

Labeling of genetically engineered foods: Proposition language raises legal issues

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(Medical Xpress)—California's ballot initiative that proposes to require labeling of genetically engineered foods raises important legal and policy issues that could take years to resolve through the courts and other means, University of California, Davis, School of Law researchers caution.

"While Proposition 37 generally captures the [spirit](#) of the genetically engineered food labeling movement, it also contains several exemptions and ambiguities that have made it a controversial measure facing California voters," says Miles Hogan, an [environmental law](#) fellow for the California Environmental Law and Policy Center at the UC Davis School of Law. "If the initiative is enacted, those important questions will have to be resolved through regulators' interpretation or in the courts."

Hogan and other researchers compiled the report, "California's Proposition 37: A Legal & Policy Analysis," examining provisions in the initiative that not only ask voters to decide whether genetically engineered foods should be labeled by retailers, but also whether to ban such foods from being called "natural."

The proposition, on the ballot in next week's general election, also proposes to exempt many foods from labeling, including processed foods, foods served at restaurants and alcohol.

While not taking a position on the initiative, the report noted that the

initiative's language will likely face litigation challenges over such issues as whether Proposition 37's labeling requirements and advertising restrictions constitute a violation of the First Amendment—regulating speech both by prohibiting and by compelling certain statements by the food sellers, especially the provision that prohibits "natural" claims.

Another likely legal challenge concerns whether Proposition 37, if enacted, could be pre-empted by federal law, which does not currently require any such labeling. The federal Food and Drug Administration has been petitioned by consumer groups to issue new regulations on genetically engineered foods.

"The result of the November election and the fate of Proposition 37 at the polls will likely have a profound impact on the future of genetically engineered food labeling both in California and in the United States as a whole," the report concludes, pointing out that California has been known to pass voter initiatives that are followed by other states.

"California has been a national leader in the use of the voter initiative process to adopt a wide array of innovative laws and policies—including those to protect the environment," observed Richard Frank, director of the UC Davis School of Law's California Environmental Law and Policy Center. "How those previous initiative measures have been interpreted by the courts and enforced by California policymakers is likely to influence strongly how Proposition 37 is implemented—if the voters approve it at the polls."

No state has yet passed any broad law governing food labeling either legislatively or through a voter initiative, although 19 states have tried to pass similar laws, according to the report. Alaska enacted a law on the mandatory [labeling](#) of [genetically engineered](#) fish only, for example, and Connecticut regulates what can be labeled as "organic" or "natural."

California voters in 1986 took similar steps with Proposition 65, which was an attempt to protect residents from exposure to hazardous chemicals. Formally titled the "California Safe Drinking Water and Toxic Enforcement Act," Proposition 65 has since been amended twice by the California Legislature, even though such amendments, as in Proposition 37, require a stringent two-thirds majority of each house of the California Legislature.

Provided by UC Davis

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