

ISSUE BRIEF

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Federal and State Governments Should Not Require Mandatory Labeling of Genetically Engineered Food

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Genetically engineered food is widely used by food companies in their products. Genetic engineering involves an intentional and targeted change to an organism's gene sequence or genetic makeup to give the organism a specific new trait.¹ This process can improve the quality and quantity of food. For example, such activity can generate pest-resistant crops or crops that grow better in adverse environmental conditions.

The safe and effective use of genetic engineering techniques benefits consumers in food markets both in America and around the world. The National Academy of Sciences just released a report again confirming that genetically engineered food is just as safe as non-genetically engineered food.² Despite these benefits, however, ill-advised efforts are under way to mandate that food companies mark food that has been produced using genetic engineering. For example, the State of Vermont has enacted legislation that soon will require genetically engineered food sold in that state to bear labels, such as one stating that food was "produced with genetic engineering."³

Instead of merely preempting Vermont's law so that it would not go into effect, as the House of Representatives proposed doing last year, the Senate recently considered (but did not pass) legislation that

would have preempted Vermont's law *and* effectively impose federal mandatory labeling. Addressing the problem of state mandatory labeling by preempting state law and then creating a federal mandatory labeling requirement (or de facto mandatory labeling) is merely trading one problem for another.

The food industry is concerned that the Vermont law could impose packaging and distribution challenges that could require companies to use that law as a national standard for food packaging, but the serious problems with state and federal labeling mandates go well beyond these concerns. For example, the government would be forcing companies to engage in misleading speech that gives the misimpression that genetically engineered food somehow involves a greater health or safety risk than food that is not genetically engineered. Such mandates would legitimize bad science and undermine agricultural production and genetic engineering. The federal government and the states should therefore refrain from enacting any mandatory genetic engineering labeling legislation.

The Current Situation

Last year, the House passed H.R. 1599,⁴ which would preempt states from imposing a mandatory labeling requirement. In March 2016, the Senate Committee on Agriculture approved S. 2609,⁵ which also would prohibit state mandatory labeling. Neither bill would create a federal mandatory standard.

The full Senate did not consider S. 2609. Instead, it considered new legislation introduced by Senator Pat Roberts (R-KS).⁶ This legislation (S. Amdt. 3450 to S. 764), which was not passed, would have required the mandatory labeling of genetically engineered

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food⁷ unless at least 70 percent of “labeled food” met a voluntary labeling standard.⁸ The U.S. Department of Agriculture (USDA) would have determined whether this voluntary threshold had been met no earlier than two years after the development of certain regulations.⁹

The scheme considered by the Senate, requiring that companies label genetically engineered food “voluntarily” or face the penalty of federal mandatory labeling, is in fact anything but voluntary. This “forced voluntary” labeling was a shortsighted attempt to preempt Vermont’s mandatory labeling law, which will go into effect on July 1, 2016 (there is a six-month grace period until January 1, 2017).¹⁰ It would have allowed information to be communicated through means such as bar codes, thereby not requiring disclosure on the package itself as the Vermont law requires.¹¹

For many Senate proponents of mandatory labeling, even this legislation did not go far enough.¹² The

Senate could go even further (for example, by requiring that information be labeled directly on packages and not through bar codes) to appease those who are pushing this mandatory labeling, anti-genetic engineering agenda.

Why Mandatory Labeling (and De Facto Mandatory Labeling) Is a Bad Idea

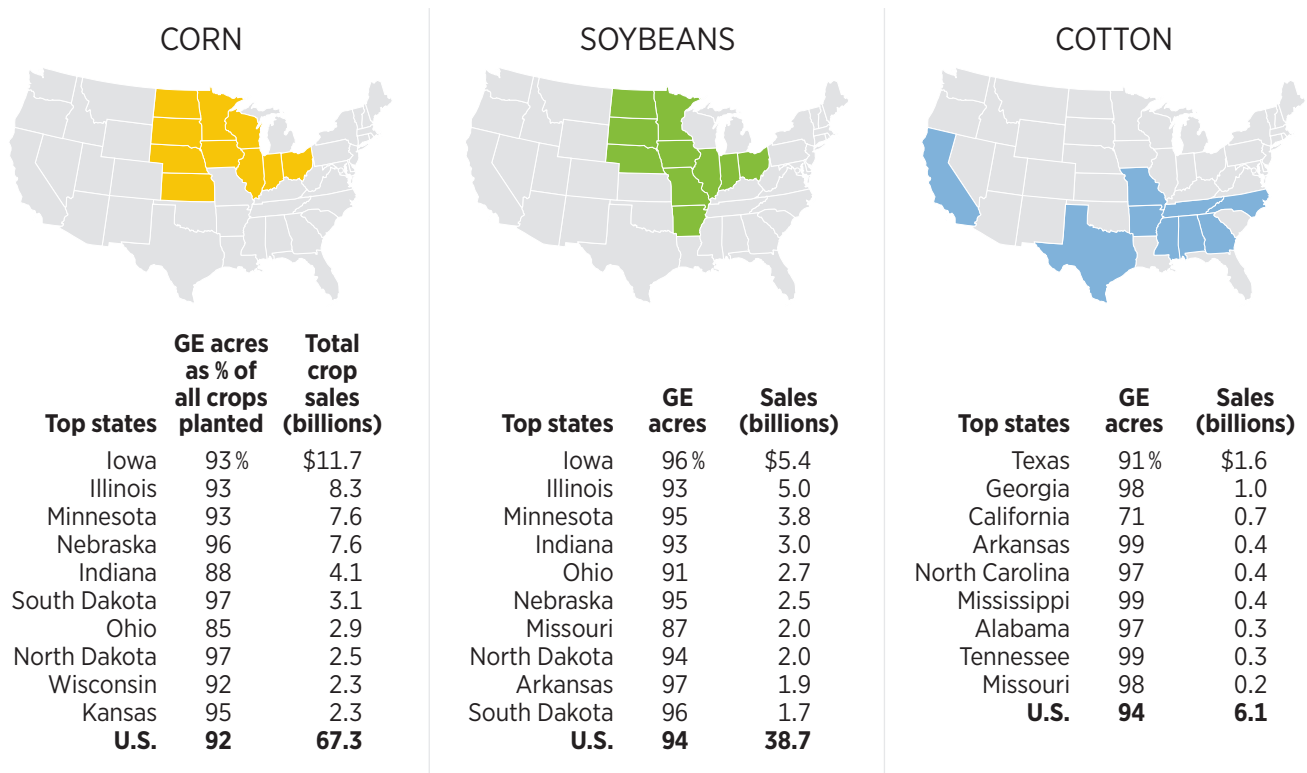
The food industry argues that it will need to label all food sold nationally based on the Vermont standard.¹³ This concern, however, pales in comparison to the much larger problems associated with mandatory labeling, which:

- **Uses the force of government to compel speech.** The government, whether federal, state, or local, should not be compelling companies to engage in speech that is misleading to consumers by giving the false impression that there is something wrong with genetically engineered

1. See, for example, U.S. Food and Drug Administration, “Consumer Info About Food from Genetically Engineered Plants,” last updated October 19, 2015, <http://www.fda.gov/Food/FoodScienceResearch/GEPlants/ucm461805.htm> (accessed May 10, 2016).
2. National Academies of Science, Engineering, and Medicine, *Genetically Engineered Crops: Experiences and Prospects* (Washington: National Academies Press, 2016), <http://www.nap.edu/catalog/23395/genetically-engineered-crops-experiences-and-prospects> (accessed May 19, 2016), and *Genetically Engineered Crops: Experiences and Prospects: Report in Brief*, May 2016, <http://nas-sites.org/ge-crops/2016/05/16/report-in-brief/> (accessed May 19, 2016).
3. State of Vermont, “No. 120. An act relating to the labeling of food produced with genetic engineering,” signed by the governor May 8, 2014, <http://www.leg.state.vt.us/docs/2014/Acts/ACT120.pdf> (accessed May 10, 2016).
4. Safe and Accurate Food Labeling Act of 2015, H.R.1599, 114th Cong., 1st Sess., <https://www.congress.gov/bill/114th-congress/house-bill/1599?q=%7B%22search%22%3A%5B%22%5C%22hr1599%5C%22%22%5D%7D&resultIndex=1> (accessed April 29, 2016).
5. S. 2609, 114th Cong., 2nd Sess., <https://www.congress.gov/bill/114th-congress/senate-bill/2609?q=%7B%22search%22%3A%5B%22genetic+label%22%5D%7D&resultIndex=9> (accessed April 29, 2016).
6. Justin Wingerter, “U.S. Senate Refuses to Advance Sen. Pat Roberts’ Bill on GMO Labeling,” *The Topeka Capital-Journal*, March 16, 2016, <http://cjonline.com/news/business/2016-03-16/us-senate-refuses-advance-sen-pat-roberts-bill-gmo-labeling> (accessed April 29, 2016).
7. For more information on genetically engineered food, see Daren Bakst, “A Q & A on the Mandatory Labeling of Genetically Engineered Foods,” Heritage Foundation *Issue Brief* No. 4440, July 22, 2015, <http://www.heritage.org/research/reports/2015/07/a-q-a-on-the-mandatory-labeling-of-genetically-engineered-foods> (accessed April 29, 2016), and U.S. Food and Drug Administration, “Questions & Answers on Food from Genetically Engineered Plants,” last updated November 23, 2015, <http://www.fda.gov/Food/FoodScienceResearch/GEPlants/ucm346030.htm> (accessed April 29, 2016).
8. Senate Amendment 3450 to S. 764, 114th Cong., 2nd Sess., March 14, 2016, <https://www.congress.gov/congressional-record/2016/03/14/senate-section/article/S1467-3> (accessed April 29, 2016). Details, such as what is meant by “labeled food,” can be found in the text of the legislation.
9. *Ibid.*
10. Grocery Manufacturers Association, Vermont Labeling Law Compliance web page, <http://www.gmaonline.org/issues-policy/state-affairs/vermont/vermont-labeling-law-compliance/> (accessed April 29, 2016).
11. *Ibid.*
12. See, for example, Jordain Carney, “Senate Dems Block GMO Labeling Bill,” *The Hill*, March 16, 2016, <http://thehill.com/blogs/floor-action/senate/273237-senate-dems-block-gmo-labeling-bill> (accessed April 29, 2016).
13. See, for example, Allison Aubrey and Dan Charles, “How Little Vermont Got Big Food Companies to Label GMOs,” NPR, March 27, 2016, <http://www.npr.org/sections/thesalt/2016/03/27/471759643/how-little-vermont-got-big-food-companies-to-label-gmos> (accessed April 29, 2016).

FIGURE 1

Genetically Engineered (GE) Crops Are Prevalent



NOTE: Cotton sales include cottonseed.

SOURCES: U.S. Department of Agriculture, 2012 Census of Agriculture, Census Highlights, https://www.agcensus.usda.gov/Publications/2012/Online_Resources/Highlights/ (accessed May 2, 2016), and U.S. Department of Agriculture, Economic Research Service, "Genetically Engineered Varieties of Corn, Upland Cotton, and Soybeans, by State and for the United States, 2000-15," July 2015, <http://www.ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-us.aspx> (accessed May 2, 2016).

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food. Such a label communicates the process by which the food was developed and has nothing to do with its nutrition or safety.¹⁴ This compelled speech may very well involve First Amendment implications.¹⁵

■ **Legitimizes bad science.** The government, by requiring a label, would be conveying to consumers that there is something wrong with genetic engineering. This is exactly the opposite of what the U.S. Food and Drug Administration has

14. U.S. Food and Drug Administration, "Guidance for Industry: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Derived from Genetically Engineered Plants," November 2015, last updated December 3, 2015, <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm059098.htm> (accessed April 29, 2016).

15. See, for example, State of Vermont, Office of the Attorney General, William H. Sorrell, "GE Food" web page, <http://ago.vermont.gov/hot-topics/ge-food-litigation.php> (accessed April 29, 2016); Andrew Kloster, "Vermont Lawsuit a Test Case for GMO-Labeling Laws and the First Amendment," Heritage Foundation *Legal Memorandum* No. 166, November 24, 2015, <http://www.heritage.org/research/reports/2015/11/vermont-lawsuit-a-test-case-for-gmo-labeling-laws-and-the-first-amendment> (accessed April 29, 2016); and Robert Hahn and John Dillard, "Mandated Labeling for Genetically Engineered Foods: Vermont's Legislation Implicates the First Amendment," Washington Legal Foundation *Legal Backgrounder*, Vol. 29, No. 14 (May 23, 2014), http://www.wlf.org/upload/legalstudies/legalbackgrounder/052314LB_Hahn.pdf (accessed April 29, 2016).

concluded.¹⁶ Major scientific organizations from the World Health Organization to the National Academy of Sciences agree that genetically engineered foods for sale are safe.¹⁷ This problem exists regardless of how the information is conveyed, whether on a package or through a bar code.

- **Undermines a critical technology.** Mandatory labeling would likely have a negative effect on genetic engineering and perpetuate myths surrounding genetically engineered food that could harm its development.
- **Hurts agriculture.** Genetic engineering is widely used in agriculture. Genetically engineered crops include alfalfa, canola, corn, cotton, papaya, soybeans, squash, and sugar beets.¹⁸ About half of U.S. cropland (169 million acres) was used to grow genetically engineered corn, cotton, and soybeans in 2013.¹⁹ Policymakers should be aware of the harm that labeling would create for farmers and states that grow a significant amount of genetically engineered crops, as well as for consumers. Table 1 shows the top corn, cotton, and soybean-growing states along with the percentage of those crops that are genetically engineered and the sales of those crops.
- **Creates a dangerous precedent.** If this type of information must be disclosed, where will the line be drawn on what other information must be disclosed? Special-interest groups, for example, would seek to use packaging to convey certain information to push their agendas. One only needs to look to the recent Dietary Guidelines process to see how environmental interests use food policy to push their agenda; the Dietary Guidelines Advisory Committee considered

factors like sustainability and global warming in recommending what people should eat.²⁰

A Federal Mandate Is the Wrong Approach

State or federal mandatory labeling of genetically engineered food is not a solution to a real policy problem. Regrettably, the Vermont law is putting pressure on some Members of Congress to take action, and out of desperation, they could pass something even worse than what was proposed in the failed Senate bill.

Whether it is appropriate for Congress merely to preempt states and block Vermont's law, as the House proposed, involves the complicated question of federal preemption. There is no magic answer. There is a strong preemption argument, though, for the House approach. Its solution would address any patchwork of state laws and ensure that governments, whether state or federal, are not forcing companies to mislead consumers based on flawed science. In addition, the federal government would be creating less, not more, government by prohibiting labeling requirements; it would be promoting freedom by not compelling misleading speech instead of limiting speech.

If Congress, however, preempted states while creating its own federal mandatory standard, such a law would address the patchwork problem but not the other problems associated with mandatory labeling. Congress would just be trading the problems of state mandatory labeling for the problems of federal mandatory labeling.

There are times, such as now, when it is critical to know what should not be done. There should be no federal mandatory labeling or de facto mandatory labeling scheme; if a solution that does not undermine genetically engineering is not identified, then no action is the best course.

16. U.S. Food and Drug Administration, "Consumer Info About Food from Genetically Engineered Plants," and U.S. Food and Drug Administration, "Guidance for Industry: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Derived from Genetically Engineered Plants."

17. Genetic Literacy Project, "GLP Infographic: International Science Organizations on Crop Biotech Safety," August 27, 2013, <https://www.geneticliteracyproject.org/2013/08/27/glp-infographic-international-science-organizations-on-crop-biotechnology-safety/> (accessed April 29, 2016).

18. International Service for the Acquisition of Agri-Biotech Applications, "ISAAA Brief 49-2014 ["Global Status of Commercialized Biotech/GM Crops: 2014"]: Executive Summary," March 2014, <http://isaaa.org/resources/publications/briefs/49/executivesummary/default.asp> (accessed April 29, 2016).

19. Jorge Fernandez-Cornejo, Seth Wechsler, Mike Livingston, and Lorraine Mitchell, *Genetically Engineered Crops in the United States*, U.S. Department of Agriculture, Economic Research Service, *Economic Research Report* No. 162, February 2014, <http://www.ers.usda.gov/media/1282246/err162.pdf> (accessed April 29, 2016).

20. Daren Bakst, "Federal Dietary Panel Pushes Junk Food Taxes, Being Green," *The Daily Signal*, February 20, 2015, <http://dailysignal.com/2015/02/20/federal-dietary-panel-pushes-junk-food-taxes-green/> (accessed April 29, 2016).

Conclusion

If the federal government were to legitimize mandatory labeling, such a short-term focused move could set the stage for more expansive labeling requirements that have little to do with food. Policymakers need to get it right instead of doing something that could well have long-term and possibly permanent repercussions for genetic engineering, farmers, and consumers, both in the United States and around the world.

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