

FOOD LABEL CENSORSHIP: ANTI-MARKET & ANTI-SPEECH

“What the beef and dairy producers want is for the government to protect them from competition... [Veggie burgers and almond milk] are not trying to fool anyone.” - Chicago Tribune columnist Steve Chapman

Plant-based meats and milks are increasingly popular in the United States. In the last year alone, these products accounted for \$684 million and \$1.8 billion in retail sales, respectively.¹ Retail sales for plant-based foods grew by 17% in that period, while total U.S. retail food sales grew by only 2%.²

Cell-based meat is not yet on the market but represents a promising new innovation: real animal meat down to the cellular level, produced in a different way. A small sample of cells is taken from a live animal and placed in a tank, called a cultivator, with nutrients that allow the cells to grow and multiply. Once on the market, cell-based meat promises to offer a range of environmental and public health benefits.³

Confronted with the success of plant-based meats and milks and the looming competitive threat of cell-based meat, the conventional meat and dairy industries have turned to the government to help protect their market share. Seeking to protect their favored industries, legislators in states across the country have introduced bills to censor the use of meat and dairy terms on the labels of plant-based foods and cell-based meat products. But consumers, not the government, should decide which products succeed in the marketplace.

Why should you oppose label censorship?

LABEL CENSORSHIP IS HARMFUL TO CONSUMERS

Label censorship will result in misleading labels and fewer options for consumers. Consumers understand plant-based meat and milk labels. Arkansas Rep. David Hillman said that his label censorship bill would apply only to producers “who want to deceive the public about how their food originated.”⁴ But the products targeted by label censorship bills are not deceiving anyone. Consumers understand that a product clearly labeled as a “veggie burger” is plant-based but can be grilled, placed in a bun, and topped with mustard and ketchup. Clearly, these bills are not meant to protect consumers. Instead, as many legislators have admitted openly

and explicitly, including Louisiana Sen. Francis Thompson, label censorship bills are “[meant] to protect the industry.”⁵

Down to the level of DNA, cell-based beef is beef, cell-based pork is pork, and cell-based chicken is chicken. So, once cell-based meat is on the market, how are producers supposed to communicate clearly with consumers about their products without labeling them as meat? A label for a burger patty made of cell-based beef that does not clearly communicate that the product is beef would be misleading. For consumers with allergies to meat, such a label could be life-threatening as well, since eating a cell-based beef burger would cause the same allergic reaction as would a conventional beef burger.

Label censorship will also leave consumers with fewer options. Instead of spending valuable resources producing multiple different labels in order to comply with a patchwork of state laws, producers may simply refrain from selling their products in states that unnecessarily censor labels.

LABEL CENSORSHIP IS UNNECESSARY.

American grocers constantly add new foods to their shelves. Producers are creating these new foods because consumers demand them. The government should not interfere by penalizing accurately labeled, innovative products simply because they compete with more established products. Changes in the marketplace are normal; government censorship is not.

LABEL CENSORSHIP IS UNCONSTITUTIONAL.

Label censorship violates producers’ First Amendment right to describe their products in a clear manner consistent with consumer expectations. As long as labels are not deceiving consumers, states are prohibited from precisely this sort of censorship.⁶ Taxpayers will be forced to pay for costly litigation that will likely be overturned in the courts.

Who opposes label censorship?

The Good Food Institute is making our opposition known by communicating with legislators face-to-face, through letters, and in cooperation with contract lobbyists. We are also a plaintiff in an ongoing lawsuit against Missouri, which enacted the first label censorship law in 2018.⁷

Plant Based Foods Association, the trade association for plant-based food companies, is lobbying against these bills. PBFA is also communicating with state retailer associations to make sure they are aware of these bills and how the bills would impact their members.

Libertarian and Conservative Think Tanks like the R Street Institute and the Cato Institute, and The Heritage Foundation oppose these bills because they represent needless government interference in the marketplace. "Consumers, regardless of what 'meat' products

they choose, should be able to decide what products best meet their needs without government intervention that tries to sway their decisions" - Daren Bakst, Senior Research Fellow in Agricultural Policy, The Heritage Foundation.⁸

Free Speech Groups, namely, several state affiliates of the American Civil Liberties Union, oppose these bills because they violate producers' First Amendment rights. The ACLU of Montana opposed Montana's label censorship bill, stating that "[it] is an unconstitutional solution in search of a problem" because "[the] restrictions on speech are neither necessary nor appropriate to prevent consumer deception."⁹ The ACLU of Mississippi wrote to Governor Phil Bryant noting that Mississippi's label censorship bill violates producers' "fundamental right to free speech."¹⁰ Representing Turtle Island Foods, the ACLU of Missouri challenged Missouri's label censorship law, asserting that the statute violates the First Amendment, the Dormant Commerce Clause, and the Due Process Clause.¹¹ Litigation is ongoing.

References:

1. Brianna Cameron & Shannon O'Neill, The Good Food Institute, State of the Industry Report: Plant-based Meat, Eggs, and Dairy (2019), <https://www.gfi.org/industry>.
2. Id.
3. Brianna Cameron & Shannon O'Neill, The Good Food Institute, State of the Industry Report: Cell-based Meat (2019), <https://www.gfi.org/industry>.
4. Maura Judkis, What's in a Name? The Battle over Alternative Meat, Milk and Rice Labeling Rages On, Wash. Post, Apr. 11, 2019, <https://wapo.st/2Qpi8TY>.
5. Jeremy Alford & Mitch Rabalais, Capitol Views: Senate Getting Real with Grocery Items, Bus. Report, Apr. 16, 2019, <https://bit.ly/2EtTPIU>.
6. See, e.g., Ocheese Creamery, LLC v. Putnam, 851 F.3d 1228 (11th Cir. 2017). Label censorship also raises preemption concerns. See Robert Hibbert & Amaru Sanchez, State Meat Label Restrictions Face Preemption Challenges, Law360, Mar. 6, 2019, <https://bit.ly/30GGRj>.
7. Complaint for Declaratory and Injunctive Relief, Turtle Island Foods v. Richardson, No. 2:18-cv-4173-FJG (C.D. Mo. Aug. 27, 2018) (No. 1), <https://bit.ly/2Q2y124> [hereinafter Missouri Complaint].
8. Daren Bakst, States Shouldn't Use Protectionist Schemes to Limit Consumer "Meat" Choices, Heritage Found., Feb. 28, 2019, <https://herit.ag/2Hz58YZ>; see also, Letter from R Street Institute, C. Jarrett Dieterle & Shoshana Weissmann, Commercial Speech & Food Labeling (2019), <https://bit.ly/2QhQHUY> ("Efforts to prohibit the use of commonly accepted phrases like 'veggie burger' and 'plant-based meat' run contrary to both the First Amendment and the English language. There is no evidence of consumer confusion about products like veggie burgers and other plant-based offerings, which means these prohibitions lack solid legal grounding."); Simon Lester and Inu Manak, It's No Use Crying Over Spelt Milk, Cato Inst., Nov. 19, 2018, <https://bit.ly/2X8sRYI> ("While it's not clear that changing the [milk] labeling standard would alter consumer behavior in any way, that does not mean that government intervention in this area is harmless. It uses up governing resources, and creates consumer confusion where none currently exists.").
9. Real Meat Act: Hearing on H.B. 327 Before the H. Comm. on Agric., 2019 Leg., 66th Sess. (Mont. 2019) (statement of Zuri Moreno, ACLU of Montana), <https://bit.ly/2WCQEeO> (last accessed June 12, 2019).
10. Letter from ACLU of Mississippi & The Good Food Institute, Jennifer Riley Collins & Jessica Almy, ACLU-GFI Opposition to H.B. 793 (2019).
11. See Missouri Complaint, *supra* note 7.

How can you join the opposition against label censorship?

Let legislators know that you oppose label censorship by sending letters to government officials, testifying at committee hearings, and writing op-eds.

To get involved, please contact GFI Senior Policy Specialist Scott Weathers at scottw@gfi.org or 919.638.5476

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