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November 25, 2015

BY ELECTRONIC FILING

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007
(212) 857-8500

Re: ***Grocery Manufacturers Association v. Sorrell*, No. 15-1504**

Response to Appellants' Notice of Supplemental Authority Pursuant to Fed. R. App. P. 28(j), Center for Food Safety v. Taylor, No. FDA-2011-P-0723 (Nov. 19, 2015)

Dear Ms. Wolfe:

On November 23, 2015, Appellants submitted to this Court a notice that the Food and Drug Administration (FDA) denied a Citizen Petition asking it to require labeling of foods produced with genetic engineering ("the Denial"). The FDA issued the Denial on the same day that it issued its first approval for a genetically engineered (GE) animal intended for food—a GE salmon. See http://goo.gl/N8Wx7L.

The Denial is irrelevant. The Citizen Petition asserted that the FDA was *required* by the Food, Drug, and Cosmetic Act (FDCA) to mandate labeling of GE foods, and the FDA determined that the FDCA did not require it to do so. Denial 1. But that is nothing new. As the Denial makes clear, the agency simply decided that there was no basis "to rescind or otherwise deviate from its 1992 Policy with respect to the labeling of foods derived from genetically engineered plants or otherwise require additional labeling for such foods." *Id.* at 2.

The question here, however, is not whether *the FDA* believes that GE foods differ from their traditional counterparts (or whether the FDCA requires federal GE labeling). Rather, the question is whether the *Vermont Legislature* had a rational basis for enacting Act 120. And the Denial—like FDA's other statements regarding GE labeling—does nothing to preclude states from requiring GE labeling. As noted in Vermont's brief (at 39-40), the regulation of food labeling falls squarely within states' core police powers, and it is common practice for states to serve as laboratories to fill gaps in federal regulations pertaining to health and safety.

That is just what the Vermont Legislature has done here. The Legislature considered a wealth of testimony and scientific literature regarding GE foods—including literature questioning the sufficiency of FDA's voluntary consultation process for GE crops—and, based on that review, decided to require GE labeling. That decision is not rendered irrational because the Vermont Legislature chose to act where the FDA has chosen not to. Nothing in the Denial—which simply reiterates the FDA's 1992 decision not to mandate GE labeling—alters that conclusion.

Sincerely,

/s/ Lawrence S. Robbins
Lawrence S. Robbins

Counsel for Appellees

cc: All Counsel of Record (by CM/ECF notice)