



March 16, 2017

Testimony in Support of HB 2739 House Committee on Judiciary

Chair Barker, members of the Committee:

Friends of Family Farmers represents small and mid-sized farmers across Oregon. We work with a wide range of producers, including organic, conventional and some who grow genetically engineered crops. We served on the state's Task Force on Genetically Engineered (GE) Seeds and Agricultural Products in 2014 in hopes of finding solutions to long-standing problems with lax oversight of GE crops at the state and federal levels.

We are testifying today in support of HB 2739, legislation to allow farmers who discover the unwanted presence of genetically engineered material on their land to seek damages from the patent-holders of those crops. We believe that in the continued absence of a sensible state level approach to regulating these crops to prevent harm, the Legislature should strengthen the ability of farmers to hold GE crop patent-holders financially liable for the damage to farmers from unwanted presence of their products.

Background

During the first special session of 2013, the Legislature narrowly passed SB 863, which placed genetically engineered seeds and 'products of seed' under the 'exclusive regulatory power' of the state. At the time, we opposed the bill because we believed that the Oregon Department of Agriculture (ODA) was not likely to establish regulations per the intent of SB 863.

Unfortunately, our concerns have been realized and in the more than three years since SB 863 passed, neither the ODA nor the Legislature has taken any steps to put in place concrete protections sought by farmers who grow non-genetically engineered crops at risk of cross-contamination. In fact, the Oregon Department of Agriculture has stated that it does not believe it can use existing regulatory authorities to make science-based decisions to address problematic GE crops without further clarification from the Oregon Legislature. This stance from ODA leaves many organic and non-GE conventional farmers at risk of seed supply contamination, market losses, and legal liability related to patent infringement from the lax oversight and inadequate regulation of open-pollinated GE crops in Oregon.

In February 2014, the Legislature authorized funding to establish Oregon's Task Force on genetic engineering. Meeting for over a year, the group included a wide range of stakeholders on all sides of these issues. This group identified a number of 'key policy considerations' to improve the state's approach to GE issues. This included the need to clarify the role of the state in regulating genetically engineered crops, the need to protect Oregon's organic and conventional non-GE markets, and to fill data gaps on the use of genetically engineered crops in Oregon because they are not as widely used here as in other states.

Partly because Oregon is not a major GE crop producing state, key organic and conventional farming sectors face significant market risk and legal liability from some of the genetically engineered crops that are grown here and that may be in the future.

ODA's Failure to Regulate at the State Level Leaves Farmers At Risk

The Legislature years ago granted ODA authority to designate 'control areas' under ORS 570.405 'for the eradication or exclusion from such areas of certain plants or their produce...*that may be a menace* to such areas and generally to horticultural, agricultural or forestry industries.' Despite advice from the Oregon Department of Justice that this authority is broad enough to be used to control GE crops regardless of their federal regulatory status, with one exception, ODA has declined to use the 'control area' authority when it comes to problematic GE crops, despite clear evidence of economic risk to existing industries.

The only ODA 'control area' for a GE crop is for genetically engineered herbicide-resistant creeping bentgrass, a crop that escaped from Idaho test plots into irrigation canals in eastern Oregon and also onto the Crooked River National Grassland from planted fields in central Oregon. Through the bentgrass control area administrative rule, ODA banned this controversial grass from the Willamette Valley entirely and set strict regulations for its production, requiring minimum isolation distances from conventional crops at risk of cross-pollination in Central Oregon. This control area exists to prevent the spread of unwanted engineered herbicide resistant traits into the wild and to protect conventional grass seed growers at risk of contamination.

But despite the clear problems with bentgrass, ODA has argued they can only maintain state level restrictions until the crop is federally 'deregulated.' With the recent decision by USDA to deregulate GE creeping bentgrass, the future of state level regulation to protect Oregon farmers from this demonstrably problematic GE crop is now unclear.

Through the establishment and maintenance of a control area for GE bentgrass, the state of Oregon has determined that genetically engineered crops can in fact be a 'menace' to agricultural industries and thus sometimes need to be controlled and regulated. Federal regulatory status is not the decisive factor - it is the behavior of the crop in the environment. The issues with GE bentgrass are similar for a number of open-pollinated and deregulated GE crops that can cross with non-GE varieties (for example, alfalfa, canola, sugar beet, corn, and grass seed like tall fescue) or those that can cross with wild cousins or go feral (like canola or grass seed).

But despite this, the ODA has taken the position that without further legislative action clarifying their authority, it lacks the ability to establish state-level regulations once a GE crop has been 'deregulated' by federal agencies.

If ODA continues to maintain the position that it cannot create, maintain or enforce state level control areas once federal 'deregulation' of a crop has occurred, it underscores the need for the Legislature to either clarify their authority to give them tools to protect farmers, or end the 2013 pre-emption on local GE crop restrictions. But it also speaks to the need for the Legislature to ensure that GE crop patent-holders are held financial liable when their profitable products cause economic harm to Oregon farmers. That is the purpose of HB 2739.

Thank you for the opportunity to testify today. We urge your support for HB 2739.

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