



Office of the Attorney General

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GE Food

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As of August 2, 2016, Attorney General No Longer Enforcing Act 120

Following President Obama's signing of S.764, which establishes a "[National Bioengineered Food Disclosure Standard](#)," the Vermont Attorney General will no longer be enforcing Act 120, Vermont's first-in-the-nation law requiring the labeling of food produced with genetic engineering (GE).

Under the federal law, the U.S. Department of Agriculture has two years to draft regulations to implement the labeling standard. The Vermont Attorney General's office intends to take an active role advocating for the federal regulations to give consumers the same access to information, in plain English, that they had under Vermont's law.

GE Food Labeling Rule

In May 2014, the Vermont Legislature passed Act 120, the law that requires labeling of food produced with genetic engineering (GE). Information for manufacturers, producers, retailers, and consumers who want to learn more about Act 120 and CP 121, the subsequent Rule developed by the Attorney General's Office, can be found on our [GE Food Labeling Rule page](#).

GE Food Litigation

On May 8, 2014, the Vermont Legislature enacted Act 120, which requires manufacturers to label genetically engineered ("GE") foods as such, and prohibits manufacturers from describing GE products as "natural." One month later, on June 12, 2014, Plaintiffs—a collection of trade associations representing food producers—filed suit, naming as Defendants Attorney General Sorrell, Governor Shumlin, Health Commissioner Chen, and Finance Commissioner Reardon.

Recent Developments:

August 5, 2016: The 2d Circuit [ordered](#) dismissal of the appeal based on the parties stipulating that Plaintiffs would withdraw it.

October 8, 2015: [Oral argument](#) on the appeal occurred at 10 a.m. at the 2d Circuit in New York City.

September 8, 2015: Plaintiffs-Appellants filed their [reply brief](#) with the 2d Circuit asking that the Court reverse the District Court's decision denying Plaintiffs' motion

for a preliminary injunction. The matter is now fully briefed at the 2d Circuit and will likely be set for oral argument sometime this fall.

August 31, 2015: Eight states, as well as a broad coalition of scientists, businesses, farmers, environmental advocacy groups, non-profits, consumer advocacy groups, and other organizations filed a total of six briefs with the 2d Circuit as amicus curiae in support of the State and seeking affirmance of the District Court's decision. (See links below.)

August 24, 2015: The State filed its response [brief](#) with the 2d Circuit asking that the Court affirm the District Court's decision denying Plaintiffs' motion for a preliminary injunction. The State's brief argues that the District Court's decision should be affirmed because Plaintiffs are unlikely to succeed on their First Amendment challenge to Act 120 's GE labeling requirement or on their First Amendment challenge to the law's "natural restriction." As an alternative basis for affirming the District Court's decision, the State's brief also argues that Plaintiffs have failed to show irreparable harm from any part of Act 120.

July 1, 2015: The American Chemistry Council, American Beverage Association, Biotechnology Industry Organization, Chamber of Commerce of the United States of America, Agricultural and Commodity Trade Associations, and Washington Legal Foundation filed briefs with the 2d Circuit as amicus curiae in support of Plaintiffs-Appellants and seeking reversal of the District Court's decision. (See links below)

June 24, 2015: Plaintiffs-Appellants filed a [brief](#) with the 2d Circuit asking that the Court reverse the District Court's decision denying Plaintiffs' motion for a preliminary injunction. Plaintiffs-Appellants challenge the District Court's decision that they were unlikely to succeed on their First Amendment challenge to Act 120 's GE labeling requirement and had not shown irreparable harm with respect to the law's "natural restriction."

June 2, 2015: The U.S. Court of Appeals for the Second Circuit set the following briefing schedule for Plaintiffs' expedited appeal: Plaintiffs' opening brief is due June 24, 2015; the State's response brief is due August 24, 2015; Plaintiffs' reply brief is due September 8, 2015; and oral argument will then be scheduled "as expeditiously as possible after the reply brief."

May 6, 2015: Plaintiffs appealed the Court's April 27, 2015 decision to the U.S. Court of Appeals for the Second Circuit.

April 27, 2015: The Court issued its [decision](#) denying Plaintiffs' preliminary injunction motion in its entirety, finding Plaintiffs were not likely to prevail on the merits of their claims or could not establish irreparable harm. The Court also granted in part and denied in part the State's motion to dismiss, rejecting a significant portion of Plaintiffs' Complaint, including claims that Act 120 is preempted by federal law and violates the Commerce Clause. As to Plaintiffs' First Amendment claims, the Court made several rulings favorable to the State. In particular, the Court adopted the Attorney General's argument that the lowest level of scrutiny applies to the disclosure law, whereby the State need only show that the GE label is reasonably related to the State's interests. The Court found that the "safety of food products, the protection of the environment, and the accommodation of religious beliefs and practices are all quintessential governmental interests," as is

the “desire to promote informed consumer decision-making.” Finally, the Court declined to dismiss Plaintiffs’ First Amendment and vagueness challenges to the law’s “natural restriction,” concluding, for the time being, that Plaintiffs had sufficiently stated their claim.

January 7, 2015: The Court held oral argument on the State’s motion to dismiss and Plaintiffs’ motion for a preliminary injunction. The Court then took both motions under advisement.

September 12, 2014: Plaintiffs filed a [motion](#) for a preliminary injunction, seeking an order postponing the effective date of the GE labeling law (which is still nearly two years away) and enjoining the State from taking any action to enforce the law.

August 8, 2014: The State moved to dismiss Plaintiffs’ Complaint in its entirety. In its [motion](#), the State contends that the GE labeling law withstands all five of Plaintiffs’ challenges to its constitutionality and that the Court should dismiss the suit without requiring the State to answer the Complaint or engage in further litigation.

District of Vermont Court Filings:

Below are the major filings and orders of the Court.

[GMA Complaint](#)

[Plaintiffs Motion for Leave to Amend Complaint](#)

[State Response to Plaintiffs Motion for Leave to Amend Complaint](#)

[Plaintiffs Proposed Amended Complaint](#)

[State Answer to Amended Complaint](#)

[VPIRG and CFS Motion to Intervene](#)

[State Response to VPIRG Motion to Intervene](#)

[Plaintiffs Response to VPIRG Motion to Intervene](#)

[VPIRG and CFS Reply in Motion to Intervene](#)

[Plaintiffs Notice of Supplemental Authority](#)

[Decision Denying Motion to Intervene](#)

[State Motion to Dismiss](#)

[Plaintiffs Opposition to Motion to Dismiss](#)

[Plaintiffs Motion for Preliminary Injunction](#)

[State Combined Reply \(Supporting State’s Motion to Dismiss\) and Response \(Opposing Preliminary Injunction\)](#)

[Exhibit A \(Draft GE Food Labeling Rule\)](#)

[Exhibit B \(Dr. Michael Antoniou Declaration\)](#)

[Exhibit C \(Dr. Charles M. Benbrook Declaration\)](#)

[Exhibit D \(Dr. Conrad Brunk Declaration\)](#)

[Exhibit E \(Dr. Jane Kolodinsky Declaration\)](#)

[Exhibit F \(Dr. Andrew Dyke Declaration\)](#)

[Exhibit G \(Jerry Greenfield Declaration\)](#)

[Exhibit H \(Rhonda Miller Declaration\)](#)

[Exhibit I \(Reed Glidden Declaration\)](#)

Amicus Briefs Supporting State Motion to Dismiss and Opposing Preliminary Injunction

[VPIRG and CFS Amicus Brief](#)

[Free Speech for People Amicus Brief](#)

[Vermont Community Law Center Amicus Brief](#)

[Plaintiffs Reply in Support of Their Preliminary Injunction Motion](#)

[Rebuttal Declaration of Dr. Alan McHughen](#)

[State Sur-Reply in Support of Motion to Dismiss](#)

[VPIRG Sur-Reply in Support of Motion to Dismiss](#)

[October 2014 Scheduling Order](#)

[Court Notice of Oral Argument to Occur January 7](#)

[GE District Court Decision](#)

[Plaintiffs Notice of Appeal](#)

[Briefing Schedule for Appeal](#)

[Brief of Plaintiffs-Appellants \(Second Circuit\)](#)

Amicus Briefs Supporting Plaintiffs-Appellants' Appeal and Seeking Reversal

[American Chemistry Council & American Beverage Association](#)

[Biotechnology Industry Organization](#)

[Chamber of Commerce of the United States of America](#)

[Agricultural and Commodity Trade Association](#)

[Washington Legal Foundation](#)

[State Brief \(Second Circuit\)](#)

Amicus Briefs Supporting State and Seeking to Affirm

[Free Speech for People, Public Good Law Center & Consumer Action](#)

[Dr. Ramon J. Seidler, Dr. Jack Heinemann, Dr. David Schubert,](#)

[Dr. Allison K. Wilson, Dr. Jonathan Latham, National Family](#)

[Farm Coalition, Our Family Farms Coalition, Sierra Club &](#)

[Center for Food Safety](#)

[Public Citizen](#)

[Consumers Union, Vermont Businesses for Social](#)

[Responsibility & Ben & Jerry's, represented by EarthJustice](#)

[Connecticut, Maine, Maryland, Massachusetts, Hawaii, Illinois,](#)

[New Hampshire & Washington](#)

[Vermont Public Interest Research Group, Cedar Circle Farm,](#)

[Northeast Organic Farming Association of Vermont & Rural](#)

Vermont, represented by Vermont Law School Environmental
& Natural Resources Law Clinic

Reply Brief of Plaintiffs-Appellants (Second Circuit)

Oral argument (Second Circuit)

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