



April 12, 2017

Testimony in Support of SB 1037

Senate Committee on Environment and Natural Resources

Chair Dembrow, members of the Committee:

Friends of Family Farmers represents small and mid-sized farmers across Oregon. We work with a wide range of farmers, 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 over GE crops at the state and federal levels.

We are testifying today in support of SB 1037, legislation to allow local communities to enact locally appropriate policies on genetically engineered crops for the purpose of protecting farmers who grow non-genetically engineered crops. We believe that in the continued absence of a sensible state level approach to addressing problems caused by genetically engineered crops, local communities should be able to address these issues locally as was the policy in Oregon until late 2013.

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 this legislation, as we believe local communities should have the right to establish local policies specific to their local agricultural industries. SB 863 decisively took away local control. We also opposed the bill because, based on our experiences, we believed that the Oregon Department of Agriculture (ODA) was not likely to live up to the legislative intent of SB 863, which was clearly for some sort of state regulatory oversight.

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. Of importance here, 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 filling in data gaps on the use of genetically engineered crops in Oregon.

Additionally, the Task Force noted some key Oregon specific themes with regard to GE issues. First, unlike the Midwest, where a handful of genetically engineered commodity crops dominate agricultural

production, Oregon agriculture is highly diversified with the vast majority of crops and agricultural output here *not* dependent upon genetic engineering. Oregon also has well-developed and valuable specialty seed, organic and export markets that are highly sensitive to genetic contamination. Additionally, regional differences in agriculture in Oregon are substantial, which is why allowing local communities to address locally specific situations, as SB 1037 would do, is critically important.

Another key theme from the state's GE Task Force is that more data on GE use in Oregon are needed. Given Oregon's diversified agricultural sector and the general lack of reliance on genetic engineering for our major crops, USDA data collection on use of GE crops in Oregon is largely non-existent. However, key organic and conventional 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. Protections for non-GE agriculture are needed.

Oregon Department of Agriculture's Failure to Regulate at the State Level

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.' The ODA has used this authority to restrict canola in the Willamette Valley and four other seed producing regions (because of plant disease issues and not because a large percentage of canola is now genetically engineered for herbicide tolerance), and to restrict commercial production of *Arundo donax*, giant cane grass, to a small area in NE Oregon. But with one exception, ODA has declined to use the 'control area' authority when it comes to genetically engineered crops, despite clear evidence of economic risk to existing industries.

But this exception is significant. ODA maintains a 'control area' for genetically engineered herbicide-resistant creeping bentgrass that has escaped into irrigation canals in eastern Oregon and also onto the Crooked River National Grassland. Because this GE grass poses such a threat to Oregon's valuable grass seed industry, through administrative rule, ODA has actually banned this controversial GE 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 ODA has argued they can only maintain such state level controls as long as the crop has not been 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 unclear.

From our perspective, through the establishment and maintenance of a control area for GE creeping bentgrass, ***the state of Oregon has in fact determined that genetically engineered crops can be a menace to agricultural industries and sometimes need to be controlled and regulated.*** The issues with GE bentgrass are similar for a number of open-pollinated 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).

In 2001, the Oregon Department of Justice advised ODA that its authority is broad enough to allow for control areas to segregate genetically engineered crops from conventional non-GE counterparts regardless of federal regulatory status, if the agency has determined that the behavior of a GE crop in the environment is or could be a menace to and harm non-GE agricultural industries.

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 maintains the position that it cannot create control areas for problematic GE crops, or cannot enforce the existing GE creeping bentgrass control areas after federal ‘deregulation’ has occurred, it further speaks to the need to adopt SB 1037 to allow local communities concerned about the future of the grass seed industry, or other industries impacted by deregulated GE crops, to set up their own rules to protect local farmers.

After Years of State Inaction – It Is Time to Restore Local Control to Protect Farmers

Because ODA appears to be unwilling or unable to use its existing authorities to protect farmers most impacted and concerned about contamination from genetically engineered crops, the Legislature should adopt SB 1037 to restore local control to local communities to establish locally appropriate protections for farmers.

We support House SB 1037 because we believe local communities deserve the right to protect family farmers growing traditional crops from the contamination impacts of genetically engineered crops. While only a small fraction of Oregon’s agricultural output is tied to genetically engineered crops, these crops can have significant adverse impacts on farmers growing traditional crops that are not genetically engineered.

It is clear that when SB 863 was passed in the 2013 special session to pre-empt local seed laws, there was an intent and commitment made to take action at the state level to protect farmers growing traditional crops. However, no action has been taken. Many of those who argued in favor of local pre-emption and state level regulation in 2013 have instead continued to block any meaningful effort at the state level to protect farmers growing traditional crops from the impacts of genetically engineered crops.

Blocking both the state of Oregon and local communities from adopting laws or rules based on local growing conditions does not make sense. The Legislature in 2013 in effect created a policy vacuum, when in fact greater clarity of the state’s role is needed. In the continued absence of state action, local rules are the only way to provide meaningful protections for farmers threatened with contamination from genetically engineered crops. Local governments and local farmers deserve the right to shape locally appropriate protections. As has been shown in Jackson County, such local farmer protections can be created in ways that are consistent with Oregon’s ‘right to farm’ law.

Without concrete protections in place, the ability of farmers in Oregon to raise seeds and crops that are not contaminated by genetically engineered pollen or seed will be eroded over time. Allowing local communities to create areas that protect the ability of farmers to produce non-GE seeds and crops without the threat of contamination not only protects the farmers growing these crops, it sends a clear signal to high value international and domestic markets that Oregon takes these issues seriously and has rules in place to prevent against GE contamination. Regardless of whether one supports genetically engineered crops or not, it is clear that there is tremendous value in preserving traditional seed stocks and in developing new seed and crop varieties through traditional breeding techniques. If the State of Oregon is unwilling to establish protections for farmers, it should not stand in the way of local communities that make the decision to move forward with local protections of their own.

Thank you for the opportunity to testify today. We urge your support for SB 1037.

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