

Testimony in Opposition to HB 2437

To: Chairman Ron Highland
Vice Chair Eric Smith
Ranking Minority Member Sydney Carlin
Members, House Agriculture Committee

From: The Good Food Institute

Re: HB 2437 - Please Oppose Label Censorship

Date: 1/23/2020

Good afternoon. I'm Scott Weathers and I represent The Good Food Institute, a nonprofit dedicated to using markets and innovation to promote new options for consumers. I'm here today to respectfully oppose House Bill 2437 and any amended version of this bill that may appear.

This bill compels producers to create new Kansas-specific labels for products that use meat-related terms, like 'veggie burger' and 'plant-based bacon,' forcing producers to include unnecessary, confusing, and burdensome wording dictated by the state on the product label.

We oppose this bill for three main reasons. In short, it's unnecessary, it's unconstitutional, and it's bad for businesses here in Kansas. Let me go into detail on each of those points.

First, this is a solution in search of a problem. Consumers are not confused by plant-based foods. In fact, plant-based food sales are growing in Kansas and across the country precisely because consumers are seeking out these products knowing that they are plant-based. People buy veggie burgers because they want to eat veggie burgers — not because they believe that they're something else. And no one selling veggie burgers pretends they're from cows. It's just common sense. Besides, federal law already prohibits false and misleading food labels.

Second, this bill violates the Constitution. In Arkansas, a federal court issued a preliminary injunction last month preventing that state's label

copyright law from being enforced, writing that the plaintiff would “likely prevail” on First Amendment grounds. Simply put, governments cannot restrict commercial speech unless the restriction directly advances a substantial government interest. Here, there’s no evidence of consumer confusion, and federal law already requires that the ingredients be listed on the label. Consumer choice — not censorship — should determine winners and losers in the marketplace.

Finally, this bill would hurt Kansas businesses. Creating a state-specific regulation would lead to an untenable situation where products sold here must be labeled differently from products sold in all 49 other states. This will inhibit the free market and hurt businesses in Kansas, especially the retailers who sell plant-based meats based on consumer demand. HB 2437 could force these retailers to remove products from their shelves and cut into their bottom line.

Variety is the spice of life, and I believe that there’s room on the plate for both traditional and innovative products here in Kansas. Kansas’ corn, soy, and wheat growers are well-poised to provide ingredients for plant-based products for decades to come. With no confusion around veggie burgers and any other plant-based food, and robust federal law on labeling, there’s no need for government restrictions that would hurt businesses. If you pass these labeling laws, which industry will be next to ask you to censor their competitors? I’m sure Barnes & Noble would like a word about “e-books.”

I respectfully urge you to vote "No" on House Bill 2437. Thank you for your consideration.



January 21, 2020

House Agriculture Committee
Kansas State Capitol
300 SW 10th Street
Topeka, KS 66612

RE: Concerns with H.B. 2437

2 pages submitted by electronic copy

Dear Representatives:

The Good Food Institute is a 501(c)(3) nonprofit organization that works with scientists, researchers, businesses, entrepreneurs, industry partners, and policymakers to harness the power of food innovation and markets to create new options for consumers.

We are writing to express our opposition to House Bill 2437. This bill compels producers to create new Kansas-specific labels for products that use meat-related terms, like “veggie burger” and “plant-based bacon.” This would force producers to include an unnecessary, confusing, and burdensome disclosure on the product label. No one is confused by veggie burgers or plant-based bacon. Instead of doing anything to benefit consumers, these bills would add unlawful and unnecessary requirements to food labels already subject to federal regulation, violate the First Amendment right to free speech, and hurt Kansas businesses.

First, H.B. 2437 would confuse consumers by requiring plant-based producers to do linguistic gymnastics on food labels. Banning the kind of commonsense labels that are already on store shelves would interfere with the free market and be unfair to consumers. Instead, companies who want to do business in Kansas would have to create Kansas-specific labels.

H.B. 2437 is unnecessary. Plant-based food labels are already subject to federal law, which prohibits misbranding. Not only are additional state restrictions unnecessary but they would be preempted by the Federal Meat Inspection Act, the Poultry Products Inspection Act, and likely the Food Drug and Cosmetic Act.¹

¹ 21 U.S.C. § 343–1 (“no state...may directly or indirectly establish under any authority...any requirement for the labeling of food of the type required by § 343(b), 343(d), 343(f), 343(h), 343(i)(1), or 343(k) of [the Food Drug and Cosmetic Act] that is not identical to the requirement of such section.”); *id.* § 678 (“Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter [of the Federal Meat Inspection Act] may not be imposed by any

H.B. 2437 violates the right to free speech, which can only be curtailed in the commercial context to further a compelling government interest. Similar laws in Missouri and Arkansas are currently in litigation on the grounds that they violate the First Amendment by preventing clear and accurate labeling of plant-based meat products. Last month, a federal court issued a preliminary injunction preventing enforcement of Arkansas’ label censorship law — which sought to limit usage of meat terms on plant-based food labels — because it likely violates the First Amendment.² Furthermore, the judge wrote that the plaintiff would “likely prevail” on First Amendment grounds. Kansas’ legislature should not put the state in the position where it needs to decide whether to use taxpayers’ money to defend a law that raises significant constitutional issues.³

It is hard to see any compelling reason for this legislation, given that plant-based meat producers have every incentive to tell consumers how their products are made. The fact that they are plant-based is central to their value proposition. Furthermore, federal law already requires ingredient disclosure and provides legal recourse for misleading labels, so there is no reason to compel speech for one type of product.

Finally, Kansas is a state that defends the free market and values freedom from government overreach. Prohibiting the use of commonsense labels will open the door to all manner of frivolous rules that would make Kansas become the next California, where every product comes packaged in bureaucratic red tape.

We respectfully urge you to vote against unnecessary and unconstitutional government overreach. Please oppose H.B. 2437. Thank you for your consideration and attention to this matter.

Sincerely,



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State”); *id.* § 467(e) (“Marking, labeling, packaging, or ingredient requirements ... in addition to, or different than those made under this chapter [of the Poultry Products Inspection Act] may not be imposed by any State”).

² *Turtle Island Foods v. Soman, Preliminary Injunction Order*, Dkt. No. 25, 19-cv-514-KGB (E.D. Ark., Dec. 11, 2019), <https://www.aclu.org/legal-document/turtle-island-foods-v-soman-preliminary-injunction-order>.

³ See generally Nick Sibilla, *FDA Crackdown On Calling Almond Milk 'Milk' Could Violate The First Amendment*, Forbes (Jan. 31, 2019), <https://bit.ly/2v4s8bc>.