

FACING GMO LABELING HEAD-ON

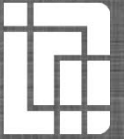
Presented by: Chip English, Partner, Davis Wright Tremaine LLP

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Minnesota Section of the Institute of Food Technologists
&
American Association of Cereal Chemists



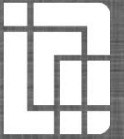
Overview of GMO Issues



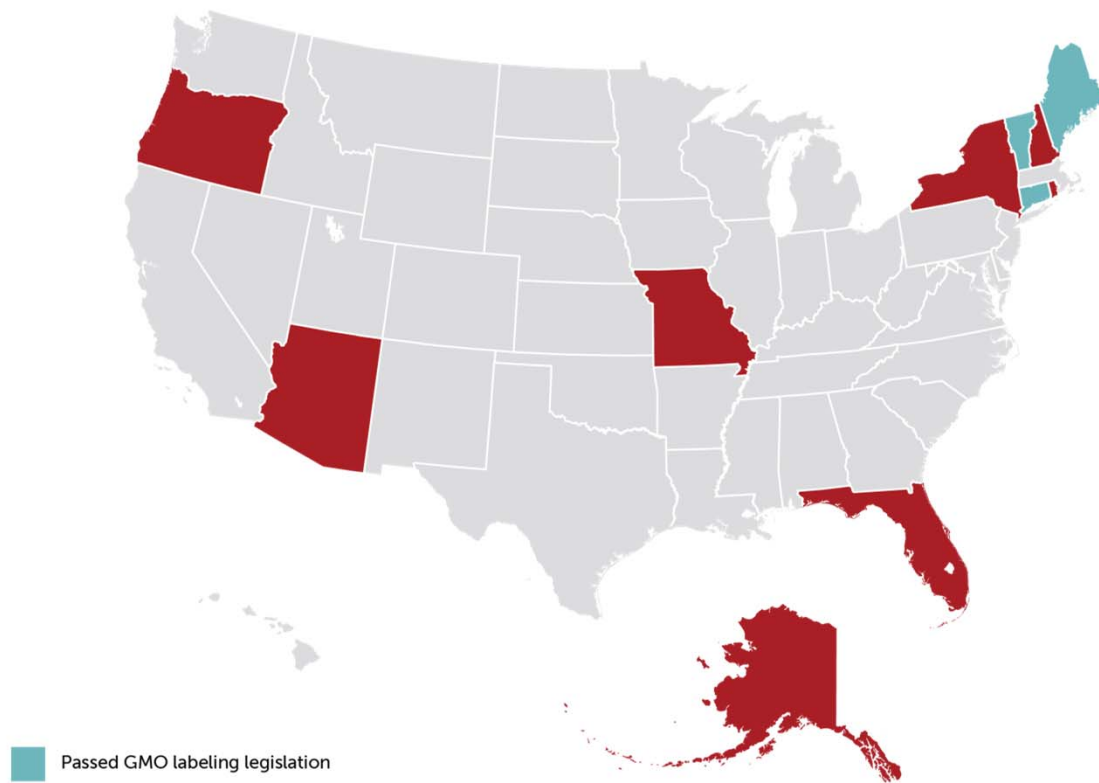
- State and Federal Legislative Status
- Legal Issues
 - First Amendment
 - Equal Protection
- Private Party Action



State Legislation – Mostly Labeling



GMO Labeling Bills Introduced or re-Introduced in 2016



Federal Legislation



- 2013 – Mandatory GMO Labeling House and Senate Bills introduced
- 2014 – Voluntary GMO labeling House Bill introduced with preemption
- 2015 –
 - Genetically Engineered Food Right-to-Know Act
 - Safe and Accurate Food Labeling Act of 2015
 - Omnibus Budget for 2016
- 2016 – Remains to be seen

Federal Agency Action



- *“Guidance for Industry: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Derived from Genetically Engineered Plants”*
 - FDA Guidance
 - Published November 2015
 - Nonbinding guidance



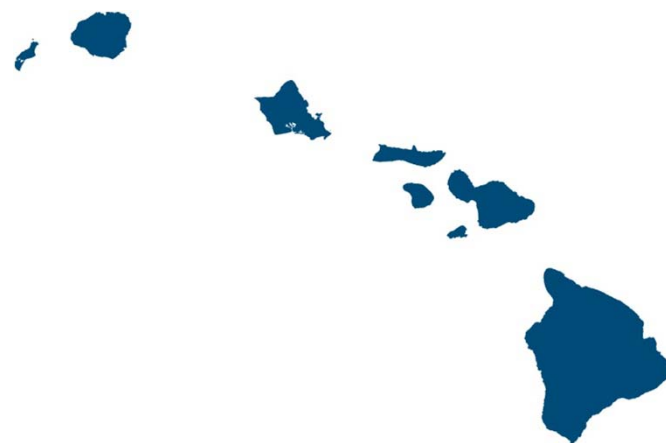
Legal Issues



- First Amendment

- Applies to state and localities
- Commercial speech has different standard
- Forced speech standard – 2014 COOL case, DC Circuit Court of Appeals

- Equal Protection (Hawaii)



Private Party Litigation



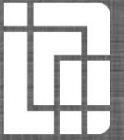
- IDFA vs. Amestoy, 2nd Circuit Court of Appeals (Aug. 1996)
 - Requirement to label product from cows treated with rBST
- IDFA v. Boggs, 6th Circuit Court of Appeals (Sept. 2010)
 - Prohibition on “rBST free” claims
- American Meat Institute v. USDA, DC Circuit Court of Appeals (July 2014)
 - COOL
- Nat’l Ass’n of Manufacturers v. SEC, DC Circuit Court of Appeals (August 2015)
 - “Conflict minerals”

Private Party Litigation, con't



- GMA v. Sorrell, 2nd Circuit Court of Appeals (Oct. 2015)
 - Vermont genetically engineered food labeling case
 - Waiting for decision
- Trial on the merits scheduled for Spring 2016





- Campbell Soup

- Voluntary labeling of products with genetically modified ingredients
- Calling for federal standard for labeling products with genetically modified ingredients



Questions?



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Chip English has over 30 years of FDA, USDA and related state law experience representing farmers, processors, lending institutions and trade associations in the food and beverage industry.

About Davis Wright Tremaine LLP



- Over 500 lawyers
- Full-service transactional, litigation and regulatory practices
- Strong industry teams, particularly in communications, media, technology, health care, energy, financial services, hospitality and life sciences

