



Oppose the DARK Act and its Unjust Preemption of State Consumer Protection Laws

This week, the Senate Committee on Agriculture, Nutrition, and Forestry will mark up Chairman Roberts' so-called "Denying Americans the Right to Know" (DARK Act). The DARK Act includes broad preemption of state law and state-based remedies relating to labeling of genetically modified organisms (GMO) food products and mislabeling of "natural" and "GMO-free" food and agricultural products. Oddly, however, this bill does not create a national standard for labeling, but rather prohibits any local, state, or other national standard. Instead, it establishes a voluntary, industry-driven FDA notification program while broadly preempting state consumer protection statutes and state law-based tort remedies. For these reasons, AAJ strongly opposes the DARK and encourages a "NO" vote at markup.

Injudicious Preemption of State Law. Under the Tenth Amendment, powers neither specifically granted to the Federal Government nor prohibited to the states are reserved for the people. This bill will preempt state-based laws relating to mislabeling of food products as "natural," "GMO-free," and similar designations.

- Section 293(c) "State Food Labeling Standards" preempts states and municipalities from establishing or continuing in effect *any* requirement that is not identical to the voluntary, industry-selected national standard.
- Section 295(b) "Federal Preemption" preempts state law requirements, including consumer protection statutes and other tort law remedies designed to provide transparency and accountability for the consuming public.

Violation of States Rights, Preemption of State Statutes. Without even creating a Federal standard, this bill preempts all preexisting and future state laws and regulations regarding GMO labeling of food products, essentially ceasing and eradicating any regulation whatsoever of GMO products. Over one hundred states and municipalities have passed laws requiring food products that contain GMO ingredients to be labeled as such. Although these states and cities decided their citizens have a right to make informed decisions regarding their food products, those statutes and ordinances will be preempted by the bill. Many other state legislatures are currently considering similar legislation. Yet, these carefully considered state decisions will also be preempted.

Preemption of State-Based, Consumer Protection Laws and Remedies. Every state has important consumer protection laws that allow residents to bring a cause of action for misleading labels on food. When food items are improperly labeled, consumers can bring such claims as false advertising, consumer protection, fraud, breach of warranty, or unfair trade practices against the manufacturers of such products. Many consumers have pursued claims over misuse of the word "natural" or "GMO-free" by food manufacturers when they were falsely led to believe a product does not—in fact—contain unnatural ingredients. Oftentimes, these same consumers were also charged a premium in addition to the food manufacturer's false or misleading statements. Because these causes of action exist solely under state law, this bill would eliminate the only remedies available to ensure advertising accountability and transparency for the consuming public.

AAJ strongly opposes the DARK and encourages a "NO" vote