

FEDERAL COURT RULES AGAINST LABEL CENSORSHIP

An Arkansas law said veggie burgers can't be called "veggie burgers." A federal court, citing freedom of speech under the First Amendment, has put that law on hold.

BACKGROUND

In March 2019, Arkansas passed Act 501, which prohibited selling "an agricultural product under the name of another food" or representing food as "meat" unless it was derived from "harvested livestock."¹ In short, the law banned common terms like "veggie burger" and "veggie sausage," simply because they used the words "burger" and "sausage."

When the law took effect in July 2019, Tofurky sued Arkansas in federal court, alleging that the new law infringed its freedom of speech – the freedom to communicate with its customers using natural terms everyone understands.

By year's end, the federal court ruled² that Tofurky was "likely to prevail" in proving a violation of freedom of speech, and ordered that the state could not enforce the law against Tofurky.

THE COURT'S DECISION

First, the court found that Tofurky had legal standing to bring its case, due to the substantial threat of enforcement and the financial penalties that could be levied against the company under the law. Next, the court had to decide whether to issue a preliminary injunction, preventing the law's enforcement against Tofurky.

To do so, the court needed to find that Tofurky was "likely to succeed" in showing that the law violated Tofurky's free speech rights.

The court found that the Arkansas law likely violated First Amendment protections for commercial speech. Applying a legal standard known as the Central Hudson test,³ the court found that the law failed to pass constitutional muster in several ways. First, the court rejected the state's argument that using the word "burger" in "veggie burger" is inherently misleading. The court ruled that the state was making an "unwarranted" assumption that consumers would latch onto the word "burger" while "disregard[ing] all other words found on the label."

Next, the court found that the law would not advance any interest in protecting consumers, because terms like "veggie burger" are not misleading or confusing. Finally, the court indicated that the state's blanket speech ban was "far more extensive than necessary," in part because misleading labeling is already prohibited by state and federal law.

IMPACT OF THE RULING

The court's ruling prevents Arkansas's law from being enforced against Tofurky while the case goes forward. While the court's ruling is not a final decision on the merits, the court's forceful decision on the constitutional problems with the Arkansas law suggests how the court will also rule in a final decision.

This decision also creates a federal precedent that label censorship violates free speech. Because the decision is based on the First Amendment of the U.S. Constitution, the same legal reasoning will invalidate similar laws in any state or territory of the United States. In other words, if other states in the country pass laws like Arkansas's to censor tofu burgers or veggie bacon, they are likely to face costly lawsuits and legal rulings against those laws.

UNNECESSARY REGULATION AND ITS COSTS

As the court noted, federal law already protects consumers from misleading labels. The court wrote that there was "no convincing argument" that existing law cannot handle "the alleged deceptive or confusing practices the State purports to target." In short, laws like Arkansas's are totally unnecessary.

In some states where similar laws have passed, the state agencies have later realized that it's unnecessary to censor veggie burgers. After Tofurky filed a lawsuit against a similar Missouri law,⁴ the state denied any intent to enforce the law against plant-based products like veggie burgers. In fact, the state argued that Tofurky's labels didn't violate the law at all.⁵ Similarly, Mississippi was sued by the

vegetarian company Upton's Naturals over a 2019 law⁶ – and subsequently settled the lawsuit after issuing a regulation allowing the use of meat terms with qualifiers like “veggie” or “vegan.”⁷

But restrictive label censorship has a bad (and costly) history in other states. When the state of Florida tried to ban unfortified skim milk from using the words “skim milk” – instead, requiring the name “imitation milk” – the state faced years of legal wrangling before a federal appeals court ruled against its efforts at label censorship.⁸ On top of five years of wasted taxpayer resources litigating the case, the state was forced to pay \$437,000 to compensate the plaintiffs for attorneys’ fees.⁹ Taxpayers may be on the hook for similar costs if their state legislatures pass burdensome, unnecessary censorship laws.

CONCLUSION

The federal court’s ruling shows that label censorship laws are unnecessary and unconstitutional. Ultimately, these laws are destined to be abandoned or struck down – but not before wasting untold government resources and taxpayer dollars.

REFERENCES:

1. Ark. Code. Ann. § 2-1-305.
2. *Turtle Island Foods v. Soman*, Preliminary Injunction Order, Dkt. No. 25, 19-cv-514-KGB (E.D. Ark., Dec. 11, 2019), available at <https://www.aclu.org/legal-document/turtle-island-foods-v-soman-preliminary-injunction-order>.
3. *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557 (1980).
4. *Turtle Island Foods v. Richardson*, Complaint for Declaratory and Injunctive Relief, Dkt. No. 1, 18-cv-4173-FJG (W.D. Mo., Aug. 27, 2018).
5. *Turtle Island Foods v. Richardson*, Response to Motion for Preliminary Injunction, Dkt. No. 37, 18-cv-4173-FJG (W.D. Mo., Dec. 28, 2018).
6. *Upton's Naturals Food Co. v. Bryant*, Complaint for Declaratory and Injunctive Relief, Dkt. No. 1, 19-cv-462-HTW-LRA (S.D. Miss., Jul. 1, 2019).
7. Elaine Watson, “PBFA, Upton's Naturals Drop Lawsuit as Mississippi Revises Plant-Based Meat Labeling Law,” Food Navigator USA (Nov. 8, 2019), available at <https://www.foodnavigator-usa.com/Article/2019/11/08/PBFA-Upton-s-Naturals-drop-lawsuit-as-Mississippi-revises-plant-based-meat-labeling-law>.
8. *Ocheesee Creamery v. Putnam*, 851 F.3d 1228 (11th Cir. 2017).
9. Michael Van Sickler, “Florida pays \$437,000 in dispute over skim milk,” Tampa Bay Times (Oct. 23, 2017), available at <https://www.tampabay.com/florida-politics/buzz/2017/10/23/florida-pays-437000-in-dispute-over-skim-milk/>.