Negative Brief: Safe and Accurate Food Labeling Act of 2015

By Eric Meinerding

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NEGATIVE PHILOSOPHY/OPENING QUOTES

What is the food industry trying to hide?

Jeff Daniels 2015. (Coordinating Producer at CNBC). “GMOs: Congress may block states from requiring labeling.” July 22nd, 2015. <http://www.cnbc.com/2015/07/22/gmos-congress-may-block-states.html> (brackets added)

"Quite frankly, it makes me nervous when I hear from some in the industry who keep pushing back hard against labeling," [Massachusetts Rep. Jim] McGovern told the committee before the panel's vote. "It's like, 'What are they trying to hide?' "

To protect consumers, the SAFE act cannot be passed

Jonathan Emord, Peter Arhangelsky, and Bethany Kennedy 2015. (Constitutional and Administrative lawyers from the Emrod and Associates law firm in Washington D.C.). “LEGAL ANALYSIS OF H.R. 1599: AN ACT TO PREEMPT STATE GMO DISCLOSURE LAWS” (Ellipses in original) August 7th, 2015. <https://www.organicconsumers.org/sites/default/files/downloads/2015-8-7_-_legal_analysis_of_h_r_1599.pdf>

To prevent consumer deception regarding whether a food is natural or was produced using genetic engineering, and to ensure that consumers can exercise informed choice at the point of sale and that the FDA receives adverse event reports for genetically engineered foods, SAFLA (H.R. 1599) must not become law.

Americans before Industry

Alex Law 2015 (Former Strategy Consultant at IBM and candidate for Congress in New Jersey). ‘The DARK Act Makes Absolutely No Sense, And Here’s Why.” September 9th, 2015. <http://www.huffingtonpost.com/alex-law/the-dark-act-makes-absolu_b_8145824.html>

GMO means Genetically Modified Organism, and in this instance, is being used to describe agricultural products that have been genetically modified. There is a debate over whether GMOs are good or bad for our health, but that isn’t what this bill is about (incidentally, I don’t think there is compelling evidence that GMOs are always good or always bad). This bill is about the consumer’s right to know whether or not what they are eating contains GMOs. It is a pretty reasonable request for a person to have as much information as possible about the food they are feeding their children so that they can make a decision based on their personal values whether or not they want it. There is a fear from food manufacturers that disclosing that they use GMO foods will. A. Increase costs   
B. Decrease sales. Part B of that fear may very well be accurate, but consumers should be entitled to know what they are feeding their families more than companies like Monsanto are entitled to gratuitous profits. To be clear, even if they disclose that they are using GMOs in their food, companies will STILL make a whole lot of money.

INHERENCY.

Labeling Required. Many labels are already required and produced without harm.

Gary Hirshberg 2015. (Chairman and Founding Partner of Just Label It. Chairman and Founder of Stonyfield Organic foods) July 21st, 2015. <http://www.huffingtonpost.com/gary-hirshberg/mandatory-gmo-labeling--i_b_7841144.html>

The crossfire on whether or not to require mandatory labeling of GMOs has become so heated and partisan that it’s hard to discern the facts from rhetoric. The latest volley was last week’s [Slate](http://www.slate.com/articles/health_and_science/science/2015/07/are_gmos_safe_yes_the_case_against_them_is_full_of_fraud_lies_and_errors.html) essay that challenged labeling proponents’ lack of substantive proof that GMOs are unsafe or unhealthy. Author William Saletan raises many valid points, but equally fails to address the hyperbole and enormous gaps between the promise and actual performance of agricultural biotechnology. But beyond this imbalance, he entirely misses the fact that there is a long history of government-enacted labeling disclosures that have nothing to do with safety concerns. There are no unique risks associated with orange juice “from concentrate” compared to fresh juice, or from “wild caught” vs. farmed fish, but both require labeling so that consumers can choose. Most content on food labels is government mandated, marketing oriented, or intended to inform consumers about information that people just want to know.

HARMS / SIGNIFICANCE

1. No violation of “science” in the labeling campaign

It’s our Right to Know, regardless of what science determines about safety

Gary Hirshberg 2015. (Chairman and Founding Partner of Just Label It. Chairman and Founder of Stonyfield Organic foods) July 21st, 2015. <http://www.huffingtonpost.com/gary-hirshberg/mandatory-gmo-labeling--i_b_7841144.html>

Responsible advocates are not demanding mandatory GMO labeling because they are unsafe; we are demanding labeling because people want, and have a right to know how our foods are grown. [Just Label It](http://www.justlabelit.org/) and other responsible labeling proponents have never argued that science has proven GMOs to be unsafe, although we have and will continue to make the case for more in-depth, independent science using state-of-the-art methods to be as sure as possible that they are safe. But while scientific questions persist over the safety of today’s GMO crops, the now sharply upward trajectory in the amount of herbicide needed to bring most GMO crops to harvest on every continent on which GMO, herbicide-tolerant crops have been planted, is deeply worrisome.

Safety Irrelevant. Even if GMOs are 100% safe, they should still be labeled.

Bruce Pardy JD 2016. (Professor of Law at Queen’s University in Ontario Canada). “Not Good or Bad but Different: Free Markets, Subjective Preferences, and Labels for Genetically Modified Foods.” April 19th, 2016. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2767067>

For the sake of the argument, I will assume these risks and problems away, and take as given the claim that the risks of GM foods are minor, not established, or less important than the benefits. These issues are irrelevant to the question of labeling. One of industry’s main objections to GMO labelling is the contention that the public misunderstands the science of GM foods, and incorrectly believes that GM foods pose health risks. Therefore, the argument goes, it would be inappropriate to label GM foods because consumers would inappropriately choose not to buy them.

Science irrelevant to the GMO-label debate

Bruce Pardy JD 2016. (Professor of Law at Queen’s University in Ontario Canada). “Not Good or Bad but Different: Free Markets, Subjective Preferences, and Labels for Genetically Modified Foods.” April 19th, 2016. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2767067>

Markets do not depend on rational decisions. The validity of buyer choices is not subject to scientific confirmation. Consumers have the autonomy to make judgments that, in the eyes of manufacturers, are irrational. External forces, such as advertising, nutritional information, social norms and family traditions, may influence how buyers arrive at personal measures of value, but no one else is in a position to decide that matter for them. Producers of GM foods and their supporters may legitimately attempt to influence consumers’ preferences by providing evidence about risks and benefits, but ultimately the customer is always right.

Multitude of reasons for a Right to Know

Bruce Pardy JD 2016. (Professor of Law at Queen’s University in Ontario Canada). “Not Good or Bad but Different: Free Markets, Subjective Preferences, and Labels for Genetically Modified Foods.” April 19th, 2016. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2767067>

People have dozens of valid reasons for wanting to know whether their food is from genetically engineered crops. Some are grounded in religious or ethical views. Others reflect concern over the long-term consequences of corporate control over both seeds and the food supply. Yet others legitimately believe that there has been inadequate independent testing of GMOs for health and safety.

2. Free Markets Unobstructed.

Labeling requirements don’t damage free markets.

Prof. Bruce Pardy JD 2016. (Professor of Law at Queen’s University in Ontario Canada). “Not Good or Bad but Different: Free Markets, Subjective Preferences, and Labels for Genetically Modified Foods.” April 19th, 2016. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2767067>

Labeling requirements for GM foods are not inconsistent with free markets. What makes a market free is the nature of its rules rather than whether it has rules at all. Compulsory food labeling is compatible with free markets because they are neutral, universal rules that apply to all comparable transactions. Labeling requirements are consistent with competition, voluntary contracts and the operation of markets as dynamic, undirected systems. GM foods owe their existence to patent rules that limit their use, thereby restricting competition. Without such rules, they would likely not exist. Their advocates are hardly in a position to maintain that governments should not impose rules.

3. No harm from labeling

GM labeling is just like labeling other ingredients

Prof. Bruce Pardy JD 2016. (Professor of Law at Queen’s University in Ontario Canada). “Not Good or Bad but Different: Free Markets, Subjective Preferences, and Labels for Genetically Modified Foods.” April 19th, 2016. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2767067>

Debate about mandatory labeling is apt to slide into debates over other aspects of GM foods that are not relevant to the question of labels. Whether GM foods should be labelled does not depend on whether they are safe or dangerous, whether their social benefits outweigh their social risks, or whether biotechnology should be promoted or prohibited. The rationale for mandatory labeling of GM foods is the same as the rationale for labeling all ingredients: disclosure of the identity of the good to be purchased. Distinguishing between ingredients ultimately depends upon the genes and traits that define them. GM foods are designed to have different genes and traits, and should be labeled accordingly.

Disputed Ingredients Labeled. Science surrounding most foods are inconclusive, labels allow the customer to choose.

Bruce Pardy JD 2016. (Professor of Law at Queen’s University in Ontario Canada). “Not Good or Bad but Different: Free Markets, Subjective Preferences, and Labels for Genetically Modified Foods.” April 19th, 2016. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2767067>

Are soybeans good for you? The answer to this question is disputed. Thanks to food labeling requirements, each consumer can decide this question for himself. Since the purpose of the label is to disclose what is in the product, all ingredients are listed in descending order of predominance by weight regardless of whether they are considered to be healthy or unhealthy. Soybeans are not listed on labels because they are beneficial or hazardous, but because they are present.

SOLVENCY

1. Money-driven advocacy

Advocates for HR1599 are deceived by big-money lobbying campaign

Alex Law 2015 (Former Strategy Consultant at IBM and candidate for Congress in New Jersey). ‘The DARK Act Makes Absolutely No Sense, And Here’s Why.” September 9th, 2015. <http://www.huffingtonpost.com/alex-law/the-dark-act-makes-absolu_b_8145824.html>

Those reasons are why this bill makes absolutely no sense. States were trying to protect their consumers by require clear labeling of what went into food products sold to their citizens. Monsanto and friends saw this as a threat to business as usual and decided to spend a bunch of money lobbying Congress and the American public to paint themselves as reasonable and their opponents as hippie-rabble rousing left-wingers. It was cleverly done, but at the end of the day very inaccurate. Campaign contributions are likely why most elected officials that support the bill are supporting it.

2. Conflict of Interest

Bill’s intent blocked: The people making the food will determine if the food is safe

Alex Law 2015 (Former Strategy Consultant at IBM and candidate for Congress in New Jersey). ‘The DARK Act Makes Absolutely No Sense, And Here’s Why.” September 9th, 2015. <http://www.huffingtonpost.com/alex-law/the-dark-act-makes-absolu_b_8145824.html>

This bill preempts states from requiring labeling of GMO food. Further, it prohibits states from preventing often inaccurate “natural claims”. The bill makes it impossible for the FDA to create a national GMO labeling system. It would also mandate the review system for the safety of GMO food to be based on industry science, which means the people making the food will determine if the food is safe.

3. No Environmental Benefits.

Herbicide usage has gone *up* since GMOs were introduced.

Gary Hirshberg 2015. (Chairman and Founding Partner of Just Label It. Chairman and Founder of Stonyfield Organic foods) July 21st, 2015. <http://www.huffingtonpost.com/gary-hirshberg/mandatory-gmo-labeling--i_b_7841144.html>

While proponents promised that GMO crops would reduce pesticide use, they have, in fact, locked farmers into unilateral, chemical and toxin-based pest management systems that are bad for farmers, the environment, and consumers. However, the use of herbicides, a category of pesticides that kill weeds, has explosively increased, according to USDA survey data. Where GMO soybeans and cotton are grown in 2015, overall per acre herbicide plus insecticide use will be close to double the level in 1996 at the dawn of the GMO era.

4. Insufficient Resources

Not enough money allocated in HR1599 to fund its operation

Jonathan Emord, Peter Arhangelsky, and Bethany Kennedy 2015. (Constitutional and Administrative lawyers from the Emrod and Associates law firm in Washington D.C.). “LEGAL ANALYSIS OF H.R. 1599: AN ACT TO PREEMPT STATE GMO DISCLOSURE LAWS” (Ellipses in original) August 7th, 2015. <https://www.organicconsumers.org/sites/default/files/downloads/2015-8-7_-_legal_analysis_of_h_r_1599.pdf>

H.R. 1599 does not authorize appropriations for the FDA or USDA to carry out the statutory mandate, which includes the promulgation of regulations for “natural” claims, and the review or assessment of certain GMO products. The FDA has most recently faced litigation for its failure to implement the Food Safety Modernization Act. The FDA had claimed a lack of funding to achieve those goals. Implementing those regulations requires time and money. The SAFLA will become yet another unfunded administrative obligation which the agency cannot meaningfully enforce absent additional fees on industry or more money from Congress. State enforcement could alleviate the federal enforcement burden, but the SAFLA stripped states of their right to participate through the express preemption clause.

5. Undetectable Hazards.

The FDA will only be able to find issues with GMOs in extreme circumstances

Jonathan Emord, Peter Arhangelsky, and Bethany Kennedy 2015. (Constitutional and Administrative lawyers from the Emrod and Associates law firm in Washington D.C.). “LEGAL ANALYSIS OF H.R. 1599: AN ACT TO PREEMPT STATE GMO DISCLOSURE LAWS” (Ellipses in original) August 7th, 2015. <https://www.organicconsumers.org/sites/default/files/downloads/2015-8-7_-_legal_analysis_of_h_r_1599.pdf>

The FDA has authority under SAFLA to require GMO disclosure where there exists a “material difference in the functional, nutritional, or compositional characteristics, allergenicity, or other attributes between the food so produced and its comparable food.” H.R. 1599, 114th Cong. § 424(A) (2015). But the FDA is unlikely to review (or even detect) the large majority of GMO components, particularly without premarket review or notification requirements for those technologies. As discussed supra, FDA is likely to detect issues with GMO-containing ingredients only under extreme circumstances where there are multiple adverse events of a serious nature.

DISADVANTAGES

1. Consumers’ Rights Violated

GMO’s *are* different from their natural counterparts

Prof. Bruce Pardy JD 2016. (Professor of Law at Queen’s University in Ontario Canada). “Not Good or Bad but Different: Free Markets, Subjective Preferences, and Labels for Genetically Modified Foods.” April 19th, 2016. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2767067>

The purpose of genetically modifying food is to cause it to be different. If it was not meant to have different genes and traits, there would be no need to modify it. GM foods are vaunted as revolutionary in their attributes and indeed unique, thus deserving of patent protection. Yet they also are said to be so ordinary that their identification on labels cannot be justified. These positions are inconsistent. If GM foods are fundamentally the same as their non-modified counterparts, there would be no need to develop them, and certainly little justification for granting proprietary interests over their production.

SAFE Act keeps consumers in the dark by denying the Right to Know

Gary Hirshberg 2015. (Chairman and Founding Partner of Just Label It. Chairman and Founder of Stonyfield Organic foods) July 21st, 2015. <http://www.huffingtonpost.com/gary-hirshberg/mandatory-gmo-labeling--i_b_7841144.html>

Whatever the reason, it is clear that facts and rhetoric will continue to be debated for years to come. In the interim, mandatory labeling of GMO foods will give consumers another option to steer clear of uncertainty and support farming systems and technology more closely aligned with personal values and concerns. This Thursday, Congress will vote on H.R. 1599 the so-called Safe and Accurate Food Labeling Act (colloquially called the [“DARK Act”](http://www.justlabelit.org/dark-act/) for Denying Americans the Right to Know), which deceptively purports to support federal labeling disclosures. But in fact, this bill would effectively block any hopes of American joining the other 64 nations around the world who have instituted mandatory GMO labeling. This bill needs to be stopped so that all interested parties - food companies, farmers, regulators and consumers can sit down at a table and forge a mutually acceptable and responsible mandatory labeling protocol free of hyperbole and judgment that simply allows consumers to vote in the marketplace for the kind of food system we want.

Link: Ignored Populace. Americans have overwhelming supported labels for years

Gary Hirshberg 2015. (Chairman and Founding Partner of Just Label It. Chairman and Founder of Stonyfield Organic foods) July 21st, 2015. <http://www.huffingtonpost.com/gary-hirshberg/mandatory-gmo-labeling--i_b_7841144.html>

And that is the fact that trumps all the others. Despite years of heated and often exaggerated rhetoric on both sides of the GMO labeling debate, poll after poll reveals that the public’s skepticism has remained unchanged and that people just want to know. The latest Mellman polls show the same results as polls taken three years ago — nine in every 10 of Americans want labels on foods containing GMOs so they can make up their own minds.

Link: Food Industry keeping consumers in the dark

Jeff Daniels 2015. (Coordinating Producer at CNBC). “GMOs: Congress may block states from requiring labeling.” July 22nd, 2015. <http://www.cnbc.com/2015/07/22/gmos-congress-may-block-states.html>

"What's clear is that the food industry and agrochemical companies are willing to do whatever it takes to keep consumers in the dark," said Colin O'Neil, director of government affairs for the Center for Food Safety, a consumer group supporting mandatory GMO labeling.’

Advocacy: Right to Know is respected in many other countries

Alex Law 2015 (Former Strategy Consultant at IBM and candidate for Congress in New Jersey). ‘The DARK Act Makes Absolutely No Sense, And Here’s Why.” September 9th, 2015. <http://www.huffingtonpost.com/alex-law/the-dark-act-makes-absolu_b_8145824.html>

This isn’t an issue of whether GMOs are good or bad. This isn’t about natural versus “standard” food production. This is simply an issue about whether or not families should be able to know what is in the food that they buy so they can decide what they want to feed their children. In countries all over the world, people have that ability. It’s time we have it in America too.

Impact: Consumers’ rights taken away

Bruce Pardy JD 2016. (Professor of Law at Queen’s University in Ontario Canada). “Not Good or Bad but Different: Free Markets, Subjective Preferences, and Labels for Genetically Modified Foods.” April 19th, 2016. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2767067>

For the sake of the argument, I will assume these risks and problems away, and take as given the claim that the risks of GM foods are minor, not established, or less important than the benefits. These issues are irrelevant to the question of labeling. One of industry’s main objections to GMO labelling is the contention that the public misunderstands the science of GM foods, and incorrectly believes that GM foods pose health risks. Therefore, the argument goes, it would be inappropriate to label GM foods because consumers would inappropriately choose not to buy them. For example, the U.S. Grocery Manufacturers Association has stated that it opposes mandatory labels for GM ingredients ‘‘because these labels could mislead consumers into believing that ingredients from genetically engineered plants are somehow different or unsafe or unhealthy — in clear contradiction of scientific fact.” The implication of this objection is breathtaking. It suggests that consumers ought not to be allowed to make their own judgments about health and safety because they are too foolish to be trusted, but instead should have such matters decided for them by government and industry. If, once GM foods are labeled, customers decline to buy, the proper market response is the same as for the manufacturer putting salt in its canned beans: decide not to use them. The consumer who wishes to avoid GM foods has a valid preference because it is hers. Whether she has come to her preference from sound information and considered judgment or whim and rumour is her own concern.

2. Free Markets Impaired

Link: Free markets require informed buyers, and labels are essential to the requirements of a free market

Prof. Bruce Pardy 2016. (Professor of Law at Queen’s University in Ontario Canada). “Not Good or Bad but Different: Free Markets, Subjective Preferences, and Labels for Genetically Modified Foods.” April 19th, 2016. <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2767067>

The requirement to disclose ingredients on the labels of food is a rule that protects and enhances competition. It is general (requiring disclosure of the content of goods), equal (applying to all foods sold) and relatively certain (although the current form of the rule in the federal regulation could be improved in this regard). It requires no more than that producers disclose what the buyer is purchasing. The can of beans on the shelf of the supermarket is not a can of beans, but a can of beans, sugar, tomatoes, molasses, pork, corn starch and salt. The requirement to disclose the list of ingredients is neutral. It is required not because the government believes the ingredients inside the can of beans to be good or bad, but because they are there inside the can. Since each brand of beans is subject to the same requirement, the purpose of labelling is not to influence potential purchasers to buy or not to buy any particular brand. Instead, the information enables buyers to compare products and align their purchases with their preferences. Demand goes up for those products that contain ingredients that buyers want. Sellers learn what customers want and respond accordingly.

Link: Markets require rules to function

Prof. Douglas J. Amy 2007 (Professor of Politics at Mount Holyoke College) “Capitalism Requires Government” <http://www.governmentisgood.com/articles.php?aid=13&p=2http://www.governmentisgood.com/articles.php?aid=13&p=2>

Markets, like governments, are very much social constructs. The market is a set of behaviors that is structured by rules, and many of the most important rules have been developed and enforced by government. Without these rules, our prized free-market economy would be a stunted and feeble version of what we see today.

Link: With less information, markets have less efficient allocation of resources

Dr. Erik O. Wright and Prof. Joel Rogers 2009 (Wright – PhD sociology. Rogers - Professor of Law, Political Science, Public Affairs, and Sociology at the *University of Wisconsin*-Madison) “THE CAPITALIST MARKET: HOW IT ACTUALLY WORKS” Aug 2009 <https://www.ssc.wisc.edu/~wright/ContemporaryAmericanSociety/Chapter%204%20--%20the%20market-dilemmas%20--%20Norton%20August.pdf>

It is possible, therefore, to imagine a free market with no government regulations on information. In such a truly free market economy, the quality of information would depend upon the preferences of consumers for good information and their ability to pay for it, the value of reputation to sellers, and the effectiveness of threats posed by private law suits for fraud. This is an imaginable world – and indeed was more or less the way American capitalism functioned in the 19th century – but the average quality of information consumers would get in the market would be much lower in such a world than in one with good state enforced regulations on information. And if the average quality of information is lower, than the allocation of resources generated by such a market would be less efficient.

Impact: Social well-being maximized with efficient allocation

Dr. Sandra Batie 2004 (PhD; professor in Dept. of Agricultural Economics, Michigan State U.) “Efficient Allocation of Resources” <https://msu.edu/course/aec/829/Efficient_Allocation_of_Resources.htm>

An efficient allocation of resources is: That combination of inputs, outputs and distribution of inputs, outputs such that any change in the economy can make someone better off (as measured by indifference curve map) only by making someone worse off (pareto efficiency).

3. States’ Rights Violation.

Link: The SAFE act blocks States’ rights

Jeff Daniels 2015. (Coordinating Producer at CNBC). “GMOs: Congress may block states from requiring labeling.” July 22nd, 2015. <http://www.cnbc.com/2015/07/22/gmos-congress-may-block-states.html>

One of H.R. 1599's critics, Rep. Jim McGovern of the House Agriculture Committee, a Democrat of Massachusetts, said he finds "it ironic that so many of my Republican colleagues espouse state's rights, but the bill before us does just the opposite. It preempts states from establishing their own labeling laws and it would invalidate laws already passed in states like Vermont, Maine and Connecticut."

Impact: Democracy violation. Voters’ will is over-ridden

Jeff Daniels 2015. (Coordinating Producer at CNBC). “GMOs: Congress may block states from requiring labeling.” July 22nd, 2015. <http://www.cnbc.com/2015/07/22/gmos-congress-may-block-states.html>

Vermont Attorney General William Sorrell said the state's mandatory GMO labeling statute is scheduled to go into effect next year, although he conceded some legal challenges remain. When asked about H.R. 1599, Sorrell responded: "What's happening in the House is really at the request of [Monsanto](http://data.cnbc.com/quotes/MON) and the grocery manufacturers. It would be most unfortunate if this powerful food industry has this much clout in the Congress that they can override the desire of Vermont and other states and consumers."

Impact: New ideas lost. State experimentation leads to the spread of new ideas.

**Analysis: We might never know the impact of all the new ideas we could lose by dropping state experimentation**

Prof. Graeme Boushey 2012. (Robert Wood Johnson Scholar in Health Policy Research at the University of Michigan and an assistant professor at the University of California, Irvine. ) Punctuated Equilibrium Theory and the Diffusion of Innovations POLICY STUDIES JOURNAL, January 2012 <http://onlinelibrary.wiley.com/doi/10.1111/j.1541-0072.2011.00437.x/full>

Although federalism makes policy coordination difficult, it also creates opportunities for considerable policy innovation, as municipal, county, and state governments develop new policies to address local concerns. Federalism encourages venue shopping, a process where activists and interest groups strategically exploit the multiple venues of government to secure support for their legislative programs ([Baumgartner & Jones, 2009](http://onlinelibrary.wiley.com/doi/10.1111/j.1541-0072.2011.00437.x/full#b3); [Holyoke, 2003](http://onlinelibrary.wiley.com/doi/10.1111/j.1541-0072.2011.00437.x/full#b21); [Pralle, 2003](http://onlinelibrary.wiley.com/doi/10.1111/j.1541-0072.2011.00437.x/full#b37)). This process increases the number of new ideas entering the political systems and can create conditions where “new ideas or policy images may spread rapidly across linked venues, thus setting in motion a positive feedback process” ([Baumgartner & Jones, 2009](http://onlinelibrary.wiley.com/doi/10.1111/j.1541-0072.2011.00437.x/full#b3), p. 240).

4. Increased Consumer Cost

Link & Impact: SAFLA = higher costs for consumers and merchants from cost of complying with regulations

Jonathan Emord, Peter Arhangelsky, and Bethany Kennedy 2015. (Constitutional and Administrative lawyers from the Emrod and Associates law firm in Washington D.C.). “LEGAL ANALYSIS OF H.R. 1599: AN ACT TO PREEMPT STATE GMO DISCLOSURE LAWS” (Ellipses in original) August 7th, 2015. <https://www.organicconsumers.org/sites/default/files/downloads/2015-8-7_-_legal_analysis_of_h_r_1599.pdf>

SAFLA increases costs for consumers and merchants of GMO-free products by imposing premarket compliance costs on those companies seeking to market products with “GMO-free” or “non-GMO” claims. See H.R. 1599, 114th Cong., § 201 (authorizing the Secretary of Agriculture to charge and collect fees to cover the estimated costs of implementing the SAFLA certification program). The bill appropriates only $2 million dollars to the GMO food certification program, but then contemplates that the balance of funding—likely far in excess of the $2 million initial appropriation—will come from the GMO-free industry. SAFLA also requires businesses to develop supply chain process controls, nongenetically engineered food plans, and recordkeeping practices specific to non-GMO products. The fees assessed under SAFLA Section 201 do not include costs of compliance with those new regulatory obligations. Section 291F(b)(1) authorizes “investigations” of regulated firms to verify the accuracy of information contained in those compliance plans. Administrative officers have power of compulsory process, which includes authority to “require the production of any records required to be maintained under this subtitle…” See H.R. 1599, Section 291F(b)(2)(E)

Link & Impact: SAFLA = decreased market supply and decreased consumer confidence = higher prices for consumers

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SAFLA therefore creates market costs for consumers in two critical ways. First, the bill will likely reduce market supply and increase prices for consumers seeking “non-GMO” foods. Second, the bill reduces the free flow of information deemed material by consumers. In December 2014, according to an Associated Press-GfK consumer poll, forty (40) percent of Americans felt that disclosure of genetically engineered ingredients in foods was extremely important, and sixty-six (66) percent favored mandatory GMO labeling. Limiting information at retail leads to uninformed purchases and a decrease in consumer confidence within the relevant market.

5. Reduced Consumer Choice

HR1599 would reduce availability of GMO-free foods

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Moreover, increased GMO-free prices could depress the market demand for those products, shrinking the GMO-free food industry to a niche product rarely available through larger retail outlets. Notably, Congress’s impetus for the Organic Foods Production Act of 1990 was specifically to support the availability of organic food products. See S. Rep. 101-357 at \*4944 (July 6, 1990). H.R. 1599 is likely to have the opposite effect. In this way, while H.R. 1599 artificially inflates the market for genetically engineered foods by obfuscating the fact that genetically engineered ingredients are in foods, it correspondingly artificially depresses the market for non-GMO foods by establishing costly prior restraints as conditions precedent to the making of GMO free and Non-GMO claims.

SAFLA would reduce GMO-Free industry

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A diminution of the GMO-free market is likely to yield a commensurate increase in the supply of GMO-containing foods, including genetically engineered crops, which increases the likelihood of cross-pollination, another significant threat to the organic food industry. The effects are circular, in part, because an increase in the aggregate environmental presence of GMO-containing crops also increases the costs of production for GMO-free crops as farmers must increase safeguards and controls to maintain a GMO-free crop. Certain states, or political subdivisions thereof, have enacted “GMO-free” zoning laws. But as the number of genetically engineered crops enlarges, those zoning ordinances lose their efficacy. SAFLA therefore imperils those local zoning ordinances, maximizing the disruption of state and local government.

6. Consumer deception

SAFLA will contribute to consumer deception by forcing the omission of important information

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Nearly two-thirds of consumers want GMO-related food disclosures. Whether a food was produced using genetic engineering is thus material to purchasing decisions. Yet SAFLA’s “voluntary” disclosure of GMO-containing foods assures that no GMO manufacturer will disclose information that could potentially influence profit margins. Thus, regardless of whether genetically engineered foods are different from comparable foods, the omission of the material GMO information contributes to consumer deception. See, e.g., 21 U.S.C. § 321(n) (in determining whether a label is misleading, the FDA must consider material omissions). The policies undergirding SAFLA are therefore contrary to public preference, and would promote consumer misinformation and deception.

7. First Amendment Violation

Link: First Amendment guarantees the right to disclose truthful information on food labels

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The First Amendment guarantees the right to disclose truthful and non-misleading information on food labels. See, e.g., Rubin v. Coors Brewing Co., 514 U.S. 476 (1995); Pearson v. Shalala, 164 F.3d 650 (D.C. Cir. 1999). “The party seeking to uphold a restriction on commercial speech carries the burden of justifying it.” Bolger v. Youngs Drug Products Corp., 463 U.S. 60, 71, n. 20 (1983). “This burden is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.” Edenfield v. Fane, 507 U.S. 761, 771 (1993) (citations omitted). First Amendment jurisprudence has focused “not only on the role of the First Amendment in fostering individual self-expression but also on its role in affording the public access to discussion, debate, and the dissemination of information and ideas.” First National Bank of Boston v. Bellotti, 435 U.S. 765, 783 (1978). The government “may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge.” Griswold v. Connecticut, 381 U.S. 479, 482 (1965). The First Amendment “protects the right to receive information and ideas.” Stanley v. Georgia, 394 U.S. 557, 564 (1972). The rights at stake here include the right of businesses to convey truthful information concerning GMOs, but also consumers’ rights to receive that information. That consumers’ right to information is specifically guaranteed under the State initiatives that have required GMO labeling disclosures.

Link: Central Hudson Test

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To prohibit disclosure of truthful and non-misleading commercial speech, such as suppression of label disclosure of genetically engineered ingredients in foods or the absence thereof, the government must meet its burden under intermediate scrutiny—the four factor test first articulated in Central Hudson. See generally Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y., 447 US 557 (1980). The four elements courts evaluate in determining whether government censorship of commercial speech violates the First Amendment are: (1) whether the speech concerns lawful activity and is not misleading; (2) whether the government’s interest in prohibiting the speech is “substantial;” (3) whether the prohibition at issue “directly advances the governmental interest asserted;” and (4) whether the prohibition is “more extensive than is necessary to serve that interest.” Coors, 514 U.S. at 482 (citing Central Hudson, 447 US 557 (1980)).

Brink: SAFLA fails test

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SAFLA does not pass muster under the Central Hudson test. The bill burdens truthful and non-misleading labeling disclosures without a substantial government interest. The bill does not directly advance a substantial government interest because it effects suppression of information that consumers deem material to a purchase, and the prohibitions on GMO claims, including those on comparative GMO/non-GMO claims—here a blanket ban—are far greater than necessary to serve any reasonable government interest. The bill imposes a content-specific prior restraint on speech without suitable guidelines or prompt access to judicial review. That gives federal regulators unbridled discretion in their application of those premarket restraints.

Impact: Civil rights violated

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The effects of SAFLA are far-reaching. The bill strips states’ rights, imposes prior restraints on non-GMO food labeling, engenders consumer confusion, promotes market dysfunction by obscuring information consumers seek at the point of sale, conflicts with state initiatives already enacted, and violates the First Amendment to the United States Constitution. The Bill enacts fees (or taxes) on the use of “non-GMO” or “GMO-free” claims, burdening the GMO-free industry and rendering such products at a competitive disadvantage vis-à-vis genetically engineered food products. For those reasons, explained in further detail below, H.R. 1599 is an unlawful, unworkable, and ill-advised expansion of federal power at the expense of the states, localities, and consumers.