued the original Sunset Review Rule to implement this Sunset provision by following the proper notice and comment process required by law. The Agency published an Advanced Notice of Proposed Rulemaking ("ANPR") in the Federal Register and received public comment before making a final determination about the Sunset process.
22. Under this original Sunset Rule, substances on the National List were automatically removed from the list after five years, unless a two-thirds majority of the NOSB voted to retain the substance.
23. In 2013 USDA issued another legislative rule, the Sunset Notice, under which USDA unilaterally altered the Sunset Review rules without engaging in the required notice and comment process.
24. This Notice changed the Sunset Review rules so that substances up for review automatically remain on the National List in perpetuity, unless a subcommittee first recommends its removal and then two-thirds of the NOSB votes to remove the substance.

25. In 2015, the NOSB altered its voting procedures from a roll call vote to a show of hands, specifically to thwart efforts by Cornucopia to document the NOSB's votes.
26. The NOSB has directly harmed the public interest mission of Cornucopia through its unlawful changes to the Sunset Review rules and its alteration of voting procedures.
27. USDA's failure to comply with the requirements of subsection 5(b) of FACA violates subsection 5(c) of FACA, which requires agency heads or other Federal officials to adhere to the requirements of subsection 5(b) in creating an advisory committee. Each of the actions alleged in paragraphs 1-26 demonstrates USDA's shirking of its duty to maintain the integrity of organic food standards on behalf of the American people.

JURISDICTION AND VENUE

28. Paragraphs 1-27 are incorporated here by reference.
29. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the APA, 5 U.S.C. §§ 701–706, OFPA, 7 U.S.C. §§ 6501–6523, and FACA, 5 U.S.C. App. 2 §§ 1–16.
30. Venue is proper in the United States District Court for the Western District of Wisconsin under 28 U.S.C. § 1391(e)(1)(C) because plaintiff Cornucopia is headquartered in Cornucopia, Wisconsin and Plaintiff Rebecca Goodman resides in Wonewoc, Wisconsin, both in the Western District of Wisconsin. Venue is also proper under 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events giving rise to the claim occurred in Wonewoc, Wisconsin, and Cornucopia, Wisconsin, both within the Western District of Wisconsin.

PARTIES AND STANDING

31. Paragraphs 1-30 are incorporated here by reference.

32. Cornucopia is a public interest organization that engages in research and education on agriculture and food issues. Cornucopia focuses on assessing the integrity of organic food and agriculture. Cornucopia seeks to educate farmers, consumers, and the media about issues affecting the integrity of organic food standards.
33. Cornucopia's board directs the organization's policy. The organization is constituted of these board members, along with other Cornucopia stakeholders and members.
34. Cornucopia's members include certified organic farmers, former members of the NOSB, and conservationists. All of these members depend on the integrity of organic food standards, and/or the consumer confidence tied to that integrity.
35. Cornucopia's thousands of members include, as their primary constituency, certified organic farmers, as well as thousands of consumers supporting organic integrity.
36. Cornucopia's policies and direction are overseen by its board of directors, who articulate to Cornucopia their concerns about the organic food industry.
37. Cornucopia regularly releases a comprehensive report of the substances that are up for periodic and regular review by the NOSB. The report independently analyzes the health and environmental effects of each of the substances before the Board, and analyzes whether each substance is essential to organic food production.
38. USDA's actions in changing the Sunset Review rules place a drain on Cornucopia's resources by allowing a greater number of substances to remain on the National List.
39. USDA's inappropriate influence has led directly to an increase in the number of harmful synthetic substances left on the National List, and that are, therefore, acceptable for use in organic agriculture.

40. Essential to Cornucopia's mission is its oversight of USDA's implementation of programs related to organic food production and agriculture. Fulfilling this part of its mission hinges on Cornucopia's ability to review each of the substances up for review before the Board and advise its members.
41. The greater number of chemicals remaining on the National List places a drain on Cornucopia's resources by increasing the number of chemicals Cornucopia has to review and report on in pursuit of its mission.
42. Cornucopia estimates that it spends 600 dollars per substance it reviews and estimates that the cost of preparing for these reviews by the NOSB over the course of a year well exceeds \$100,000.
43. The fact that unqualified persons sit on the NOSB in the seats reserved for organic farmers exacerbates the harms to Cornucopia from the increased number of chemicals remaining on the National List.
44. These unqualified NOSB members, Carmela Beck and Ashley Swaffar, lack the qualifications to duly represent the interests of organic farmers.
45. USDA's appointments of Ms. Beck and Ms. Swaffar deprive Cornucopia's members who applied for these appointments and were rejected of the right to a fair appointment process under the OPFA.
46. Dominic Marchese, a Cornucopia member and family-scale certified organic farmer from Farmdale Ohio, applied for an appointment on the NOSB during the 2011–2012 appointment cycle when Ms. Beck was appointed to the board.

47. Mr. Marchese applied to the NOSB in 1992, 2009, and again in 2011, the year Ms. Beck was selected. Mr. Marchese's application was timely and complete, and included all of the required materials demonstrating his work as an organic farmer.
48. Instead of appointing a farmer to the seat on the NOSB reserved for farmers, the USDA selected Ms. Beck, who works as a "Grower Liaison," at Driscoll's.
49. Again in 2014, rather than appointing a farmer to the seat on the NOSB reserved for owners or operators of organic farms, USDA selected Ashley Swaffar, a corporate compliance officer at Arkansas Egg Company (now a staff member of another agribusiness, Vital Farms).
50. Rebecca Goodman, another family-scale certified organic farmer from Wonewoc, Wisconsin, applied for an appointment on the NOSB during the year that Ms. Swaffar was appointed to the board. Ms. Goodman's application was timely and complete, and included all of the required materials demonstrating her work as an organic farmer. Ms. Goodman included 6 letters of support for her appointment to the NOSB.
51. On information and belief, Ms. Beck and Ms. Swaffar's votes do not align with the interests of owners or operators of organic farm operations over half the time. These unqualified individuals do not have the requisite experience and knowledge, and personal investment in certified organic production agriculture, to properly advocate for the interests of organic farmers.
52. USDA's appointment of unqualified individuals to the NOSB undermines the integrity of organic food standards.
53. USDA's inappropriate influence over the NOSB also undermines the integrity of organic food standards because recommendations from the NOSB concerning the

National List, and the advice it provides the Secretary on organic policy matters, can no longer be relied upon to represent the diverse voice of organic stakeholders as intended by Congress in the OFPA.

54. On information and belief, Cornucopia's board and farmer members suffer a reputational harm from USDA's actions because the organic certification label becomes less trustworthy in the eyes of consumers and stakeholders due to actions by USDA that are perceived to be weakening organic integrity.
55. Cornucopia's members suffer an economic harm because consumers seeking organic produce are less likely to purchase organically certified food when that organic label's integrity has been compromised. Cornucopia has a strong interest in the integrity of organic food standards, consumer confidence in those standards, and the interstate commerce of organic produce, which mirrors the OFPA's purposes.
56. Cornucopia has an interest in ensuring that the NOSB remains fairly balanced and free of inappropriate influence. This interest can be vindicated through FACA, which was passed to ensure that independent federal agencies are free from inappropriate influence from their appointing authority.
57. Defendant USDA is a federal agency responsible for oversight of the National Organic Production Program ("NOP"). USDA has its headquarters in Washington, D.C.
58. Defendant Tom Vilsack is the Secretary of Agriculture. Secretary Vilsack is responsible for the administration, operations, and activities of USDA, including oversight of the NOP. Secretary Vilsack is being sued in his official capacity only. Because Cornucopia's grievances result from USDA's violations of the OFPA and FACA, section 702 of the APA grants legal redress.

59. Vacating USDA’s appointment of unqualified persons, and enjoining USDA from further inappropriately influencing the NOSB, will redress injuries to Cornucopia and its members.

LEGAL BACKGROUND

60. Paragraphs 1-59 are incorporated here by reference.
61. The OFPA was enacted to protect the integrity of organic food standards, uphold consumer confidence in a consistent standard, and facilitate interstate commerce in organic produce.
62. The OFPA authorizes the creation of the NOSB, a 15-member board, to assist in the development of organic food standards.
63. The NOSB is an independent federal advisory committee within the meaning of subsection 3(2)(A) of FACA.
64. Subsection 6518(a) of the OFPA directs the USDA to act “in accordance with the Federal Advisory Committee Act” in composing the NOSB.
65. Subsection 6518(b) of the OFPA requires USDA to maintain a specified composition in appointing members to the NOSB.
66. Subsection 6518(b)(1) of the OFPA directs USDA to appoint to the NOSB four individuals who “own or operate an organic farming operation.”
67. Subsection 6517(a) of the OFPA requires the Secretary of Agriculture to “establish a National List of approved and prohibited substances that shall be included in the standards for organic production and handling.”

68. Subsection 6518(k)(2) of the OFPA states that the NOSB “shall develop the proposed National List or proposed amendments to the National List for submission to the Secretary.”
69. Subsection 6517(e) of the OFPA provides that substances on the National List must be reviewed at least every five years by the NOSB to determine whether they should remain on the list.
70. Subsection 5(b)(2) of FACA provides that advisory committees should “be fairly balanced” in terms of the viewpoints represented and functions to be performed.
71. Subsection 5(b)(2) of FACA was enacted to ensure that advisory committees would be free from the inappropriate influence of the appointing authority or special interests.
72. Subsection 5(c) of FACA requires the President, agency heads, or other Federal officials to comply with the guidelines established in FACA subsection (b) in creating an advisory committee.
73. Section 702 of the APA grants the right to judicial review to “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute.”
74. Section 704 of the APA subjects final agency action for which there is no adequate remedy in a court to judicial review.

FACTUAL BACKGROUND

75. Paragraphs 1-74 are incorporated here by reference.

USDA’s Inappropriate Appointments to the NOSB

76. USDA appointed Carmela Beck to a position on the NOSB reserved for owners or operators of an organic farming operation, for the term beginning in January 2012.

77. Ms. Beck works as the National Organic Program Supervisor and Organic Certification Grower Liaison for Driscoll's, a conventional and organic berry producer.
78. On information and belief, based on statements made by Ms. Beck at an NOSB meeting, Driscoll's does not grow its own organic berries. Driscoll's buys the vast majority of its berries from independent organic farmers to be sold under the Driscoll's brand.
79. During the course of Ms. Beck's term, she has voted 177 times to retain a substance on the National List, when the other NOSB farmer members, representatives of owners and operators of organic farm operations, voted to remove a substance.
80. Cornucopia wrote a letter to USDA, dated April 5, 2012, contesting Ms. Beck's appointment on the ground that her work with Driscoll's was insufficient to qualify her as an owner or operator of an organic farming operation.
81. USDA responded to Cornucopia and defended Ms. Beck's appointment on the basis that she was qualified for the NOSB position reserved for operators or owners of organic farms because she worked for eight years with Driscoll's.
82. USDA appointed Ashley Swaffar to a position on the NOSB reserved for owners or operators of an organic farming operation for the term beginning in January 2015.
83. Ms. Swaffar worked for Arkansas Egg Company, a conventional and organic egg production company. In her role at Arkansas Egg Company she was responsible for financial planning, developing new products and customers, industry relations, growth planning, government relations and compliance, animal welfare program development and compliance. She is also a liaison between contract growers and company and facilitates organic system plan development and compliance. She is currently employed

by Vital Farms, another company that primarily contracts with independent farmers for production and markets both conventional and organic eggs.

84. Ms. Swaffar has voted 165 times to retain a substance on the National List, when the other NOSB farmer members, representatives of owners and operators of organic farm operations, voted to remove a substance.
85. Cornucopia wrote a letter to USDA, dated August 18, 2015, contesting Ms. Swaffar's appointment.
86. USDA has yet to respond to Cornucopia's August 18, 2015 letter.

USDA's Influence on the NOSB

87. From 2013 to the present, USDA has exerted increasing levels of influence over the NOSB, undermining the committee's independence and power.
88. On September 13, 2013, USDA implemented new Sunset Review rules without seeking public input or satisfying the procedures required by the APA.
89. The new Sunset Review rules allow substances to remain on the National List, unless a two-thirds majority of the NOSB votes to remove the substance. Under the original Sunset rules, substances on the National List were automatically removed from the list after five years, unless a two-thirds majority of the NOSB affirmatively voted to retain the substance.
90. Under the new Sunset Review rules, the NOSB takes no affirmative action in reviewing substances on the National List; a subcommittee must first recommend removal of a substance before the NOSB votes on its status on the National List.

91. Under the new Sunset Review rules, substances may now remain on the National List after five years without review by the NOSB, if a subcommittee does not recommend that the substance be removed.
92. Under the new Sunset Review rules, substances are only removed from the list after an affirmative two-thirds vote by the NSOB.
93. The modifications to the Sunset Review rules have led directly to an increase in the number of harmful synthetic substances left on the National List, and that are, therefore, acceptable for use in organic agriculture.
94. For example, at the October 26-29, 2015 NOSB meeting, di-glycerides and mono-glycerides were up for review before the NOSB. Six members of the NOSB voted for the removal of this substance. Eight members voted for the retention of this substance.
95. Under the prior Sunset Review rules, di-glycerides and mono-glycerides would not have had enough votes to stay on the National List. Under the current Sunset Review rules, di-glycerides and mono-glycerides have remained on the National List.
96. At this same meeting, xanthan gum was up for review before the NOSB. Five members of the NOSB voted for the removal of this substance. Eight members voted for the retention of this substance.
97. Under the prior Sunset Review rules, xanthan gum would not have had enough votes to stay on the National List. Under the current Sunset Review rules, xanthan gum remained on the National List.
98. Lignin sulfonate was also up for review before the NOSB at the October 2015 meeting. Seven members of the NOSB voted for the removal of this substance. Seven members voted for the retention of this substance.

99. Under the prior Sunset Review rules, lignin sulfonate would not have had enough votes to stay on the National List. Under the current Sunset Review rules, lignin sulfonate remained on the National List.
100. After votes at the October 2015 meeting, over twenty substances have remained on the National List. This expansion of the list of synthetic substances allowed for use in organic agriculture would have not come about under the original Sunset Rules that went through the proper notice and comment processes.
101. USDA's issuance of the Sunset Notice violates the APA because the agency failed to engage the public and interested stakeholders by providing a notice and an opportunity for comment.
102. In February 2014, USDA disbanded NOSB's Policy Development Subcommittee, and deemed the subcommittee's Policy and Procedures Manual ("PPM") to be no longer in force.
103. The Policy Development Subcommittee, with public review and comment, had previously created and updated the PPM to guide the NOSB. On information and belief, the USDA removed the NOSB's ability to set its own work plan, requiring all of the NOSB's work to be preapproved by USDA.
104. On information and belief, at the April 29, 2014, NOSB meeting, Miles McEvoy unilaterally appointed himself co-chair of the NOSB.
105. On May 14, 2015, former NOSB Chairwoman, Jean Richardson sent an email to Miles McEvoy, Lisa Brines, and Emily Brown Rosen suggesting that the Board's voting process should change, in part to thwart Cornucopia's efforts to track the votes and relay this information to the public. Ms. Richardson said that she would like to

“consider using simple hand voting in October.” The email asks if there is any legal reason that a roll call is conducted and asks that the Board implement a “hand vote” so that “Cornucopia won’t be able to rate our voting record!”

106. The NOSB previously conducted a roll call vote where each member would vote individually.
107. Now, the votes are conducted with a show of hands.
108. Voting by a show of hands makes it more difficult for Cornucopia’s members to track the votes as they happen and for Cornucopia to share this information with its members, farmers, the public and the media.
109. USDA’s 2013 issuance of the Sunset Notice changed the Sunset Review rules so that substances up for review automatically remain on the National List in perpetuity, unless a subcommittee first recommends its removal and then two-thirds of the NOSB votes to remove the substance.
110. USDA’s issuance of the Sunset Notice failed to engage the public and interested stakeholders by providing a notice and an opportunity for comment.
111. USDA’s inappropriate influence in issuing the Sunset Notice has led directly to an increase in the number of harmful synthetic substances left on the National List, and that are, therefore, acceptable for use in organic agriculture. The changes to the Sunset Review rules in the Sunset Notice allow for direct conflict with the plain text of the OFPA, which prohibits substances from remaining on the National List for more than five years without being reviewed by the NOSB.

CAUSES OF ACTION

Count 1:

USDA's appointments of Carmela Beck and Ashley Swaffar to the NOSB violate the Organic Food Production Act, 7 U.S.C. § 6518(b)(1), because they are not owners or operators of organic farming operations.

112. Paragraphs 1-111 are incorporated here by reference.

113. Subsection 6518(b)(1) of the OFPA reserves four positions on the NOSB for owners or operators of organic farming operations.

114. At the time of their appointment Carmela Beck and Ashley Swaffar did not own or operate an organic farming operation, as attested to by their applications for NOSB membership provided to USDA.

115. Ms. Beck works for Driscoll's, a vegetable and organic berry distributor, which sells products under its label after contracting for production for organic produce from independent farmers.

116. Ms. Swaffar worked for an Arkansas Egg Company, an organic egg company, in administrative, financial, and public relations positions that are unrelated to actual organic farming.

117. By appointing Carmela Beck and Ashley Swaffar to spots on the NOSB that are reserved for owners or operators of organic farming operations, USDA violated the subsection 6518(b)(1) of OFPA.

Count 2:

USDA's appointment of Carmela Beck and Ashley Swaffar violate the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 5(b)(2), because their appointment fails to maintain the proper balance of membership and viewpoints required on the NOSB.

118. Paragraphs 1-117 are incorporated here by reference.

119. Subsection 5(b)(2) of FACA requires that advisory committees be balanced in both membership and viewpoint.
120. Subsection 6518(a) of the OFPA explicitly commands the USDA to act “in accordance with the Federal Advisory Committee Act” in composing the NOSB.
121. Subsection 6518(a) of the OFPA directly sets out the number of positions reserved for the different interest groups and viewpoints to ensure a balanced membership.
122. Neither Carmela Beck nor Ashley Swaffar is an owner or an operator of an organic farming operation.
123. By appointing Carmela Beck and Ashley Swaffar to spots on the NOSB that are reserved for owners or operators of organic farming operations, USDA has left the NOSB unbalanced in violation of subsection 5(b)(2) of FACA.

Count 3:

USDA has inappropriately influenced the NOSB through a series of actions, in violation of the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 5(b)(3).

124. Paragraphs 1-123 are incorporated here by reference.
125. Subsection 5(b)(3) of FACA requires advisory committees to be free from the inappropriate influence of their appointing authority.
126. USDA is the appointing agency for the NOSB under section 6502(19) of the OFPA
127. Through a series of actions, USDA inappropriately influenced the NOSB.
128. The deputy administrator of USDA’s NOP appointed himself chairperson of the NOSB in violation of subsection 6518(g) of the OFPA, which provides that the “Board shall select a Chairperson for the Board.”

129. USDA disbanded the NOSB's Policy Development Subcommittee, and thus removed the mechanism by which the NOSB could independently and transparently develop best practices to guide its activities.
130. USDA removed the NOSB's ability to develop its own work plan, undermining the Subcommittee's independence.
131. USDA altered the Sunset Review rules without notice and comment, making it dramatically harder to remove chemicals from the National List, or even for chemicals to come before the NOSB for review.
132. The actions claimed in paragraphs 125-131 demonstrate the erosion of the NOSB's power and ability to independently advise on the National List.
133. USDA's actions thus constitute "inappropriate influence by the appointing authority" under subsection 5(b)(3) of FACA.

Count 4:

USDA failed to adhere to the requirement of subsection 5(b) of the Federal Advisory Committee Act, a violation of 5 U.S.C. App. 2 § 5(c).

134. Paragraphs 1-133 are incorporated here by reference.
135. FACA requires the President, agency heads, or other Federal officials to comply with the requirements of FACA subsection 5(b) in creating an advisory committee.
136. USDA's conduct described in paragraphs 113-117, 119-123, and 125-133 demonstrates the agency's failure to comply with the guidelines established under FACA subsection 5(b).
137. Thus, USDA has violated FACA subsection 5(c).

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that this Court:

- (1) Declare that USDA has violated the OFPA by appointing unqualified persons to posts reserved for owners and operators of organic farming operations, and by selecting the NOSB's chairperson;
- (2) Declare that USDA must appoint members to the NOSB who meet the statutory requirements for their posts;
- (3) Declare that USDA has violated FACA by:
 - a. Appointing unqualified persons to posts reserved for owners and operators of organic farming operations;
 - b. Disbanding the NOSB's Policy Development Subcommittee;
 - c. Removing the NOSB's ability to develop its own work plan; and
 - d. Modifying the NOSB's Sunset Review rules;
- (4) Vacate the appointments of Carmela Beck and Ashley Swaffar to the NOSB;
- (5) Order the removal of substances from the National List that have remained on the list since the modifications to the Sunset Review rules, but that would have been removed from the list under the old Sunset Review rules based on the votes they received;
- (6) Award Plaintiffs attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- (7) Award Plaintiffs all other relief the Court deems just and proper.

DATED: April 18, 2016

Respectfully Submitted,

/s/ Sarah J. Fox

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