

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

GROCERY MANUFACTURERS)	
ASSOCIATION, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	Case No. 5:14-cv-00117-CR
WILLIAM H. SORRELL, in his official capacity))	
as the Attorney General of Vermont, <i>et al.</i> ,)	
)	
<i>Defendants,</i>)	
and)	
)	
VERMONT PUBLIC INTEREST RESEARCH))	
GROUP and CENTER FOR FOOD SAFETY,))	
)	
<u><i>Proposed Intervenor-Defendants.</i></u>)	

DECLARATION OF ANDREW KIMBRELL IN SUPPORT OF VERMONT PUBLIC INTEREST RESEARCH GROUP AND CENTER FOR FOOD SAFETY’S MOTION TO INTERVENE AS DEFENDANTS

I, Andrew Kimbrell, do hereby declare as follows:

Introduction

1. I am the Executive Director and Founder of the Center for Food Safety (CFS). I have personal knowledge of the matters stated herein and, if called as a witness, could and would competently testify thereto.

2. CFS is a nationwide consumer and environmental organization whose mission centers on furthering the public’s right to know how their food is produced, through labeling and other means. CFS is a tax-exempt, nonprofit membership organization with offices in Washington, D.C.; San Francisco, California; Portland, Oregon; and Honolulu, Hawai‘i. CFS represents more than 500,000 consumer and farmer members across the country, including thousands of Vermont residents.

3. I founded CFS in 1997 and since have served as a member of the CFS Board of Directors and helped create its organizational purpose and goals. In creating CFS, I sought to establish a nonprofit organization that protects public health and the environment from the harms of industrial agriculture. Chief among my concerns were pollution from pesticides, water and air contamination from factory farming, and biological and ecosystem contamination from genetically engineered organisms. Accordingly, CFS's program activities are focused in several areas, including the environmental, public health, and economic impacts of the development and commercialization of agriculture and food processing technologies. Principal among these activities are analyses and actions to mitigate the impact of genetically engineered (GE) agricultural products on public health and the environment, and opposition to the use of toxic chemicals and pesticides in agriculture.

Interests

4. The other major pillar of CFS's mission is the public's fundamental right to know: the protection and furtherance of transparency in our food and agricultural system. In particular, as discussed in detail below, CFS has worked at the forefront of the issue of genetically engineered foods and GE labeling for nearly two decades, at both the federal and state levels. CFS has a major program area specific to GE foods and labeling, and numerous CFS staff members—program, policy, scientific, legal, outreach, campaign—whose work encompasses GE food and labeling.

5. CFS takes a multi-faceted approach in pursuing its mission, utilizing legal, political, and grassroots strategies, including public and policymaker education, outreach, and campaigning. For instance, CFS disseminates a wide array of informational materials to government agencies, lawmakers, nonprofits, and the general public regarding the adverse

effects of industrial food production—such as genetically engineered agricultural products and pesticides—on human health, the environment, and farmers. These educational and informational materials include, but are not limited to, news articles, videos and other multimedia, policy reports, white papers, legal briefs, press releases, newsletters, product guides, action alerts, and fact sheets.

6. Similarly, CFS disseminates a wide range of educational and informational materials on transparency in food production, and specifically on the labeling of genetically engineered food. These educational and informational materials include, but are not limited to, news articles, videos and other multimedia, policy reports, white papers, legal briefs, press releases, newsletters, product guides, action alerts, and fact sheets.

7. For example, in 2007, I authored and CFS staff edited the book *Your Right to Know: Genetic Engineering and the Secret Changes in Your Food* (Earth Aware Press, 2007). More generally, our CFS website is a universe of information on the specific issue of GE food and GE labeling. We have many free resources the public can read and download, such as: CFS factsheets on GE food labeling; GE food labeling frequently asked questions; CFS “true food member” newsletters on GE food labeling; staff blogs on GE food labeling; citizen lobbying toolkits for GE food labeling legislation; polling showing U.S. citizens overwhelmingly want GE food labeling; economic studies debunking increased food cost allegations associated with GE labeling; national and international maps showing established GE food labeling laws and current active labeling legislation; grocery store shopping guides and smart phone applications for GE foods; GE food labeling “take action” informational alerts; and informational GE food labeling

videos.¹ CFS regularly sends out action alerts to its members, encouraging them to participate in the legislative or agency rulemaking notice-and-comment process, or to submit letters to government officials related to GE labeling.

8. In addition to this body of outreach and campaign work, over the past decade-plus we have also worked closely with dozens of states legislatures and leaders in U.S. Congress on GE food issues and GE food labeling legislation. CFS has been committed to pursuing mandatory GE labeling across the country for over a decade in an effort to promote transparency in the marketplace.

9. To this end, CFS has also long worked on GE labeling at the state level, in dozens of states. CFS has engaged in grassroots lobbying in support of numerous GE labeling bills and ballot initiatives across the country, informing its members in these states how to get involved and support such efforts. CFS also tracks the progress of state GE labeling legislation across the country and updates its over 500,000 members. For example, we determined that in 2013 and 2014, there were over seventy legislative bills introduced in at least thirty states across the country. Thirty-five labeling bills were introduced in twenty states in 2014 alone.

10. CFS staff provides written and oral testimony to these state legislatures and state legislative committees in support of GE labeling bills, and otherwise provided legal and policy support, analysis, and expertise for these bills. In 2013 and 2014, states of particular focus and testimony included but were not limited to California, Hawaii, Maryland, New York, Oregon, Pennsylvania, and Washington. In 2013, CFS similarly assisted in the successful passage of GE food laws in Connecticut and Maine.

¹ See Ctr. for Food Safety, *GE Food Labeling*, <http://www.centerforfoodsafety.org/issues/976/ge-food-labeling>.

11. In addition, CFS has co-authored and been part of the leadership steering committee for three state ballot initiatives on GE food labeling legislation in California (2012), Washington (2013), and currently Oregon (2014).

12. As in other states, in Vermont for the past several years CFS has assisted in its legislative efforts, working closely with Vermont partner groups like Vermont Public Interest Research Group (VPIRG), and providing policy and scientific expertise as well as grassroots campaign support. CFS legal staff provided input and feedback to both the state- and locally-based organizations like VPIRG as early as December 2011. CFS submitted its first written testimony to the state on March 13, 2012, to the House Committee on Agriculture, on the introduced GE labeling legislation, Bill 722. Also since at least 2012, CFS legal staff has similarly closely partnered with Vermont Law School's Environmental and Natural Resources Law Clinic in providing legal counsel during the Vermont legislative process, answering questions, providing suggestions, and undertaking analyses regarding the GE labeling legislation. Throughout, CFS provided policy, scientific, and legal support during the legislative process of Act 120 and its predecessor legislation. CFS also submitted written legal testimony in support of its passage. CFS published numerous public statements and blog posts in support of Act 120.

13. Similarly at the federal level, CFS staff often meets with congressional leaders to discuss the issue and provide input and expert testimony to policymakers on GE labeling. This longstanding work has included providing Congress with expertise, input, and support for numerous federal labeling bills, including most recently H.R. 1699/S. 809, the Genetically Engineered Food Right-To-Know Act (introduced April 24, 2013). Over the past year CFS has led a grassroots coalition of organizations to engage public participation on the labeling issue—

encouraging them to support their lawmakers in co-sponsoring the Genetically Engineered Food Right-To-Know Act—and to directly educate members of Congress about the topic.

14. CFS is also working with allies in Congress to defeat recently introduced legislation that seeks to preempt states from requiring GE food labeling as in Act 120, known as the “DARK” Act (Deny Americans their Right to Know). CFS is coordinating a national campaign to stop this legislation, including sending out action alerts to the public, meeting with members of Congress, and organizing likeminded organizations and companies to engage Congress on this issue.

15. In addition, in 2011, CFS drafted and filed a formal legal rulemaking petition with the Food and Drug Administration (FDA), on behalf of over 650 companies and organizations calling on the FDA to require the mandatory labeling of GE foods for all Americans. Since CFS’s petition was filed, over 1.4 million people have submitted comments in support of it.

16. As discussed above, CFS provides significant oversight of governmental activities surrounding GE products and transparency. As part of this, when necessary, CFS engages in public interest litigation to address the impacts of industrial food production on its members, public health, the environment, and the public interest. This includes public interest litigation over the adverse impacts of genetically engineered crops.²

² See, e.g., *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010); *Ctr. for Food Safety v. Vilsack*, 718 F.3d 829 (9th Cir. 2013); *Center for Food Safety v. Vilsack*, 502 Fed. App’x 647 (9th Cir. 2012); *Ctr. for Food Safety v. Vilsack*, 636 F.3d 1166 (9th Cir. 2011); *Ctr. for Food Safety v. Salazar*, 900 F. Supp. 2d 1 (D.D.C. 2012); *Ctr. for Food Safety v. Salazar*, 898 F. Supp. 2d 130 (D.D.C. 2012); *Grant v. Vilsack*, 892 F. Supp. 2d 252 (D.D.C. 2012); *Ctr. for Food Safety v. Vilsack*, 734 F. Supp. 2d 948 (N.D. Cal. 2010); *Delaware Audubon Soc’y v. Dep’t of Interior*, 612 F. Supp. 2d 442 (D. Del. 2009); *Ctr. for Food Safety v. Vilsack*, No. C 08–00484 JSW, 2009 WL 3047227 (N.D. Cal. Sept. 21, 2009); *Geertson Seed Farms v. Johanns*, No. C 06–01075 CRB, 2007 WL 518624 (N.D. Cal. Feb. 13, 2007); *Int’l Ctr. for Tech. Assessment v.*

17. This specifically includes assisting in the defense of state and local governments' efforts to provide transparency and public disclosure of genetically engineered foods. For example, most relevantly, CFS is currently an Intervenor-Defendant and counsel in *Syngenta et al. v. County of Kauai*, a challenge by several pesticide companies to the County of Kauai's 2013 ordinance which requires public disclosure of genetically engineered crop planting and intertwined significant pesticide spraying on that island. *See* Order Granting Mot. Intervene, No. Civ. 14-00014BMK, 2014 WL 1631830 (D. Haw. Apr. 23, 2014).

Injury

18. Accordingly, as the above-summarized organizational body of work and interests illustrate, CFS would be severely and particularly injured by any decision in favor of Plaintiffs' legal challenge to Act 120. CFS has championed the GE labeling issue across the country since the organization's inception. CFS vigorously supported the passage of Act 120, working closely with its state-based allied group VPIRG and the Environmental and Natural Resources Law Clinic of Vermont Law School during the legislative process. Further, in addition to in-state effects, the Court's decision will likely have national ramifications for GE labeling, since this case may raise legal issues of first impression. As such, an adverse decision for Vermont would potentially damage CFS's efforts to protect the public's right to know in other states and nationally.

19. In addition to CFS's core organizational interests in upholding Act 120, our members' personal interests are directly related to the successful implementation of Act 120. Our over half a million nationwide members care a great deal about whether or not their food is

Johanns, 473 F. Supp. 2d 9 (D.D.C. 2007); *Ctr. for Food Safety v. Johanns*, 451 F. Supp. 2d 1165 (D. Haw. 2006).

genetically engineered, and believe that all Americans should have the right to know and choose for themselves what they purchase and feed their families, just like the citizens of other countries across the globe, including Europe, Japan, Australia, India, Russia, and China. Because the U.S. federal government has thus far failed to require the labeling of genetically engineered foods, our members believe states like Vermont should require such disclosure and transparency, in order to prevent consumer deception and confusion, prevent potential risks to human health, protect religious practices, and protect the environment.

20. Thousands of CFS's consumer and farmer members live in Vermont. These members have numerous direct interests in the labeling of genetically engineered foods, including but not limited to, furthering public health and food safety, protecting the environment and farmers, preventing confusion and deception, and protecting religious and ethical beliefs.

21. We also have thousands of members in Maine and Connecticut, other states that have passed GE food labeling laws, but that have so-called "trigger clauses" in them, that require other nearby states to pass similar laws, including Vermont's Act 120. Accordingly those members' efforts and interests in their own states' laws would be injured by any revocation of Act 120 in Vermont.

22. Our members have direct and specific interests in protecting Act 120 from this industry attack, because Act 120 establishes a crucial system by which these members can make informed decisions about the potential health effects of the food they purchase, consume, and feed their families, and by which, if they choose, they can avoid such foods.

23. Our members believe such potential health risks from GE foods are present because, among other reasons, as the State of Vermont concluded in the Findings of Act 120, the FDA does not distinguish between GE foods and those developed by traditional methods, and

does not independently test the safety of GE foods, nor make any finding of their safety. Rather the sum total of FDA's food safety oversight of GE foods is a private consultation with industry, and even that is voluntary. In fact, in the U.S. we do not have a law specifically focused on the oversight of GE organisms, or their labeling. FDA does not even have any regulations addressing it; it only has addressed the GE labeling issue in a 1992 policy statement, over twenty years ago. Further, because there is yet unfortunately no mandatory labeling of GE foods, our members believe health professionals have no means of tracking if these foods are causing adverse health effects. Our members have the right protected by Act 120, to choose whether to purchase foods that are produced through genetic engineering.

24. Our members also have direct and specific interests in protecting Act 120 from this industry attack, because Act 120 establishes a crucial system by which these members can make informed decisions about the environmental effects of the food they purchase, consume, and feed their families, and by which, if they choose, they can avoid such foods.

25. This is because, among other reasons, our members know that 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. Our members believe 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. Our members believe that GE crops have also reduced biodiversity through the transgenic contamination of local varieties and native flora. Our members deserve the choice protected by Act 120, to choose whether to purchase foods whose production can lead to such environmental harms.

26. Our members also have direct and specific interests in protecting Act 120 from this industry attack, because Act 120 establishes a crucial system by which these members can make informed decisions about the agronomic and economic effects on sustainable agriculture of the food they purchase, consume, and feed their families, and by which, if they choose, they can avoid such foods.

27. This is because our members know that GE foods can contaminate conventional and organic crops, affecting the marketability of those crops. Organic systems prohibit, and organic consumers reject, genetic engineering. Yet organic crops are threatened by GE contamination from neighboring fields. In addition, export markets can be and have been jeopardized by contamination from GE crops. This is because over sixty countries—including the EU, Russia, Japan, and China—and many key U.S. trading partners have laws requiring the labeling of GE foods, and will reject GE-contaminated foods. Our members believe that such transgenic contamination is also an irreparable environmental harm reducing biodiversity and causing farmers to lose their fundamental right to sow the crops of their choice. Even the risk of contamination harms conventional and organic farmers, since they must shoulder the burden of measures to try to minimize the risk of such contamination, such as setting up buffer zones and DNA testing of their own crops. They believe that mandatory identification of foods produced with genetic engineering can be a critical method of preserving the economic value of exports or domestically sensitive markets with restrictions on GE foods. Requiring labeling of GE foods as in Act 120 will help protect organic and non-GE products from contamination by increasing identification of GE foods through the food production process, thereby reducing the risk of contamination. Our members would be injured by the loss of labeling that would allow them to know if they were purchasing GE products that cause harm to sustainable agriculture interests.

28. Our members also have significant interests in avoiding being deceived and confused by food that is produced through genetic engineering but not labeled. Absent Act 120, multinational food companies, such as those represented by the Plaintiff trade groups, are not required to label foods produced through genetic engineering, despite the fact that they are required to and do label such foods in dozens of other countries around the globe. Although the federal government has had a voluntary program providing guidelines for the labeling of GE foods for over a decade, not a single U.S. corporation currently so labels voluntarily. Accordingly, without mandatory labeling, it is difficult to impossible for consumers to ascertain reliably whether foods they purchase and eat are genetically engineered. As a consequence, polling shows that consumers are under incorrect assumptions about whether the food they purchase is genetically engineered. Act 120 simply requires that foods that are produced using genetic engineering be labeled as such, providing consumers with information about the foods they purchase that is currently hidden. Thereby, as Vermont concluded in the Findings of Act 120, labeling reduces consumer deception and confusion about the foods consumers purchase. Our members would be severely injured by the loss of informed decision making that Act 120 provides.

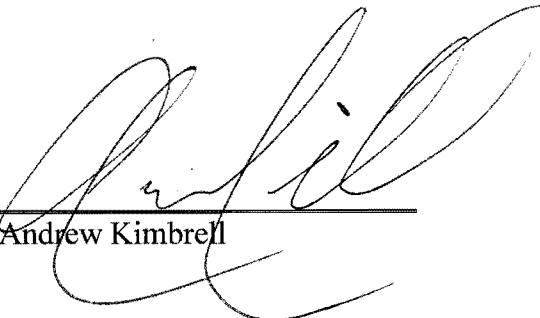
27. Our members also seek to avoid being deceived and confused by food that is genetically engineered and yet labeled as “natural.” As explained in the definitions of Act 120, genetic engineering involves the mixing of species and engineering of genes that would never occur in nature, and as such the labeling of such foods as “natural” or with similar terms is inherently misleading, confusing, deceptive, and in conflict with the common sense, general understanding that genetic engineering is not natural. Our members would be injured by a loss of Act 120’s protection against such misleading labeling.

28. Our members' interests also include making informed decisions that Act 120 will provide, in protection and furtherance of their ethical, moral, and religious beliefs, and dietary restrictions. Without mandatory disclosure, our members may unknowingly violate their dietary or religious beliefs.

29. In sum, upholding the validity of Act 120 and ensuring the Act's successful implementation is crucial to CFS's organizational interests and the interests of its members.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed on 6/27/2014 in San Francisco, CA



Andrew Kimbrell