15-1504-cv

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

GROCERY MANUFACTURERS ASSOCIATION, SNACK FOOD ASSOCIATION, INTERNATIONAL DAIRY FOODS ASSOCIATION, and NATIONAL ASSOCIATION OF MANUFACTURERS,

Appellants.

v.

WILLIAM H. SORRELL, in his official capacity as the Attorney General of Vermont; PETER SHUMLIN, in his official capacity as Governor of Vermont; JAMES B. REARDON, in his official capacity as Commissioner of the Vermont Department of Finance and Management; and HARRY L. CHEN, in his official capacity as the Commissioner of the Vermont Department of Health,

Appellees.

Appeal from the United States District Court
for Vermont, No. 5:14-cv-117-cr
Before the Honorable Christina Reiss

AMERICAN CHEMISTRY COUNCIL AND
AMERICAN BEVERAGE ASSOCIATION'S *AMICUS CURIAE*
BRIEF IN SUPPORT OF APPELLANTS AND REVERSAL

(counsel listed on inside cover)

July 1, 2015

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INTRODUCTION AND SUMMARY OF ARGUMENT[1][2]

There is little dispute that consumers should be advised when the products they use and eat present significant health risks. Nor is there a dispute that the government may compel manufacturers and retailers to provide factual, uncontroversial labeling in connection with significant health risks. But a problem of constitutional proportions arises when labeling is compelled without a science-based determination of risk.

Act 120, which would require the labeling of foods containing genetically engineered (GE) ingredients, does not arise from a science-based health concern. In fact, the United States Food and Drug Administration (FDA) has recognized that foods produced from GE plant varieties do not "in any meaningful or uniform way" vary from non-engineered varieties and do not pose "any different or greater safety concern than foods developed by traditional plant breeding." *FDA, Statement of Policy: Foods Derived from New Plant Varieties*, 57 Fed. Reg. 22984, 22991 (May 29, 1992) (FDA 1992 Statement). The State of Vermont does not

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[1] Pursuant to Federal Rule of Appellate Procedure 29(c)(5) and Second Circuit Local Rule 29.1(b), *Amici* state as follows: (1) neither party's counsel authored the brief in whole or in part; (2) neither party nor their counsel contributed money that was intended to fund preparing or submitting the brief; and (3) no person other than *Amici*, their members or their counsel contributed money that was intended to fund preparing or submitting the brief.

[2] *Amici* have received consent to file this brief from both the Appellants-Plaintiffs and Appellee-Defendant, and as such have authority to make this filing pursuant to Federal Rule of Appellate Procedure 29(a) and Second Circuit Local Rule 29.1.

dispute the FDA's interpretation of the scientific literature or offer its own science-based, human health risk assessment, but nonetheless insists that the safety of GE products is still up for debate.

The nature of this debate is critical. The debate is between those who believe that science must lead the law, and those who do not; between those who believe the government's effort to compel speech must be constrained by the current state of scientific knowledge, and those who believe the government may infringe upon First Amendment rights based on unscientific fears.

The District Court, misconstruing controlling precedent, stepped into the morass, concluding that a "scientific debate" on product safety is a sufficient ground for the government to compel speech. But "scientific debate," left undefined, impermissibly invites compelled speech based on junk science, scientific hypothesis, or pseudo-science.

The District Court's analysis also cannot be reconciled with precedent imposing heightened constitutional scrutiny upon compelled disclosures that are not both "factual and uncontroversial." *Zauderer v. Office of Disciplinary Counsel of Sup. Ct. of Ohio*, 471 U.S. 626, 651 (1985). Act 120's disclosure requirement may be factual, but it is not without controversy.

One reason Act 120's compelled labeling is controversial is its capacity to mislead consumers. Consumers understand that product labels are routinely used to

convey warnings of risk or danger. *See, Int'l Dairy Foods Ass'n v. Boggs*, 622 F.3d 628, 642 (6th Cir. 2010). Thus, the labeling of GE products will inevitably lead consumers to infer, incorrectly, that they are unsafe.

In *Zauderer*, the Supreme Court held that compelled factual disclosures will survive First Amendment scrutiny to the extent the disclosures are directed at reducing consumer confusion. Here, on the other hand, Act 120 introduces confusion where none previously existed. In fact, Act 120 compels sellers to be the source of the confusion, requiring them to be the purveyors of misleading information about their own products.

The District Court looked past the threat of consumer confusion and presumed sellers will take steps to explain their side of the scientific debate to consumers. This logic flips *Zauderer* on its head. Instead of the government compelling speech to protect consumers from deception in the marketplace, the marketplace is called upon to rescue consumers from government induced misinformation.

The District Court also overestimates the ability of sellers to correct misimpressions consumers might form about GE products. Product labels, due to their limited size and limited consumer appeal, are not a place for engaging in a scientific debate about genetic engineering. Moreover, most products lack the

physical space for a label that could unambiguously explain there is no material difference between GE and conventional products.

Once the veneer of "scientific debate" is stripped away from the State's argument, it becomes clear that the impetus for Act 120's labeling requirement is nothing more than what this Court in *Amestoy* described as "consumer interest" or "consumer curiosity." *Int'l Dairy Foods Ass'n v. Amestoy*, 92 F.3d 68, 74 (2d Cir. 1996). Consumer curiosity, however, is not a significant enough interest to compel private speech.

The District Court's ruling should be reversed.

STATEMENT OF INTEREST OF *AMICI CURIAE*

The American Chemistry Council ("ACC") is the nation's premier trade association for chemical manufacturers and is the oldest trade association of its kind. Founded in 1872 as the Manufacturing Chemists' Association, ACC represents industry leaders and innovators who employ the chemical sciences to manufacture consumer products essential to Americans' way of life. This $760 billion industry is a critical component of the national economy, accounting for 12% of all U.S. exports, nearly 800,000 American jobs, and one-fifth of the world's chemical products. As ACC's website explains, the products of chemistry will make it possible to satisfy a growing world population by providing a healthy and plentiful food supply, clean air and water, safe living conditions, efficient and

affordable energy sources, and lifesaving medical treatments in communities around the globe.

The American Beverage Association ("ABA") is the trade association representing the broad spectrum of companies that manufacture and distribute non-alcoholic beverages in the United States, including regular and diet soft drinks, bottled water and water beverages, 100-percent juice and juice drinks, sports drinks, energy drinks, and ready-to-drink teas. Founded in 1919, the ABA represents hundreds of beverage producers, distributors, bottlers, franchise companies, and support industries. ABA's members employ more than 233,000 workers nationwide, generate U.S. sales in excess of $140 billion per year, and regularly participate in food safety initiatives as they apply to and impact beverages and the beverage industry. ABA regularly represents its members in federal and state litigation and rulemakings that relate to the industry's interests.

ACC and ABA (together "*Amici*") regularly appear on behalf of their members before the Second Circuit and other courts in cases that raise significant issues that affect their members, including issues related to compelled commercial speech. *Amici* have a substantial interest in this action because the District Court's holding contradicts Second Circuit precedent that *Amici's* members rely upon, thereby posing a serious challenge to *Amici's* members' ability to predict and respond to regulatory changes in the Second Circuit and across the country.

ARGUMENT

I. "Scientific Debate" is not a Valid Ground for Compelling Product Labels

A. The State lacks scientific evidence that GE products pose a health risk.

The State contends that compelled labeling of GE products under Act 120 is justified by the ongoing "scientific debate" concerning the safety and environmental impact of genetically engineered plants. *Grocery Mfrs. Ass'n v. Sorrell*, No. 5:14-CV-117, 2015 WL 1931142, at *33 (D. Vt., Apr. 27, 2015). What exactly is the nature of this debate? It is easier to describe what the debate is **not**.

The debate is not, truly, about the science. There is no body of scientific evidence from which experts have concluded that GE products pose a risk of harm. Thus, this case can be distinguished from *National Electrical Manufacturers Assoc. v. Sorrell*, 272 F.3d 104, 115 (2d Cir. 2001), which affirmed a Vermont law compelling special labels on mercury-containing light bulbs, noting "Vermont's interest in protecting human health and the environment from mercury poisoning . . . ." *National Electrical* did not describe the health risks of mercury exposure, but those risks – including significant damage to fetal development – are well-established. *See, e.g., White Stallion Energy Ctr., LLC v. E.P.A.*, 748 F.3d 1222,

1231 (D.C. Cir. 2014). Mercury poisoning is a science-based health concern; the concern that GE products might pose a health risk is scientifically unfounded.

Also inapposite is *New York State Restaurant Ass'n v. New York City Board. of Health*, 556 F.3d 114 (2d Cir. 2009). That decision affirmed compelled posting of calorie content information with the goal of supporting "New York's interest in preventing obesity." *Id*. at 134. There is no debate that caloric intake is directly relevant to concerns regarding the complex problem of obesity in that weight gain will occur if calories consumed exceed calories used.

To the extent we understand the nature of the "scientific debate" surrounding genetic engineering, it is a debate without scientific evidence showing a cause and effect. It is a debate that has been manufactured based on speculation and fear. However the debate might be characterized, its existence does not give rise to a state interest sufficient to compel speech on the issue.

The contours of this "debate" are similar to those in *CTIA—The Wireless Ass'n v. City & County of San Francisco*, 827 F. Supp. 2d 1054, 1061 (N.D. Cal. 2011), where the United States District Court for the Northern District of California rejected San Francisco's attempt to compel cellphone retailers to disclose the "risk" that cellphone use might cause adverse health effects. The compelled speech at issue was "a series of factoids [about cellphone radiation], all of which seem[ed] to be literally true." *Id*. at 1060. However, the District Court

recognized (under *Zauderer*) that even truthful, factual information is subject to First Amendment scrutiny, and examined the government's interest in compelling cellphone labeling.

The District Court correctly distilled the government's alleged interest to this question: "Is the mere unresolved possibility that something may (or may not) be a carcinogen enough to justify compelled warnings and compelled recommended precautions by store owners?" *Id*. at 1061. The District Court recognized the "governmental interest . . . in protecting public health and safety," but stressed the "importan[ce] . . . in identifying the [State's] actual interest." *Id*. at 1059-60. Where the government's specific, actual interest was based upon "the mere unresolved possibility" of injury, compelled speech could not be justified.

Central to the District Court's decision in *CTIA* was its understanding of the meaning of the word "risk." *Id*. at 1061. The District Court explained that "risk" typically refers to a scientifically proven relationship between an exposure and an injury, "in the sense that smoking is a known carcinogen." *Id*. The government, on the other hand, was using "risk" to describe a fear of the unknown: the chance that science might one day show a statistical correlation between cellphone use and injury. *Id*. The government's desire to anticipate and address that unknown "risk" was ultimately an insufficient basis to compel speech. *Id*. at 1063-1064.

The District Court's decision in *CTIA* was affirmed on appeal to the Ninth Circuit, which found unconvincing the government's concern that "[t]here is a debate in the scientific community about the health effects of cell phones." *CTIA-The Wireless Ass'n v. City & Cnty. of S.F.*, 494 F. App'x 752, 753-754 (9th Cir. 2012) (internal quotation and citation omitted). In light of the record demonstrating that "there is no evidence of cancer caused by cell phones," the Ninth Circuit refused to find that the compelled disclosures were both "purely factual and uncontroversial." *Id*. at 754, citing *Zauderer*, 471 U.S. at 651 (internal quotations omitted).

To have a "scientific debate," there must first be true science. Here, the debate over Act 120 is devoid of any scientific voices expressing the research-based opinion that GE products are unsafe.

B. The State's "scientific debate," even if an extension of the precautionary principle, is an insufficient ground to compel speech.

The government is effectively ignoring its lack of scientific evidence and attempting to justify Act 120's disclosure requirement by invoking the precautionary principle. The precautionary principle is the idea that the government, when faced with uncertain scientific evidence of a health threat, should be able to act upon a hunch. *CTIA*, 827 F. Supp. 2d at 1058.

In *CTIA*, the precautionary principle was one of the justifications cited by the City and County of San Francisco in favor of compelling speech. *Id*. The District Court presumed, without deciding, that "a government may impose, out of caution, at least some disclosure requirements based on nothing more than the possibility that an agent may (or may not) turn out to be harmful." *Id*. at 1061. In this context, however, the concept of "possibility" was narrowly defined – it corresponded with the World Health Organization's list of 267 substances that were categorized as "possibly carcinogenic to humans." *Id*. at 1060. This is a category created by the World Health Organization for substances for which there is "limited evidence of carcinogenicity in humans" or "sufficient evidence of carcinogenicity in experimental animals." *Id*.

Cell phone radiation may have fallen under this "possibly carcinogenic" category, but GE products do not. The record here is devoid of either "limited evidence" in humans or "sufficient evidence" in animals that GE products pose a risk of cancer or any other adverse health effect. So the State would not benefit here even if this minimal level of scientific evidence were a sufficient basis for compelling speech.

That said, there are reasons to reject the mere "possible" as sufficient grounds to infringe upon First Amendment rights. For one, the District Court in *CTIA* did not consider that the World Health Organization's "possibly

carcinogenic" category is too speculative to meet *Zauderer's* "purely factual and uncontroversial" standard. Another reason, which the District Court in *CTIA* did address, was the U.S. Supreme Court's rejection of precautionary government action in *Industrial Union Department, AFL–CIO v. American Petroleum Institute*, 448 U.S. 607 (1980). *CTIA*, 827 F. Supp. 2d at 1061.

Industrial Union concerned OSHA workplace exposure limits to benzene, "a substance which has been shown to cause cancer at high exposure levels." *Indus. Union*, 448 U.S. at 611. Because of benzene's carcinogenicity, OSHA reduced the air exposure limit for benzene from 10 parts to 1 part-per-million, "the lowest technologically feasible level that will not impair the viability of the industries regulated." *Id.* at 613. This tenfold reduction of the exposure level was based on the precautionary principle and OSHA's custom "to set a permissible exposure limit by applying a safety factor of 10-100 to the lowest level at which adverse effects had been observed…." *Id.* at 631-632. The Supreme Court held, however, that OSHA could not regulate benzene exposure at a level below which it "poses a significant health risk in the workplace." *Id.* at 614-615. And even at OSHA's prior 10 parts-per-million exposure level, the evidence of adverse effects from benzene exposure was "sketchy at best." *Id.* at 631. The Supreme Court therefore affirmed that OSHA's new standard was unenforceable.

Consumer class actions provide another context for evaluating efforts to enforce hypothetical, unproven health risks. In several cases, courts have held that hypothetical health risks posed by toxic chemicals in consumer products are too speculative to confer Article III standing. *See*, *In re Fruit Juice Prods. Mktg. & Sales Practices Litig.*, 831 F.Supp.2d 507, 511 (D. Mass. 2011) (no Article III injury where, according to the FDA, food contained lead at levels that "do not pose an unacceptable risk to health."); *Herrington v. Johnson & Johnson Consumer Cos.*, No. C 09-1597, 2010 WL 3448531 (N.D. Cal., September 01, 2010) (no Article III injury based on purchase of shampoo with trace levels of carcinogens).

CTIA, Industrial Union, and the aforementioned class actions reflect a barrier to the government regulating hypothetical health risks. But even in these cases, the hypothetical health risks were based on *some* foundation of established science: there is either "limited evidence" in humans or "sufficient evidence" in animals that cell phone radiation can be carcinogenic; benzene is a known carcinogen; and lead is a proven neurotoxin. Here, on the other hand, there has been no scientific demonstration that GE products cause any adverse health effects. It would therefore be incongruous to recognize the hypothetical health risks of using GE products as a substantial state interest sufficient to overcome First Amendment rights.

C. The rejection of "scientific debate" as a basis for compelled speech will not threaten labeling programs resting upon hard science.

In *National Electrical Manufacturers Assoc. v. Sorrell*, this Court avoided declaring broad protections against compelled speech, noting "[i]numerable federal and state regulatory programs require the disclosure of product and other commercial information." 272 F.3d at 111. The Court provided several examples of regulatory programs compelling health-based speech – including laws that require tobacco labeling, nutritional labeling, and notification of workplace hazards – and expressed concern that a prohibition on mercury labeling might "expose these long-established programs to searching scrutiny by unelected courts." *Id.* at 116.

Striking down Act 120 will not affect laws compelling tobacco labeling, nutritional labeling, and notification of workplace hazards. These laws are all based on consensus-based science, not speculation that a significant risk to health might someday be discovered. Smoking tobacco has long been established as a carcinogen. *CTIA*, 827 F. Supp. 2d at 1061. And workplace hazard exposure standards, too, depend on known risks of injury. *See, Indus. Union Dep't, AFL–CIO, supra.*

The Food and Drug Administration's ("FDA") nutritional laws are similarly science-based. The FDA can compel disclosure on a label of "any vitamin,

mineral, or other nutrient" that "will assist consumers in maintaining healthy dietary practices." 21 U.S.C. § 343 (q)(1)(E). The FDA determines label contents "based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence." *See* 21 CFR § 101.14(c).

Scientific consensus of the type the FDA relies upon is the well-established benchmark for government labeling regimes. These regimes would not be affected by this Court's rejection of "scientific debate" as a basis for compelled speech.

D. The "scientific debate" standard is too uncertain a foundation for compelling speech.

The "scientific debate" standard also lacks sufficient definition to be used as a standard for compelling speech. The District Court's decision itself suggests no limit as to what might legitimately be described as a debate that justifies compelled speech. A state might very well declare the existence of "debates" in connection with the safety of processed food, synthetic ingredients, non-organic ingredients, ingredients grown with pesticides, or non-vegetarian products. A state might raise the "debate" of ingredients grown in soils with background levels of arsenic or lead, or in areas of high air pollution. Or a state might identify a "debate" on the

safety of foods grown by large agribusinesses or small agribusinesses, union shops or non-unions shops, or whatever size or type of business that might be perceived as threatening to local taxpayers.

The "scientific debate" standard has meaning only if the government is required to support a decision to compel labeling with actual, data-driven science. The best case for compelled labeling would be demonstrated by evidence of scientific consensus that the use of a product poses a high risk of a life-impairing injury. The state's interest becomes more uncertain in the face of dwindling scientific consensus, reduced health risk, and less serious health problems. And where the government rests upon a mere fear of health risk, junk science, or pseudo-science, no true "scientific debate" can be said to exist.[3]

Here, the District Court failed to announce the criteria by which it determined the existence of a legitimate "scientific debate" sufficient to overcome First Amendment concerns. The District Court recognized a "scientific debate" without science, and in doing so, rendered a decision not meaningfully distinguishable from the "consumer curiosity" standard rejected by this Court almost twenty years ago in *International Dairy Foods Ass'n*, 92 F.3d at 74.

The District Court could not convincingly distinguish the State's health-based interest here from the one addressed in *Amestoy*. It stated that "Act 120's

[3] The Flat Earth Society, for example, believes it is engaged in a scientific debate on whether the earth is flat.

'Findings' and 'Purpose' extend beyond the mere appeasement of consumer curiosity, and the State emphasizes that it is not making the concessions it made in [*Amestoy*]." *Grocery Mfrs. Ass'n*, 2015 WL 1931142, at *33. However, the State's refusal here to "make concessions" is no more than legal semantics.

In *Amestoy*, the State's brief before the Second Circuit stated that "[t]he court below had ample evidence before it to support its findings that consumers are concerned that rBST use . . . will have potentially harmful health effects on humans and cows." Defendants-Appellees Brief, *Int'l Dairy Foods Assoc. v. Amestoy*, 92 F.3d 67 (1996) (No. 95-7819), 1995 WL 17049818, at *7. The State's brief went on to state that "[c]onsumers' concerns about potential human health effects from rBST use are fueled by an on-going debate within the scientific community over the safety of rBST for humans." *Id.* at 11. Skip forward two decades and the State once again grounds its argument in **potential** safety risks and the position "that the current state of the science is uncertain; [ ] reasonable minds differ on this issue." *Grocery Mfrs. Ass'n v. Sorrell*, No. 5:14-CV-117, Defendant's Reply, Dkt. No. 63.

In *Amestoy*, as here, this Court was faced with a purported lack of scientific consensus and the State's desire to sate consumer curiosity. Here, as in *Amestoy*, consumer curiosity is not a sufficient basis to compel speech. The Court should

find Act 120 unconstitutional for the same reason that it struck down the labeling act at issue in *Amestoy*.

II. The Disclosure Compelled by Act 120 is Misleading and therefore cannot Survive Constitutional Scrutiny

In *Zauderer*, the U.S. Supreme Court addressed compelled factual disclosures in the context of potentially deceptive advertising. The Court concluded in that context that compelled speech that was "purely factual and uncontroversial" would overcome First Amendment concerns. *Zauderer*, 471 U.S. at 651.

The State has attempted to meet the "purely factual and uncontroversial" standard by presenting its concerns with GE products in the form of a simplistic factoid. The factoid – "this product was produced with genetic engineering" – may be literally true, but literal truth does not suggest the absence of controversy. To the contrary, a very real controversy exists: consumers reading an Act 120 label will reasonably infer that the GE product may be unsafe.

Although the State claims that Act 120's purpose is to educate consumers, the GE factoid is likely to mislead some number of consumers into believing, incorrectly, that products produced with genetic engineering are unhealthy or unsafe. Consumers would not be blamed for thinking along these lines. Consider tobacco labeling, nutritional labeling, and notification of workplace hazards:

consumer experience is that disclosures on cigarettes, foods, and at work are based on scientifically established health threats.

The Sixth Circuit has acknowledged the connection in the consumer's mind between labeling and perceived health risk. *International Dairy Foods Ass'n v. Boggs*, 622 F.3d 628. *International Dairy*, like *Amestoy*, addressed a law regulating speech in the connection with a genetically engineered hormone called recombinant bovine somatotropin (rbST), a substance given to lactating cows to increase their milk production. Whereas the Vermont law in *Amestoy* compelled the labeling of dairy products from cows given rbST, the Ohio law in *International Dairy* was permissive. Dairy processors could label their product, "this milk is from cows not supplemented with rbST," but if they did so, they were compelled to include a parallel disclosure on the label stating that "[t]he FDA has determined that no significant difference has been shown between milk derived from rbST-supplemented and non-rbST-supplemented cows." *Id*. at 640. The Sixth Circuit, relying upon *Zauderer*, upheld the compelled reference to the FDA's science-based determination. *Id*. at 642. The Court reasoned that "production claims such as 'this milk is from cows not supplemented with rbST' are potentially misleading because they imply that conventional milk is inferior or unsafe in some way." *Id*.

International Dairy recognizes that purely truthful information can be misleading. So too did the District Court in *CTIA*. It held that a purely factual

disclosure, e.g., "cell phones radiate RF [radiofrequency energy]," can leave the impression that cell phones are dangerous and have somehow escaped the regulatory process. *CTIA*, 827 F. Supp. 2d at 1062. Labeling inevitably causes some consumers to draw comparisons between products and assume, incorrectly, that one is inferior. The labeling compelled by Act 120 would cause Vermont consumers to make the inaccurate assumption that GE products pose a greater health risk than do non-GE products.

As the District Court noted, the product sellers themselves may act to alleviate the threat of consumer confusion by publicizing their position, and that of the FDA, i.e., that GE products pose no health risk. But there are two problems with burdening sellers of GE products with the obligation to speak.

First, sellers wishing to avoid prejudice in the marketplace would be forced to leave behind their choice "of what to say and what to leave unsaid." *Pac. Gas & Electric Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 11 (1986); *Hurley v. Irish–Am. Gay, Lesbian and Bisexual Grp. of Boston, Inc.*, 515 U.S. 557, 573–574 (1995) ("this general rule, that the speaker has the right to tailor the speech, applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid...."). Sellers would have to address the attributes of GE products at a time and place of the government's choosing, not their own.

Second, to prevent consumer confusion on the safety of GE products, sellers would have to reach consumers at the very moment they encounter and interpret Act 120's disclosure. Hypothetically, sellers can meet this requirement by providing their views on the product labels, but as previously discussed, the size of product labels precludes a robust and complete scientific discussion about genetic engineering. Moreover, sellers would be rightly concerned that consumers would see the GE labeling disclosure and then ignore the seller's own "fine print" that followed.

It is unlikely sellers can effectively engage consumers at the point of sale to counteract misimpressions left by Act 120's compelled labeling. The ability to make corrective speech on the safety of GE products is a phantom that does not justify Act 120's burdens on First Amendment rights.

The marketplace should not be compelled to rescue consumers from government induced misinformation. Instead, the government should permit market forces to provide consumers with the information they desire about the products they encounter. Consumers demanded products that declare they are "natural," "organic," or "GMO-free," and these products are now ubiquitous in the marketplace. Similarly, consumers who wish to identify GE products can ask sellers and manufacturers for the information. The sellers and manufacturers may

or may not provide the information requested, but if they do not, concerned consumers will look elsewhere for their shopping needs.

CONCLUSION

For the foregoing reasons, *amici curiae* urge the Court to reverse the District Court's ruling.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I hereby certify that this Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the Brief contains 4552 words, excluding the parts of the Brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

I further certify that this Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the Brief has been has been prepared in Times New Roman 14-point font using Microsoft Word 2010.

/s/ Jason Levin
Jason Levin

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2015, I caused the foregoing to be filed through this Court's CM/ECF appellate filer system, which will send a notice of electronic filing to all registered users.

/s/ Jason Levin
Jason Levin