

EXHIBIT 3

EXCERPTS

Transcript of Hearing Before the Senate Committee on Agriculture
February 7, 2014, CD No. 14-40

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1 Male 1: Well we'll call the meeting to order and I want to
2 welcome the states attorney

3 William: Attorney general.

4 Albert: Attorney general.

5 Male 1: Yeah. So welcome.

6 William: Thank you Mr. Chairman, for the record William
7 Sorrell, attorney general here to speak about the GMO
8 legislation, and accompanied by my very able assistant attorney
9 general Bridget Asay, who I might well call about to answer one
10 or more of your questions. For the record I'm here at the
11 request of the chair who asked not only to hear from the
12 attorney general's office, but made the request that if possible
13 that I appear personally, so I'm happy to accommodate that
14 request. I was interviewed by the Free Press yesterday about
15 what my testimony will be and by a channel 3 reporter for the
16 11:00pm news. I didn't see the Free Press and I didn't see
17 channel 3, but I do want to say that at 6:09am this morning an
18 email came in to the office. Dear AG it is your job to tell the
19 legislature the law, not campaign for GMO. Tell what the legal
20 issues are and keep your mouth shut if you want my vote the next
21 time around. Thinking you're out of line, you are looking pro
22 GMO, this is not your time to speak. So I

23 Albert: Do you remember what you actually said. Is it signed
24 love mom or?

25 William: I think you could you will be able to know after I'm

1 done whether what I'm saying today is consistent with what I
2 said out to the TV and to the Free Press. But I am not here to
3 be out of line, but I'm also not here to shut up. I'm here to
4 speak

5 Albert: Present legal

6 William: Some issues from my position as attorney general
7 advising you on what might happen, you know, depending on what
8 you do going forward. And let me start by saying that I, and my
9 office, we are strongly pro consumer, and have looked at issues
10 from that perspective for a long time. And there's no longer
11 rule making process that we went through than what we did on the
12 Vermont labeling law, and when companies could claim to be
13 Vermont companies or describe their products as Vermont
14 products. And by in large we approach this with the view that
15 consumers should be able to make informed choices about the
16 products that they purchase and what's in those products.
17 That's the framework the basic framework within which we
18 approach public policy. The potential tension of conflict is
19 when labeling requirements potentially run in conflict with the
20 US constitution. Some different provisions of the constitution,
21 but most particularly in this discussion the first amendment,
22 and the free speech provisions of the first amendment. A lot of
23 people think free speech means you can say whatever you want,
24 and with obviously some limitations that's what free speech is
25 about. But free speech is also about the ability to decide not

1 to speak, that silence is a form of communication, and is the
2 constitutional right. And when we get into the area of
3 David: Compelled speech.

4 William: Compelled speech of required content on labels. The
5 government is compelling a company or an individual putting a
6 product into commerce, to speak, and to make certain disclosures
7 on labels. And what the courts do in this arena is, you have
8 the individual or the company's right to free speech or silence
9 on the one hand, balanced against the governmental interest in
10 trying to further a governmental interest, and here to let
11 consumers make informed choices, and particularly if there's
12 concern about the harm that a product might cause to apprise the
13 consumer to know this, to make informed decisions on purchasing.

14 And it's not just in the labeling arena that we see these kinds
15 of conflicts. And it's not just in labeling that Vermont has
16 dealt with these kind of conflicts. And a couple of cases that
17 Bridget Asay and I are very familiar with. One was when the
18 legislature, in the interest of limiting the amount of money in
19 campaigns, passed a statute, went out ahead of the rest of the
20 country, and limited spending on campaigns. And that was the
21 governmental interest in the integrity of our elections and
22 voter confidence in elected officials and such on the one hand,
23 versus the free speech rights of those with money, to use their
24 money to support candidates and to speak by how they use their
25 money. That case went all the way to the US Supreme Court. We

1 prevailed at the lower courts, I argued the case, and we lost
2 that case. And the court found that the free speech rights of
3 those with money, and the wish to spend, outweighed the
4 governmental interest in fostering the integrity or confidence
5 in part of voters integrity of elections. Similarly the
6 legislature enacted a law, as did Maine and New Hampshire,
7 restricting access to Doctors prescribing records for commercial
8 marketing purposes for the pharmaceutical industry. That case
9 also went to the US Supreme Court, Bridget Asay argued the case,
10 and in that case the First Amendment right, not of individuals
11 as in the campaign finance case, but corporations, was deemed to
12 be of greater weight then the states interest in trying to limit
13 the cost increases for prescription drugs. Those are examples
14 of balancing by the Court of First Amendment versus governmental
15 interest. Now going more specifically to labeling, and
16 Vermont's experiences in that arena, we've had two particular
17 cases over the last fifteen years or so. One was the Vermont
18 legislature enacted a statute requiring labeling of dairy
19 products when the cows had received bovine growth hormone, rBGH
20 rBST. Required labeling for those products when the products
21 arguably had BGH in them. Similarly the legislature alone in
22 the country enacted a statute requiring the labeling of consumer
23 products containing mercury, and in both cases Vermont was sued.
24 We ultimately prevailed in one and lost in the other. We
25 prevailed in having the Vermont statute on mercury labeling

1 upheld. The Court finding that it was just clear and convincing
2 evidence that mercury in most respects is bad for you, personal
3 health and for the environment. On the bovine growth hormone
4 case, we lost. And ultimately what the court said is that there
5 wasn't sufficiently compelling evidence of harm for products
6 containing BGH to outweigh the dairy industries First Amendment
7 right not to be forced to so label their products. And so that
8 law was struck down, and what we see in the dairy industry is
9 some manufacturers who use only BGH or rBST free fluid milk, so
10 indicating in their products that, you know no bovine growth
11 hormone or whatever in our products, as is their right to do.
12 So now you're looking at an issue of forcing manufacturers of
13 products that contain GMOs to so label their products. And
14 unlike the situation of mercury products, which is a very small
15 part of the market place. Here we're talking in processes
16 foods, estimates of eighty to ninety percent of what you see on
17 grocery store shelves, containing process foods containing
18 GMOs. So we're talking about a labeling requirement that's not
19 a small part of the products in the market place, but arguably
20 the majority of products you would see, certainly processed
21 foods, in our grocery stores. So a question is, where is the
22 science at in terms of the public health risks attendant with
23 consuming GMO laden foods, as opposed to those that don't have
24 GMOs. And is the risk or harm sufficiently serious or clear
25 that the government interest in requiring that labeling,

1 outweighs the manufacturer or processor's interest in not being
2 compelled to so label their products. I have not sat in any of
3 the committee hearings on the House side, nor on the Senate
4 side, to hear the experts on the health relative health claims
5 whether healthy or harmful, to know. But that's your decision
6 to make based on the evidence as presented to you, and how
7 compelling you find that evidence to be. I will saw that if you
8 do enact this statute, and it goes into effect, and possibly
9 even if you've just enacted it and it hasn't yet gone into
10 effect, I have little doubt but that the state will be sued. I
11 think that's almost a certainty from comments that have been
12 made by a prominent industry groups. I don't know that for
13 sure, but I think you should assume that Vermont will be sued.
14 And I will say that depending on where the evidence falls
15 between the mercury side of the equation and the BGH side of the
16 equation, or some either between those, or somewhere outside
17 one of those or the other. That would largely determine the
18 likely hood of success that the state would have in litigation.
19 And given the fact that the case would alleged in all likely
20 hood alleged constitutional violations, at least in the free
21 speech arena, potentially in the commerce clause provisions. If
22 Vermont is unsuccessful in defending the statute we would be
23 subject to needing to pay attorneys fees. Which we had to pay
24 in the campaign finance case, and we had to pay in the IMS case,
25 and I frankly don't remember right now on the BGH, I assume we

1 did but I don't

2 Male 1: Were you the AG when we did this.

3 William: I believe I was administration secretary.

4 Male 1: Yes. Yes. And what we're up against, and I've been
5 pretty neutral on this whole issue, wanting to hear the
6 testimony, and if I'm wrong committee members can speak up. But
7 we on the pros and cons, if we had someone in one day talking
8 about how, you know, safe GMOs are, and the studies that have
9 been done were, you know, false. The next day the other side
10 for some reason would be calling in, wanting to come in, and
11 we'd hear pretty much the opposite story from those folks. And
12 it's pretty much gone that way all the way through. And I was
13 here when we had the problem with rBST BGH. And I was sure that
14 we were dead right on that, and ultimately I was right on it,
15 because the consumers put up such a fight that no milk companies
16 actually refused to take milk from BGH injected cows for our
17 fluid market at least. And so I've been under the impression
18 from after hearing testimony that we would probably get sued.
19 William: I think that's almost definitely.

20 Male 1: And it's similar to you. But it seems that the
21 populous, our senators want this labeling law done. I mean
22 there's a large large majority of the people that support
23 labeling.

24 William: I think that's correct and I think that there were
25 polls when the legislature enacted the campaign finance law that

1 the vast majority of Vermonters thought there should be less big
2 money influence in our campaigns than there was. And there are
3 times when the will of the populous runs afoul of the
4 constitution.

5 Male 1: And during the last election, I mean we did have
6 freedom to spend as much as we want by and individuals, and
7 that did happen in Vermont, and I don't think there was one
8 candidate that received that money that actually won. So the
9 people even though the money was spent, the people still got
10 their way, and won in the end. Because none of those people
11 that the vast majority of that money was spent on won. But I
12 think that what we're trying to do is craft a bill that you
13 could defend to the best of your ability, and you know I think
14 we're doing pretty good at that.

15 William: And let me make very clear that if you enact a statute
16 that requires mandatory labeling of GMO products, we will do our
17 level best to defend that statute as aggressively as possible.
18 So let there be no question about that.

19 Male 1: Then the other issue is we talked of course finances
20 are a big issue in this building, and the citizens are certainly
21 concerned about a balanced budget in taxes and all that. And
22 one proposal that Senator Zuckerman brought forth, was to set up
23 a defense, a voluntary defense fund for citizens to contribute
24 to. And that's it was certainly unique to my way of thinking,
25 and I don't know, would you want to comment on that, if that

1 would be appropriate, or inappropriate or...

2 David: Maybe I'll [INDISCERNIBLE 00:19:01] a little bit more as
3 well, to make sure you I don't know if you've read the wording
4 of that. The idea was persons

5 [INDISCERNIBLE 00:19:07]

6 William: I looked at it just before this morning.

7 David: So it was flesh and blood persons, not corporations.

8 William: Yes not corporations, I understand that.

9 David: And also it was completely voluntary, as you know. And
10 it was trying to remember if there are any other major details,
11 but

12 William: And excuse me I'll just say that there was a case in
13 the past where issue was raised with me about outside funding of
14 the states defense. And I expressed concerns that the policy
15 and the appearance of the legislature enacts a statute and then
16 there's not the appetite to defend this particular statute with
17 tax payer funds, but an openness to defending this other statute
18 as long as there's private funding. And I acknowledge your
19 proposal as just for individuals as opposed to corporations
20 because I can tell you right now that there are enforcement
21 actions that I and other AGs are being encouraged to take
22 against large corporations, where other corporations compete
23 that compete with these, want to finance the litigation. And I
24 would suggest that you at least consider the appearances to the
25 average citizen of legislature enacts this or that, and we look

1 to wealthy individuals to defend legislative.

2 David: There's no requirement that they be wealthy.

3 William: Well that's true. Five hundred thousand Vermonters
4 could pay ten bucks a piece, and there's five million.

5 David: There's also the US there's no restriction.

6 William: I understand that.

7 David: Sorry.

8 William: It's a now I also understand I think the way it's
9 it's not just that there's a fund that would be available that
10 under the proposal the law wouldn't even go into effect unless
11 one person or five million people paying a dollar fund the fund.

12 And let me

13 David: [INDISCERNIBLE 00:21:41]

14 William: I wouldn't want to prejudice any litigation that we're
15 ultimately in, but I could envision the plaintiff or plaintiffs
16 arguing, hey this legislature passed this law, but they didn't
17 even go into effect unless a whole bunch of people individually
18 funded the defense of the statute rather than the state with
19 it's own full phasing credit and tax payer revenues stand behind
20 it and defend the law. So I and here, unlike there just being
21 a fund that could be used in the defense, the law doesn't even
22 go into effect, I understand under this proposal, unless and
23 until the fund gets to be five million dollars.

24 David: Or other, there's other triggers as well.

25 William: Or they

1 David: So it's not only this, this is one way.

2 Male 1: It's and or...

3 David: And or yeah.

4 William: Alright. I can see a situ

5 David: If it was solely this, as the way to do it, then you
6 could say you're bribing the people, but this is an option.

7 William: In that balancing the argument, between the
8 governmental interest in the private First Amendment
9 constitutional interest. I can envision an argument coming from
10 those attacking the statute to say, well the government interest
11 wasn't so important that the government put it's own money up,
12 it's only if individuals, whether wealthy or not, fund it, that
13 the law even goes into effect. And that would be an argument,
14 I'm not saying that would be dispositive in the case at all, but
15 it would be one that wouldn't be totally fun to hear from our
16 side of the equation.

17 Male 1: Thank god they're [INDISCERNIBLE 00:23:33].

18 Chris: So just following up on that then. Are you aware of the
19 state taking a, you know building in a fund raising mechanism
20 like this in any previous legislation.

21 William: I am not, but you know the state people can make
22 contributions to the state, and that's not unheard of.

23 Chris: Even if you were trying to capitalize on public support
24 for it, someone could achieve the same things outside the law,
25 through a private mechanism. You don't need to build it into a

1 law to go out and fund raise and to support, and write a check
2 to the state of Vermont.

3 William: I I think I might be missing your question.

4 Chris: I Well

5 William: You're saying, is it possible that even if it's not in
6 a law, that individuals or corporations or whatever could
7 contribute millions of dollars to the state, either to pave a
8 stretch of route twelve, or to defend a statute, sure, sure.

9 Male 1: I wish they would contribute to do twelve.

10 Chris: A question back in terms of the law, and how it might be
11 examined in court if there were as suit. Is a lack of consensus
12 in the scientific community about positive or ill effects of
13 GMOs sufficient to rise the level of compelling interest on the
14 part of the state, if you provide citizens with that
15 information.

16 William: Right I can't it really depends on where that's why
17 I say, sort of it's on the continuum. But I mean if you've got
18 half the expert community saying one thing, and half the expert
19 community saying the other, then the question for the trier of
20 fact is which is more credible, which studies are better with
21 it, whatever. But at the end of the day it's roughly a fifty
22 fifty balance, then it makes it it would make it somewhat
23 difficult for the government to say that we have this compelling
24 interest to require the labeling, when there's a relative lack
25 of certainty of the harm. And that was the case in the BGH.

1 Where there were strong arguments both sides of the equation, I
2 can't say it was an absolute balance, but there were certainly
3 arguments both way. But in mercury, there were virtually no
4 studies that said mercury is good for you, you know unless
5 you're trying to tell the temperature.

6 Chris: So just to be sure I understand, so

7 William: The more compelling the evidence of harm, the stronger
8 the states argument would be.

9 Male 1: Albert.

10 Albert: You know [INDISCERNIBLE 00:26:45] I certainly I'm an
11 arborist and I have no intention of trying to give you some
12 legal advice or it's a big questions but you mentioned

13 Male 1: It probably wouldn't work anyway.

14 Albert: You never can tell.

15 William: No I listen to advice.

16 Albert: You mentioned in the case of mercury it was a very
17 small component rather than the genetically engineered food are
18 such a you know ninety percent, eighty five percent of produced
19 foods so, isn't it possible that a compelling states interest
20 could be, regardless of whether or not you're weighing the
21 strength of the studies, but the lack thereof. We're talking
22 about something where the science has really been incomplete,
23 for a variety of reasons, many of which are laid out in the
24 bill. And so you have something that is not just in something
25 here and in something there, but is in lots of things. It's in

1 something that maybe ninety five percent of the people in the
2 state of Vermont are ingesting. And there because it hasn't
3 been completely enough looked at, and it is so wide spread

4 William: [INDISCERNIBLE 00:27:56].

5 Albert: Not a negative part, but that's a positive, using for
6 it to be a compelling interest of the state.

7 William: And that the risk is potentially so great, even though
8 there's the lack of certainty on it.

9 Albert: Exactly.

10 William: So that would those would certainly be arguments that
11 we would at least consider making yes, you're and the unknown
12 harm is so great that the government is attempting to protect in
13 the the event that the uncertainty could have dramatically
14 negative or harmful effects, sure.

15 David: Yeah you stated earlier on sort of a relative certainty
16 that we would be sued.

17 William: Yeah.

18 David: Potentially even before it goes into an active, sort of
19 on passing the legislation. With that certainty in mind, why
20 would they not then have done that already with Maine and
21 Connecticut, who have similar triggers, or types of triggers,
22 they wait. Why would they not have sued them, and would they
23 wait to sue us.

24 William: I don't know, you'd have to ask them. I'm just saying

25

1 David: If there's a certainty they're gonna sue, then they
2 would have sued right?

3 William: No, not necessarily. They might wait until it was
4 reasonably foreseeable that there were gonna be enough states
5 and I mean in Maine for example I think New Hampshire has to
6 approve it, in order for Maine to go. And I think New Hampshire
7 said no, at least thus far. You know in other words if the
8 effected date is July 1 2015 or whatever, in order to get
9 prepared for the labe to meet the labeling requirements and
10 everything, they needed quite a bit of advanced notice to do the
11 production and distribution, and whatever. And in a state like
12 Maine where you have the triggering number of states, in all
13 likely hood all of the states with a statute requiring the
14 labeling would be sued, because otherwise if they leave one
15 state out, they're gonna need to label in that state.

16 David: Right that was my point. I think Connecticut though is
17 thirty or sixty days after the trigger it goes into effect. And
18 so that could be well within one year, whereas even our bill
19 says July 2015 which is more than a year away. So I would think
20 if they were gonna sue on the basis of potential risk of this
21 happening within a short enough time period that they would have
22 a problem with it, that they would have already sued
23 Connecticut. Because if New York passes this bill in the next
24 two months, Connecticut is in. And they're got a I don't
25 recall exactly, but I think it was a fairly short window, from

1 once the trigger happens. So that's why I'm just questioning
2 the certainty with which you are using, I think it's a real
3 possibility, it just seemed very certain by you that we would
4 be.

5 William: I think if you're thinking, if you pass this law, that
6 you're gonna avoid litigation

7 David: I'm not saying that either

8 William: For now and for all time on this law

9 David: That's not what I said.

10 William: I think that's wishful thinking.

11 David: That's not what I said, I was questioning the certainty.

12 William: I am virtually certain that Vermont will be sued,
13 eventually. Sooner or later.

14 Male 1: Chris.

15 Chris: There sometimes when people talk about triggers,
16 there's sort of a safety in numbers notion I guess floated out
17 there. I guess on mercury we went along with like seven other
18 states or something like that. But how does that effect your
19 worry as an AG, to have other states going or not going, to
20 have Vermont alone or not.

21 William: Well you want to have particularly when you get to
22 the Supreme Court level, and sometimes at the Circuit Court of
23 Appeals level, enough friend of the court briefs from other
24 states supporting you. Which is what we did in IMS, we did in
25 campaign. Finance we did on the [INISCERNIBLE 00:31:51] just

1 this part year. And it arguably, the more states, and the more
2 population that are of a view that this is a serious health
3 risk, that at least arguably gives us a little bit more weight
4 of arguing that this is not just Vermont, or not just Maine or
5 Connecticut, but rather this is a perceived to be a significant
6 health risk by a significant number of states, and a significant
7 amount of the population. So I think that I'd rather be arguing
8 with more states and more population, than not. And I think the
9 argument is somewhat more compelling that way. At the end of
10 the day, the constitution is the constitution, and if all fifty
11 states pass these laws, and what's arguably the most
12 conservative US Supreme Court that we've had at least in the
13 last seventy or eighty years in this country feels otherwise,
14 then that's gonna be the end of it.

15 Chris: And are those other states not apt to contribute brief
16 and support, unless they've already passed legislation, or
17 similar legislation.

18 William: No not necessarily. The just in a case in the US
19 Supreme Court, Harris V Quinn on collective bargaining rights,
20 and then in the home care arena. Vermont's one of the states of
21 ten I think that have a law, Vermont hasn't bargained yet, but
22 there were two separate briefs that went in on the part of
23 states. One of those with already effective laws arguing this
24 or that at the Supreme Court. And we were on a brief, generally
25 supporting public sector bargaining rights. So, and a number of

1 those states don't have legislation at all on the home care
2 issue. But they just, looking ahead, want to preserve their
3 right. So no it wouldn't be in all likely hood it wouldn't be
4 just the states that already have statutes. I would think there
5 would be others you know that would get on a brief supporting
6 Vermont's or Connecticut's arguments.

7 Male 1: What about financially. Do other states, would other
8 states help out.

9 William: That would be most unusual. They would have
10 particularly states that are being sued, they would have their
11 own legal cost to shoulder. But it would be it would have to
12 go through the appropriations process. So would the California
13 general assembly agree to kick in Vermont's defense cost, maybe,
14 but unlikely.

15 Male 1: Any other questions, Albert.

16 Albert: Well yeah just so to be clear on that I think it's a a
17 point worth underlining, you know, for everyone. So that, as
18 far as the strength in numbers so there's since there's no
19 financial pooling of money in the defense necessarily. We
20 wouldn't be helped by other states financially.

21 William: Not necessarily. They might agree.

22 Albert: It would be unusual, I believe you said. If that's
23 unusual then the only advantage therefore from a litigation
24 point of view, would be to have other states going along on the
25 brief, as friends of I'm not sure what the legal term is, but

1 when you let off other states say yeah and by the way, me too,
2 to the court. That that could have weight that would be
3 possibly advantageous.

4 William: That could have weight that would be possibly
5 advantageous. And the states that have enacted

6 Albert: Correct.

7 William: Statutes like this would be even more compelling,
8 because those legislatures, and not just their AG getting on a
9 brief, their legislatures have said yes, this is a big public
10 health problem, and the public interest in this issue outweighs
11 the private interest in free speech silence. And the more
12 states, the more population legislatures are of that view, that
13 at least gives us some added weight to argue, rather than this
14 is Vermont going it alone with a population of six hundred
15 thousand. And no, I'm not saying it's a definite loser if
16 Vermont's the only state, I'm just saying there's risk of
17 litigation, and there are potentially some very strong arguments
18 that might be made by plaintiffs. That their constitutional
19 rights are being violated by this mandatory labeling. In the
20 same way they were successful in defeating rBGH labeling case.

21 Albert: So the only so for the people who are have lots of
22 risk aversion, there only solace in having other people aboard,
23 whether or not having enacted or just joining, is that it
24 possibly strengthens the case.

25 William: You said only, and I don't want to say only. I say

1 that would be a benefit, or arguably a benefit in the arguments
2 of defending a statute, if other states, and encompassing larger
3 numbers of Americans were convinced that this is a sufficiently
4 public health issue, that mandatory labeling outweighs the
5 constitutional right in the industry for silence, to avoid
6 compelled speech.

7 Male 1: I think we're all set. I want to thank you for your
8 time.

9 William: Well thank you for asking me in.

10 Male 1: Yeah, appreciate it.

11 William: And if we can be of any assistance to you going
12 forward, please ask.

13 Male 1: Yep, very good.

14 William: And have a great weekend.

15 Albert: Thank you.

16 Male 1: You too. Lucy Leriche.

17 Lucy: Yep.

18 Male 1: Thanks for coming.

19 Lucy: Oh absolutely, it's always a pleasure to see this fine
20 committee. For the record, Lucy Leriche, Deputy Secretary of
21 the Agency of Commerce and Community Development. I have to
22 admit that I have not seen the latest version of this bill. But
23 I just came in to mostly reiterate probably the testimony that I
24 had given prior, some weeks ago, regarding this bill. This the
25 whole, the administration certainly supports the concept of