COMMENTS

of

WASHINGTON LEGAL FOUNDATION

to the

OFFICE OF THE ATTORNEY GENERAL
STATE OF VERMONT

Concerning

CONSUMER PROTECTION RULE 121 — LABELING FOODS PRODUCED WITH GENETIC ENGINEERING

IN RESPONSE TO THE PUBLIC NOTICE PUBLISHED ON DECEMBER 17, 2014

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February 12, 2015

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Via email (todd.daloz@state.vt.us)
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Re: Proposed Consumer Protection Rule CP 121
Labeling Foods Produced with Genetic Engineering

Dear Mr. Daloz:

Washington Legal Foundation (WLF) appreciates this opportunity to submit comments in response to the Attorney General's proposed Consumer Protection Rule CP 121 (the "Proposed Rule") regarding the labeling of foods produced with genetic engineering.

Rule CP 121 is being proposed pursuant to Act 120, which establishes labeling requirements for "genetically engineered foods." WLF believes that Act 120 raises serious constitutional issues because it imposes significant burdens on the speech rights of food manufacturers and distributors. We recognize that the Vermont legislature has directed the Attorney General to issue regulations governing implementation of Act 120 and that the Attorney General is obligated to carry out that function in a manner consistent with the legislature's mandate. Nonetheless, in light of the dubious constitutional validity of Act 120 as enacted, WLF urges the Attorney General to substantially revise the Proposed Rule in order to reduce constitutional objections to the greatest extent possible.

In particular, Act 120 violates the First Amendment because it lacks viewpoint neutrality. That is, it takes sides on a contentious social issue by imposing a labeling requirement on foods

produced from genetically modified ("GM") crops but not on foods produced from non-GM crops. The constitutional infirmity arising from Act 120's viewpoint discrimination would be lessened if the Proposed Rule were modified to require that *all* foods must include labeling regarding GM foods. WLF notes that Act 120 grants the Attorney General broad rulemaking authority, including but not limited to authority to require food labels to state that "the Food and Drug Administration does not consider foods produced from genetic engineering to be materially different from other foods." Act 120, Section 3. If the Proposed Rule were revised so as to require inclusion of that disclaimer language on *all* food sold within the State, Act 120's constitutional deficiencies would be less acute. Whatever its merits, doing so would largely eliminate Act 120's most glaring First Amendment violation: the Act's blatant viewpoint discrimination.

WLF is also concerned that Act 120 may expose food manufacturers to massive (and unwarranted) tort liability. A manufacturer whose food is produced from GM crops and is sold in Vermont after July 2016 will be subject to opportunistic private class-action lawsuits under Vermont's consumer protection laws, without regard to whether the manufacturer ever intended that the food be shipped to Vermont. WLF urges the Attorney General to revise the Proposed Rule in order to provide manufacturers with explicit protection from private lawsuits where they did not intend their unlabeled product to be sold in Vermont. If Act 120 is allowed to take effect, WLF expects that many manufacturers will decide simply to cease doing business in Vermont. Such manufacturers should not be subject to tort liability simply because others—who

do not themselves face potential liability under Act 120—decide to bring those manufacturers' products into the State.

I. *Interests of WLF*

Washington Legal Foundation is a public interest law firm and policy center with supporters in all 50 States. WLF regularly appears before federal and state courts and administrative agencies to promote free enterprise, individual and business civil liberties, a limited and accountable government, and the rule of law.

To that end, WLF has devoted substantial resources to promoting the free speech rights of the business community, appearing before numerous federal courts in cases raising First Amendment issues. *See, e.g., Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653 (2011); *Nike v. Kasky*, 539 U.S. 654 (2003); *United States v. Caronia*, 703 F.3d 149 (2d Cir. 2012). In particular, WLF has litigated regularly in opposition to government efforts to compel speech. *See, e.g., R.J. Reynolds Tobacco Co. v. FDA*, 696 F.3d 1205 (D.C. Cir. 2012); *Phillips v. Washington Legal Found.*, 524 U.S. 156 (1998). Even under the somewhat relaxed First Amendment standards sometimes applied to government regulation of commercial speech, *see Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557 (1980), WLF does not believe that Act 120's compelled speech requirements can withstand constitutional scrutiny. But because those requirements so blatantly discriminate on the basis of viewpoint, WLF contends that they are subject to heightened First Amendment scrutiny, which they cannot hope to withstand.

II. *Statutory Background*

With its adoption of Act 120 in May 2014, Vermont became the first (and thus far only) State in the country to require labeling of foods that contain, or may contain, GM ingredients. Act 120 requires a "food offered for sale by a retailer [in Vermont] after July 1, 2016" to be labeled as "produced entirely or in part from genetic engineering if it is . . . entirely or partially produced with genetic engineering." 9 V.S.A. § 3043(a). The Act provides that the packaging of "processed food" (defined as any food other than a raw agricultural commodity) that contains GM ingredients must bear one of three labels: (1) "produced with genetic engineering"; (2) "partially produced with genetic engineering"; or (3) "may be produced with genetic engineering." 9 V.S.A. § 3043(b)(3). The "may be" language is reserved for products whose manufacturers do not know whether the products contain GM ingredients.

Manufacturers and wholesalers are strictly liable for selling processed foods containing GM ingredients that do not bear the appropriate GM label, 9 V.S.A. § 3048, except that they can avoid liability if they obtain from *every* seller from whom they purchased the product or product ingredients a "sworn statement" that the food "has not been knowingly or intentionally produced with genetic engineering and has been segregated from and has not been knowingly or intentionally commingled with food that may have been produced with genetic engineering at any time." 9 V.S.A. § 3044(2). Vermont *retailers*, on the other hand, are exempt from liability for failure to include required labeling on processed foods containing GM ingredients. 9 V.S.A. § 2045(a). Act 120 also exempts a broad array of food sales from its labeling requirements,

including food sold by a restaurant or for immediate human consumption. 9 V.S.A. § 3044. The Act imposes no labeling requirements on food that does not include GM ingredients.

Act 120 further provides that violators "shall be liable for a civil penalty of not more than $1,000 per day, per product." 9 V.S.A. § 3048(a). It also contemplates lawsuits by consumers who purchase improperly labeled products, stating, "Consumers shall have the same rights and remedies as provided under subchapter 1 of chapter 63 of this title." 9 V.S.A. § 3048(b).

III. *Proposed Rule CP 121*

The Attorney General's Proposed Rule CP 121 largely tracks the language of Act 120. It provides rules governing how GM labels are to be displayed. CP121.02. It authorizes, but does not require, such labels to state that FDA "does not consider food produced with genetic engineering to be materially different from other foods." CP 121.02(c)(ii). The Proposed Rule also creates a six-month grace period for manufacturers: it establishes a "presumption" that food offered for retail sale before January 1, 2017 was packaged and distributed before July 1, 2016 (the effective date of Act 120's labeling requirements) and provides that manufacturers will generally not be held liable for retail sales during that six-month period—even if the product contains GM ingredients yet is not labeled as such. CP 121.04(d). It also states that nothing in the Proposed Rule "shall limit the rights and remedies available to . . . consumers under any other provision of Vermont law, including 9 V.S.A. § 2453." CP 121.05.

IV. The First Amendment Imposes Significant Constraints on Governments' Authority to Compel Individuals or Corporations to Speak

The Proposed Rule makes no mention of the First Amendment. WLF finds that omission

highly surprising given the significant constraints that the First Amendment imposes on the authority of Vermont or any other government to compel speech. In light of those constraints, it is essential that any government agency charged with implementing a speech-compelling statute (such as Act 120) carefully tailor its regulations to ensure that any interference with speech rights is kept to a minimum. In an effort to explain WLF's constitutional objections to the Act and the Proposed Rule, we briefly outline governing First Amendment principles.

Both the right to speak and the right to refrain from speaking are "'complementary components of the broader concept of individual freedom of mind' protected by the First Amendment." *R.J. Reynolds*, 696 F.3d at 1211 (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)). The D.C. Circuit has explained that government efforts to compel speech are generally subject to "strict scrutiny," and that "[t]he 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.'" *Ibid.* (quoting *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573-74 (1995)). First Amendment protections against compelled speech apply just as fully to corporations as they do to individuals. *Ibid.*

When the speech subject to compulsion or restriction is "commercial" in nature—that is, speech that "does no more than propose a commercial transaction," *Bolger v. Youngs Products Corp.*, 463 U.S. 60, 66 (1983)—the courts have applied a somewhat more relaxed (albeit still stringent) standard of review. The Supreme Court has explained that commercial speech is "linked inextricably with the commercial arrangement that it proposes," and that "the State's

interest in regulating the underlying transaction may give it a concomitant interest in the expression itself," thereby suggesting a need to afford the government somewhat more leeway in its regulation of commercial speech. *Edenfield v. Fane*, 507 U.S. 761, 767 (1993).

When the speech regulation at issue involves commercial speech, the Supreme Court has reviewed its constitutionality under the test first articulated in *Central Hudson*. That test requires courts to consider as a threshold matter whether the commercial speech concerns unlawful activity or is inherently misleading.[1] If so, then the speech is not protected by the First Amendment. If the speech concerns lawful activity and is not inherently misleading, then the challenged speech regulation violates the First Amendment unless regulators can establish that: (1) they have identified a substantial government interest; (2) the regulation "directly advances" the asserted interest; and (3) the regulation "is no more extensive than is necessary to serve that interest." *Central Hudson*, 447 U.S. at 566. The evidentiary burden is not light; for example, the government's burden to show that a commercial speech regulation advances a substantial government interest "in a direct and material way . . . 'is not satisfied by mere speculation or conjecture; rather, a government body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restrictions will alleviate them to a material degree.'" *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 487 (1995) (quoting *Edenfield*,

[1] Of course, that threshold issue is not relevant when, as here, the challenged government regulation takes the form of compelled speech. In a compelled speech case, the challenger asserts the right *not* to speak, not the right to engage in speech that regulators might conclude is inherently misleading or solicits unlawful activity.

507 U.S. at 770-71).

But application of the somewhat relaxed *Central Hudson* standard of review depends on a finding that the government is applying its speech regulations in a manner that is both content-neutral and viewpoint-neutral. When a statute "imposes burdens [on commercial speech] that are based on the content of speech and that are aimed at a particular viewpoint . . . [i]t follows that heightened scrutiny is warranted." *Sorrell v. IMS Health Inc*., 131 S. Ct. 2653 (2011). Vermont cannot realistically believe that Act 120's speech regulation could survive heightened First Amendment scrutiny; it has never asserted, for example, that the statute serves a "compelling" state interest. Accordingly, for Vermont to have even a plausible chance of prevailing against First Amendment challenges to Act 120, it is incumbent on the Attorney General to draft regulations that remove any content-based and viewpoint-based speech restrictions from the statute. The Proposed Rule includes no provisions designed to ensure content and viewpoint neutrality.

V. Act 120's Most Glaring Constitutional Deficiency Is that It Is a Content-Based and Viewpoint-Based Speech Restriction and Thus Subject to Heightened Scrutiny, a Scrutiny It Cannot Withstand

WLF does not believe that Act 120 can survive scrutiny under the somewhat relaxed *Central Hudson* test. But whether that assessment is correct is not the central focus of these comments, because that assessment is not particularly germane to the regulation-drafting process. The Vermont legislature has directed the Attorney General to draft regulations that implement a food labeling program regarding GM ingredients, and the *Central Hudson* analysis

will be largely the same regardless of how the Attorney General writes the regulations.[2]

Instead, these comments focus on a more glaring First Amendment-related deficiency in Act 120: the statute is neither content-neutral nor viewpoint-neutral. A law burdening speech based on its content is "presumptively invalid" and "can stand only if it satisfies strict scrutiny." *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 813, 817 (2000) (quoting *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992)). Laws that go beyond "mere content discrimination, to actual viewpoint discrimination" are even more highly disfavored under First Amendment case law. *R.A.V.*, 505 U.S. at 391.

The discriminatory nature of Act 120 is readily apparent. Its strictures do not apply across the board to all food; rather, it applies only to those foods containing GM ingredients. As

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[2] In brief, WLF contends that Act 120 itself flunks the *Central Hudson* test because it does not advance any "substantial interest." Vermont contends that it has a "substantial interest" in providing truthful information to consumers who might be interested in learning whether a food contains GM ingredients. But the Second Circuit has held that a desire to satisfy curious consumers is not a "substantial interest" where (as here) there is no evidence that food possessing the labeled characteristic poses any safety concerns or is materially different from food that does not possess that characteristic. *Int'l Dairy Foods Assoc. v. Amestoy*, 92 F.3d 67 (2d Cir. 1996) (holding that Vermont lacked a "substantial interest" in requiring milk labels to disclose if the milk came from cows that had been treated with the growth hormone rBST, where Vermont failed to demonstrate a material difference between such milk and milk from untreated cows). Moreover, Vermont cannot demonstrate that Act 120 "directly advances" its interest in GM labeling, given that: (1) the statute includes so many exemptions from the labeling requirement; and (2) the Act's mandated language (food "produced with genetic engineering") is highly misleading (*e.g.*, one may genetically engineer a plant, but one does not genetically engineer a food into existence). Finally, Act 120 flunks *Central Hudson*'s final prong: it does not qualify as a "narrowly tailored" regulation of speech because Vermont could have achieved its objectives through numerous other means that do not involve compelled speech (*e.g.*, it could have increased consumer knowledge by promoting voluntary labeling by manufacturers whose products do not contain GM ingredients).

food manufacturers have well documented in their numerous submissions to Vermont and to the federal court hearing their First Amendment challenge, Act 120 compliance costs are huge; yet Vermont has elected to impose those costs on only a subset of manufacturers (those who choose to use GM ingredients in their foods). Such manufacturers are placed at an additional disadvantage because they must devote valuable space on their labels to the speech being compelled by Vermont, while other, favored manufacturers (those who choose not to use GM ingredients or have persuaded the legislature to allot them one of the Act's numerous exemptions) are free to use that labeling space however they wish. There is only one plausible conclusion: Vermont is discriminating in order "to tilt public debate in a preferred direction," *Sorrell*, 131 S. Ct. at 2671; that is, the State is compelling speech from only one segment of the business community in order to accommodate those citizens who have political objections to the sale of GM food. Such viewpoint-discriminatory speech regulation is facially invalid. *R.A.V.*, 505 U.S. at 391-92.

VI. *The Attorney General Could Substantially Reduce Act 120's Content and Viewpoint Discrimination by Mandating GM-Related Labeling on All Foods*

If the Attorney General revised the Proposed Rule by exercising his delegated powers to mandate GM-related labeling on all foods, that would largely eliminate the viewpoint-discriminatory aspects of Act 120. WLF notes that Act 120 grants the Attorney General broad leeway in his adoption of implementing regulations. For example, Section 3 of the Act states:

> The Attorney General may adopt by rule requirements for the implementation of [Act 120], including: (1) a requirement that the label required for food produced from genetic engineering include a disclaimer that the Food and Drug Administration does

> not consider foods produced from genetic engineering to be materially different from other foods.

The Act's use of the word "including" when describing the Attorney General's regulation-drafting authority indicates that, although his *explicit* authorization extends to requiring food containing GM ingredients to include the statement about FDA's views on GM foods, he is also authorized to require inclusion of the FDA statement on food that does *not* contain GM ingredients. Indeed, if one assumes that the legislature authorized the Attorney General to require the FDA statement because it wanted to more fully inform consumers regarding the views of scientific experts on GM foods, there is every reason to conclude that the authorization extends to the labeling of *all* food.

If Vermont required *all* foods to bear truthful statements about GM foods, Vermont could then more plausibly argue that it is not seeking "to tilt public debate in a preferred direction." *Sorrell*, 131 S. Ct. at 2671. If GM labeling is required on all foods, then the substantial costs that Act 120 currently imposes only on those manufacturers who have not yielded to political sentiments against genetic engineering (*e.g.*, the substantial costs of creating a parallel distribution network to ensure that only those goods bearing Vermont's prescribed labeling are shipped to Vermont) would be borne equally by *all* manufacturers. And the Vermont legislature cannot plausibly object to the content of such a statement, because it explicitly authorized the Attorney General to require the FDA statement's inclusion on the labels of all food that includes GM ingredients.

WLF does not mean to suggest that revising the Proposed Rule would eliminate all

serious doubts about the constitutionality of Act 120, or that WLF supports expanded GM labeling requirements. Indeed, for the reasons explained above, WLF believes that Act 120 would violate the First Amendment even if it were stripped of its viewpoint-discriminatory aspects and were thus made subject to constitutional review under the more lenient *Central Hudson* test. Nonetheless, revising the Proposed Rule would render the Act as administered less acutely unconstitutional.

VII. *The Attorney General Should Revise the Proposed Rule to Reduce Food Manufacturers' Exposure to Massive Tort Liability*

WLF is also concerned that Act 120 may expose food manufacturers to massive (and unwarranted) tort liability. A manufacturer or distributor whose food is produced from GM crops and is sold in Vermont after July 2016 will be subject to opportunistic private class-action lawsuits under Vermont's consumer protection laws, without regard to whether the manufacturer or distributor ever intended that the food be shipped to Vermont. WLF urges the Attorney General to revise the Proposed Rule in order to provide manufacturers and distributors with explicit protections from such private lawsuits.

WLF notes initially that Act 120 does not expressly create a private right of action for violations of the Act. The Act's only reference to private suits is a single sentence in 9 V.S.A. § 3048(b): "Consumers shall have the same rights and remedies as provided under subchapter 1 of chapter 63 of this title." The referenced statute is Vermont's consumer protection law, which provides:

> Any consumer who contracts for goods and services in reliance upon false or

> fraudulent representations or practices prohibited by section 2453 of this title, or who sustains damages or injury as a result of any false or fraudulent representations or practices prohibited by section 2453 of this title, or prohibited by any rule or regulation made pursuant to section 2453 of this title may sue for appropriate equitable relief and may sue and recover from the seller, solicitor, or other violator the amount of his or her damages, or the consideration or the value of the consideration given by the consumer, reasonable attorney's fees, and exemplary damages not exceeding three times the value of the consideration given by the consumer.

9 V.S.A. § 2461(b).[3]

The Proposed Rule is similarly silent on whether Act 120 creates a private right of action. It states merely that "[n]othing in this rule shall limit the rights or remedies available to the State of Vermont or to consumers under any other provision of Vermont law, including 9 V.S.A. § 2453." CP 121.05.

WLF requests that the Attorney General revise CP 121.05 to state explicitly that Act 120 does *not* create a private right of action for violation of the Act. While the proposed regulation is

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[3] Section 2453, the substantive provision cited by § 2461(b), states in relevant part:

> (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.
> * * *
> (c) The attorney general shall make rules and regulations, when necessary and proper to carry out the purposes of this chapter, relating to unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce. . .
> (d) Violation of a rule or regulation as made by the attorney general is prima facie proof of the commission of an unfair or deceptive act in commerce.

9 V.S.A. § 2453. The Attorney General has not issued any regulations, pursuant to § 2453(c), governing whether and when the labeling of foods containing GM ingredients might be deemed "unfair or deceptive acts or practices in commerce."

undoubtedly correct that the legislature did not intend that the Act would limit previously existing rights to seek judicial relief, the fairest reading of the Act is that it also did not intend the Act to *expand* those rights. Instead, the legislature intended that if consumers felt deceived after purchasing food with GM ingredients but lacking GM labeling, they were free to file suit under 9 V.S.A. § 2461, but that they would need to establish (as required by pre-existing law) that the labeling was "false or fraudulent" or constituted an "unfair or deceptive act[ ] or practice[ ] in commerce." *See, e.g.*, 9 V.S.A. § 3048(b) (providing merely that consumers' "rights and remedies" are those "provided under [9 V.S.A. § 2461]"). In other words, it did not intend to create a new cause of action or to decree that a violation of Act 120 would constitute *prima facie* evidence of an unfair or deceptive act or practice in violation of 9 V.S.A. § 2453(a).

WLF nonetheless expects that the plaintiffs bar will file numerous suits asserting the contrary—that Act 120 does create a private right of action for violations of the GM labeling requirements. Given the huge potential damages available in class actions asserting such claims (*e.g.*, recovery of the amount paid for the food by each class member, plus punitive damages of up to three times the amount paid, plus attorneys' fees), most food manufacturers would likely feel coerced into paying substantial settlements for even the most trivial or inadvertent violations of the Act. The Attorney General can prevent such unwarranted litigation by amending the Proposed Rule to state explicitly that Act 120 does not provide a private right of action for violation of labeling requirements. Enforcement of the Act by the Attorney General (per 9 V.S.A. § 3048) and suits by consumers who can demonstrate (per 9 V.S.A. § 2461(a)) that they

were deceived by "false or fraudulent representations" on a product label should be more than sufficient to ensure compliance with the Act.

WLF also requests that the Attorney General revise the Proposed Rule to impose strict limits on private lawsuits, or enforcement by the Attorney General, for violations of Act 120. In particular, the final rule should specify that no manufacturer or distributor is liable for the sale of a mislabeled product containing GM ingredients if it did not intend that the product be shipped to Vermont and the product came to Vermont due to the actions of others. A manufacturer of processed food has little control over shipments of its product once it passes into the hands of wholesalers. There undoubtedly will be instances in which a manufacturer ships to its wholesaler goods intended for retail sale in, say, Massachusetts, but the wholesaler nonetheless forwards those goods to retailers in Vermont. The Act omits any explicit safe harbor for manufacturers in those instances; fairness dictates that the Attorney General write that safe harbor into the regulations.[4]

Indeed, if Act 120 is allowed to take effect, WLF expects that many manufacturers will decide simply to cease doing business in Vermont. Such manufacturers should not be subject to tort liability if, against their direct instructions, others decide to bring their processed foods into Vermont for resale. WLF notes that Act 120 explicitly exempts retailers from responsibility for

[4] The Attorney General clearly recognizes his statutory authority to create safe harbors; indeed the Proposed Rule creates one for processed foods containing GM ingredients and sold at retail between July 1, 2016 and January 1, 2017. *See* CP 121.04(d). While WLF applauds the Attorney General for creating that safe harbor, it urges the him to go further in protecting manufacturers and distributors from unwarranted liability.

selling improperly labeled processed foods containing GM ingredients. 9 V.S.A. § 2045(a). If retailers have difficulty finding, say, corn starch for their stores because no manufacturer of corn starch is willing to ship its product into Vermont, they would have every incentive to make their own arrangements to bring the corn starch into Vermont—knowing that they face no liability if the corn starch they sell were later deemed "mislabeled."[5] Under those circumstances, there can be no justification for holding the manufacturer or distributor liable for the actions of the retailer. Accordingly, WLF urges the Attorney General to revise CP 121.04 and CP 121.05 to provide that manufacturers and distributors are not responsible for the mislabeling of processed food sold in Vermont if the processed food entered Vermont based on actions over which they exercised no control.

[5] Indeed, retailers might even be tempted to generate additional income by coordinating litigation over their sale of mislabeled processed food. They would be uniquely positioned to inform plaintiffs' lawyers of such sales and to line up the purchasers as potential plaintiffs in a class action suit against the manufacturer.

CONCLUSION

WLF urges the Attorney General to revise the Proposed Rule as outlined herein, in order to lessen Act 120's First Amendment deficiencies and to reduce the exposure of food manufacturers to unwarranted tort liability. We note that Vermont has been a recidivist with respect to violating the First Amendment rights of the business community. Several of the landmark court decisions cited in these comments entailed the invalidation of a Vermont statute held to violate First Amendment rights. *See, e.g.*, *Sorrell v. IMS Health, Inc.*, 131 S. Ct. 2653 (invalidating Vermont statute prohibiting truthful speech about doctors' prescribing patterns); *Int'l Dairy Foods Assoc. v. Amestoy*, 92 F.3d 67 (2d Cir. 1996) (invalidating Vermont statute requiring that milk labels disclose if the milk came from cows treated with a growth hormone). Particularly given that history, it is incumbent on the Attorney General to closely consider First Amendment issues before issuing the regulations in final form.

Sincerely,

/s/ Richard A. Samp
Richard A. Samp
Chief Counsel

/s/ Glenn G. Lammi
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Chief Counsel, Legal Studies Division