

Question: Why doesn't Vermont's law violate the First Amendment?

Because the law advances the State's strong interests in things like preventing consumer deception and enabling Vermonters to avoid the potential health risks of genetically engineered foods.

Examples: In the *American Meat Institute v. USDA* case this past September, the court said that the USDA could require country of origin labeling (COOL) on food products in order to prevent consumer confusion.

In the *National Electric Manufacturers Association v. Sorrell* case from 2001, the court said that Vermont could require labels on mercury-containing products based on environmental protection.

Question: Why isn't Vermont's law preempted?

Because the federal Food, Drug, and Cosmetic Act says that only certain things are preempted, and GE food labeling doesn't fall under any of those categories.

Examples: A "genetically engineered" label does not change the "standard of identity" for a food, which is a federal standard. E.g., "bread" is still "bread."

A "genetically engineered" label does not make a health claim because it does not suggest that a nutrient in a food promotes a health benefit.

Question: Why doesn't Vermont's law violate the commerce clause?

Because the law does not create impermissible burdens on interstate commerce.

Examples: The law does not distinguish between in-state and out-of-state products; GE products from all producers (regardless of state of origin) must be labeled.

The law has local benefits that outweigh any burden on commerce. E.g., the Supreme Court said in a 1981 case that burdens like compliance costs, withdrawal of some businesses from the in-state market, and lost profits did not outweigh Minnesota's benefit in reducing waste by requiring all milk sold in the state to be in paper containers.

The law is not "extra-territorial" – it doesn't require businesses to label products outside the state. E.g., in a 2010 case, the court said that Ohio could require labels on dairy products in the state.