



CENTER FOR FOOD SAFETY

March 14, 2013

Connecticut State Legislature
Testimony in Support of HB 6519

Statement of George A. Kimbrell, Senior Attorney, Center for Food Safety

Center for Food Safety (CFS) is pleased to submit this testimony in support of HB 6519, an act concerning genetically engineered (GE) foods.

CFS is a non-profit public interest organization dedicated to challenging harmful food production technologies and promoting sustainable alternatives at both the federal and state level. CFS's mission includes protecting the public's right to know how their food is produced, including improving food labeling. CFS and its founders have worked on the issue of GE crops and GE labeling for more than twenty years, at both the federal and state level. To that end we have worked with dozens of states on the crafting of GE labeling bills. Among other efforts, we co-authored California's 2012 Proposition 37. We also co-authored Washington State's current ballot initiative on the labeling of GE foods, I-522.

HB 6519 is a well-supported bill that comports well with Connecticut and federal law and if it is enacted would not likely be susceptible to successful legal challenge.

First, food labeling is an area historically governed by state law. The federal government did not begin to regulate food labels at all until 1906, with the passage of the Wiley Act, and did not expressly cover many labeling areas until the 1990 Nutrition Labeling and Education Act (NLEA). This means that any analysis of HB 6519 must begin with a presumption of legality and against preemption by federal law.

Federal law may preempt, or supersede, state law in three ways: express preemption, field preemption and implied conflict preemption. However neither of the two theoretical sources of preemption here—federal regulation of GE foods and federal labeling law—apply.

The U.S. federal government, unlike many other countries, does not require foods produced through genetic engineering be labeled. Unlike much of the world we don't have a law specifically focused on overseeing genetically engineered organisms, or their labeling. In fact, FDA only has addressed the GE labeling issue over twenty years ago, in a 1992 policy statement. As such, it cannot be given preemptive effect, because it does not carry the force of law.¹

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Second, regarding labels more generally, the process of genetic engineering is not a category covered by any other federal labeling law. The 1990 NLEA noted above has an express preemption provision for some forms of labeling such as nutrients or health claims, but importantly if a category is not listed there, there is no implied preemption, *i.e.*, it is not preempted.² The labeling of foods produced through the process of genetic engineering is simply not a category covered.

HB 6519 is also in harmony with the dormant commerce clause.

Although the Constitution empowers Congress to regulate interstate commerce, states may regulate articles in interstate commerce, so long as they do not discriminate against out-of-state interests.³ HB 6519 would not so discriminate, because it requires labeling no matter where the GE crops are produced.

Further, if a state law thus has only indirect effects on interstate commerce, it is proper unless the burden it imposes is “clearly excessive” in relation to its local benefits.⁴ Connecticut’s myriad interests in protecting its consumers’ right to know, health, economic interests, and environment easily outweigh any labeling inconvenience to food companies, a far cry from “clearly excessive.” Courts have repeatedly held these types of local benefits to be sufficient.

Moreover, food suppliers and farmers are required to keep track of all kinds of information, including where their seed comes from, what pesticides are used on their crops, and food safety procedures used. Keeping track of how our food is produced is a standard safety requirement that should be practiced by all food processors. It’s one of the only ways we have to trace food borne illness outbreaks, pesticide use, or to recall contaminated materials.

To be clear, labeling of GE foods is not an effort to shut down the advance of science and technology; rather, it is an effort aimed at offering the public full disclosure, preserving the right of free choice in the marketplace, and creating a better food industry. Requiring GE foods to be labeled should have no adverse impact on a company’s ability to conduct new, forward thinking research. In fact, if future GE products claim to offer consumers benefits, labeling offers these companies an opportunity to distinguish these beneficial products from other ones in the marketplace.

Currently none of these beneficial products exist: One of the main reasons for opposition to GE labeling is that, despite three decades of research and hundreds of millions of dollars in public and private investment, the industry has failed to come up with even one trait that attracts consumers. Their products offer only potential risk and no benefits to consumers in cost, nutrition, flavor, etc. Labeling will reveal this, and the companies are justifiably worried that market forces will therefore not favor their products.

Finally, Connecticut can compel the labeling of foods produced through genetic engineering, because it is a factual disclosure that is “reasonably related” to numerous Connecticut state interests.⁵ Thus the law will not improperly impinge on commercial speech rights.

These myriad state interests include but are not limited to:

- Public health. That is, preventing consumer confusion or deception by disclosing a fact of production about which consumers have health and safety concerns.

Unlike in many other countries, GE crops do not undergo independent testing prior to commercialization in the U.S. Documents uncovered in our prior GE food litigation show that FDA scientists have indicated that GE foods could pose serious risks. Nonetheless, FDA only holds a voluntary, and confidential, meeting with industry before allowing commercialization of these foods, and relies entirely on the data the industry chooses to show them; the agency does none of its own testing and makes no findings of safety.

Further, because there is yet unfortunately no mandatory labeling of GE foods, health professionals have no way of tracking if these foods are causing adverse health effects.

- Economics: That is, Connecticut citizens should have the choice to avoid purchasing foods whose production could harm the state's farmers and agricultural markets.

U.S. export markets are jeopardized by contamination from GE crops. This is because over 60 countries—including the EU, Russian, Japan and China—and many key U.S. trading partners have laws requiring the labeling GE foods, and will reject GE contaminated foods. Identification is a critical method for preserving these export markets.

Similarly, the U.S. organic industry is also threatened by contamination from GE crop production, since organic systems prohibit, and organic consumers reject, genetic engineering.

- Environment: GE crops, which are overwhelmingly engineered to do one thing only—be resistant to herbicides—have massively increased overall herbicide use in U.S. agriculture, by hundreds of millions of pounds. They have also created an epidemic of herbicide-resistant superweeds covering over 60 million acres of U.S. farmland. These pesticide-promoting GE crops only lead to more herbicide use, causing damage to our agricultural areas and to our drinking water, and pose health risks to farm workers, wildlife, and consumers. GE crops have also reduced biodiversity through the transgenic contamination of local varieties and native flora. Connecticut consumers should have the choice to avoid purchasing foods whose production can lead to such environmental harms.

Thus Connecticut has much more than the mere rational basis required to compel the commercial speech required by its labeling bill. First Amendment principles protect the free flow of information, and HB 6519 easily overcomes any “minimal” interest of food companies in not disclosing that information.⁶

In sum, the intention of HB 6519 is simple: it merely requires that foods that are produced using genetic engineering be labeled as such. The initiative is intended to provide Connecticut consumers with information about the foods they purchase that is currently hidden. One of the great freedoms we have as Americans is the basic right to choose in the marketplace. If we want to know if our food contains gluten, high fructose corn syrup, trans-fats or MSG, we can simply

read the label. This information has empowered millions of Americans to take control of what we eat and feed our families, for health, religious, environmental or ethical reasons. However these freedoms are being denied to the more than 90 percent of Americans who want to know if their food is genetically engineered. Since FDA has to date refused to label GE foods, it is up to individual states to lead the way and protect its state's interests, including its public's health, its public's right to know, its agricultural economy, its farmers and its native ecosystems.

Thank you and I am happy to provide further analysis or respond to any follow-up questions.

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¹ See, e.g., *Holk v. Snapple*, 575 F.3d 329, 341-42 (3d. Cir. 2009).

² *Id.* at 336; 101 Pub.L. 535, 104 Stat. 2353, 2364 (Nov. 8, 1990).

³ See, e.g., *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986).

⁴ See, e.g., *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970).

⁵ See, e.g., *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 651, 661 (1985).

⁶ *Id.* at 651.