

Biotech Food Labeling Proposal Raises First Amendment Concerns

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With Californians set to vote on Proposition 37—the California Right to Know Genetically Engineered Food Act—and a host of other states considering similar proposals, the debate on compelled labeling for foods derived from plant varieties developed with the use of recombinant DNA and related technologies is in full force. Often lost in these debates, however, is whether such initiatives would pass muster under First Amendment principles for compelled speech requirements.

This Legal Opinion Letter published by the Washington Legal Foundation examines the First Amendment issues that would be raised by Proposition 37 and specifically its requirement that all foods be labeled as "Genetically Engineered" unless a manufacturer affirmatively establishes that food biotechnology was not used in the development of any ingredient or demonstrates the applicability of one of the Act's exemptions. In light of the substantial body of case law invalidating compelled speech requirements on First Amendment grounds, particularly those that endorse a value-laden position or stigmatize a lawful product, Proposition 37 would be vulnerable to challenge under the First Amendment for both its compelled labeling requirement and its speech ban.

Click the link below to download a PDF of the Legal Opinion Letter.