



May 17, 2013

The Honorable J. Brendan Sharkey
Speaker of the House
Connecticut House of Representatives
Legislative Office Building
Hartford, Connecticut

Dear Mr. Speaker:

I am writing on behalf of the Association of National Advertisers (ANA) to express our strong opposition to House Bill 6519 and House Bill 6527. Those bills would impose specific new requirements for both the labeling and advertising of certain foods offered for sale in Connecticut that are produced with genetic engineering. We are concerned that these requirements raise serious First Amendment and interstate commerce concerns.

ANA is the advertising industry's oldest trade association, founded in 1910. We lead the marketing community by providing our members insights, collaboration and advocacy. ANA's membership includes more than 500 companies with 10,000 brands that collectively spend more than \$250 billion in marketing communications and advertising. A number of ANA members have headquarters or conduct substantial business operations in Connecticut. For more information, visit <http://www.ana.net>.

Food labeling is generally regulated at the federal level by the U.S. Food and Drug Administration and the U.S. Department of Agriculture. The advertising for most food products is regulated by the Federal Trade Commission (FTC) and is designed to be consistent throughout the nation. Imposing specific disclosures in both labeling and advertising for products sold in Connecticut that are not required in any other state would be an unreasonable burden on interstate commerce.

Such an imposition would also be a form of compelled speech, which raises very serious First Amendment concerns. Companies would be prohibited from advertising certain food products unless they include the specific disclosures imposed by the state.

The U.S. Supreme Court has made it clear that truthful, non-deceptive commercial speech cannot be banned or restricted unless the restriction "directly and materially advances" a "substantial governmental interest" and is "narrowly tailored" to "reasonably fit" that interest. See *Central Hudson Gas and Electric Corporation v. Public Service Commission of New York*, 447 U.S. 557 (1980). Any government restriction on commercial speech must also be "no more extensive than necessary." *Lorillard Tobacco Company v. Reilly*, 533 U.S. 525 (2001).

In a series of cases, including *Greater New Orleans Broadcasting Association v. U.S.*, 527 U.S. 173 (1999) and *44 Liquormart Inc. v. Rhode Island*, 517 U.S. 484 (1996), the Supreme Court has ruled that all products and services have the same protection under the First Amendment.

In a decision in the *Western States* case, the Supreme Court ruled that a federal law prohibiting pharmacists from advertising compounded drugs violated the First Amendment. See *Thompson v. Western States Medical Center*, 535 U.S. 357 (2002). Writing for the majority, Justice O'Connor stated: "If the First Amendment means anything, it means that regulating speech must be a last – not first – resort."

Much of the food advertising that is seen or heard by residents of Connecticut originates in media outside of the state. These bills would seek to impose serious penalties on marketers that use national or regional media to communicate with consumers in Connecticut. A television commercial or magazine ad for a food company that is legal in 49 other states could face serious legal consequences in Connecticut under these bills. This raises serious interstate commerce concerns. As noted earlier, even if we were to put to one side the serious Commerce Clause issues with this legislation, these types of restrictions can only be justified if there is a substantial government interest that is directly and materially advanced in a narrowly tailored manner that is no more restrictive than necessary. Neither of these bills could meet this test.

We believe that consumers who have concerns about genetically engineered food products can be best protected through voluntary labeling programs. Such an approach avoids the serious First Amendment and interstate commerce concerns raised by these bills.

We urge you to oppose House Bill 6519 and House Bill 6527.

Thank for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Jaffe". The signature is fluid and cursive, with the first name "Dan" and last name "Jaffe" clearly distinguishable.

Dan Jaffe
Group Executive Vice President, Government Relations