



February 15, 2022

To: House Committee on Agriculture

Re: Opposition to House Bill 2530

Chairman Rahjes and members of the House Committee on Agriculture. Thank you for considering the Plant Based Foods Association's ("PBFA") opposition to House Bill (HB) 2530. As presently drafted, the bill presents a misguided attack on innovation and all food producers' free speech rights to use words and phrases that consumers understand.

PBFA was founded in 2016 to represent a rapidly growing industry comprised of companies producing plant-based meat, egg, and dairy. The association has quickly grown to include more than 300 members, ranging from small start-up food companies to established national brands to ingredient suppliers and restaurants. Many PBFA members make and sell plant-based meat, including plant-based burgers, crumbles, meatballs, and sausages. , For example, Kansas-based PBFA member, Cereal Ingredients Inc (CII) is an industry leader in developing plant proteins from pea, rice, chickpea, wheat, fava, soy, and other plant-based ingredients.

HB 2530 is unnecessary, unconstitutional, and misguided. The bill is an attempt to impose new restrictions on how plant-based companies communicate with their customers, infringing on their First Amendment rights to label their foods with clear, non-misleading terms.

Kansas law already prohibits food labeling that is false or misleading in any particular. Under existing authority, Kansas can already take action to prevent consumer deception from food labeling statements, including statements misrepresenting non-meat products as meat.

Furthermore, plant-based products are governed by the Food and Drug Administration (FDA), and our members are in full compliance with current FDA requirements.

In the years that our members have sold products in Kansas, our members have not encountered instances of consumer confusion about the source of their products. In fact, plant-based meat companies already have every incentive to label their foods with non-misleading terms that make it clear their products do not contain animal meat because this is what attracts consumers to their foods.

However, if HB 2530 passes, companies would be required to change its label (e.g., because "plant-based" isn't one of the approved qualifiers), and grocery stores in Kansas would therefore

have to buy products that have different labels than ones the same grocery chain sells in other states.

Attempts, such as HB 2530, to impose new overly prescriptive restrictions (which go above-and-beyond FDA requirements), run afoul of First Amendment protections allowing companies to label their foods with clear, non-misleading terms. Because the First Amendment prevents the government from restricting the free flow information to consumers except in extremely narrow circumstances, laws such as proposed in HB 2530 are unlikely to withstand constitutional scrutiny, while costing Kansas taxpayers hundreds of thousands of dollars in litigation fees.

For example, an Ohio law that precluded use of word “butter” in labeling or advertising any product that was made in imitation of or substitute for butter, without regard to whether such use was misleading, was ruled unconstitutional. *Lever Bros. Co. v. Maurer*, 712 F. Supp. 645 (S.D. Ohio 1989). Likewise, a Washington law prohibiting use of dairy terms in advertising margarine was deemed *per se* violative of the First Amendment.

Anderson, Clayton & Co. v. Washington State Dep't of Agric., 402 F. Supp. 1253 (W.D. Wash. 1975). In recent years, the Supreme Court has **affirmed** and **re-affirmed** that these types of restrictions are unconstitutional.

As such, each recent instance of such speech-restrictive legislation has been subject to legal challenge by a coalition of plaintiffs including some combination of PBFA, PBFA company members, the American Civil Liberties Union, the Institute for Justice, and the Good Food Institute.

- Arkansas, Oklahoma, Louisiana: In 2019 and 2020, these states each enacted various laws restricting the use of conventional terms by many alternative types of foods. In each state, a challenge was filed. In Arkansas, a federal trial court declared that the law was likely unconstitutional while granting a temporary halt in enforcement. Litigation is ongoing in Louisiana and Oklahoma. **In each case, litigation is a costly, unnecessary step the risk of which may be mitigated.**

PBFA members want shoppers in Kansas and across the United States to be clear about what they are buying. Our industry is fully committed to ensuring that consumers are fully informed, which is why the Plant Based Foods Association has established industry guidance for the labeling of plant-based meat alternatives.

We believe that this approach ensures an open and competitive marketplace without the need for government intervention and urge you to oppose HB 2530. Thank you for your consideration regarding this important topic.

Sincerely,

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