

Local and State Food Labeling Session Summary

Mark Walters, Partner, Frommer, Lawrence & Haug, LLP, Washington

Dr. Barbara Schneeman, Professor Emerita, University at California

John Dillard, Attorney, OFW Law, Washington, D.C.

Representative John Rusche, M.D., Idaho

David Zepponi, President, Northwest Food Processors Association, Oregon

Moderator: Representative Tara Sad, New Hampshire

This session offered a variety of perspectives on the debate about whether to require labels of genetically engineered foods. Mark Walters presented arguments in favor of labeling, including public support, the goals of current consumer laws, and protection of export markets. He outlined constitutional challenges to labeling laws based on the First Amendment, commerce clause and federal preemption of state laws. Mr. Walters also discussed case in which the U.S. Supreme Court sided against a farmer he represented who was sued by Monsanto for using Round Up ready seeds in violation of the company's prohibition on saving or reusing seeds once the crop is grown.

Dr. Schneeman, a former U.S. Food and Drug Administration official and current professor at the University of California-Davis, discussed FDA's current policy on food labeling. The FDA's approach, which is based the U.S. Food, Drug and Cosmetics Act, generally favors voluntary labeling, so long as the labels are truthful and not misleading. She discussed a number of issues implicated by the current labeling debate, including how to determine what material facts must be listed on a food label, what nutrient content claims require supporting information, and whether labels can describe a method of production (as opposed to the actual product itself).

John Dillard, of OFW Law, discussed the constitutionality of proposed labeling laws in the states. He explained the process courts adopt in determining whether a law violates the First Amendment's right to free speech (which includes the right to refrain from speech) and the dormant commerce clause, which prohibits states from passing laws that benefit their citizens or businesses over those in other states.

Idaho Representative John Rusche, a former pediatrician, provided a medical perspective on whether there are any health risks associated with genetically modified foods. He discussed an American Medical Association's study that found no medical justification for labeling genetically modified foods. Representative Rusche also discussed the two prominent approaches to the issue—the scientific approach based on potential harm and the consumer choice approach that stresses transparency—and offered a potential new approach that would test genetically engineered foods for toxicity and allow voluntary labeling consistent with international trade standards.

David Zepponi, President of Northwest Food Processors Association in Oregon, provided a business perspective on the potentially large impact mandatory labeling would have on the food industry, including increased production costs, consumer prices, and legal exposure for companies. He warned that labeling may cause some companies to leave or be squeezed out of the market.