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USDA URGED NOT TO DISCRIMINATE AGAINST GENETICALLY MODIFIED FOODS

The Washington Legal Foundation (WLF) today urged the U.S. Department of Agriculture (USDA) not to discriminate against genetically modified (GM) food when adopting its National Organic Program -- which establishes standards for what foods are permitted to be labeled "organic."

In comments filed with USDA, WLF argued that any effort to prohibit distributors from labeling their products "organic" simply because they contain GM ingredients would violate the distributors' First Amendment rights. WLF also argued that when Congress adopted legislation mandating national standards for organic food, it did not intend to exclude GM food.

USDA is in the process of establishing nationwide standards for organic produce, a process mandated by Congress when it adopted the Organic Foods Production Act of 1990. In 1999, USDA invited public comments on the issue of whether distributors of GM food (i.e., food whose genetic makeup has been altered by scientists in order to promote some desired attribute, such as resistance to insects) should be permitted to label such food "organic." The great majority of those who responded urged USDA to exclude GM food from the definition of "organic" food.

In connection with proposed rules issued in March, USDA said that it had decided to abide by what it deemed the popular will:

> [C]onsumers have made clear their opposition to use of [genetic engineering] in organic food production. This rule is a marketing standard, not a safety standard. Since use of genetic engineering in the production of organic foods runs counter to consumer expectations, foods produced through excluded methods will not be permitted to carry the organic label.

In its comments in opposition to USDA's proposal, WLF argued that the First Amendment is not subject to abrogation based on popular vote. WLF argued that the terms "organic" food and GM food have never historically been understood to be mutually exclusive. WLF argued that most people understand "organic" food to mean food that has not been treated with synthetic pesticides, herbicides, or fertilizer. Accordingly, WLF argued, a food package truthfully states that it contains "organic" food if it has been produced under those conditions, regardless of whether it contains ingredients grown from genetically modified seeds.

WLF argued that the First Amendment does not permit the government to bar truthful statements from product packaging in the absence of very strong reasons for doing so. WLF argued that no such reasons exist for doing so here; distributors of organic food who also want their customers to know that they do not use GM ingredients are free to disclose that information on their labels. Thus, if there is a market for organic food that is free of GM ingredients, market forces will ensure that that information will be conveyed to consumers on product labels, WLF argued. Accordingly, there is no need for the government to begin censoring truthful speech in the name of consumer protection.

WLF also argued that when it adopted the Organic Foods Production Act of 1990, Congress did not intend to exclude GM food from the definition of "organic" food. WLF noted that the Act provides a lengthy definition of what it means for food to be "organic" and that GM food falls comfortably within that definition. WLF argued that the Act does not authorize USDA to amend the definition of "organic" in order to fit USDA's perception of changing public sentiment. WLF argued that USDA is asking the wrong question in attempting to gauge public sentiment. The question is not whether consumers wish to avoid consumption of GM food; rather, the question is what the word "organic" was understood to mean in 1990 when the Act was adopted and what it is understood to mean today. WLF argued that the consumer "demand" identified by USDA is nothing more than political opposition to GM foods by one segment of the population, not a genuine complaint that consumers are actually being misled.

WLF is a public interest law and policy center with members in all fifty states. WLF devotes a significant portion of its resources to promoting the interests of a free-market economy and to defending the rights of individuals to go about their affairs without undue interference from government regulators.

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