

2021

I Want You To Panic: Leveraging the Rhetoric of Fear and Rage for the Future of Food

Iselin Gambert
George Washington University

Follow this and additional works at: <https://scholarworks.uark.edu/jflp>



Part of the [Environmental Law Commons](#), [European Law Commons](#), [Food and Drug Law Commons](#), [Jurisprudence Commons](#), [Law and Economics Commons](#), [Law and Society Commons](#), and the [Social Welfare Law Commons](#)

Recommended Citation

Gambert, I. (2022). I Want You To Panic: Leveraging the Rhetoric of Fear and Rage for the Future of Food. *Journal of Food Law & Policy*, 17(2). Retrieved from <https://scholarworks.uark.edu/jflp/vol17/iss2/4>

This Article is brought to you for free and open access by ScholarWorks@UARK. It has been accepted for inclusion in *Journal of Food Law & Policy* by an authorized editor of ScholarWorks@UARK. For more information, please contact scholar@uark.edu.

—Journal of—
FOOD & LAW
—POLICY—

Volume Seventeen

Number Two

2021

I WANT YOU TO PANIC: LEVERAGING THE RHETORIC OF FEAR
AND RAGE FOR THE FUTURE OF FOOD
Iselin Gambert

A PUBLICATION OF THE UNIVERSITY OF ARKANSAS SCHOOL OF LAW

I Want You to Panic: Leveraging the Rhetoric of Fear and Rage for the Future of Food

Iselin Gambert*

Abstract

“Humanity Is About to Kill 1 Million Species in a Globe-Spanning Murder-Suicide. Only 11 Years Left to Prevent Irreversible Damage from Climate Change.”

Doomsday headlines like these are terrifying. But are they enough to make us act? The causes of the current climate crisis are many, but the science is clear that the meat and dairy industry shoulders much of the blame. Given the role the animal agriculture industry plays in perpetuating the climate crisis, combined with the harms the industry imposes on the animals and workers within it, politicians and governments—given their degree of power and influence—should ostensibly be leaders in setting policies that might set humanity on a course-correction. Instead, we see fear prompting politicians and governments to action—action designed to slow progress and thwart change.

This article explores the role that emotion—specifically fear and rage—play in shaping the legal, political, and cultural discourse around the future of food, and offers a strategy to leverage those emotions to help people more effectively confront the impact that their dietary choices have on the environment, farm animal welfare and exploitation, and factory farm workers. Part One provides an overview of the current climate crisis. It also unpacks the role that animal-derived meat plays in perpetuating cultural norms around traditional masculinity, which the American Psychological Association has identified as harmful and which has been identified as a driving force behind climate skepticism. Part Two explores three examples of governments—state, national, and international—using fear as a primary motivating force to wage linguistic and semantic battles over the meaning of “meat” and “milk.” This section unpacks legislative efforts in Missouri, Arkansas, and other states to pass so-called “Real Meat Laws” that seek to prohibit the commercial speech of producers of plant-based and cultivated meat. It explores similar efforts in the U.S. Congress to prohibit plant milk from using the word “milk” on its labels in a thinly-veiled fear-driven attempt to protect the dairy industry. And it explores the European Union’s

recent passage of Amendment 171, which, if allowed to take effect, would introduce sweeping restrictions on plant-based food labeling. Part Three suggests that one way to facilitate the paradigm shift we need around food is to leverage the role that emotion plays in consumer decisions around food, and offers mandatory Graphic Warning Labels (GWLs) as a tool to do just that. Building on research done around the globe into the effectiveness of GWLs on cigarette packages that blend Logos and Pathos by combining data with scientifically accurate yet emotionally disturbing and fear-inducing images, this section argues that consumers need to be confronted with logical and emotional appeals to reject animal-based food each and every time they pick those items off a grocery store shelf. Ultimately, this article agrees with teenage Swedish climate activist: “I want you to panic,” she said. “I want you to feel the fear I feel every day. And then I want you to act.”

I. Introduction

*Humanity is About to Kill 1 Million Species in a Globe-Spanning Murder-Suicide.*¹

What happened just now as you read those words? Did you shift uncomfortably in your seat, perhaps, or let out a sigh of dread?

*Only 11 Years Left to Prevent Irreversible Damage from Climate Change, Speakers Warn during General Assembly High-Level Meeting.*²

* Professor of Legal Writing, The George Washington University Law School

¹ Eric Levitz, *Humanity Is About to Kill 1 Million Species in a Globe-Spanning Murder-Suicide*, INTELLIGENCER (May 6, 2019), <https://nymag.com/intelligencer/2019/05/un-report-humans-are-driving-1-million-species-extinct.html>.

² See Darryl Fears, *One Million Species Face Extinction, U.N. Report Says. And Humans Will Suffer as a Result.*, THE WASH. POST (May 6, 2019), https://www.washingtonpost.com/climate-environment/2019/05/06/one-million-species-face-extinction-un-panel-says-humans-will-suffer-result/?utm_term=.6aa898519958. See Press Release, Intergovernmental Sci.-Pol’y Platform on Biodiversity & Ecosystem Serv. (IPBES), Nature’s Dangerous Decline ‘Unprecedented’ Species Extinction Rates ‘Accelerating’, U.N. PRESS RELEASE (May 6, 2019), available at https://www.washingtonpost.com/context/ipbes-global-report-species-extinction-rate-is-accelerating/f724e478-da85-4e89-83f9-f663c496f08c/?utm_term=.2a5ef9c6cc2c; Press Release, General Assembly, Only 11 Years Left to Prevent Irreversible Damage from Climate Change, Speakers Warn During General Assembly High-Level Meeting, U.N. Press Release GA/12131 (Mar.28, 2019).

How about now? Is your heartbeat quickening a bit? Are your palms beginning to sweat? What if I told you that this headline is two years old already, so there's only nine years left? Feeling a bit stressed? Me too. But what are you doing to do about it?

As a scholar of rhetoric, I see the world through the lens of the different rhetorical narratives that are used in legal, political, and cultural contexts. Often referred to as “Aristotle’s rhetorical triangle,”³ the rhetorical tools of Logos (appeals to logic), Pathos (appeals to emotion), and Ethos (appeals leveraging the credibility of the persuader) underpin every piece of persuasion there is, from children vying to stay up past their bedtime because they did their chores (Logos), to fundraising ads depicting images of malnourished children in Africa (Pathos), to a doctor entering an exam room cloaked in a white coat (Ethos).⁴

Doomsday headlines like the ones above skillfully blend Logos—one million species; eleven years left—and Pathos—murder-suicide; irreversible damage. More often than not, when it comes to headlines like these, *fear* is the particular emotion used to get us readers to sit up and pay attention. Fear, after all, is a powerful emotion, and reading about the sixth mass extinction unfolding at the hands of human-fueled habitat destruction and climate change is, to put it mildly, very scary stuff.⁵ But is fear powerful enough to get us to act?

³ *The Rhetorical Triangle: Making Your Communications Credible and Engaging*, MIND TOOLS, <https://www.mindtools.com/pages/article/RhetoricalTriangle.htm> (last visited Aug. 28, 2021)

⁴ For an overview of Logos, Pathos, and Ethos, see *Ethos, Pathos, and Logos*, THE NATURE OF WRITING, <https://natureofwriting.com/courses/introduction-to-rhetoric/lessons/ethos-pathos-and-logos/>.

Studies have shown that patients prefer their doctors to wear white coats as compared to any other form of attire, with white-coat-clad doctors rating the highest “across all domains including how knowledgeable, trustworthy, caring and approachable the physician appeared as well as how comfortable the physician made the respondent feel.” Christopher M. Petrilli et al., *Understanding Patient Preference for Physician Attire: A Cross-Sectional Observational Study of 10 Academic Medical Centres in the USA*, *BMJ OPEN* (Apr. 19, 2018), available at <https://bmjopen.bmj.com/content/bmjopen/8/5/e021239.full.pdf>.

⁵ See, e.g., Damian Carrington, *Sixth Mass Extinction of Wildlife Accelerating, Scientists Warn*, *THE GUARDIAN* (June 1, 2020), <https://www.theguardian.com/environment/2020/jun/01/sixth-mass-extinction-of-wildlife-accelerating-scientists-warn> and Damian Carrington, *Climate Crisis: World Is at Its Hottest for at Least 12,000 Years – Study*, *THE GUARDIAN* (Jan. 27, 2021), <https://www.theguardian.com/environment/2021/jan/27/climate-crisis-world-now-at-its-hottest-for-12000-years>.

Unfortunately not, it seems—at least not when the fear is sparked by an occasional headline that we scroll past on our phone or computer screen. But emotions *can* be powerful influencers of human behavior—especially when combined with data and science and presented in the right way and at the right time.

While the human-generated causes of climate change, species extinction, and habitat destruction are many, our appetites—and the norms, customs, and traditions that drive them—are one of the most significant contributors. Humans' seemingly insatiable appetite for animal-derived meat and milk contribute mightily to the climate crisis we are facing, with billions of animals suffering in the shadows until they wind up on our plates. Workers in the animal agriculture industry suffer too; disproportionately immigrants and people of color, factory farm and slaughterhouse workers face grueling conditions that are harmful to both body and mind, often with little pay, no job security, and, in 2020, the threat of Covid-19 exposure at rates higher than the general population.⁶

If logic carried the day, we would all go vegan tomorrow. And yet, only about 3% of us have stopped eating animals.⁷ Why doesn't imminent climate collapse, the sixth mass extinction, and widespread suffering of billions of farm animals conjure up even a fraction of the behavior-changing panic we humans (justifiably) felt in 2020 when the Covid-19 pandemic unfolded, leading our species to rapid and widespread behavioral changes—including mass lockdowns, social distancing, and new norms around mask-wearing—took place across the globe?

Given the current climate emergency and the role the animal agriculture industry plays in perpetuating it, combined with the real harms the industry imposes on the animals and workers within it, politicians and governments—given their degree of power and influence—should ostensibly be leaders in setting policies and taking actions that might set humanity on a course-correction. But that is far from the case. Instead, we see fear prompting politicians and governments to action—action designed to slow progress and thwart change.⁸

Specifically, there are examples throughout the world of state, national, and international governments alike introducing and

⁶ See *infra* section II(c).

⁷ Sage Williams, *Vegan Statistics – New Data Investigation for 2021*, FUTURE KIND+ (Apr. 9, 2020), <https://www.futurekind.com/blogs/vegan/vegan-statistics>.

⁸ See *infra* section II.

passing legislation and regulations that amount to fear-based linguistic battles with plant-based food. Where lawmakers could be allies in developing strategies to promote climate-friendly plant-based food and discourage consumption of environmentally destructive animal-based food, they are doing just the opposite, making it *harder* for plant-based food advocates to have a level playing field with the animal agriculture industry, much less get the upper hand in the fight against climate change and species extinction.

This article explores the role that emotion—namely fear and rage—plays in the battle over the future of food and offers a strategy to leverage those emotions to help people more effectively confront the impact that their dietary choices have on the environment, farm animal welfare and exploitation, and factory farm workers. It proceeds in three parts. Part One provides an overview of the current climate crisis and role that emotions—including fear, rage, and grief—play in our responses to it. Acknowledging the significant role that the animal agriculture industry plays in contributing to the current climate crisis, this section argues that while politicians and governments should be doing (much) more to promote plant-based food, they are doing just the opposite, pursuing fear-driven legislative and regulatory efforts to protect the animal agriculture industry through linguistic and semantic battles with plant-based food. Unpacking the role that animal-derived meat plays in perpetuating deeply entrenched cultural norms around traditional masculinity, which the American Psychological Association has identified as harmful⁹ and which has been identified as a driving force behind climate skepticism, this section questions the strategy of plant-based foods striving to fit into, rather than break free from, the “real men eat meat” narrative. Finally, this section argues that despite widespread resistance to a fulsome embrace of plant-based food and fear of rejecting too enthusiastically animal-derived meat and milk, we are at the tipping point of realizing a sweeping cultural paradigm shift in our species’ relationship to food, and we have all the necessary ingredients to realize it.

Part Two explores three examples of governments—state, national, and international—using fear as a primary motivating force to enact laws and regulations that would protect the animal agriculture industry from real or perceived threats by plant-based foods. Through linguistic and semantic battles over the meaning of “meat” and “milk,” governments hide behind baseless assertions that

⁹ Stephanie Pappas, *APA Issues First-Ever Guidelines for Practice with Men and Boys*, 50 *MONITOR PSYCH.* 35 (2019).

plant-based foods will “mislead” consumers if their labels contain “meaty” or “milky” words more commonly associated with animal-derived food. This section unpacks legislative efforts in Missouri, Arkansas, and other states to pass so-called “Real Meat Laws” that seek to prohibit—and in one case, criminalize—the commercial speech of producers of plant-based and cultivated meat. It explores similar efforts in the U.S. Congress to prohibit plant milk from using the word “milk” on its labels in a thinly veiled fear-driven attempt to protect the dairy industry. And it explores the European Union’s recent passage of Amendment 171, which, if allowed to take effect, would introduce sweeping restrictions on plant-based food labeling including prohibitions on labels declaring that those products are “Not Milk.” This section explores the role that Swedish oat milk producer Oatly has played on social media and elsewhere to bring the dangers and absurdities of Amendment 171 to light, revealing the fear that underpins the Amendment and interrogating the rationale beneath it.

Part Three suggests that one way to facilitate the sort of sweeping paradigm shift we need around the food we eat is to effectively leverage the role that emotion plays in consumer decisions around food and offers mandatory Graphic Warning Labels (GWLs) as a tool to do just that. Building on research done around the globe into the effectiveness of GWLs on cigarette packages that blend Logos and Pathos by combining data with scientifically accurate yet emotionally disturbing and fear-inducing images, this section argues that consumers need to be confronted with logical and emotional appeals to reject animal-based food each and every time they pick those items off a grocery store shelf. Building on Oxford university professor Joseph Poore’s proposal to add mandatory labeling to all food communicating each item’s environmental impact,¹⁰ this section argues that GWLs should communicate each food item’s impact not only on the environment, but also on animal well-being and exploitation and worker conditions.

Recognizing that the United States is one of the only countries in the world yet to adopt GWLs for cigarette packages and the First Amendment challenges that may follow any regulatory effort to require GWLs on food, this section looks to the March 2020 FDA Rule as a blueprint for success. Taking effect in October 2022, the Rule will, for the first time in the United States, require cigarette

¹⁰ Joseph Poore, *We Label Fridges to Show Their Environmental Impact –Why Not food?*, THE GUARDIAN (Oct. 10, 2018), <https://www.theguardian.com/environment/2018/oct/10/we-label-fridges-to-show-their-environmental-impact-why-not-food>.

packages to include one of eleven new health warnings combining text and color images “depicting the negative health consequences of cigarette smoking.”¹¹ In issuing its March 2020 Rule, the FDA provided an extensive analysis arguing that the new GWLs do not violate the First Amendment’s protections on commercial speech.¹² This section draws from the rationales offered in the FDA’s analysis to argue that GWLs on animal-based food likewise would not violate the First Amendment. Specifically, the government has a substantial interest in keeping the general public safe by reducing the wide-ranging dangers associated by climate change and mass species extinction, as well as in reducing the harms associated with mass exploitation and suffering to humans and nonhuman animals in the animal agriculture industry. Scientifically accurate GWLs on animal-based food would directly advance the government’s interest and given the enormity and time-sensitivity of the crisis, imposing mandatory GWLs on animal-derived food is a proportionate action to serve that interest.

The world is at a tipping point regarding the current climate crisis, and a sweeping paradigm shift in our species’ relationship with food is a necessary ingredient in our efforts to avert disaster. Science and data—Logos—tell us as much, but emotion—especially fear and rage—can either facilitate or thwart our efforts to make a change. Ultimately, the choice is up to us. “I don’t want your hope,” Swedish teenage climate activist—and vegan—Greta Thunberg famously admonished a room full of world leaders, her voice filled with rage and disgust. “I don’t want you to be hopeful. I want you to panic. I want you to feel the fear I feel every day. And then I want you to act.”¹³

¹¹ See U.S. FOOD & DRUG ADMIN., CIGARETTE LABELING AND HEALTH WARNING REQUIREMENTS (2021), <https://www.fda.gov/tobacco-products/labeling-and-warning-statements-tobacco-products/cigarette-labeling-and-health-warning-requirements>.

¹² See U.S. FOOD & DRUG ADMIN., FDA PROPOSES NEW REQUIRED HEALTH WARNINGS WITH COLOR IMAGES FOR CIGARETTE PACKAGES AND ADVERTISEMENTS TO PROMOTE GREATER PUBLIC UNDERSTANDING OF NEGATIVE HEALTH CONSEQUENCES (2019), <https://www.fda.gov/news-events/press-announcements/fda-proposes-new-required-health-warnings-color-images-cigarette-packages-and-advertisements-promote>.

¹³ Greta Thunberg, ‘Our House Is on Fire’: Greta Thunberg, 16, Urges Leaders to Act on Climate, THE GUARDIAN (Jan. 25, 2019), <https://www.theguardian.com/environment/2019/jan/25/our-house-is-on-fire-greta-thunberg16-urges-leaders-to-act-on-climate>.

II. Uses of Anger and Fear to Create or Hinder Change

A. *Facing The Death Spiral*

On May 6, 2019, the United Nations published a summary of its report warning that human behavior was threatening up to a million species with extinction with grave implications to our water supplies and overall well-being and public health.¹⁴ Robert Watson, the chairman of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services that authored the article, told *Science* in stark terms: “What’s at stake here is a livable world.”¹⁵

That same day, Prince Harry and Meagan Markle’s first baby was born. In the week that followed, ABC’s *World News Tonight* spent more than seven minutes reporting on the royal baby’s birth—more time than the program spent covering climate change during the entirety of 2018.¹⁶ The program didn’t spend a single *second* covering climate change or species extinction during the week of May 6 – 12, 2019.¹⁷ The BBC News website did a bit better, publishing a story on its front page titled “Humans threaten 1 million species with extinction.”¹⁸ But it was tucked in at the bottom of the screen beneath three splashier headline stories about the royal baby.¹⁹

Not everyone ignored or downplayed the climate story: the environmental-focused news website Grist published a story titled “The royal baby is cute and all, but hello, the planet is on fire” criticizing mainstream media’s lack of coverage on the climate crisis.²⁰ In an article cheekily titled “Who’s Going to Tell the Royal Baby That Our Planet Is Unequivocally Dying?,” Vice journalist Derek Mead captured the surreality of the moment in stark terms:

¹⁴ Press Release, Intergovernmental Sci.-Pol’y Platform on Biodiversity & Ecosystem Servs., *supra* note 2.

¹⁵ Elizabeth Kolbert, *Climate Change and the New Age of Extinction*, THE NEW YORKER (May 20, 2019), <https://www.newyorker.com/magazine/2019/05/20/climate-change-and-the-new-age-of-extinction>.

¹⁶ Lisa Hymas & Ted MacDonald, *The Royal Baby Is Cute and All, but Hello, the Planet Is on Fire*, GRIST (May 21, 2019), <https://grist.org/article/the-royal-baby-is-cute-and-all-but-hello-the-planet-is-on-fire/>.

¹⁷ *Id.*

¹⁸ Matt McGrath, *Nature Crisis: Humans ‘Threaten 1m Species with Extinction’*, BBC (May 6, 2019), <https://www.bbc.com/news/science-environment-48169783>.

¹⁹ Screenshot on file with the author.

²⁰ Hymas and Macdonald, *supra* note 16.

When we're talking about extinction, we're not just talking about losing some cute monkeys bopping about in some forest somewhere, although they are important too. We're talking about everything we rely on to survive—our air, our water, our food, our medicines, the basic underpinnings of life itself—being eroded away at such a rapid clip that without fundamentally reshaping the way we interact with our world, we face a genuine death spiral. That might sound hyperbolic, but it's not. It also might sound hyperbolic to say this is the most important story, not just of today, not of this week or year or decade, but of our lives, but it's really not. . . . [R]oyal baby aside, the most important news of the day, the decade, our lives, is this: We have pushed the planet far past its limits, and we ignore that at our existential peril.”²¹

In his Vice article, Mead is certainly ringing the alarm bells, stoking his readers with justified panic and fear for the future of our planet. The trouble is that if what we humans need to take the threat of climate change seriously is an unrelenting, consciousness-raising alarm bell, articles like Mead’s are few and far between, too easy to scroll past on our phone or computer screen. And mainstream, prime-time media, with its tendency to prioritize stories about celebrities and royal babies over what Mead argues is “the most important story, not just of today, not of this week or year or decade, but of our lives,”²² is fueling our complacency.

B. How Dare You

If small bursts of panic and fear in the form of too-easy-to-scroll-past headlines about the climate crisis aren’t enough to prompt a widescale shift in human behavior, what is? 2019—the last full year before Covid-19 hijacked the world’s attention in an unprecedented way—showed us that if fear isn’t always an effective tool to convince us humans to confront our role in climate change and species extinction, maybe anger is. That year, we saw a glimpse into the role that precision-focused anger can play in sparking social change in the form of a hoodie-clad teenage girl from Sweden.

In January 2019, 16-year-old climate activist Greta Thunberg addressed an audience of world leaders in Davos,

²¹ Derek Mead, *Who’s Going to Tell the Royal Baby That Our Planet Is Unequivocally Dying?*, VICE (May 6, 2019), <https://www.vice.com/en/article/9kxaga/whos-going-to-tell-the-royal-baby-that-our-planet-is-unequivocally-dying>.”

²² *Id.*

Switzerland.²³ “Our house is on fire,” she began. “I am here to say, our house is on fire.”²⁴ Blending a wealth of scientific data (Logos) with vivid, emotional imagery (Pathos), Thunberg captured the world’s attention.

*We are at a time in history where everyone with any insight of the climate crisis that threatens our civilization – and the entire biosphere – must speak out in clear language, no matter how uncomfortable and unprofitable that may be. We must change almost everything in our current societies. The bigger your carbon footprint, the bigger your moral duty. The bigger your platform, the bigger your responsibility. Adults keep saying: ‘We owe it to the young people to give them hope.’ But I don’t want your hope. I don’t want you to be hopeful. **I want you to panic.** I want you to feel the fear I feel every day. And then I want you to act. I want you to act as you would in a crisis. I want you to act as if our house is on fire. Because it is.*²⁵

Thunberg’s rhetoric used the language of fear but was grounded in rage. That rage, combined with rational reliance on global scientific consensus, helped catalyze millions of people to action.

On September 23, 2019, Thunberg took the stage in New York City to address the United Nations. She’d traveled across the Atlantic by sailboat, shunning air travel because of its significant carbon footprint.²⁶ *This is all wrong*, Thunberg said, a look of utter disgust on her face.²⁷ *I shouldn’t be up here. I should be back in school, on the other side of the ocean. Yet you all come to us young people for hope. How dare you!*²⁸

You have stolen my dreams and my childhood with your empty words. And yet I’m one of the lucky ones. People are

²³Thunberg, *supra* note 13.

²⁴*Id.*

²⁵*Id.*

²⁶Jeff Brady, *Teen Climate Activist Greta Thunberg Arrives in New York After Sailing the Atlantic*, NPR (Aug. 28, 2019), <https://www.npr.org/2019/08/28/754818342/teen-climate-activist-greta-thunberg-arrives-in-new-york-after-sailing-the-atlan>.

²⁷Elizabeth Weise, *‘How Dare You?’ Read Greta Thunberg’s Emotional Climate Change Speech to UN and World Leaders*, USA TODAY (Sept. 23, 2019), <https://www.usatoday.com/story/news/2019/09/23/greta-thunberg-tells-un-summit-youth-not-forgive-climate-inaction/2421335001/>.

²⁸*Id.*

suffering. People are dying. Entire ecosystems are collapsing. We are in the beginning of a mass extinction, and all you can talk about is money, and fairy tales of eternal economic growth. How dare you!

For more than 30 years the science has been crystal clear. How dare you continue to look away, and come here saying that you're doing enough when the politics and solutions needed are still nowhere in sight. . . . You are failing us. But the young people are starting to understand your betrayal. The eyes of all future generations are upon you. And if you choose to fail us, I say: We will never forgive you. . . . We will not let you get away with this. Right here, right now is where we draw the line. The world is waking up. And change is coming, whether you like it or not.²⁹

Anger is not the only emotion Thunberg displayed. She also spoke from a place of deep loss and grief. Thunberg, along with countless young people and indeed people of all ages, sees the current climate crisis as the most profound existential challenge of their lifetimes. It's no wonder that "climate grief" is being studied by researchers around the world as we scramble to make sense of the jumble of emotions we experience when confronted with the fragility of our planet and our species' role in harming it.³⁰ "Climate grief" manifests in many forms, from "bereavement-like grief and trauma" to "anticipatory grief" to "transitional grief" to "eco-anxiety," and "is related both to changes that have already happened and to changes that are coming, or are in the process of happening."³¹

Grief and rage: those seem like appropriate emotions for the times we are living in. New words and phrases are being created to describe specific types of climate grief, sometimes rooted to a specific place or ecosystem—"Reef Grief," "Snow Anxiety"—and sometimes encompassing the other emotions that are bound up with loss and grief.³² Australian philosopher Glenn Albrecht has coined the word "solastalgia" to describe "homesickness because of environmental changes," as well as "terrafurie," which means "rage because of mindless destruction of nature."³³

²⁹ *Id.*

³⁰ See Panu Pihkala, *Climate Grief: How We Mourn a Changing Planet*, BBC (Apr. 2, 2020), <https://www.bbc.com/future/article/20200402-climate-grief-mourning-loss-due-to-climate-change>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

Much has been written about, as feminist scholar Audre Lorde described it, “the uses of anger.”³⁴ Anger, Lorde said, “is loaded with information and energy.”³⁵ When “[f]ocused with precision it can become a powerful source of energy serving progress and change.”³⁶

“Anger is the deepest form of compassion,” wrote poet and philosopher David Whyte.³⁷ It is “the purest form of care, the internal living flame of anger always illuminates what we belong to, what we wish to protect and what we are willing to hazard ourselves for.”³⁸ In *Rage Becomes Her: The Power of Women’s Anger*, Soraya Chemaly implores her reader to “envision[] anger as a transitional tool that helps you to change the world around you.”³⁹ “Anger has a bad rap,” Chemaly acknowledges,

but it is actually one of the most hopeful and forward thinking of all our emotions. It begets transformation, manifesting our passion *and* keeping us invested in the world. It is a rational *and* emotional response to trespass, violation, and moral disorder. It bridges the divide between what “is” and what “ought” to be, between a difficult past and an improved possibility.⁴⁰

Anger, says Chemaly, “isn’t what gets in our way - it *is* our way.”⁴¹

C. *If Cows Were a Country*

While there are many causes of the current climate crisis, “food production is the largest cause of global environmental change.”⁴² Our species’ seemingly insatiable hunger for dairy and meat shoulders much of the blame. Much has been written about the

³⁴ See AUDRE LORDE, *The Uses of Anger: Women Responding to Racism*, in *SISTER OUTSIDER* 124 (1984).

³⁵ *Id.* at 127.

³⁶ *Id.*

³⁷ DAVID WHYTE, *CONSOLATIONS: THE SOLACE, NOURISHMENT AND UNDERLYING MEANING OF EVERYDAY WORDS* 12 (2014).

³⁸ *Id.*

³⁹ SORAYA CHEMALY, *RAGE BECOMES HER: THE POWER OF WOMEN’S ANGER* xiii (2018).

⁴⁰ *Id.* at xx.

⁴¹ *Id.* at xxiii.

⁴² Walter Willet et. al., *Food in the Anthropocene: The EAT–Lancet Commission on Healthy Diets from Sustainable Food Systems*, 393 *LANCET* 447, 449 (Jan. 2019).

science underpinning the animal agriculture industry's vast contributions to the current climate crisis and habitat destruction.⁴³ Experts typically attribute about 15 percent of the world's carbon emissions to livestock, but the Worldwatch Institute audited that number in 2009 and found uncounted emissions that bring the livestock contribution to 51 percent.⁴⁴ "Humans and the animals we eat are 96% of the carbon mass of mammals in the world," explained Steven Chu, Nobel Prize winning physicist.⁴⁵ All other mammals—all the whales and elephants and lions and rats and deer and all the rest—they together make up the other 4%.⁴⁶ Chu put this into context in stark terms: "If cattle and dairy cows were a country, they would have more greenhouse gas emissions than the entire EU 28. Just something to think about."⁴⁷

There is (much) more to say about the current science around climate change and the huge role that animal agriculture is playing to perpetuate it.⁴⁸ "A vegan diet is probably the single biggest way to reduce your impact on planet Earth, not just greenhouse gases, but global acidification, eutrophication, land use and water use," said

⁴³See, e.g., Francis Vergunst & Julian Savulescu, *Five Ways the Meat on Your Plate Is Killing the Planet*, THE CONVERSATION (Apr. 26, 2017), <https://theconversation.com/five-ways-the-meat-on-your-plate-is-killing-the-planet-76128> (Laying out five ways meat is harmful: (1) The environmental impact is huge; (2) It requires masses of grain, water and land; (3) It hurts the global poor; (4) It causes unnecessary animal suffering, and (5) It is making us ill).

⁴⁴ Jeff McMahon, *Meat and Agriculture Are Worse for the Climate Than Power Generation*, Steven Chu Says, FORBES (April 4, 2019), <https://www.forbes.com/sites/jeffmcmahon/2019/04/04/meat-and-agriculture-are-worse-for-the-climate-than-dirty-energy-steven-chu-says/?sh=720217fe11f9>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ A 2018 study conducted by University of Michigan and Tulane University and published in Environmental Research Letters showed that meat and dairy are responsible for over 83% of diet-related greenhouse gas emissions in the United States. See Martin C. Heller et. al., *Greenhouse Gas Emissions and Energy Use Associated with Production of Individual Self-selected US Diets*, ENV'T RSCH. LETTERS (Mar. 2018), <https://iopscience.iop.org/article/10.1088/1748-9326/aab0ac>. See also Joe Loria, *15,000 Scientists from 184 Countries Urge People to Go Vegan to Save the Planet*, MERCY FOR ANIMALS (Nov. 17, 2017), <https://mercyforanimals.org/blog/15000-scientists-from-184-countries-urge/> ("The Alliance of World Scientists, a group of 15,000 scientists from 184 countries, met last month to discuss preventing environmental destruction and concluded that it's time for humans to change their behavior and switch to a plant-based diet.") See also Damian Carrington, *Avoiding Meat and Dairy Is 'Single Biggest Way' to Reduce Your Impact on Earth*, THE GUARDIAN (May 31, 2018), <https://www.theguardian.com/environment/2018/may/31/avoiding-meat-and-dairy-is-single-biggest-way-to-reduce-your-impact-on-earth>.

Joseph Poore, a researcher at the University of Oxford.⁴⁹ “It is far bigger than cutting down on your flights or buying an electric car.”⁵⁰

This article takes that science as a given and works from the premise that unless we do something drastic to stop the march toward irreversible climate disaster that involves our relationship to the things we consider food, the effects will be unthinkable.⁵¹ This article is concerned with the urgency of the current climate crisis, what is being done about it with respect to the food we eat and why those efforts are falling short, and what *should* be done instead.⁵²

This article also works from the premise that the animal agriculture industry is dangerous not only because of its contribution to the climate crisis and the sixth mass extinction. It also represents a global system of unimaginable suffering and cruelty that—socially acceptable and legally sanctioned—exploits, oppresses, and commodifies billions of individuals every single year.⁵³ The vast

⁴⁹ Carrington, *supra* note 48

⁵⁰ *Id.*

⁵¹ See, e.g., Fredrik Hedenus et. al, *The Importance of Reduced Meat and Dairy Consumption for Meeting Stringent Climate Change Targets*, 124 CLIMATIC CHANGE 79 (2014).

⁵² See Emily Kasriel, *Can Dairy Adapt to Climate Change?*, BBC (Dec. 8, 2020), <https://www.bbc.com/future/article/20201208-climate-change-can-dairy-farming-become-sustainable>.

⁵³ See Andrew Jacobs, *Is Dairy Farming Cruel to Cows?*, N.Y. TIMES (Dec. 29, 2020), <https://www.nytimes.com/2020/12/29/science/dairy-farming-cows-milk.html>. In the article, Jacobs acknowledges some basic truths about the lives of cows born into the dairy industry: “Dairy cows are repeatedly impregnated by artificial insemination and have their newborns taken away at birth. Female calves are confined to individual pens and have their horn buds destroyed when they are about eight weeks old. The males are not so lucky. Soon after birth, they are trucked off to veal farms or cattle ranches where they end up as hamburger meat. The typical dairy cow in the United States will spend its entire life inside a concrete-floored enclosure, and although they can live 20 years, most are sent to slaughter after four or five years when their milk production wanes.” *Id.* Confronting the plight of the animals whose lives are wholly trapped within the meat and dairy industries is an emotional thing. In his 2020 Academy Awards speech, longtime animal rights activist Joaquin Phoenix’s voice cracked and strained with emotion as he urged the audience to consider the lives of dairy cows. See Oscars, *Joaquin Phoenix Wins Best Actor*, YOUTUBE (Mar. 11, 2020), https://www.youtube.com/watch?v=qiiWdTz_MNc. “We feel entitled to artificially inseminate a cow and when she gives birth we steal her baby, even though her cries of anguish are unmistakable,” he said. “And then we take her milk that’s intended for the calf and we put it in our coffee and cereal.” *Id.* See also Kelsey Piper, *Farms Have Bred Chickens So Large That They’re in Constant Pain*, VOX (Sep. 23, 2020) <https://www.vox.com/future-perfect/21437054/chickens-factory-farming-animal-cruelty-welfare>. See also Eric Schlosser, *America’s Slaughterhouses Aren’t Just Killing Animals*, THE ATLANTIC (May 12, 2020),

majority of those individuals are nonhuman animals whose entire lived experience from birth to death is regulated and controlled according to a complex web of market forces, but the rest are human workers—disproportionately immigrants and people of color—who spend day after day plucking, debeaking, milking, and killing—all for low wages and at great risk to their own physical and mental health.⁵⁴

The logical conclusion of this grim reality? Eating animals is an outdated practice that causes more harm than good according to virtually every conceivable metric.⁵⁵ If ever there was a moment where science supported a coordinated global effort to bring forth a drastic change to our consumption habits, this is it. If this sounds like a stretch, we have in 2020 proof of the fact that when faced with a serious imminent threat to our well-being, our species is in fact capable of widespread, life-altering changes to our behavior.⁵⁶ What makes imminent climate collapse, the sixth mass extinction, and widespread suffering of billions of farm animals and millions of workers feel less urgently threatening to us than Covid-19?

<https://www.theatlantic.com/ideas/archive/2020/05/essentials-meatpacking-coronavirus/611437/>.

⁵⁴ See, e.g., Dylan Matthews & Byrd Pinkerton, *How Chicken Plants Became More Dangerous Places to Work than Coal Mines*, VOX (Oct. 7, 2020),

<https://www.vox.com/future-perfect/21502225/chicken-meatpacking-plant-future-perfect-podcast>. See also Schlosser, *supra* note 53. See also Amy J. Fitzgerald et al, *Slaughterhouses and Increased Crime Rates: An Empirical Analysis of the Spillover from “The Jungle” into the Surrounding Community*, ORG. & ENV’T 1, 8, 10 (2009),

http://www.animalstudies.msu.edu/Slaughterhouses_and_Increased_Crime_Rates.pdf. See also Tom Philpott, *Refugees Make Your Dinner. Literally*. MOTHER JONES (Jan. 31, 2017), <https://www.motherjones.com/environment/2017/01/meat-industry-refugees-trump/>. John Oliver did a segment called Meatpacking in February 2021 in which he heighted the many harms facing workers in the animal agriculture industry. See *Last Week Tonight with John Oliver: Meatpacking* (HBO Feb. 22, 2021),

<https://www.youtube.com/watch?v=IhO1FcjDMV4&feature=share>.

⁵⁵ It may even contribute to and future pandemics and public health crises. See, e.g., Danush Parvaneh, *The Next Pandemic Could Come from Factory Farms*, VOX (Aug. 18, 2020), <https://www.vox.com/videos/2020/8/18/21374061/factory-farming-meat-coronavirus-pandemic>.

⁵⁶ See Lydia Denworth, *Masks Reveal New Social Norms: What a Difference a Plague Makes*, SCI. AM. (May 14, 2020),

<https://www.scientificamerican.com/article/masks-reveal-new-social-norms-what-a-difference-a-plague-makes/>.

D. “Real Meat” and #SoyBoys

People are hardwired to resist change and cling to the safety of the past.⁵⁷ And in exploring our species’ appetite for animal-derived meat and dairy, it’s important to consider the significant role that traditional gender roles, masculinity ideals, and speciesism play in dominant food culture.⁵⁸ A close look reveals a narrative of fear perpetuating our current food culture. Meat and meat-eating occupies a very specific cultural space in that not only signifies “the good old days” and tradition, but also serves as a long-standing symbol of traditional—and white—masculinity, dominance, and power.⁵⁹ Meat-eating is central aspect in our patriarchal world, one that literally exploits female bodies and reproductive lives for human consumption, one that figuratively views women as nothing more than pieces of meat.

In her landmark work *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory*, feminist scholar Carol J. Adams explored the relationship between patriarchal values and meat eating and argues that “male dominance and animals’ oppression are linked by the way that both women and animals function as absent referents in meat eating and dairy production, and that feminist theory logically contains a vegan critique . . . just as veganism covertly challenges patriarchal society.”⁶⁰ She describes as a “racialized politics of meat” that worked to split the “world into intellectually superior meat eaters and inferior plant eaters”⁶¹

⁵⁷ Eleanor Bruce, *Resisting Change*, MINDTOOLS (May 30, 2019), <https://www.mindtools.com/blog/resisting-change/>.

⁵⁸ For an examination of the historical and contemporary connections between attitudes around plant- and animal-eating, gender, and race, see Iselin Gambert & Tobias Linné, *From Rice Eaters to Soy Boys: Race, Gender, and Tropes of ‘Plant Food Masculinity,’* 7 ANIMAL STUD. J., 129, 133 (2018)

⁵⁹ Juliana Roth, *The Meat Industry’s Exploitation of Toxic Masculinity Hurts Us All*, THE ESTABLISHMENT (Mar. 29, 2016), <https://medium.com/the-establishment/how-the-meat-industry-exploits-toxic-masculinity-868f10989e> (“Eating meat, after all, has long been associated with masculinity; since pretty much the dawn of advertising, commercials have explicitly linked meat-eating to desirable manliness. To name but a few of the most egregious examples from the last few years, there was the Carl’s Jr.’s ad depicting X-Men’s Mystique morphing into a ripped manly man after consuming a bacon cheeseburger (with the tagline “Man Up”); Burger King’s “I Am Man” commercial, in which a guy sings about not settling for “chick food”; and the Taco Bell “Guys Love Bacon” campaign.”)

⁶⁰ See CAROL J. ADAMS, *THE SEXUAL POLITICS OF MEAT: A FEMINIST-VEGETARIAN CRITICAL THEORY* (20th Anniversary ed. Continuum, 2010). See also Carol J. Adams, *The Sexual Politics of Meat: The Book*, <https://caroljadams.com/spom-the-book> (last visited Sept. 8, 2021).

⁶¹ See ADAMS, *supra* note 60 at 54.

In the late 19th century, the confluence of institutionalized racism, sexism, and colonialism “led to widespread sentiments connecting animal-eating (ie, meat and dairy) to intellectual superiority and virile masculinity exemplified by the white western man.”⁶² Plant-eating, meanwhile, “was associated with Asian and other non-white cultures, and was thought to represent emasculation and to confer weakness of both mind and body.”⁶³

The colonial-era tropes around plant- and animal-eating are alive and well in today’s culture. Mainstream TV shows and movies increasingly include references to plant-based meat, often in disparaging ways that imply that plant-based meat could never taste as good as animal-derived meat,⁶⁴ or as a not-so-subtle attack on traditional norms of masculinity.⁶⁵ The tropes extend beyond the screen: “In France, they take offence if you don’t eat meat, like you are rejecting their culture,” said Lori Chen, member of a 2016 delegation from the Buddhist Tzu Chi Foundation promoting “a Day of Meatlessness.”⁶⁶ Added delegation member Hanford Lin, “In China, you are emasculated if you only eat plants.”⁶⁷

The culture wars of the Trump Era included various attacks on vegan advocates and plant-based food. The alt-right slur and viral social media hashtag “Soy Boy,” which references the idea of men who consume soy products, is used to attack men who are perceived to be feminine in appearance and in ideology.⁶⁸

Needless to say, the trope of “real men eat meat” is a powerful one in today’s society.⁶⁹ Scholar Laura Wright has explored

⁶² Gambert & Linné, *supra* note 58, at 133 (citing Melanie DuPuis, Angels and Vegetables: A Brief History of Food Advice in America, 7 *GASTRONOMICA: THE J. FOOD & CULTURE* 34-44 (2007)).

⁶³ *Id.* (“the racial rhetoric of the day ... portrayed Asians as effeminate and enfeebled and the Chinese ‘leaf diet’ as a cause of degeneracy”).

⁶⁴ See, e.g., the opening scenes of *COMING TO AMERICA 2* (Paramount Pictures 2021), where plant-based meat is humorously dismissed as sustainable yet inedible.

⁶⁵ See, e.g., *The Crew* (Netflix 2021) (featuring a woman-owned NASCAR team sponsored by the fictional plant-based meat brand “Fake Steak”).

⁶⁶ *Paris Climate Change Summit and the Taboo of Meat-Eating*, EURONEWS (Sept. 12, 2015), <https://www.euronews.com/2015/12/09/paris-climate-change-summit-and-the-taboo-of-meat-eating>.

⁶⁷ *Id.*

⁶⁸ See Gambert & Linné, *supra* note 58, at 133.

⁶⁹ See Victoria Gagliardo-Silver, *Fragile Masculinity Says Meat Is Manly. If We Don’t Challenge That, People Will Die and the Earth Will Be Irreversibly Damaged*, INDEPENDENT (Apr. 4, 2019), <https://www.independent.co.uk/voices/fragile-masculinity-mean-eaters-death->

veganism and the threatening space that it occupies in today's culture.⁷⁰ The vegan body, she argues, "threatens the status quo in terms of what we eat, wear, and purchase—and also in how vegans choose not to participate in many aspects of the mechanisms undergirding mainstream culture."⁷¹ These threats," she argues, "are acutely felt in light of post-9/11 anxieties over American strength and virility."⁷² A discourse has emerged that seeks, among other things, to bully veganism out of existence as it is poised to alter the dominant cultural mindset."⁷³

In considering meat's long-standing association with norms of traditional masculinity, it's important to recognize that those norms are harmful in a much broader sense. In January 2019, the American Psychological Association published a report concluding that "traditional masculinity—marked by stoicism, competitiveness, dominance and aggression—is, on the whole, harmful."⁷⁴

The idea that people, and especially men, might be shamed for embracing vegan food is a real one, with recent research indicating that one of the biggest barriers to veganism for men is shame, fear, social stigma, and traditional masculinity ideals. A study from the University of Southampton found that young men "are afraid to choose the vegetarian option in a restaurant for fear of being socially shunned," even if they dislike animal-derived meat.⁷⁵ The yearlong research study found that men "experienced 'social isolation' among friends after admitting to reducing their consumption of meat."⁷⁶ In a Twitter poll directed at men, 45% of respondents reported their biggest barrier to leading a vegan diet was social stigma. 39% said their biggest barrier was masculinity.⁷⁷

Given the deep-seeded and deeply enmeshed fears around plant-eating being linked to emasculation and weakness, it makes

vegan-vegetarian-earth-a8855331.html (citing Tweet declaring "'real men eat red meat and punch nerds in the face'").

⁷⁰ See LAURA WRIGHT, *THE VEGAN STUDIES PROJECT: FOOD, ANIMALS, AND GENDER IN THE AGE OF TERROR* (2015), available at <https://ugapress.org/book/9780820348568/the-vegan-studies-project/>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Pappas, *supra* note 9, at 34.

⁷⁵ *Men Fear Social Shame of Ordering Vegetarian Dishes, Study Finds*, THE TELEGRAPH, (Aug. 26, 2018), https://www.telegraph.co.uk/news/2018/08/26/men-fear-social-shame-orderingvegetarian-dishes-study-finds/?WT.mc_id=tmg_share_fb.

⁷⁶ *See id.*

⁷⁷ Gagliardo-Silver, *supra* note 69.

sense that vegan food advocates and producers have recently been playing into dominant masculinity narratives, offering burgers that “bleed” and using marketing designed to appeal to men who are afraid that vegan eating may make them weak or effeminate.⁷⁸ Darlene Juschka, a professor in Religious and Women’s Studies at the University of Regina, argues that “the raw and bloody beef burger is associated with a kind of robust masculinity,” and she perceives the “simulated bleeding [of some vegan burgers] as a way of perhaps making permissible an otherwise ‘soft’ and ‘feminine’ vegan food.”⁷⁹ Apart from bleeding burgers, brands like Beyond Meat have branded their vegan burgers with masculine ideas like “Beast,” and used traditionally masculine, muscular men to promote their products.⁸⁰

The current trend of plant-based food brands marketing “bleeding” or “beast” burgers amounts to an approach of assimilation, of trying to shed previous associations of vegan food being coded as “feminine” or a sign of weakness or emasculation and reframing these products so that they occupy the same cultural space of strength and traditional masculinity as animal-based food. Journalist Sarah Todd summed it up this way: “The strategy is a practical one: Rather than trying to push men to eat less meat and embrace plant-based diets, Beyond Meat and Impossible Foods want to expand the definition of what meat is.”⁸¹ In other words, vegan meat is “real meat” too.

While the notion of men who adhere to traditional masculinity norms embracing vegan diets is a good one, it’s less clear whether the strategy of perpetuating those norms in a plant-based package is sound. Marketing vegan food to exist rhetorically within traditional norms of masculinity may succeed in getting more people to eat incrementally more vegan food—and that is surely a good thing for animals and for the planet. But is it enough to create the sort

⁷⁸ See Lara Williams, *Why Even Vegans Crave Burgers That “Bleed,”* VICE, (Nov. 15, 2018), <https://www.vice.com/en/article/nepbad/why-even-vegans-crave-burgers-that-bleed>.

⁷⁹ *Id.*

⁸⁰ Roth, *supra* note 59 (“One vegan meat company, Beyond Meat, even offers a “Beast Burger” that is packaged in colors that may appeal to men, along with a photograph of the burger sizzling on a grill. The use of the masculine word “beast” might attract meat-eating men who identify with traditional masculine norms looking to switch over.”).

⁸¹ Sarah Todd, *Beyond Meat and Impossible Foods Burgers Could Change the Way We Think About Masculinity*, QUARTZ (Apr. 27, 2019), <https://qz.com/quartz/1603993/beyond-meats-vegan-burgers-could-change-the-way-we-think-about-masculinity/>.

of fundamental paradigm shift we need in the way we think about food, and the way we think about ourselves?

Max Elder, the research director at the Institute for the Future, a nonprofit research center in Silicon Valley, is skeptical, saying that “If Beyond Meat and Impossible Foods succeed in instilling this new idea of meat, the cultural link between meat and masculinity may well remain intact. . . . We can’t just eat our way out of toxic masculinity.”⁸² He argues that “because these companies emphasize how similar their products are to meat in taste and texture, they may be less likely to make people question their meat-eating habits and engage in deeper reflections about the relationship between food and gender.”⁸³

There is arguably an even bigger danger inherent in promoting vegan food within the rhetoric of traditional masculinity, and it has to do with fear and rage. Given the known harms inherent in norms of traditional masculinity both to individuals and society more broadly,⁸⁴ perpetuating rhetoric that binds vegan food to those norms may make it more difficult for people to break free from the effects of those harms.

E. The Misogyny of Climate Deniers and Greta Haters

Given the degree to which veganism threatens to disrupt long-held norms around masculinity and food, it’s no wonder that plant-based foods are being met with resistance everywhere from social media to the halls of Congress. Because of the role that animal-derived food plays in exacerbating the current climate crisis and threat of mass species extinction, it’s also necessary to understand the role that traditional masculinity norms play in perpetuating skepticism among some people around the effects—or even existence of—climate change, as well as a resistance to take meaningful action to prevent it.

After Greta Thunberg’s speech at the UN in 2019, she faced an outpouring of misogynistic rage. This was perhaps unsurprising: a 2014 study analyzing the language of a focus group of climate skeptics revealed that “for climate skeptics . . . it was not the environment that was threatened, [but rather] a certain kind of modern industrial society built and dominated by their form of

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See Pappas, *supra* note 34.

masculinity.”⁸⁵ In an article published about the misogynistic response to Thunberg’s activism, scholars expanded on previous research that demonstrates a link between climate change denial and misogyny.⁸⁶ “At a deep level,” they wrote, “the language of climate denialism is tied up with a form of masculine identity predicated on modern industrial capitalism – specifically, the Promethean idea of the conquest of nature by man, in a world especially made for men. By attacking industrial capitalism, and its ethos of politics as usual, Thunberg is not only attacking the core beliefs and world view of certain sorts of men, but also their sense of masculine self-worth. Male rage is their knee-jerk response.”⁸⁷ The authors noted that while her attackers want to frame her as nothing more than a hysterical child, “in reality, Thunberg is cutting through - rather than displaying - emotionalism. What certain kinds of men do not wish to acknowledge is that asking for action on climate change is entirely rational.”⁸⁸

Given this tendency towards “male rage” as a fear response to rational discussions around the broad changes we need to make in our dominant food culture in response to impending climate disaster, where do we go from here? Is promoting vegan food within the framework of traditional masculinity really the path to the cultural shift we need in this moment? Given what we know about misogyny and the harms of the rhetoric of so-called traditional masculinity, a better approach would be for veganism to embrace an explicit rejection of that rhetoric rather than assimilate into it.

F. Change is Coming, Whether You Like It or Not

Politicians on the right and the left are fearful of disrupting the status quo when it comes to our cultural obsession with animal-derived meat and milk. At the 2019 Conservative Political Action Conference (or C-PAC), former Trump White House adviser Sebastian Gorka infamously denounced Rep. Alexandria Ocasio-Cortez and the Green New Deal with the pithy admonishment, “They want to take away your hamburgers.”⁸⁹ The irony of Gorka attacking

⁸⁵ Martin Gelin, *The Misogyny of Climate Deniers*, THE NEW REPUBLIC (Aug. 28, 2019), <https://newrepublic.com/article/154879/misogyny-climate-deniers>.

⁸⁶ See Camilla Nelson & Meg Vertigan, *Misogyny, Male Rage and the Words Men Use to Describe Greta Thunberg*, THE CONVERSATION (Sept. 30, 2019), <https://theconversation.com/misogyny-male-rage-and-the-words-men-use-to-describe-greta-thunberg-124347>.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Antonia Noori Farzan, *The Latest Right-Wing Attack on Democrats: ‘They Want to Take Away Your Hamburgers,’* THE WASH. POST, (Mar. 1, 2019),

Ocasio-Cortez and the Green New Deal is that none of the politicians supporting the Deal, which endeavors to tackle the climate crisis in sweeping ways,⁹⁰ have actually suggested outlawing beef or other animal meat consumption.⁹¹ Ocasio-Cortez herself isn't even vegetarian, much less vegan (though she allegedly went vegetarian for lent in 2021).⁹²

With respect to the Green New Deal, Ocasio-Cortez appears keenly aware of the prevailing fear-driven rhetoric around the threat that plant-based foods pose to the animal agriculture industry. Not only is she reluctant to try to challenge it, but in some cases, she has even perpetuated it:

In the [Green New] Deal, what we talk about, and it's true, is that we need to take a look at factory farming, you know? Period. It's wild. And so, it's not to say you get rid of agriculture, it's not to say we're gonna force everybody to go vegan or anything crazy like that. But it's to say, 'Listen, we gotta address factory farming. Maybe we shouldn't be eating a hamburger for breakfast, lunch, and dinner. Like, let's keep it real.'⁹³

By invoking the trope of the “crazy vegan”—a common rebuke of vegan and plant-based advocacy—Ocasio-Cortez's rhetoric reinforces and perpetuates the idea that it would be “crazy” for large numbers of people to go vegan, and implies that all that is needed to tackle the current climate crisis is a small incremental change amounting to not eating a hamburger three times a day (query whether twice a day would be good enough). The problem with this rhetoric is that given the science around animal meat and dairy's contributions to climate change and the exploitation bound up in the

<https://www.washingtonpost.com/nation/2019/03/01/latest-right-wing-attack-democrats-they-want-to-take-away-your-hamburgers/>.

⁹⁰ Lisa Friedman, *What Is the Green New Deal? A Climate Proposal, Explained*, N.Y. TIMES (Feb. 21, 2019), <https://www.nytimes.com/2019/02/21/climate/green-new-deal-questions-answers.html>.

⁹¹ Farzan, *supra* note 89.

⁹² Chelsea Ritschel, *Alexandria Ocasio-Cortez Goes Vegetarian in Memory of Colleague's Son*, THE INDEPENDENT, (Feb. 19, 2021), <https://www.independent.co.uk/life-style/aoc-vegetarian-lent-jamie-raskin-tommy-vegan-b1804888.html>.

⁹³ Kat Smith, *How the Green New Deal Will Affect the Way We Eat*, LIVE KINDLY, <https://www.livekindly.co/how-will-the-green-new-deal-affect-agriculture/> (last visited Sept. 9, 2021).

animal agriculture industry, small incremental changes are not enough.⁹⁴

As Greta Thunberg—herself a vegan—told a room full of leaders several times her age, “[t]he world is waking up. And change is coming, whether you like it or not.”⁹⁵ We ignore that fact at our peril. What’s needed is a total paradigm shift around the idea of, and our relationship to, food. And the best news is that it appears that the moment we are living in contains all the necessary ingredients that social scientists say is necessary to create meaningful behavioral change.

Building on work done by David Gleicher in the 1960s, organizational development consultant and community activist Kathie Dannemiller developed a “Formula for Change” that provides a model to assess the capacity for individual or collective change.⁹⁶ Dannemiller’s formula, $C = D \times V \times F > R$, represents the notion that three factors must be present for meaningful change to occur.⁹⁷ These factors are: (1) **D**issatisfaction with how things currently are; (2) a **V**ision of what alternative is possible; and (3) the **F**irst concrete steps that can be taken towards that Vision.⁹⁸ If the sum of these three factors is greater than any existing **R**esistance to change, then **C**hange is possible.⁹⁹ So, $C = D \times V \times F > R$. As this paper will show, we have all of Dannemiller’s ingredients for change at our fingertips: the question is whether they are greater than the current resistance to it.

That the Covid-19 crisis normalized in a matter of months drastic behavioral changes throughout the globe including significant reductions in travel, social distancing, and mask-wearing shows us that rapid, widespread behavioral change is in fact possible for us change-resistant humans. “Social norms can change rapidly,”

⁹⁴ See Dylan Moon, *Why Do Some Green Activists Eat Meat?*, SCI. AM. (May 21, 2019), <https://blogs.scientificamerican.com/observations/why-do-some-green-activists-eat-meat/> (discussing the fact that multinational organizations and gatherings like the UN and Amnesty International gather to discuss ways to reverse the negative effects of climate change, they serve meat and dairy at their catered events).

⁹⁵ Weise, *supra* note 27.

⁹⁶ Kathleen D. Dannemiller & Robert W. Jacobs, *Changing the Way Organizations Change: A Revolution of Common Sense*, J. APPLIED BEHAV. SCI., 480, 498 (1992). See also Al Blixt, *Kathie Dannemiller on the DVF Formula for Change*, YOUTUBE (Dec. 31, 2018), <https://www.youtube.com/watch?v=ysNuM2oVqBU>.

⁹⁷ Dannemiller, *supra* note 96, at 480.

⁹⁸ *Id.* at 483.

⁹⁹ *Id.*

explained social psychologist Catherine Sanderson, “and it doesn’t take everybody. . . . The tipping point for achieving enough critical mass to initiate social change proved to be just 25 percent of participants. They become the social influencers, the trendsetters. You get this sweep.”¹⁰⁰ Science writer Lydia Denworth notes that even “weird behaviors can become standard, and long-standing customs can change,” citing indoor smoking as one example.¹⁰¹ “To bring about such change,” she writes, “a new behavior must first ascend to the status of a social norm. Norms include both the perception of how a group behaves and a sense of social approval or censure for violating that conduct.”¹⁰²

This article explores the “uses of anger” and other emotions—in particular, fear and grief—as tools of, or hindrances to, change. Specifically, this article is interested in “change” as it relates to humans’ relationship to food insofar as our animal-laden diets are a key contributor to climate change and other harms. It examines the roles that fear, rage, and other emotions play in shaping the legal and cultural discourse around the food we eat, the words we use to describe that food, and what we even consider to be “food” in the first place. It argues that fear is a powerful rhetorical tool leveraged by policymakers and legislators to hold on to the status quo, to preserve outdated norms and customs, to cling to the past. The future, with its technologically innovative milks and meats made from plants or grown from cultured cells, is frightening to those who feel comforted by tradition, by things staying the same as they’ve always been, by those who don’t want to change.¹⁰³ This is why fear-driven rhetoric works well when used by animal agriculture industry advocates and not nearly as well when it’s been used in doomsday news headlines as a means to persuade consumers to take a different path.

Maybe there’s a smarter way to leverage the power of fear—and rage—to inspire consumer change. This article offers mandatory

¹⁰⁰ Denworth, *supra* note 56.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ See Brief of State of Missouri at 4-6, *Turtle Island Foods, SPC v. Thompson*, 992 F.3d 694 (8th Cir. 2021) (No. 19-3154) (quoting Gillian Tett, *Can You Swallow the Idea of Lab-Grown Meat?*, FIN. AM. (Feb. 4, 2020), <https://channels.ft.com/en/rethink/lab-grown-meat/>) (“Artificial meat alternatives are moving from science fiction to supermarket shelves” and “Today, science fiction is soon approaching reality, at least for artificial or lab-grown meat alternatives As one food writer put it, ‘When I originally heard about lab-grown meat, my first thought was ‘yuck.’ The idea of ‘growing’ a steak or chicken leg in a test tube sounds like a scene from science fiction, not haute cuisine.”).

Graphic Warning Labels (GWLs) on animal-derived food as one way to blend scientific data with emotionally provocative imagery to change human behavior. Whatever the tactics, change is coming, and it can't come soon enough. In her essay "The Uses of Anger," feminist scholar Audre Lorde wrote of the need for change to be sweeping, to draw a boundary between what used to be and what comes next.¹⁰⁴ "And when I speak of change," she said, "I do not mean a simple switch of positions or a temporary lessening of tensions, nor the ability to smile or feel good. I am speaking of a basic and radical alteration in those assumptions underlying our lives."¹⁰⁵ The change we need in our relationship to food is of the sort Lorde envisions. It is a line in the sand. It says loudly and clearly, this behavior ends now. A new world is waiting, if we would only create it.

III. Uses of Fear to Protect the Animal Agriculture Industry

Before sweeping paradigm-shifting change can take place, we humans need to want to change, and be encouraged to change. Given the current climate emergency and the role the animal agriculture industry plays in perpetuating it, combined with the real harms the industry imposes on the animals and workers within it, politicians and governments—given their degree of power and influence—should be leading the charge. Instead, we see fear driving them to action designed to protect the animal agriculture industry, slowing progress and thwarting change.

Specifically, there are examples throughout the world of state, national, and international governments alike introducing and passing legislation that amount to fear-based linguistic battles with plant-based food. Where lawmakers could be allies in developing strategies to promote climate-friendly plant-based food and discourage consumption of environmentally destructive animal-based food, they are doing just the opposite, making it harder for plant-based food advocates to have a level playing field with the animal agriculture industry, much less get the upper hand in the fight against climate change and species extinction. This section explores three examples of lawmakers trying to do just that.

¹⁰⁴ LORDE, *supra* note 34, at 122.

¹⁰⁵ *Id.* at 122.

In each example explored below, lawmakers have attempted (often successfully) to pass laws that would make it difficult if not impossible for plant-based foods to use words like “meat” and “milk” on their packages. The proposed laws, while distinct in their specific wording, share a common theme in their attempt to justify their own existence: they claim that the laws are necessary to prevent plant-based foods from “misleading” or “confusing” consumers who may mistake them for animal-derived meat and dairy.¹⁰⁶ As this paper will illustrate, these arguments are disingenuous at best and themselves misleading at worst. At bottom, they mask the real motivation behind lawmakers’ interest in passing these laws: fear. Namely, fear about the possible decline of the animal agriculture industry in light of the rise in popularity of plant-based food and cultured meat.

A. “Real Meat” Acts: Misleading Arguments about Meaty Words for Plant-Based Foods

Since 2018 at least 18 states in the United States have either introduced or passed legislation restricting use of the word “meat.”¹⁰⁷

¹⁰⁶ See Real MEAT Act of 2019, H.R. 4881, 116th Cong. § 2(5) (2019) (“Both USDA and FDA are responsible for enforcing a universal standard that labels are truthful and not misleading.”) See also MO. REV. STAT. § 265.494 (2018) (“No person advertising, offering for sale or selling all or part of a carcass or food plan shall engage in any misleading or deceptive practices, including, but not limited to, any one or more of the following: . . . (7) Misrepresenting the cut, grade, brand or trade name, or weight or measure of any product, or misrepresenting a product as meat that is not derived from harvested production livestock or poultry. . . .”)

The stated legislative purpose of Arkansas’ Act 501 is “to protect consumers from being misled or confused by false or misleading labeling of agricultural products that are edible by humans. ARK. CODE ANN. § 2-1-301 (2019). *Report of the Committee on Agriculture and Rural Development on the Proposal for a Regulation of the European Parliament and of the Council Amending Regulations Establishing a Common Organisation of the Markets in Agricultural Products*, at 172, COM (1308/2013) (July 5, 2019) A8-0198. Amendment 171 seeks to protect the dairy industry by prohibiting “any [] commercial indication or practice likely to mislead the consumer as to the product’s true nature or composition.

The “misleading” consumer argument has also been pursued—so far unsuccessfully—in the courts in the context of plant milk. For an overview of cases where courts rejected the “misleading consumers” argument as it relates to plant milk products using the word “milk,” see Iselin Gambert, *Got Mylk?: The Disruptive Possibilities of Plant Milk*, 84 BROOKLYN L. REV. 801, 812–17 (2019).¹⁰⁷ Elaine Watson, *Plant-Based and Cell-Cultured ‘Meat’ Labeling Under Attack in 25 States*, FOOD NAVIGATOR-USA (May 29, 2019), <https://www.foodnavigator-usa.com/Article/2019/05/29/Plant-based-and-cell-cultured-meat-labeling-under-attack-in-25-states>.

See also Brief of State of Missouri, *supra* note 103, at 12 (“In 2019, 60 bills were introduced in 31 states, and more than 12 were enacted.”). The following states have introduced legislation: Arizona, Arkansas, Colorado, Georgia, Illinois,

The states have taken a range of approaches, but they all seek to define the word “meat” as the substance that comes from slaughtered animals. The goal is virtually always to prohibit cultured meat—sometimes referred to as “cellular meat” or “clean meat”—from using the term “meat” on its packaging or advertising, but some states have also sought to prohibit plant-based meat from using the term—even when those products use qualifiers like “plant-based” before the word.¹⁰⁸

The rhetoric around these new laws is almost always that meat from a slaughtered animal is “real,” discrediting other types of meat—plant meat and cultured meat—by implying that they are “fake” or the “stuff of futurism and science fiction.”¹⁰⁹ Governments aren’t subtle about it, either: Mississippi introduced its “Fake Meat Bill” in January 2019, and Montana enacted its “Real Meat Act” in April of that year.¹¹⁰ In October 2019, the “Real Marketing Edible Artificials Truthfully Act of 2019”—or “Real MEAT Act”—was introduced to Congress.¹¹¹ Montana’s Real Meat Act characterizes cultivated meat as “Cell-cultured edible product” and defines it as “the concept of meat.”¹¹² In justifying the need for Montana’s Real

Indiana, Kentucky, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Virginia, Washington, Wyoming. *Id.* See also Dan Flynn, *The Ban Against Lab-Grown Food Using ‘Meat’ on the Label Grows to 7 States*, FOOD SAFETY NEWS (Apr. 5, 2019), <https://www.foodsafetynews.com/2019/04/the-ban-against-lab-grown-food-using-meat-on-the-label-grows-to-7-states/>; Ed Maxiner, *Alternative Protein Labeling Battle Hits States*, AGRI-PULSE (Apr. 3, 2019), <https://www.agri-pulse.com/articles/12053-alternative-protein-labeling-battle-hits-states>.

¹⁰⁸ See § 265.494.

¹⁰⁹ Brief of State of Missouri, *supra* note 103 at 4.

¹¹⁰ Alex Lowery, *Fake Meat Bill Passes House, Heads to Senate*, FARM BUREAU MISS. (Jan. 25, 2019), <https://msfb.org/2019/01/25/fake-meat-bill-passes-house-heads-to-senate/>. See also Real Meat Act, ch. 186, 2019 Mont. Laws.

¹¹¹ Real MEAT Act of 2019, H.R. 4881, 116th Cong. § 1 (2019). H.R. 4881 § 1, *supra* note 106; See also Real MEAT Act of 2019, S. 3016, 116th Cong. § 1 (2019). As of the time of this writing, the Real Meat Act of 2019 has not become law.

¹¹² Real Meat Act, ch. 186, sec. 1, § 50-31-103(4), 2019 Mont. Laws 1. Montana’s Act defines “Meat” as “the edible flesh of livestock or poultry and includes livestock and poultry products” and states that “[t]his term does not include cell-cultured edible products as defined in this section.” *Id.* at sec. 6, § 81-9-217(7), 2019 Mont. Laws 12. It defines “Cell-cultured edible product” as “the concept of meat, including but not limited to muscle cells, fat cells, connective tissue, blood, and other components produced via cell culture, rather than from a whole slaughtered animal.” *Id.* at sec. 1, § 50-31-103(4), 2019 Mont. Laws 1. The Act states that “cell-cultured edible product derived from meat muscle cells, fat cells, connective tissue, blood, or other meat components must contain labeling indicating it is derived from those cells, tissues, blood, or components.” *Id.* at sec. 1, § 50-31-103(4), 2019 Mont. Laws 1.

Meat Act, Rep. Alan Redfield, sought to conjure up images to make consumers queasy. “Picture, if you will, on the grill a nice, juicy burger,” he said. “Then picture another thing on the grill that came from a petri dish.”¹¹³

The truth is that there is nothing fake or contrived, radical or even remarkable about referring to plant-based food as “meat.” That word—both in the dictionary and in our vernacular—is not and has never been limited to animal flesh. The Oxford English Dictionary has a multitude of definitions for the word; the definition of plant-based meat appears right below the one for animal-based meat.¹¹⁴ The earliest reference of the centuries-old linguistic tradition of using the word “meat” to refer to plant-based food dates back to 1425.¹¹⁵ There is a reference to plant-based meat in the King James Bible.¹¹⁶

What *is* remarkable is the degree to which lawmakers have been so transparent about the fact that fear is one of, if not *the* primary motivating force behind the laws and regulations seeking to restrict the use of words “meat” to describe plant-based or cultivated meat. Namely, fear that the market for animal-based meat may suffer a significant decline as these products offer consumers alternatives that are less environmentally destructive and avoid the suffering and exploitation involved in the animal agriculture industry. “I don’t make laws for me,” said Claire Blood, the Nebraska Democratic State Senator—and vegetarian! —who introduced a bill to exclude

¹¹³ Tim Pierce, ‘Real Meat Act’ Passes Legislature, MONT. PUB. RADIO (Mar. 27, 2019), <https://www.mtpr.org/post/real-meat-act-passes-legislature#:~:text=House%20Bill%20327%20adds%20a,flesh%20of%20a%20slaughtered%20animal>.

¹¹⁴ See *Meat*, OXFORD ENGLISH DICTIONARY, (3d ed. 2021).

(Meat, noun

- I. Senses relating to food generally.
- II. Senses relating specifically to flesh.
 4. a. The flesh of animals used as food, esp. excluding fish and sometimes poultry, and usually in contrast to the bones and other inedible parts[.]
 5. The flesh of a fruit, nut, egg, etc., likened in texture to the flesh of animals; the edible pulp, kernel, yolk or white, etc., as opposed to the rind, peel, or shell.)

¹¹⁵ See *id.* The dictionary also includes this sentence, from 1613, showing the longstanding use of the word “meat” to refer to plant-based food: “*Of the meat of the Nut dried, they make oyle.*” Samuel Purchas · *Purchas his pilgrimage; or, Relations of the world and the religions obserued in all ages and places discovered* · 1st edition, 1613 (1 vol.).

¹¹⁶ Genesis 1:29 (King James) (“And God said, Behold I have given you every herb bearing seed, which is upon the face of all the earth, and every tree, in which is the fruit of a tree yielding seed; to you it shall be for meat.”).

plant- and cell-based products from the term ‘meat.’¹¹⁷ “I make laws for Nebraskans. Part of what I have to do is protect our No. 1 industry, and that’s cattle in Nebraska.”¹¹⁸

A pair of cases brought by well-known plant-based food brand Tofurky highlight the extent to which the narrative offered by legislators in introducing their versions of “Real Meat Acts”—that these laws are necessary to protect unwitting consumers seeking to consume animal-derived meat from the threat of confusion and deception wrought by companies selling products devoid of slaughtered animals—is a guise concealing the truth: that legislators’ interest in protecting the profits of the animal agriculture industry is greater than their interest in meaningfully tackling the root causes of the current climate crisis and facilitating consumers’ access to greener and less exploitative alternatives.

1. Missouri’s fear of “the stuff of futurism and science fiction”

In August 2018, Missouri enacted Mo. Rev. Stat. § 265.494, becoming the first state in the nation to take aim at plant-based and cultivated meat products’ use of “meaty” words.¹¹⁹ Specifically, the statute provides that:

*No person advertising, offering for sale or selling all or part of a carcass or food plan shall engage in any misleading or deceptive practices, including, but not limited to, any one or more of the following: . . . (7) Misrepresenting the cut, grade, brand or trade name, or weight or measure of any product, or misrepresenting a product as meat that is not derived from harvested production livestock or poultry.*¹²⁰

Unlike other similar state statutes that carry only civil penalties, Missouri’s statute criminalizes the speech it seeks to prohibit, with violations of the statute constituting a Class A misdemeanor, punishable by incarceration up to one year and a fine up to \$1,000.¹²¹

¹¹⁷ Elaine Povich, ‘Fake Meat’ Battle Spreads to More States, PEW (Jan. 25, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/01/25/fake-meat-battle-spreads-to-more-states>.

¹¹⁸ *Id.*

¹¹⁹ See MO. REV. STAT. § 265.494 (West 2018).

¹²⁰ *Id.*

¹²¹ See MO. REV. STAT. § 265.496 (West 2018). See also Turtle Island Foods, SPC v. Richardson, 425 F.Supp.3d 1131, 1134 (W.D. Mo. 2019).

Missouri's statute defines "meat" as: "any edible portion of livestock, poultry, or captive cervid carcass or part thereof."¹²² The law does not define the term "misleading," but its broad definition of the term "misrepresent" includes "any untrue, misleading or deceptive oral or written statement, advertisement, label, display, picture, illustration or sample."¹²³ Further, "misrepresenting a product as meat that is not derived from harvested production livestock or poultry" is classified as a prohibited "misleading or deceptive" practice.¹²⁴

While § 265.494's focuses on "misleading or deceptive practices," Missouri has not received a single consumer complaint about plant-based products being mistaken for animal-derived meat.¹²⁵ Indeed, "[w]hen it enacted the new law, Missouri did not rely on any evidence that . . . any plant-based meat producer's marketing materials [] are misleading."¹²⁶

The legislators who supported the passage of § 265.494 were rather more transparent than the statute itself in articulating the real motivation behind the statute, which is to protect the animal agriculture industry from the threat of plant-based and cultivated meat.¹²⁷ "We want to protect our cattlemen in Missouri and protect our beef brand," said Senator Crawford.¹²⁸ "[A]ll we're trying to do is basically just protect our meat industry," said Rep. Razer.¹²⁹ "We have to protect our cattle industry, our hog farmers, our chicken industry," said Rep. Knight, who also said, "This bill is basically just trying to protect the integrity of the meat industry."¹³⁰

What are those statements describing if not fear? In August 2018, the well-known plant-based meat producer Tofurky (formally known as Turtle Island Foods) filed suit together with the advocacy organization The Good Food Institute (GFI) challenging § 265.494.¹³¹ The plaintiffs (hereinafter "Tofurky") argued that the

¹²² MO. REV. STAT. § 265.300(7) (West 2018).

¹²³ MO. REV. STAT. § 265.490(6) (West 2018).

¹²⁴ MO. REV. STAT. § 265.494(7) (West 2018).

¹²⁵ See Appellants' Brief at 14, *Turtle Island Foods, SPC v. Thompson* (8th Cir. 2020) (No. 19-3154).

¹²⁶ *Id.*

¹²⁷ *Id.* at 15.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Tofurky's formal business name is Turtle Island Foods SPC, d/b/a The Tofurky Company. *Turtle Island Foods, SPC v. Richardson*, 425 F. Supp. 3d 1131 (W.D. Mo. 2019). See also Appellants' Brief, *supra* note 125, at 1.

statute violates their First Amendment rights, their due process rights, and violates the Dormant Commerce Clause.¹³² The suit was filed against the Cole County prosecuting attorney, on behalf of a putative defendant class of prosecutors.¹³³ Tofurky gave notice to the Missouri Attorney General that they were challenging the constitutionality of a state statute, and the State intervened.¹³⁴ In October 2018, Tofurky filed a motion for preliminary injunction based on its First Amendment claim, which the court denied on September 30, 2019.¹³⁵ Tofurky filed a notice of appeal to the U.S. Court of Appeals for the Eighth Circuit that same day.¹³⁶

In its order denying Tofurky’s motion for preliminary injunction, the district court focused heavily on non-binding guidance issued by the Missouri Department of Agriculture (MDA) two days after § 265.494 took effect that recommend that plant-based products using a “qualifier” and a disclaimer should be exempt from prosecution.¹³⁷ That guidance stated that:

MDA will not refer products whose labels contain the following:

- Prominent statement on the front of the package, immediately before or immediately after the product name, that the product is “plant-based,” “veggie,” “lab-grown,” “lab-created,” or a comparable qualifier; and
- Prominent statement on the package that the product is “made from plants,” “grown in a lab,” or a comparable disclosure.¹³⁸

¹³² See *Turtle Island Foods*, 425 F. Supp. 3d at 1134-35. See also Complaint for Declaratory and Injunctive Relief at 2, *Turtle Island Foods, SPC v. Richardson* (W.D. Mo. 2018) (No. 18-4173).

¹³³ See *Turtle Island Foods*, 425 F. Supp. 3d at 1134.

¹³⁴ Appellants’ Brief, *supra* note 125, at 18–19.

¹³⁵ *Turtle Island Foods, SPC*, 425 F. Supp. 3d at 1142. See also Appellants’ Brief, *supra* note 125, at 19–20 (“[T]he court concluded that the balance-of-harms and public-interest factors weighed against a preliminary injunction and it therefore denied the motion.”).

¹³⁶ Appellants’ Brief, *supra* note 125, at 20.

¹³⁷ See *Turtle Island Foods*, 425 F. Supp. 3d at 1140–41. See *Turtle Island Foods*, 425 F. Supp. 3d at 1140–41. The district court noted that “The State argues that plaintiffs will not suffer irreparable harm without an injunction because the statute does not prohibit their labels and they face no realistic threat of enforcement of a contrary reading of the statute. The State argues that there is no risk of irreparable harm to plaintiffs because the statute does not do what plaintiffs say it does.” *Turtle Island Foods, SPC*, 425 F.Supp.3d at 1140.

¹³⁸ Memorandum from the Mo. Dept. of Agric. Dir.’s Off. to the Mo. Dept. of Agric. Meat Inspection Program (Aug. 8, 2018).

MDA further stated that “[i]n MDA’s opinion, products that contain these statements do not misrepresent themselves as meat and thus do not violate Section 265.494(7).”¹³⁹

Referencing MDA’s non-binding guidelines and the fact that “[t]he labels and marketing materials of Tofurky, as well as the plant-based meat companies that GFI advocates for, all clearly indicate their products are plant based, meatless, vegetarian or vegan,”¹⁴⁰ the district court dismissed Tofurky’s claim that “because its labels include terms which are also applied to conventional meat like ‘kielbasa’ ‘hot dogs’ ‘ham roast’ ‘burgers’ and ‘bologna,’ it reasonably fears prosecution under the statute.”¹⁴¹ The court ultimately held that “plaintiffs have shown no risk of irreparable harm because their labels truthfully disclose that their products are plant-based or lab-grown and the Missouri Department of Agriculture has advised that products with these types of statements on their labels do not misrepresent themselves.”¹⁴²

In its appeal to the Eighth Circuit, Tofurky argues that the district court “rewrote the statute in a manner not supported by its text,”¹⁴³ and “did not consider, as it was required to do, what the law actually says as opposed to what the government now argues it would like the law to say.”¹⁴⁴ In its brief, Tofurky makes clear that it “does not want consumers to believe its plant-based meats are animal products; to the contrary, it wants to make clear that its products are not made from animals.”¹⁴⁵ Tofurky claims that it “fears prosecution” because § 265.494 “provides no exception for plant-based meat producers that use descriptors or qualifiers to identify their products as being vegetarian, vegan, or made from plants.”¹⁴⁶ As for the guidelines issued by MDA that seem to protect Tofurky from prosecution for its existing plant-based meat products, Tofurky emphasizes that the MDA guidelines actually do “nothing” to prohibit country prosecutors from filing charges against the company.¹⁴⁷ “Indeed,” notes Tofurky, “the MDA lacks the power to protect a plant-based meat producer from prosecution under the law.

¹³⁹ *Id.*

¹⁴⁰ *Turtle Island Foods*, 425 F. Supp. 3d at 1135.

¹⁴¹ *See id.* at 1135, 1141.

¹⁴² *Id.* at 1141.

¹⁴³ Appellants’ Brief, *supra* note 125, at 1.

¹⁴⁴ *Id.* at 11.

¹⁴⁵ *Id.* at 13.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 16.

Even if a producer follows the memorandum’s guidelines, a prosecutor may still bring charges against the producer.”¹⁴⁸

Tofurky also underscores the idea that “references to meat are crucial to Tofurky’s business model” and that “avoid[ing] references to meat,” as the plain language of the statute suggests it needs to do, “will gravely and irreparably harm” the brand.¹⁴⁹ Tofurky asserts that its business model “requires Tofurky to convey to consumers, many of whom are looking for ways to replace animal-based meat, that Tofurky products may be used” as main-dish alternatives to animal meat.¹⁵⁰ “[B]y using terms such as ‘vegetarian ham roast,’” explains Tofurky, the brand “is conveying its firmly held ideological view that Americans don’t need to slaughter animals for a meal. Tofurky conveys this view by using language which presents its products as plant-based alternatives to animal-based meat—rather than just side dishes.”¹⁵¹

In its reply brief, the state of Missouri argued that “because the law does not apply to [Tofurky’s] apparently truthful labels for their plant-based products, the district court correctly refused to enjoin Missouri’s law.”¹⁵² The government’s brief takes issue with Tofurky’s fear of prosecution under § 265.494, arguing that “the behavior with which the statute is concerned is not the use any particular word or words, but the result of whatever words are on the label.”¹⁵³ In other words, the government claims that the statute allows plant-based and cultivated meat products to identify themselves as “meat” as long as those products’ labels do not “suggest that plant-based or lab-grown meat alternatives are conventional meat from an animal carcass.”¹⁵⁴ The government does not directly respond to Tofurky’s argument that the statute, on its face, makes no mention of the use of “qualifiers,” and that Missouri’s reliance on MDA’s non-binding guidelines do not guarantee safety from prosecution for Tofurky or related brands.¹⁵⁵ “If the law were truly intended to require plant-based meat products only to include appropriate disclosures,” argued Tofurky in its reply brief, “then it

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 18.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Brief of State of Missouri, *supra* note 103, at 3.

¹⁵³ *Id.* at 40.

¹⁵⁴ *Id.* at 39-40.

¹⁵⁵ Appellants’ Reply Brief at 5–9, *Turtle Island Foods v. Thompson*, 992 F.3d 694 (8th Cir. 2020).

would simply say so using plain language. The State would not need to graft a nonbinding memo onto the law.”¹⁵⁶

Missouri’s brief also attempts to conjure up an emotional response, namely one of skepticism and disdain for plant-based and cultivated meat. Casting it as “the stuff of futurism and science fiction” and citing *Star Trek*’s Captain Kirk,¹⁵⁷ Missouri cautioned that “not every consumer may be eager right away to chow down on a vat-created muscle tissue entrée at the breakfast table or work cafeteria.”¹⁵⁸ Underscoring the fact that its “science fiction” rhetoric was intended to unsettle rather than excite its readers, Missouri’s brief cited a food writer who said this: “When I originally heard about lab-grown meat, my first thought was ‘yuck.’ The idea of ‘growing’ a steak or chicken leg in a test tube sounds like a scene from science fiction, not haute cuisine.”¹⁵⁹

The government’s brief goes on to cite “safety concerns” and “competing environmental concerns” as reasons consumers may be wary of cultivated meat.¹⁶⁰ “The growing trend against processed food and genetically modified food means that many consumers want food that is more natural and more organic—the opposite of food that was made in a factory, sold in a box, and created by chemical processes never found in nature.”¹⁶¹ Referencing “early reports”—but not citing those reports directly—Missouri goes on to suggest that “however well-intentioned or humanitarian may be the concept of mass producing lab-grown animal-cell meat alternatives . . . the industry may impose a greater environmental impact than traditional ranching and farming, increasing carbon dioxide emissions, which are of concern to many who worry about climate change.”¹⁶² A close look at the single study referenced in the news article that the government cites reveals that its key takeaway is that “cultured meat is not *prima facie* climatically superior to cattle; its relative impact

¹⁵⁶ *Id.* at 7.

¹⁵⁷ Brief of State of Missouri, *supra* note 103, at 4 (quoting *Star Trek: Charlie X* (CBS broadcast Sept. 15, 1966) (“On Earth today, it’s Thanksgiving. If the crew has to eat synthetic meat loaf, I want it to look like turkey.”)).

¹⁵⁸ *Id.* at 6.

¹⁵⁹ Brief of State of Missouri, *supra* note 103, at 6 (citing Gillian Tett, *Can You Swallow the Idea of Lab-Grown Meat?*, *FIN. TIMES* (Feb. 4, 2020), <https://www.ft.com/content/903beb2e-3cb0-11eab232-000f4477fbca>).

¹⁶⁰ *Id.* at 6-7.

¹⁶¹ *Id.*

¹⁶² *Id.* at 7. The “report” that the government references is apparently *Climate Impacts of Cultured Meat and Beef Cattle*. John Lynch & Raymond Pierrehumbert, *Climate Impacts of Cultured Meat and Beef Cattle*, *FRONTIERS SUSTAINABLE FOOD SYS.* (2019), <https://www.frontiersin.org/articles/10.3389/fsufs.2019.00005/full>.

instead depends on the availability of decarbonized energy generation and the specific production systems that are realized.”¹⁶³ The brief makes no mention of species extinction, habitat loss, or other aspects of the climate crisis. There is no data about the treatment of animals in the animal agriculture industry.¹⁶⁴

On March 29, 2021, the United States Court of Appeals for the Eighth Circuit issued an order affirming the district court’s denial of Tofurky’s motion for preliminary injunction.¹⁶⁵ Noting that it “find[s] no reason to disturb the district court’s ruling as to Plaintiffs’ likelihood of success on the merits,” the Eighth Circuit held that “the district court did not abuse its discretion in determining Plaintiffs failed to show irreparable harm.”¹⁶⁶ The Court noted that because “the evidentiary record is scant and the scope of [its] review is limited . . . we emphasize that our analysis here may provide little guidance as to the appropriate disposition on the merits.”¹⁶⁷

A similar case Tofurky filed in Arkansas reveals that states seeking to justify their “Real Meat Acts” by claiming that consumers may be misled by plant-based meat products are likely to find that courts aren’t buying that argument.

2. Arkansas’ misplaced insistence that meaty words mislead consumers

¹⁶³ Lynch & Pierrehumbert, *supra* note 162. (“The scale of cattle production required for the very high levels of beef consumption modeled here would result in significant global warming, but it is not yet clear whether cultured meat production would provide a more climatically sustainable alternative. The climate impacts of cultured meat production will depend on what level of decarbonized energy generation can be achieved, and the specific environmental footprints of production. There is a need for detailed and transparent LCA of real cultured meat production systems. Based on currently available data, cultured production does not necessarily give license for unrestrained meat consumption.”)

¹⁶⁴ The government argues that some consumers may prefer animal meat to “any of these processed vegetarian products because they enjoy meat more or because these plant-based products can still produce as many carbon emissions as producing meats like chicken.” Brief of State of Missouri, *supra* note 103, at 8. *See also* Olivia Roos, *Is Fake Meat Better for You, or the Environment?*, NBC NEWS (Oct. 13, 2019), <https://www.nbcnews.com/news/us-news/fake-meat-better-you-or-environment-n1065231> (stating without citation the claim that “[c]ellular-based meat alternatives release five times the emissions as chicken, putting their emissions just under beef. Plant-based meat alternatives produce the same amount of emissions as chicken — which are about five times the emissions of legumes and vegetables.”).

¹⁶⁵ *Turtle Island Foods, SPC v. Thompson*, 992 F.3d 694 (8th Cir. 2021).

¹⁶⁶ *Turtle Island Foods, SPC v. Thompson*, 992 F.3d 694, 701-02 (8th Cir. 2021).

¹⁶⁷ *Turtle Island Foods, SPC v. Thompson*, 992 F.3d 694, 702 (8th Cir. 2021).

In March 2019, Arkansas enacted Act 501, titled “An Act to Require Truth in Labeling of Agricultural Products that are Edible by Humans; and for Other Purposes” (“Act 501”).¹⁶⁸ Act 501, like Missouri’s § 265.494, takes aim at plant-based and cultivated meat products’ use of “meaty” words. Not only that, but certain provisions of the Act can be interpreted as prohibiting the use of “milky” words for foods not derived from animal-based milk.

The stated legislative purpose of Act 501 is “to protect consumers from being misled or confused by false or misleading labeling of agricultural products that are edible by humans.”¹⁶⁹ The Act defines “agricultural product” broadly as “a horticultural, viticultural, forestry, dairy, livestock, poultry, or bee product or any other farm, ranch, plantation, or range product[.]”¹⁷⁰ It defines “meat” as “a portion of a livestock, poultry, or cervid carcass that is edible by humans” and specifies that “meat” “does not include a: (i) Synthetic product derived from a plant, insect, or other source; or (ii) Product grown in a laboratory from animal cells[.]”¹⁷¹ It defines “misrepresent” as “to use any untrue, misleading, or deceptive oral or written statement, advertising, label, display, picture, 28 illustration, or sample[.]”¹⁷² The Act does not provide a definition for the terms “misled” or “confused.”

Act 501 prohibits a broad range of activities, including, amongst other things, “[r]epresenting the agricultural product as meat or a meat product when the agricultural product is not derived from harvested livestock, poultry, or cervids” and “[u]tilizing a term that is the same as or similar to a term that has been used or defined historically in reference to a specific agricultural product[.]”¹⁷³ The breadth of the activities prohibited in the Act, combined with the Act’s silence on whether “qualifiers” such as “plant-based” may be used by plant-based foods alongside “meaty” or “milky” words, casts a wide net that seemingly encompasses not just plant-based and cultivated meat but plant milk and related plant-based dairy products as well.

¹⁶⁸ ARK. CODE ANN. § 2-1-301 (2019).

¹⁶⁹ *Id.*

¹⁷⁰ ARK. CODE ANN. § 2-1-302(1) (2021).

¹⁷¹ § 2-1-302(7).

¹⁷² § 2-1-302(10).

¹⁷³ ARK. CODE ANN. § 2-1-305(6), (10) (2019).

Act 501 imposes civil penalties for violation of its provisions, with each violation of Act 501 punishable by a civil penalty of up to \$1,000.¹⁷⁴

Tofurky filed suit against the state of Arkansas in July 2019 at the U.S. District Court for the Eastern District of Arkansas, Central Division, seeking declaratory and injunctive relief under 42 U.S.C. § 1983 to challenge the constitutionality of Arkansas Act 501.¹⁷⁵ In August 2019 Tofurky filed a motion for preliminary injunction, focusing on its first amendment claims and the claim that “Act 501 also violates the Fourteenth Amendment Due Process Clause’s prohibition against vague statutes.”¹⁷⁶ On December 11, 2019, Judge Kristine G. Baker granted Tofurky’s motion for a preliminary injunction “enjoining enforcement of the six provisions of Act 501 challenged by Tofurky and as applied to Tofurky[.]”¹⁷⁷

In its Motion for Preliminary Injunction, Tofurky stated that “[t]he question in this case is whether the government can prohibit companies from using terms like ‘veggie burger’ or ‘tofu hot dog’ to describe their products.”¹⁷⁸ Asserting that Act 501 was passed “[i]n response to vigorous lobbying from the agriculture industry,”¹⁷⁹ Tofurky attacked the Act’s purported purpose of preventing consumer confusion, arguing that:

The law’s stated purpose is to prevent consumer confusion, but there is no evidence in the legislative record that consumers are confused about whether a veggie burger comes from a cow. To the contrary, people buy plant-based meats precisely because they are *not* made from slaughtered animals. Far from preventing consumer deception, the law is more likely to create consumer confusion by prohibiting companies from continuing to use self-evident terms like ‘vegan sausage’ to accurately describe the taste, appearance, and texture of their products. The law’s tendency to confuse, rather than inform, is no accident; the legislative history

¹⁷⁴ ARK. CODE ANN. § 2-1-306(a)(1) (2019).

¹⁷⁵ *Turtle Island Foods, SPC v. Soman*, 424 F. Supp. 3d 552, 561 (E.D. Ark. 2019).

¹⁷⁶ Memorandum of Law in Support of Plaintiff’s Motion for Preliminary Injunction at 13, *Turtle Island Foods, SPC v. Soman*, 424 F. Supp. 552 (No. 4:19-cv-514-KGB).

¹⁷⁷ *Turtle Island Foods, SPC*, 424 F. Supp. 3d at 579.

¹⁷⁸ Memorandum of Law in Support of Plaintiff’s Motion for Preliminary Injunction, *supra* note 173, at 1.

¹⁷⁹ *Id.* at 2.

reveals that the law's true purpose is to benefit the meat industry by censoring the competition.¹⁸⁰

Tofurky defines "plant-based meats" as "foods that approximate the texture, flavor, and appearance of meat derived from slaughtered animals."¹⁸¹ Tofurky argues that "[s]imilar to other plant-based meat producers, Tofurky's packaging and marketing materials—which use terms like 'chorizo,' 'hot dogs,' and 'ham roast' to effectively describe its products—all clearly indicate that these products are plant based, meatless, vegetarian, or vegan."¹⁸² Tofurky argues that its products "already comply with federal food labeling regulations and numerous state and federal consumer protection laws, which prohibit the deceptive labeling and marketing of food products and consumer products more generally."¹⁸³ Tofurky argues that in the face of Act 501, it must "either completely overhaul its labeling and marketing practices to comply with the Act's restrictions on truthful and non-misleading commercial speech, or face the threat of ruinous civil penalties."¹⁸⁴

Tofurky goes on to argue that "Act 501 unconstitutionally restricts Tofurky's truthful and non-misleading commercial speech in violation of the First Amendment," and proceeds to offer an analysis of its labels as commercial speech under the framework provided in the landmark Supreme Court case *Central Hudson Gas & Electric Corp. v. Public Service Commission*.¹⁸⁵

¹⁸⁰ *Id.* at 1-2.

¹⁸¹ *Id.* at 3.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Memorandum of Law in Support of Plaintiff's Motion for Preliminary Injunction, *supra* note 173, at 3-4.

¹⁸⁵ *Id.* at 4-13 (citing *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 563-64 (1980)).

On p. 19 of its order granting Tofurky's motion for preliminary injunction, the court set out the four-part Central Hudson test: "In analyzing restrictions on commercial speech, the Supreme Court articulated an intermediate scrutiny framework for commercial speech in Central Hudson resulting in a four-part test. 447 U.S. at 765. Under the Central Hudson test, courts "test the constitutionality of laws burdening commercial speech" by considering: "(1) whether the commercial speech at issue concerns unlawful activity or is misleading; (2) whether the governmental interest is substantial; (3) whether the challenged regulation directly advances the government's asserted interest; and (4) whether the regulation is no more extensive than necessary to further the government's interest." Preliminary Injunction Order at 19, *Turtle Island Foods, SPC v. Soman*, 424 F. Supp. 3d 552 (No. 4:19-cv-514-KGB) (citing *Cent. Hudson*, 447 U.S. at 566). See also *1-800-411-Pain Referral Serv., LLC v. Otto*, 744 F.3d 1045, 1055 (citing *Cent. Hudson*, 447 U.S. at 566). Provided that the speech is not false or inherently misleading, "[e]ach of these latter three inquiries must be answered in the affirmative for the

Noting that “the Court must determine whether the commercial speech restricted by Act 501 is protected under the First Amendment” and recognizing that this inquiry requires the court to determine “whether the commercial speech regulated by the Act is false or inherently misleading,” Tofurky attacks the notion that its labels may be at all “misleading” to consumers.¹⁸⁶ Pointing out the long history of plant-based foods using “meaty” words, Tofurky asserts that “the State cannot plausibly maintain that any use of words like ‘meat,’ ‘burger,’ or ‘steak’ on plant-based food labels is inherently misleading.”¹⁸⁷ Citing a passage from Genesis 1:29 from the King James Bible, Tofurky noted that “[f]or decades—and in some cases centuries—these words have been used to describe foods that are not made from slaughtered animals, such as coconut meat, veggie burgers, and beefsteak tomatoes.”¹⁸⁸

In arguing that Act 501 does not advance a substantial governmental interest, Tofurky notes that “there is no evidence in the legislative record demonstrating that consumers are confused or deceived by labeling or marketing materials for plant-based meats” and that there is no evidence “that prohibiting Tofurky and other plant-based meat purveyors from using meat-based terms will in fact alleviate consumer confusion to a material degree.”¹⁸⁹

Tofurky goes a step further, arguing not only that “meaty” words on plant-based food labels are not confusing to consumers, but that “Act 501 is likely to create consumer confusion where, for decades, none has existed.”¹⁹⁰ Tofurky argues that

[t]he Act’s restriction on the use of these terms will make it much more difficult for consumers to identify the plant-based meats they want to consume in lieu of meat from slaughtered animals. For example, Tofurky’s ‘Plant-Based Original Italian Sausage’ communicates that the product is

regulation to be found constitutional.”” *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 367 (2002); *See also Missouri. ex rel. Nixon v. Am. Blast Fax, Inc.*, 323 F.3d 649, 653 (8th Cir. 2003).

¹⁸⁶ Memorandum of Law in Support of Plaintiff’s Motion for Preliminary Injunction, *supra* note 173, at 6-7.

¹⁸⁷ *Id.* at 7.

¹⁸⁸ *Id.* (citing *Genesis 1:29 (King James)* (“And God said, Behold I have given you every herb bearing seed, which is upon the face of all the earth, and every tree, in which is the fruit of a tree yielding seed; to you it shall be for meat.”)).

¹⁸⁹ Memorandum of Law in Support of Plaintiff’s Motion for Preliminary Injunction, *supra* note 173, at 8-9.

¹⁹⁰ *Id.* at 9.

made from plants and has the shape and seasonings commonly associated with sausage made from animal meat. The Act requires Tofurky to replace ‘sausage’ with less descriptive terms like ‘roll’ or ‘tube.’ Consumers who confront a package that reads ‘plant-based protein’ or ‘veggie tube’ in the grocery store will have no idea what they are buying.¹⁹¹

Tofurky elaborates on its argument that its labels are not misleading to consumers in its analysis of its due process claim. Arguing that Act 501 “also violates the Fourteenth Amendment Due Process Clause’s prohibition against vague statutes,” the company points out that while the Arkansas statute defines “meat” as being derived from animal flesh, the word has been used “to refer to the flesh of fruits or nuts” in documents as wide-ranging as the King James Bible and FDA documents.¹⁹² Further, notes Tofurky, words like “patty,” “burger,” and “steak” have long been associated with “non-animalian food,” such as nut burgers and peppermint patties.¹⁹³

“[E]ven more confusing,” argues Tofurky, is the Act’s prohibition against terms “similar” to those “historically used in reference to specific agricultural products. Does the Act prohibit ‘beetballs’ because it is similar to ‘meatballs;? Is Tofurky prohibited from using its own registered trademark in Arkansas because it is ‘similar’ to the word ‘turkey’?”¹⁹⁴

Tofurky also attacks the very premise that Act 501 was enacted to protect consumers from being confused or misled, identifying the true purpose as one grounded in fear. Citing a comment from the Arkansas Cattlemen’s Association that “the Act is necessary to protect the industry’s ‘brand I.D.’ from ‘[c]ounterfeit products,’ Tofurky asserts that “[t]he Act’s true purpose is not to protect consumers, but to stoke confusion in order to benefit the economic interests of the meat industry. It is no secret that agriculture industry advocates lobbied for the Act because they fear a decline in sales ‘as shoppers choose from a growing pantry of alternatives.’”¹⁹⁵

Arkansas’ response to Tofurky’s motion for preliminary injunction argues that “Tofurky’s misleading commercial speech is

¹⁹¹ *Id.*

¹⁹² *Id.* at 13-14.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 14.

¹⁹⁵ Memorandum of Law in Support of Plaintiff’s Motion for Preliminary Injunction, *supra* note 173, at 9.

not protected by the First Amendment.”¹⁹⁶ Arkansas argues that “Tofurky’s labels for its ‘plant-based’ products are inherently misleading because they use the names and descriptors of traditional meat items but do not actually include the product they invoke.”¹⁹⁷ Unlike Missouri, who argued that Tofurky’s labels were not misleading because they contained “qualifiers,” Arkansas dismisses Tofurky’s qualifiers, asserting that its labels “rarely identify the components of its products. Instead, many of its labels bury the term ‘plant-based’ somewhere on its packaging or otherwise resorts to fine print to identify some of the components of its product.”¹⁹⁸ Taking issue with Tofurky’s label for “slow roasted chick’n,” the state argues that the label “does not dispel the notion that it is an actual poultry product until the consumer finds the term ‘plant-based’ buried in the bottom corner of the label.”¹⁹⁹ Arkansas provides no evidence that even a single consumer has actually been confused or misled by these labels.

Dismissing Tofurky’s argument that “meaty” words have been used for centuries to refer to plant-based foods—and seemingly discrediting the language invoked in the King James Bible—Arkansas argues that “[t]he fact that such words have been misapplied in the past does not categorically mean they are no longer misleading to consumers.”²⁰⁰ The state also argues that Tofurky is unlikely to succeed on its Fourteenth Amendment Due Process claim because “the Company only identifies one subsection of Act 501 that it claims is impermissibly vague” and “[c]onsidering the Act as a whole, it is plain what Act 501 regulates.”²⁰¹ Seeming to acknowledge that the provision Tofurky identified, Ark. Code Ann. § 2-1-305(10), may be unconstitutionally vague, the state argues that even if the court finds that provision to be impermissibly vague, “the Court should sever the provision it determines is unconstitutionally vague and allow the remainder of the statute to remain in effect.”²⁰²

Arkansas also rejects Tofurky’s assertion that Act 501’s “true purpose” is “to stoke confusion in order to benefit the economic

¹⁹⁶ Defendant’s Response to Plaintiff’s Motion for Preliminary Injunction, at 13, *Turtle Island Foods, SPC v. Soman*, 424 F. Supp. 3d 552 (E.D. Ark. 2019) (No. 4:19-cv-00514-KGB).

¹⁹⁷ *Id.* at 15.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 16.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 24.

²⁰² Defendant’s Response to Plaintiff’s Motion for Preliminary Injunction, *supra* note 193, at 24.

interests of the meat industry.”²⁰³ Arguing that “Tofurky’s unfounded fear of an industry-wide conspiracy is dispelled by its own evidence,” Arkansas ignores the quote Tofurky provided by the Arkansas Cattlemen’s Association and focuses instead on the fact that the same spokesperson also cited concern for the consumer in supporting the Act.²⁰⁴

In its order granting Tofurky’s motion for preliminary injunction, the Court determined that “Tofurky has demonstrated it is likely to prevail on the merits of its First Amendment claim as applied,” and therefore did not reach Tofurky’s Fourteenth Amendment claim.²⁰⁵ The Court found that “[a]s applied, Act 501 prohibits Tofurky from using words like ‘meat,’ ‘beef,’ ‘chorizo,’ ‘sausage,’ and ‘roast’ to describe its plant-based meat products,” and notes “[t]he statute provides no exception for plant-based meat producers that clearly identify their products as being vegetarian, vegan, or made from plants[.]”²⁰⁶

The Court then proceeds to conduct a First Amendment analysis using the Central Hudson test, beginning with an inquiry into whether Tofurky’s commercial speech—in the form of its product labels—is “inherently misleading.”²⁰⁷ The Court identifies seven labels—“Veggie Burger,” “Deli Slices,” “Chorizo Style Sausage,” “Slow Roasted Chick’n,” “Original Sausage Kielbasa,” “Hot Dogs,” and “Vegetarian Ham Roast”—and “finds the speech at issue not inherently misleading.”²⁰⁸ “It is true,” the Court acknowledges, “that these labels use some words traditionally associated with animal-based meat. However, the simple use of a word frequently used in relation to animal-based meats does not make use of that word in a different context inherently misleading.”²⁰⁹ Noting the labels’ use of “qualifier” words like “veggie,” “all vegan,” and “plant-based,” the Court emphasized that its finding that the labels are not inherently misleading “rings particularly true since the labels also make disclosures to inform consumers as to the plant-based nature of the products contained therein.”²¹⁰ “[T]his is not a case of key information in minuscule type buried deep among many ingredients,” said the Court, in apparent

²⁰³ *Id.* at 18.

²⁰⁴ *Id.*

²⁰⁵ *Turtle Island Foods, SPC v. Soman*, 424 F. Supp. 3d 552, 571 (E.D. Ark. 2019).

²⁰⁶ *Id.* at 563.

²⁰⁷ *Id.* at 573-75.

²⁰⁸ *Id.* at 573-74.

²⁰⁹ Preliminary Injunction Order at 23, *Turtle Island Foods, SPC v. Soman* 424 F. Supp. 3d 552 (E.D. Ark. 2019) (No. 4:19-CV-00514).

²¹⁰ *Id.*

response to the state's argument that the Tofurky labels' qualifiers appeared in "fine print" or were "buried" in a corner of the label.²¹¹

The Court calls "unwarranted" Arkansas' assertion "that the simple use of the word 'burger,' 'ham,' or 'sausage' leaves the typical consumer confused," and finds that Tofurky's labels "include ample terminology to indicate the vegan or vegetarian nature of the products."²¹² The Court also notes that there is no evidence of any consumer confusion by Tofurky's "packaging, labeling, or marketing."²¹³ Noting that Tofurky "identifies several in-effect federal and state laws directed at prohibiting deceptive labeling and marketing of food products, and consumer products more generally, with which Tofurky contends its food labeling complies," the Court also held that there is "no convincing argument as to why each of these laws is ineffective at policing the alleged deceptive or confusing practices the State purports to target."²¹⁴ The Court offered that, instead of the prohibition in Act 501, the state could "create a symbol to go on the labeling and packaging of plant-based products indicating their vegan composition, or require a disclaimer that the products do not contain meat if further laws are deemed necessary to advance its stated purpose."²¹⁵ Because it found that Tofurky "is likely to prevail in demonstrating that Act 501 does not advance the stated governmental interest of protecting consumers from being misled or confused," it declined to reach the question of "whether the stated interests the Court identifies are not the actual interests served by Act 501."²¹⁶

The district court's grant of Tofurky's motion for preliminary injunction in Arkansas was a win for advocates of plant-based foods who believe that "Real Meat" laws claiming to protect consumers from being misled or confused are really thinly-veiled and fear-driven attempts at protecting the animal agriculture industry's bottom line. Lawsuits in other states against similar laws echo the same refrain.

²¹¹ *Id.* at 24. See also Defendant's Response to Plaintiff's Motion for Preliminary Injunction, *supra* note 193, at 13.

²¹² Preliminary Injunction Order, *supra* note 206, at 24 (citing *Ang v. Whitewave Foods Co.*, No. 13-CV-1953, 2013 WL 6492353, at *4 (N.D. Cal. 2013)).

²¹³ Preliminary Injunction Order, *supra* note 209, at 24.

²¹⁴ *Id.* at 27.

²¹⁵ *Id.*

²¹⁶ *Id.* at 27-28.

3. Mississippi, Louisiana, and Oklahoma pursue statutory “clear losers”

A spate of other states have pursued legislation to prohibit plant-based food from using meaty words on their packaging. Time and time again, proponents of those laws reveal that it isn't consumer confusion they are afraid of, but rather the threat that plant-based products may hurt the animal agriculture industry's bottom line.

“This bill will protect our cattle farmers from having to compete with products not harvested from an animal,” said Mississippi Farm Bureau Federation president Mike McCormick in January 2019 when Mississippi's “Fake Meat Bill” passed in the Mississippi state House.²¹⁷ The law went into effect in July 2019, and was immediately challenged in court by vegan food company Upton's Naturals in a suit joined by the Plant Based Foods Association (PBFA) and the Institute for Justice (IJ).²¹⁸ In September 2019 Mississippi proposed new regulations allowing for plant-based foods to use meaty words so long as they are accompanied by a “qualifier” like “plant-based” that is “prominently displayed on the front of the package[.]”²¹⁹

In October 2020 Tofurky—together with GFI and the Animal Legal Defense Fund sued the Louisiana Department of Agriculture and Forestry, challenging its new law that seeks to prohibit meaty words for plant-based foods.²²⁰ The law “prohibits companies from ‘[u]tilizing a term that is the same as or deceptively similar to a term that has been used or defined historically in

²¹⁷ Lowery, *supra* note 110.

²¹⁸ Andrew Wimer, *New Lawsuit Challenges Mississippi Labeling Law That Makes Selling “Veggie Burgers” a Crime*, INST. FOR JUSTICE (July 2, 2019), <https://ij.org/press-release/new-lawsuit-challenges-mississippi-labeling-law-that-makes-selling-veggie-burgers-a-crime/>.

²¹⁹ See Complaint for Declaratory and Injunctive Relief at 1-2, *Turtle Island Foods SPC v. Strain*, No. 20CV00674, 2020 U.S. Dist. (M.D. La. 2021).

See also Kelsey Piper, *Mississippi Will No Longer Ban Calling Veggie Burgers “Veggie Burgers,”* VOX (Sept. 6, 2019), <https://www.vox.com/future-perfect/2019/9/6/20853246/mississippi-veggie-burger-ban-laws-plant-based>.

See also 02-001-407 MISS. CODE R. § 112.01 (LexisNexis 2021).

²²⁰ Nigel Barrella, *How Plant-Based Companies Are Fighting Back Against Label Censorship*, GOOD FOOD INST. (Nov. 5, 2020), <https://gfi.org/blog/label-censorship-lawsuits/>. The complaint for the case is available here: Complaint at <https://nationalaglawcenter.org/wp-content/uploads/2020/12/LA-Complaint-Tofurky.pdf>.

reference to a specific agricultural product.”²²¹ Supporters of the law argued in testimony in the Louisiana state legislature that it “was necessary to ‘protect our industries’ in the face of ‘a growing trend’ of consumers deciding to purchase different products. ‘We must protect our industry in this state: agriculture. It’s the number one industry in the state of Louisiana,’ the bill’s Senate sponsor, Francis Thompson (D-Delhi) argued during legislative hearings.”²²²

“It’s bemusing that these laws keep getting passed,” says Amanda Howell, an ALDF attorney co-counsel on the Louisiana case.²²³ “It’s bemusing that given the win in Arkansas the states don’t see these laws as clear losers. It’s a waste of state resources and it’s insulting to all consumers. Passing laws to protect one industry over another is not the job of our government.”²²⁴

And yet, the laws keep coming. In October 2020, Upton’s Naturals filed suit in Oklahoma in 2020 against a “strange new type of labeling law that tries to micromanage font sizes for disclosures on plant-based products.”²²⁵ Other laws—and legal challenges to them—may well be on the horizon.

Journalist Kelsey Piper notes that states’ “backlash” against plant-based food companies “might seem premature. While plant-based meat is certainly rising in popularity, all plant-based meat products still account for only a tiny fraction of the demand for meat. And plant-based alternatives aren’t changing the meat industry yet: Demand for meat actually grew last year.”²²⁶

²²¹ Kelsey Piper, *Tofurky Is Suing Louisiana for the Right to Label Its Veggie Burgers* “Veggie Burgers,” VOX (Oct. 8, 2020), <https://www.vox.com/future-perfect/21507907/louisiana-veggie-burger-ban-tofurky-lawsuit>.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ Barrella, *supra* note 220. See also *Truth in Labeling Laws(uits)—Update*, The National Agricultural Law Center, at <https://nationalaglawcenter.org/truth-in-labeling-lawsuits-update/>.

²²⁶ Kelsey Piper, *Mississippi Is Forbidding Grocery Stores from Calling Veggie Burgers* “Veggie Burgers,” VOX (July 3, 2019), <https://www.vox.com/future-perfect/2019/7/3/20680731/mississippi-veggie-burgers-illegal-meatless-meat>. See also Eliza Barclay, *Americans Should Eat Less Meat, but They’re Eating More and More*, VOX (Oct. 1, 2016), <https://www.vox.com/2016/8/18/12248226/eat-less-meat-campaign-fail> (“consumption of meat in the United States rose by 5 percent in 2015 — the biggest increase in 40 years”).

But, notes Piper, fear is a powerful driving force behind this spate of laws seeking to cling to the animal-meat-laden status quo.²²⁷ “It’s past time for meat companies to move past trying to outlaw their competition,” argues Piper in a different article, “and toward addressing the problems that are driving consumers toward plant-based meat: environmental concerns, the mistreatment of slaughterhouse workers, animal cruelty, and public health.”²²⁸

B. Fear and Dairy PRIDE

Milk occupies a sacred space in human culture; it’s so bound up with human civilization that the ancient Greeks named our galaxy after it, and at least fourteen languages do the same today.²²⁹ Dairy milk in particular is a central fixture of Western culture, a fact of life many take for granted, but not a particularly logical one given that a majority of people of color are unable able to digest it.²³⁰

Despite the firm hold that dairy milk has in the cultural landscape of the United States and Europe, dairy milk consumption has fallen by forty percent since 1975.²³¹ In the U.S., 20,000 dairy farms have shuttered over the last decade—a 30 percent decline.²³² Meanwhile, sales in plant milk have skyrocketed in recent years, threatening to further disrupt the once-ironclad hold that dairy milk had in the milk industry.²³³

²²⁷ See Piper, *supra* note 226. “[P]lant-based meat advocates hope — and sellers of conventional meat fear — that someday, that might change. A more climate-conscious population is increasingly bothered by the carbon footprint and land use problems associated with conventional meat production, and economies of scale may enable plant-based meat alternatives to be more competitive on price. While that day is far off, and still quite speculative, the possibility has clearly spurred lobbyists to action.” *Id.*

²²⁸ Piper, *supra* note 221.

²²⁹ See Robinson Meyer, *How to Refer to the Milky Way Across the Globe*, THE ATLANTIC (Aug. 8, 2013), <https://www.theatlantic.com/technology/archive/2013/08/how-to-refer-to-the-milky-way-across-the-globe/278506/>.

²³⁰ See Andrew Curry, *The Milk Revolution*, 500 NATURE 20, 20-21 (2013). See also Andrea Freeman, *The Unbearable Whiteness of Milk: Food Oppression and the USDA*, 3 U.C. IRVINE L. REV. 1251, 1269-73 (2013) (discussing the concept of “food oppression” and the role dairy plays in perpetuating it); Mathilde Cohen, *Animal Colonialism: The Case of Milk*, 111 AM. J. INT’L L. UNBOUND 267, 268-69 (2017) (discussing the role dairy milk and “lactating animals became integral parts of colonial and neocolonial projects).

²³¹ Jacobs, *supra* note 53.

²³² *Id.*

²³³ See Oliver Franklin-Wallis, *White Gold: The Unstoppable Rise of Alternative Milks*, THE GUARDIAN (Jan. 29, 2019), <https://www.theguardian.com/news/2019/jan/29/white-gold-the-unstoppable-rise->

Over the last decade a series of lawsuits and legislative efforts on both sides of the Atlantic reveal the great lengths dairy milk advocates will go to in order to protect the dairy industry from the perceived threat of plant-based milk. Like the linguistic and semantic battles over the word “meat,” these “milk wars” are typically fought under the guise of needing to protect the “misled” consumer, but at bottom are really about something entirely different: fear.

In the United States, a trio of federal cases out of California brought by plaintiffs claiming consumers may be “misled” or confused by plant milk using the word “milk”; in each case, the court dismissed the notion that anyone may mistake plant milk for the stuff that comes from cows.²³⁴ “[I]t is simply implausible that a reasonable consumer would mistake a product like soymilk or almond milk with dairy milk from a cow,” the Northern District of California stated in the 2013 case *Ang v. WhiteWave Foods Co.*²³⁵ “The first words in the products’ names should be obvious enough to even the least discerning of consumers,” said the Court.²³⁶ Dismissing the notion that a reasonable consumer may view a term like “soymilk” and “assume that the [drink] came from cows” as one that “stretches the bounds of credulity,” the Court concluded that under that logic, “a reasonable consumer might also believe that veggie bacon contains pork, that flourless chocolate cake contains flour, or that e-books are made out of paper.”²³⁷

The “milk wars” entered the halls of Congress in the United States in 2017, when a bipartisan group of lawmakers introduced the DAIRY PRIDE Act to Congress.²³⁸ If passed, the Act—which was re-introduced in 2019 and is formally known as the Defending

of-alternative-milks-oat-soy-rice-coconut-plant (discussing the rise in popularity of plant milks in Europe and the United States).

²³⁴ *Ang v. Whitewave Foods Co.*, No. 13-cv-1953, 2013 WL 6492353, at *4 (N.D. Cal. Dec. 10, 2013); *Gitson v. Trader Joe’s Co.*, No. 13-cv-01333-VC, 2015 WL 9121232, at *1 (N.D. Cal. Dec. 1, 2015); *Painter v. Blue Diamond Growers*, 757 Fed. Appx. 517, 519 (9th Cir. 2018).

For a detailed discussion of these cases, see Gambert, *supra* note 106, at 812-17.

²³⁵ *Whitewave*, 2013 WL 6492353 at *4. See Gambert, *supra* note 106, at 812-17, for an in-depth discussion of the case.

²³⁶ *Whitewave*, 2013 WL 6492353 at *4.

²³⁷ *Id.*

²³⁸ See Dairy PRIDE Act, S. 130, 115th Cong. (2017).

It’s probably no coincidence that the lawmakers who introduced the bill were democrats from Vermont and Wisconsin – big dairy states where increasingly plant milk sales may be an especially big threat. *Id.*

Against Imitations and Replacements of Yogurt, Milk, and Cheese To Promote Regular Intake of Dairy Everyday Act—would prohibit plant-based milk from using the word “milk” on its packaging.²³⁹ This sort of prohibition is already in place in the EU and Canada.²⁴⁰

A narrative of fear runs through the rhetoric surrounding the efforts of lawmakers to make it harder for plant-based products to compete with dairy. Specifically, fear that plant milk and related plant-based products may threaten the economic bottom line of the dairy industry. Shortly before the DAIRY PRIDE Act was introduced, 32 congressmen sent a letter to the FDA filled with fear-driven rhetoric about the dangers facing “hard-working Americans.”²⁴¹ The congressmen’s letter unapologetically framed its arguments around a pathos-driven narrative designed to conjure sympathy for the plight of American dairy farmers. “[D]airy farmers are facing a serious financial crisis,” the letter reads.²⁴² “These hard working Americans have experienced deep cuts in income as milk prices have plunged 40% since 2014. . . . Unless more is done, many more farmers will be forced to sell their herds.”²⁴³

What’s misleading about this rhetoric about “hard working Americans” is that in the US, a majority of workers in the dairy industry are immigrants, many of them noncitizens.²⁴⁴ The farms themselves are often owned by huge dairy conglomerates.²⁴⁵ In a

²³⁹ See DAIRY PRIDE Act, S. 792, 116th Cong. (2019). The Act would also prohibit other products, such as plant-based yogurt and cheese, from using the words “yogurt” or “cheese” on their packaging. *Id.*

²⁴⁰ See Council Regulation 1898/87, 1987 O.J. (L182) 36, 36, 38 (EC); Food and Drug Regulations, C.R.C., c 870, s B.08.003 (Can.).

²⁴¹ See Letter from Rep. Peter Welch, Mike Simpson & Members of Congress to Hon. Robert M. Califf, Comm’r, Food & Drug Admin. (Dec. 16, 2016) [hereinafter “Welch-Simpson Letter”], available at <http://www.nmpf.org/files/Welch-Simpson%20Letter.pdf>.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ FLYNN ADCKOCK ET AL, CTR. FOR N. AM. STUD., THE ECONOMIC IMPACTS OF IMMIGRANT LABOR ON U.S. DAIRY FARMS (2015), <https://1yoo7k3mjej72y4ffj396xcv-wpengine.netdna-ssl.com/wp-content/uploads/2021/02/CNAS-pub-Immigrant-Labor-Impacts-on-Dairy-Final.pdf>. See also Memorandum from Farmworker Justice on Selected Statistics on Farmworkers, available at <https://www.farmworkerjustice.org/sites/default/files/NAWS%20data%20factsht%201-13-15FINAL.pdf>.

In 2014, immigrant labor accounted for 51% of all dairy labor, and dairies that employ immigrant labor produced 79% percent of the US milk supply. *Id.*

²⁴⁵ See Debbie Weingarten, ‘There Are Ghosts in the Land’: How US Mega-Dairies Are Killing Off Small Farms, THE GUARDIAN (June 1, 2021),

2019 story about the crisis President Trump’s immigration policies were having on the dairy industry, the New York Times noted that “[i]t has long been an open secret in upstate New York that the dairy industry has been able to survive only by relying on undocumented immigrants for its work force.”²⁴⁶

The U.S. is not the only place where fears of harming the animal agriculture industry prompt politicians to pursue laws that hinder the ability of plant-based meat and milk to play an even more meaningful role in our species’ fight against climate change. A recent amendment passed by the European parliament is the latest battle in the European “milk wars” that began in 2014 when the Swedish dairy lobby sued a small (and at the time relatively obscure) Swedish oat milk company called Oatly, accusing it of misleading consumers.²⁴⁷ Oatly lost that particular battle, but has in recent years boomed in popularity across the globe and, as one of the key players in the latest scourge of the “milk wars,” seems intent on winning the war.

C. Amendment 171: “A wacko, incomprehensible direction to take in the middle of a climate crisis”

“Not milk.”

“Milk alternative.”

“Does NOT contain milk.”²⁴⁸

In late 2020 and early 2021, it appeared that phrases such as these commonly found on cartons of soy, almond, and oat milk were poised to become illegal in the European Union. In October 2020, under the guise of protecting customers from being “misled,” the European parliament passed Amendment 171 by a narrow 54% majority that, if allowed to become law,²⁴⁹ would have introduced

<https://www.theguardian.com/environment/2021/jun/01/there-are-ghosts-in-the-land-how-us-mega-dairies-are-killing-off-small-farms>.

²⁴⁶ Christina Goldbaum, *Trump Crackdown Unnerves Immigrants, and the Farmers Who Rely on Them*, N.Y. TIMES (Mar. 18, 2019), <https://www.nytimes.com/2019/03/18/nyregion/ny-farmers-undocumented-workers-trumpimmigration.html>.

²⁴⁷ See Marknadsdomstolen [MD] ([Market Court]) 2015 case no. C 23/14, available at

http://avgoranden.domstol.se/Files/MD_Public/Avgoranden/Domar/Dom2015-18.pdf (Swed.).

²⁴⁸ See Liam Giliver, *Oatly Slams EU over ‘Incomprehensible’ Decision to Support ‘Dairy Ban,’* PLANT BASED NEWS (Oct. 25, 2020), <https://plantbasednews.org/lifestyle/food/oatly-slams-eu-over-dairy-ban/>.

²⁴⁹ “It now needs approval from the EU Council of Ministers, which will consider the proposal at the trilogue meetings with the parliament and European Commission on January 27-28. If it’s agreed by the council and the commission, it

sweeping changes that would ban these and related labels on plant-based food products throughout the EU.²⁵⁰

In targeting plant milk and other non-dairy food alternatives, Amendment 171 sought to protect the dairy industry by invoking familiar fear-driven rhetoric, aiming to prohibit “any [] commercial indication or practice likely to mislead the consumer as to the product’s true nature or composition.”²⁵¹ Despite the persistence of dairy advocates in perpetuating the fear-driven narrative that a consumer may mistakenly purchase a container of oat milk containing the label “Not Milk” thinking that she is buying dairy milk, no evidence has been presented that a consumer might ever actually make that mistake.

If allowed to become law, Amendment 171 would have explicitly prohibited words such as “milk,” “butter,” and “yogurt” from appearing on plant-based food labels in any way that amounts to “any direct or indirect commercial use of [those words]” by “comparable products or products presented as capable of being substituted not complying with the corresponding definition” of those words, or “in so far as such use exploits the reputation associated with [those words.]”²⁵² Also prohibited is “any misuse, imitation or evocation, even if the composition or true nature of the product or service is indicated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘substitute’, ‘like’ or similar[.]”²⁵³

The European Alliance for Plant-based Foods called the Amendment’s broad language “worrying,” noting that “[i]n its most

will become law.” Enrico Bonadio & Andrea Borghini, *Vegan ‘Dairy’ Products Face EU Ban from Using Milk Cartons and Yoghurt Pots – and the UK Could Be Next*, THE CONVERSATION (Jan. 26, 2021), <https://theconversation.com/vegan-dairy-products-face-eu-ban-from-using-milk-cartons-and-yoghurt-pots-and-uk-could-be-next-153564>.

²⁵⁰ *Id.* See also Tiffany Duong, *New EU Laws Could Censor Vegan ‘Dairy’ Products*, ECOWATCH (Jan. 28, 2021), <https://www.ecowatch.com/eu-vegan-dairy-law-2650162992.html?rebellitem=1#rebellitem1>; Flora Southey, ‘Plant-Based Dairy Censorship’: Oatly, Upfield and ProVeg Petition to Overthrow Amendment 171, FOOD NAVIGATOR (Jan. 14, 2021), <https://www.foodnavigator.com/Article/2021/01/14/How-Oatly-Upfield-and-ProVeg-plan-to-overthrow-Amendment-171>; Gilliver, *supra* note 245.

²⁵¹ See *Report of the Committee on Agriculture and Rural Development on the Proposal for a Regulation of the European Parliament and of the Council Amending Regulations Establishing a Common Organization of the Markets in Agricultural Products*, *supra* note 106, at 172.

²⁵² *Id.*

²⁵³ *Id.*

restrictive interpretation, [the Amendment] could result in bans on plant-based food packaging that looks visually similar to dairy foods. For example, a ban on packaging for plant-based desserts that resembles a yoghurt pot.”²⁵⁴

In a characteristically cheeky media campaign titled “Are you stupid?,” Swedish oat milk producer Oatly took aim at Amendment 171.²⁵⁵ No stranger to the cultural or legal “milk wars,” Oatly is well known for using humor, wit, and social media savvy to attack the rhetoric of its significantly more deep-pocketed competitors in the dairy industry.²⁵⁶ Its January 2021 YouTube ads began with the premise that “the milk lobby seems to think that when plant-based products use descriptions like ‘alternative to yogurt’ or ‘not milk’ or ‘creamy texture’, it’s hard for consumers to tell the difference between them and dairy.”²⁵⁷ Oatly’s stated goal was to “find out if the people of Europe really are that stupid.”²⁵⁸ In the ads, Oatly gathered people around a table for “focus groups” and were asked to point to the dairy milk container after being presented with a bottle of dairy and a bottle of Oatly oat milk.²⁵⁹ Needless to say, everyone pointed immediately to the carton emblazoned with an image of a cow, providing that no one was “that stupid.”²⁶⁰

Oatly and other plant-based food advocates were vocal not only about the absurdity of the claim that consumers may be “misled” by plant milk using phrases like “milk alternative” on its packaging, but also about the bigger and more consequential impact that Amendment 171 would have on existing efforts to promote plant-based foods as meaningful alternatives to meat and dairy in the global

²⁵⁴ European Alliance for Plant-Based Foods, *What Is Amendment 171 and How Could It Affect Plant-Based Foods?*, POLITICO (Oct. 5, 2020), <https://www.politico.eu/sponsored-content/what-is-amendment-171-and-how-could-it-affect-plant-based-foods/>. Oatly presented a visual of a spray bottle of oat milk shaped like household cleaner to prove the same point. *See Are You Stupid?*, OATLY, <https://www.oatly.com/int/stop-plant-based-censorship> (last visited Sept. 7, 2021).

²⁵⁵ *See Are You Stupid?*, *supra* note 251; *see also* Oatly, *A Quick & Colorful Guide to AM 171 | Stop AM 171 | Oatly*, YOUTUBE (Jan. 19, 2021), <https://www.youtube.com/watch?v=1rCc8-uGAj0>; *Stop Plant-Based Dairy Censorship*, PROVEG INT’L, <https://stopam171.com/> (last visited Sept. 7, 2021).

²⁵⁶ For a detailed overview of Oatly’s legal and cultural battles against the Swedish dairy lobby, *see See Gambert, supra* note 106, at 832-37.

²⁵⁷ *See Oatly, Where’s the Milk? | Stop AM 171 | Oatly*, YOUTUBE (Jan. 18, 2021), https://www.youtube.com/watch?v=_WMGDldA9pw&t=1s.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

fight against climate change and species extinction.²⁶¹ In a section called “And what about the climate?,” Oatly’s webpage about Amendment 171 said this:

The EU seems confused there, too. Amendment 171 will contradict the EU’s own sustainability ambitions. As part of the European Green Deal (with the goal to make the EU climate neutral by 2050), the Farm to Fork Strategy highlights the fact that current EU food consumption patterns are unsustainable, calling for a shift to more plant-based diets, both for reasons of public health and for environmental protection. Amendment 171 is a move in the opposite direction, creating a huge road block for both consumers and the European plant-based food sector.²⁶²

Oatly’s Director of Public Affairs and Sustainable Eating, Cecilia McAleavey, had harsh words about the advocates pursuing the passage of Amendment 171. “Given the climate crisis, it’s irresponsible to try and prevent us from encouraging people to make the switch to plant-based and help protect the planet in the process,” she said.²⁶³ “People are not stupid—everyone understands that this is an attempt by the dairy lobby to hinder the shift towards sustainable plant-based eating.”²⁶⁴

Jasmijn de Boo, Vice President of ProVeg International, agreed. “It is baffling to once again be forced to justify sustainability. We would be sabotage innovation? Who will benefit?”²⁶⁵ “We need to adapt across every part of our food chain if we’re to tackle the climate crisis,” she continued.²⁶⁶ “Genuinely sustainable food production must be enabled. How will we reach our climate goals if we allow the influence of powerful but unsustainable industries to determine our collective fate?”²⁶⁷

Oatly characteristically leveraged social media to spread the word about the dangers of Amendment 171 to efforts to combat climate change. “This past Friday the EU Parliament voted Yes to Amendment 171 which will make it illegal for plant-based foods to be compared to dairy products in the future,” said Oatly in an

²⁶¹ See *Are You Stupid?*, *supra* note 254.

²⁶² *Id.*

²⁶³ Southey, *supra* note 250.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

Instagram post on Oct. 24, 2020, alongside an image of an Oatly container emblazoned with the words “Not Milk.”²⁶⁸

*This means we can no longer call our products milk-free or talk about any of the health and environmental advantages they offer. It’s a wacko, incomprehensible direction to take in the middle of a climate crisis. Especially since this amendment runs contrary to the EU’s own climate goals and their ambition to encourage the consumption of plant-based foods. Actually though, it isn’t so surprising considering there are more milk lobbyists in Brussels than actual cows in pasture during the summer months.*²⁶⁹

Specifically targeting Amendment 171’s prohibition on comparisons made between dairy and plant milk and other vegan foods, Oatly took aim at the dairy lobby:

*Consider this. If a liter of cow’s milk generates 293% more greenhouse gas emissions than a liter of oat drink²⁷⁰, doesn’t it make perfect sense that the number one priority of all those milk lobbyists is to forbid this weakness from being exposed? And when the Milk Lobby decides to flex its protein-rich muscles we all know what happens—the public loses out. How will consumers now be able to easily compare different food products in order to make more informed decisions about what they eat?*²⁷¹

To be clear: Amendment 171 was not about whether plant milk should be allowed to use the word “milk” on its packaging: the European Union already has regulations dating back to 1987 that narrowly define “milk” as animal in nature, save for a few carefully delineated exceptions.²⁷² As a result, soy, almond, rice, oat, and other plant-based milks and dairy substitutes are already required to use

²⁶⁸ See Oatly (@oatly), INSTAGRAM (Oct. 24, 2020), https://www.instagram.com/p/CGuedRNM2aK/?utm_source=ig_embed.

²⁶⁹ *Id.*

²⁷⁰ *Id.* (“This comparison specifically refers to Swedish cow’s milk 1.5% and Oatly Oat Drink 1.5%.”)

²⁷¹ *Id.*

²⁷² See Council Regulation 1898/87, art. 2, 1987 O.J. (L 182) 36, 36 (EC). For exceptions, see Commission Decision 2010/791/EU, annex I, 2010 O.J. (L 336) 55, 56 (citing Council Regulation 1234/2007, annex XII, 2010 O.J. (L 299) 1, 105 (EC)). The regulations also allow for the legal description of nondairy products such as “peanut butter,” “cream crackers,” and “shea butter.” *Id.* Note that use of the word “milk” by plant milk companies in the U.S. remains contested. See Gambert, *supra* note 106, at 812-17.

terms like “soy beverage” or “oat drink” on their packaging.²⁷³ When Amendment 171 was first passed, the European Dairy Association (EDA) said that it was a “good day” for the “EU lactosphere,” adding that “non-dairy products cannot hijack our dairy terms and the well-deserved reputation of excellence in milk and dairy.”²⁷⁴

Amendment 171 was grounded not in logic, but fear. But logic—and public pressure—won out in the end: in May 2021—after Oatly and other plant milk advocates gathered over 450,000 citizen signatures on a petition to oust Amendment 171—the European Parliament voted to withdraw the Amendment by a vote of 124–37.²⁷⁵

IV. Want You To Panic: Embracing Fear And Rage As A Catalyst To Action

When it comes to confronting the idea that we humans may need to drastically reduce our meat consumption in the name of averting the current climate crisis, Jo Leinen, an omnivorous German member of the European Parliament, was cautious: “This is one of the most delicate issues with climate protection, because we all have our habits and diet is something quite holy for some people, not to be meddled with.”²⁷⁶

Federal dietary guidelines have been reluctant to unequivocally recommend against animal meat consumption for environmental purposes. In 2016, new federal dietary guidelines urged Americans to cut sugar intake and for the first time suggested that teenage boys and men cut down on their consumption of protein in the form of meat, chicken and eggs.²⁷⁷ Draft recommendations “had suggested all Americans adopt more environmentally-

²⁷³ See Council Regulation 1898/87, art. 2, 1987 O.J. (L182) 36, 36. Gambert, *supra* note 106, at 806.

²⁷⁴ Southey, *supra* note 250.

²⁷⁵ Flora Southey, *Amendment 171 off the table: Europe allows for ‘creamy’ and ‘buttery’ plant-based dairy*, Food Navigator (May 26, 2021), <https://www.foodnavigator.com/Article/2021/05/26/Europe-drops-Amendment-171-allowing-for-creamy-and-buttery-plant-based-dairy>. See also *Stop Plant Based Censorship*, Oatly, <https://www.oatly.com/en-us/things-we-do/initiatives/stop-plant-based-censorship> (last visited Dec. 9, 2021).

²⁷⁶ *Paris Climate Change Summit and the Taboo of Meat-Eating*, *supra* note 67.

²⁷⁷ Anahad O’Connor, *New Dietary Guidelines Urge Less Sugar for All and Less Protein for Boys and Men*, N.Y. TIMES, (Jan. 7, 2016), <https://well.blogs.nytimes.com/2016/01/07/new-diet-guidelines-urge-less-sugar-for-all-and-less-meat-for-boys-and-men/>.

sustainable eating habits by cutting back on meat,” but that advice was removed from the final published guidelines.²⁷⁸ In 2015, a government-assembled committee of nutrition experts “recommended that the dietary guidelines encourage all Americans to consume more plant-based foods and less meat to help promote environmentally sustainable eating habits.”²⁷⁹ The suggestion was met with “intense lobbying and criticism from the food and meat industries” that led to a congressional hearing.²⁸⁰ That December, congress called for a review of the dietary guidelines by the National Academy of Medicine and limited the scope of those guidelines to nutrition, “which essentially eliminated the advice about following an environmentally-sustainable diet.”²⁸¹ “That was the most controversial thing,” said Dr. Michael F. Jacobson, executive director of the Center for Science in the Public Interest, “and now it’s on the cutting-room floor.”²⁸²

And yet, the science is clear: our collective appetite for meat and dairy is a massive contributor to the current climate crisis and species extinction. It’s also an undeniable fact that the animal agriculture industry perpetuates animal exploitation and suffering on a grand scale. It’s no exaggeration to say that the harms caused by the animal agriculture industry should be taken every bit as seriously as other threats to our collective health and well-being, from cigarette smoking to Covid-19.

If Logos carried the day, we would all go vegan tomorrow. But despite The Economist dubbing 2019 “The Year of the Vegan,”²⁸³ it’s estimated that only about 3% of the world’s population actually eats a strictly plant-based diet.²⁸⁴ “Everyone I spoke with agreed that customers aren’t going to buy [plant-based foods] to save the planet,” reflected Washington Post journalist Tamar Haspel in an article about how unlikely it is for plant-based meat to significantly transform and disrupt the animal meat

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ Davide Banis, *Everything Is Ready to Make 2019 the "Year of the Vegan". Are you?*, FORBES (Dec. 31, 2018),

<https://www.forbes.com/sites/davidebanis/2018/12/31/everything-is-ready-to-make-2019-the-year-of-the-vegan-are-you/?sh=561d5b3a57df>.

²⁸⁴ Williams, *supra* note 7.

industry.²⁸⁵ “[W]e’re not rational when it comes to food.”²⁸⁶

Despite acknowledging that rice and beans is “a nutritionally perfect food and it basically costs nothing,” journalist Joel Stein admitted that “I care about animals and the environment and, even more, virtue signaling about how much I care about animals and the environment. I just don’t want to make any effort or sacrifice any pleasure.”²⁸⁷ Emotions played a significant role in Stein’s experiment of hosting a vegan dinner party “filled with bleeding edge products that don’t bleed.”²⁸⁸ “I felt vaguely superior,” he said about his meal—which featured exotic plant-based ingredients like fake bacon made from a mycelium called kogi and ravioli stuffed with cheese from beta-lactoglobulin and coconut oil—“as if we were leaving the Animal Age. I know it isn’t all that hard to be vegan where I live in Southern California. . . . But it seemed more possible when I replaced meat with this fun futuristic world than a simple gatherer past.”²⁸⁹

In the article, Stein asked Moby, musician and longtime vegan and animal rights activist, why he bothered producing a documentary about cultivated based meat when he himself was content to eat rice and beans.²⁹⁰ Moby reflected on what appears to be true about human nature. “We live in a broken world filled with irrational institutions,” he said.²⁹¹ “If you want to change the world, you have to work inside those irrational institutions.”²⁹² “That made sense,” acknowledged Stein, “especially later that night when I was knuckle-deep in a pint of plant-based Hazelnut Chocolate Chunk ice cream. I realized where those institutions were. They were in my head.”²⁹³

If logic and rational thinking—Logos—isn’t enough to inspire us to change our behavior, it’s worth considering whether

²⁸⁵ Tamar Haspel, *One Thing Might Keep the Impossible Burger from Saving the Planet: Steak*, WASH. POST (May 28, 2019), https://www.washingtonpost.com/lifestyle/food/one-thing-might-keep-the-impossible-burger-from-saving-the-planet-steak/2019/05/23/729836b0-7d69-11e9-a5b3-34f3edf1351e_story.html.

²⁸⁶ *Id.*

²⁸⁷ Joel Stein, *Could This Be the Lab-Made Dinner Party of Our Future?*, N.Y. TIMES (Feb. 23, 2021), <https://www.nytimes.com/2021/02/21/business/fake-meat-eggs-dairy-products.html?referringSource=articleShare>.

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

emotion—Pathos—will.²⁹⁴ Specifically, by taking cues from other initiatives to change human behavior—namely the use of Graphic Warning Labels to curb cigarette consumption—it appears that a blend of Logos and Pathos that taps into the power of emotional fear-based narratives may help people radically reshape their relationship to—and choices about—food.

A. *Leveraging Fear Through Mandatory Graphic Warning Labels*

In order to create policies that are likely to result in people choosing to significantly change their diets in response to the threat of the climate crisis, it's helpful to consider what we already know about getting people to respond to an urgent threat: they need information and a feeling that that are part of the solution. In the early days of the Covid-19 pandemic, medical anthropologist Monica Schoch-Spana at the Johns Hopkins Center for Health Security explained that it's important to “inform and involve people in crafting solutions to the threat. . . You respect the public's autonomy, and you give them the information they need.”²⁹⁵ “I firmly believe we will manage this task if really all citizens see it as *their* task,” German Chancellor Angela Merkel remarked in March 2020.²⁹⁶ “Nobody is expendable. Everybody counts. It requires effort by all of us.”²⁹⁷

To get people to see themselves as part of the solution to the crisis fueled by meat and dairy, they need information. One way to convey that information is through mandatory labeling of all food products to show each item's impact on the environment and its relationship to worker and animal exploitation and suffering.²⁹⁸

²⁹⁴ In an article honoring Dennis Mileti, one of the world's leading experts on how humans behave in disasters and who died of Covid-19 in January 2021, it was noted that “Mileti did serious quantitative research, but he also knew how to talk so people would listen. He understood that emotion, social networks and group identity matter more than most things in disaster planning.” See Amanda Ripley, *Opinion: A disaster Expert Died Two Days Before He Was Set to Be Vaccinated. Here's How to Honor Him.*, WASH. POST (Feb. 17, 2021), <https://www.washingtonpost.com/opinions/2021/02/17/dennis-mileti-death-pandemic-psychology/>.

²⁹⁵ Amanda Ripley, *We Know How to Prepare the Public for a Crisis. Why Aren't We Doing it?*, WASH. POST (March 25, 2020), <https://www.washingtonpost.com/opinions/2020/03/25/we-know-how-prepare-public-crisis-why-arent-we-doing-it/>.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ The internet is full of sites like the BBC's “Follow the Food” quiz that allows consumers to get a rough estimate of their diet's climate footprint, but such sites

Oxford university professor Joseph Poore, who researches agriculture and the environment, has already proposed mandatory labeling of all food to show each item's environmental impact.²⁹⁹ Poore argues that these labels “would change how we produce and consume in three far-reaching ways.”³⁰⁰ First, “producers would have to measure their impacts in a uniform way and be accountable for the results.”³⁰¹ Second, “mandatory labels support sustainable consumption” because they would allow consumers to meaningfully compare otherwise-similar products, such as locally-produced and imported varieties of the same product.³⁰² Finally, mandatory environmental labels “would create information about the food system, and today this information is scarce. This could underpin better policy, particularly taxes or subsidies linked to actual environmental harm.”³⁰³

Poore is clear that such labels must be mandatory, because voluntary labeling has not been successful in changing consumer behavior.³⁰⁴ “[V]oluntary labelling doesn't leverage consumer behavior because shoppers are more likely to stop buying brands they perceive as unethical than to start buying those they perceive to be ethical,” he says.³⁰⁵ “Mandatory labels would highlight both high- and low-impact producers, in the same way, across multiple products. This would encourage more people to think about their choices by exposing them to the facts every time they are in the shops.”³⁰⁶

are limited in utility both because they rely on generalities and because they are entirely voluntary, failing to provide critical information at the moment a consumer is holding a product in her hands in the grocery store aisle. *See, e.g., Follow the Food*, BBC, <https://www.bbc.com/future/bespoke/follow-the-food/calculate-the-environmental-footprint-of-your-food.html> (last visited Sep. 5, 2021).

²⁹⁹ Poore, *supra* note 10.

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *See Id.* Oatly has also envisioned mandatory warning labels for food. In an October 24, 2020 Instagram post criticizing the implications of Amendment 171, it reasoned that “[o]ne way forward is to make it mandatory for dairy companies to state the climate impact of their products on their cartons so that consumers can make their own comparisons.” Oatly (@Oatly), *supra* note 268

³⁰⁵ Poore, *supra* note 10.

³⁰⁶ *Id.* Mandatory labels will have the effect of confronting consumers in the grocery store aisles every single time they are making purchasing decisions. This is very different than websites like the “Follow the Food” one the BBC offers, which allows people to select from a variety of generic food choices to see the

Poore's vision of mandatory labels on food is a simple yet visionary way to put critical information into the hands of consumers right at the moment it matters most—when they are in the grocery aisles scanning the aisles to decide what to put in their cart.³⁰⁷ But would Poore's labels be enough to dissuade vast numbers of people from selecting burgers and milk derived from a cow over their plant-based alternatives?

The mandatory labels that Poore envisions focus exclusively on the food product's environmental impact and are “emotionally neutral” in appearance, making use of red, orange, and green shapes to indicate how well a product scores on a variety of metrics such as water consumption, emissions, pesticide toxicity, and impact on biodiversity.³⁰⁸ The danger of Poore's bright, emotionally neutral labels is that they're too Logos-driven and don't pack enough of a Pathos-punch. To leverage the power of emotion-driven persuasion, mandatory food labels should leverage what we already know about using fear to change people's behavior. Taking a cue from anti-smoking initiatives, graphic imagery should appear on the labels of all animal-based food. The labels should communicate each food's impact not only on the environment, but also on animal well-being and exploitation and worker conditions.³⁰⁹

Research indicates that in the cigarette realm, Graphic Warning Labels (GWLs) “generally leads to a continuous drop in smoking rates.”³¹⁰ GWLs on cigarette packages have been shown to be significantly more effective than simple text-based warning labels because they create a fear and anger response that led to a stronger

environmental “foodprint” of their selected diet across a variety of metrics. See *Follow the Food*, *supra* note 298.

³⁰⁷ Proponents of Graphic Warning Labels on cigarette packages recognize that “People are more likely to see an anti-smoking message if it is present in the form of a label right on the outside of the cigarette box they are holding,” which is why they are particularly effective. See https://tobacco.stanford.edu/ad_tags/artries/.

³⁰⁸ Poore, *supra* note 10.

³⁰⁹ Ideally all food items—plant-based and animal-derived alike—would come with these mandatory labels, but given the particularized harms caused by animal-derived meat and dairy, it's absolutely essential that all animal-derived food be labeled.

³¹⁰ See, e.g., Minsoo Jung, *Implications of Graphic Cigarette Warning Labels on Smoking Behavior: An International Perspective*, 21 J. CANCER PREV. 21 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4819662/>. See also Christophe Haubursin, *Those Gross, Graphic Warnings on Cigarette Labels? This Study Shows They Actually Work.*, VOX (April 8, 2015), <https://www.vox.com/2015/4/8/8371613/graphic-warnings-on-cigarette-packs-are-changing-the-smoking>.

intention to quit smoking.³¹¹ A 2018 report from Australia titled *Evaluation of effectiveness of graphic health warnings on tobacco product packaging* showed that GWLs were good at “attracting attention and being noticed,” with the most common descriptions of the labels being that they contained “gross/ ugly/ disgusting/ bad/ confronting/ graphic pictures.”³¹² The report found that GWLs “are remembered and encoded in memory,” with roughly 70% of people being able to “describe one of the graphics or messages when asked what pictures they could recall on packaging.”³¹³ Some images proved more memorable than others, but on the whole people’s “[r]ecall of written health warnings was considerably lower than recall of the graphics,” with only 39% of people being able to recall a written warning.³¹⁴ Graphic images have the added benefit of communicating effectively to people with low literacy, as well as to immigrants who are not yet able to read the national language(s).³¹⁵ Further, research also shows that health information on cigarette labels is conveyed better when that information is were combined with GWLs.³¹⁶ Thus, combining written messages with a graphic image that evokes negative emotions is likely to elicit the strongest response among consumers.

Research also indicates that label size matters: the Framework Convention on Tobacco Control (FCTC) recommends that GWLs extend across at least 50% of the cigarette package cover.³¹⁷ Larger GWLs have the create more space to provide information mixed with graphic imagery, and do a better job of competing for the consumer’s attention than smaller labels do on a

³¹¹ Jung, *Supra*, note 310. “When functional magnetic resonance imaging of neural responses generated after exposing smokers to GWLs were analyzed, the images aroused strong emotional reactions, which increase cognitive efforts that accompany information processing. This increases the memory of the images and reduces the desire to smoke. In other words, smokers exposed to GWLs exhibited more fear and a stronger intention to quit smoking than did smokers exposed to simple warning messages.” *Id.*

³¹² See ESSENCE COMMUNICATIONS, *EVALUATION OF EFFECTIVENESS OF GRAPHIC HEALTH WARNINGS ON TOBACCO PRODUCT PACKAGING 7* (2018). The Australian report found that when smokers and recent smokers see GWLs on cigarette packaging, 57% felt “some emotional response,” with the most common emotions being: “disgusted (14%), worry/concern (6%), guilty, fearful/scared (6%), thinking they should stop (5%) and relief they aren’t smoking (7% non-smokers).” *Id.* at 9. Nearly a third (31%) claimed to feel nothing or reported that they ignored or were desensitized to the GWLs. *Id.* at 9.

³¹³ *Id.* at 7.

³¹⁴ *Id.*

³¹⁵ CANADIAN CANCER SOCIETY, *CIGARETTE PACKAGE HEALTH WARNINGS: INTERNATIONAL STATUS REPORT 7* (6th ed. 2018).

³¹⁶ Jung, *supra* note 310.

³¹⁷ *Id.*

package.³¹⁸ As of 2018, 107 countries required warnings covering at least 50% of the package, up from 24 countries in 2008.³¹⁹ Some countries go bigger: mandatory GWLs must cover 90% of the cigarette pack in Nepal, 87.5% of the pack in New Zealand, 85% in India, and 82.5% in Australia.³²⁰

In Canada, masculinity itself is an explicit target of the fear-driven rhetoric leveraged by GWLs, with some cigarette packages containing warnings that “tobacco use can make you impotent” paired with a humorous image of a limp, dropping cigarette.³²¹ As of 2018, 118 countries (or jurisdictions) worldwide require “picture warnings” on cigarette packages, reaching 58% of the world’s population.³²² This is up from 18 countries in 2008.³²³ Meanwhile, 107 countries require warning labels to cover at least 50% of the package front and back, up from 24 countries in 2008.³²⁴ The United States, meanwhile, is not a party to the FCTC and until very recently had no requirement that graphic images or “picture warnings” be used on cigarette packages at all.³²⁵

Given the longstanding resistance in the United States to embracing GWLs on cigarette packages—at odds with most of the rest of the world—it stands to reason that efforts to implement mandatory food labeling for environmental and animal impact would face similar resistance. A recent FDA rule—issued in March 2020 and going into effect in January 2022—offers a framework for success.³²⁶

³¹⁸ CANADIAN CANCER SOCIETY, *supra* note 315, at 7.

³¹⁹ *Id.* at 2.

³²⁰ *Id.* at 8.

³²¹ See *Yucky but Effective*, SOUTH FLORIDA SUN SENTINEL (Feb. 24, 2001), <https://www.sun-sentinel.com/news/fl-xpm-2001-02-24-0102231047-story.html>. See also James Brooke, *Canada Seeks to Jolt Smokers with a Picture on Each Pack*, N.Y. TIMES (Jan. 20, 2000), <https://www.nytimes.com/2000/01/20/world/canada-seeks-to-jolt-smokers-with-a-picture-on-each-pack.html>. (“[T]o illustrate a link between cigarette smoking and male impotence, Canadian health authorities chose a photograph of a symbolically limp cigarette. Trying to blunt smoking’s sex appeal, the warning would read: “Cigarettes may cause sexual impotence due to decreased blood flow to the penis. This can prevent you from having an erection.””).

³²² CANADIAN CANCER SOCIETY, *supra* note 315, at 7.

³²³ *Id.* at 7.

³²⁴ *Id.* at 2.

³²⁵ *Id.* at 11.

³²⁶ *Cigarette Labeling and Health Warning Requirements*, U.S. FOOD & DRUG ADMIN. (Aug. 25, 2021), <https://www.fda.gov/tobacco-products/labeling-and-warning-statements-tobacco-products/cigarette-labeling-and-health-warning-requirements>.

B. *The 2020 FDA Rule: a Blueprint for Mandatory Graphic Labeling Success*

Any regulatory effort to impose GWLs on animal-derived food would do well to understand the long and controversial history that attempts to impose GWLs on cigarette packages have faced in the United States. A recent development in the form of a yet-to-be implemented FDA rule provides a blueprint that advocates of GWLs for food can follow.

In March 2020, the Food and Drug Administration (FDA) in the United States issued “a final rule to establish new cigarette health warnings for cigarette packages and advertisements” that “amends the Federal Cigarette Labeling and Advertising Act (FCLAA) of 1965 to require each cigarette package and advertisement to bear one of the new required warnings. The final rule specifies the 11 new textual warning label statements and accompanying color graphics.”³²⁷ The FDA stated that it is “taking this action to promote greater public understanding of the negative health consequences of cigarette smoking,”³²⁸ noting that current written warnings, “which have not changed in 35 years, have been described as ‘invisible’ . . . and fail to convey relevant information in an effective way[.]”³²⁹ The rule was supposed to go into effect on June 18, 2021,³³⁰ but the date has been pushed back to January 14, 2022.³³¹

Once implemented, the new FDA rule will bring the United States in line with the 118 countries that already require GWLs on cigarette packages. The rule states that the new warnings will “consist of textual warning statements accompanied by color graphics, in the form of concordant photorealistic images, depicting the negative health consequences of cigarette smoking.”³³² Further, the warnings “warnings must appear prominently on packages and in advertisements, occupying the top 50 percent of the area of the front and rear panels of cigarette packages and at least 20 percent of the area at the top of cigarette advertisements.”³³³

³²⁷ Tobacco Products; Required Warnings for Cigarette Packages and Advertisements, 85 Fed. Reg. 15,638 (June 18, 2021) (codified at 21 C.F.R. 1141).

³²⁸ *Id.*

³²⁹ *Id.* at 15,639.

³³⁰ *Id.* at 15,638.

³³¹ *Cigarette Labeling and Health Warning Requirements*, *supra* note 322.

³³² Tobacco Products; Required Warnings for Cigarette Packages and Advertisements, 85 Fed. Reg. at 15,638.

³³³ *Id.*

In issuing its rule, the FDA noted that it received comments from a number of constituencies arguing that the new required warnings “violate the First Amendment of the United States Constitution under a variety of legal standards” and that “the Government's interest in promoting greater public understanding of the negative health consequences of cigarette smoking is not substantial.”³³⁴ The FDA rejected those arguments. It asserted that *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985) governs this matter, and that under the *Zauderer* framework, a government interest supporting factual disclosures need not be substantial—but emphasized that “even if a substantial interest were required, that standard is easily met for these required warnings.”³³⁵ It also discussed the First Amendment argument at great length.³³⁶

The FDA rejected the argument that images that intend to “evoke an emotional response, shock the viewer into retaining information, or convey an ideological message about how consumers should behave” cannot qualify as factual and accurate “based on their assertion that they are designed to evoke an emotional response, such as disgust.”³³⁷ The FDA argues that the planned warning images “illustrate the factual and accurate textual statements with which they are paired,” and emphasized that the FDA developed the images via a “a science-based, iterative research process” that created images

that were factually accurate; that depicted common visual presentations of the health conditions and/or showed disease states and symptoms as they are typically experienced; that presented the health conditions in a realistic and objective format devoid of non-essential elements; and that study participants found were concordant with the statements on the same health conditions. To do this, FDA staff, including internal medical experts from a range of specialties, worked closely with a certified medical illustrator to develop high quality, factually accurate photorealistic images[.]³³⁸

Food labeling in the United States is regulated by a combination of the Food & Drug Administration (FDA) and the U.S. Department of Agriculture (USDA), with the FDA governing dairy and plant-based foods and USDA being responsible for meat and poultry labeling (both agencies regulate eggs, but in distinct

³³⁴ *Id.* at 15,643.

³³⁵ *Id.* at 15,644.

³³⁶ *Id.* at 15,643.

³³⁷ *Id.* at 15,646.

³³⁸ *Id.*

forms).³³⁹ The FDA and USDA are “in close coordination” on labeling matters, and “intend to work together to reach a common goal that will best assist consumers in making healthy dietary choices.”³⁴⁰

Advocates of GWLs for animal-derived food should have no problem showing that the government has a significant interest in keeping the general public safe by reducing the wide-ranging dangers associated by climate change and mass species extinction, as well as in reducing the harms associated with mass exploitation and suffering to humans and nonhuman animals in the animal agriculture industry. To the extent the FDA (or USDA) faced First Amendment challenges in any effort to impose mandatory GWLs on animal-derived food, it could turn to the rationale it presented in the FDA’s March 2020 rule as a blueprint. Specifically, so long as food labels contained “factual and accurate textual statements” paired with graphic images that are accurate and developed via “a science-based, iterative research process,” they should withstand any challenge that images intended to evoke an emotional response cannot qualify as “factual and accurate.”³⁴¹

GWLs for animal-derived food may be met with challenges based on the D.C. Circuit’s 2012 decision *R.J. Reynolds Tobacco Co. v. FDA*, which struck down GWLs the FDA issued in 2011.³⁴² In that case, the D.C. Circuit emphasized that “[n]o one doubts the government can promote smoking cessation programs; can use

³³⁹ *Guidance for Industry: Letter Regarding Point of Purchase Food Labeling*, U.S. FOOD & DRUG ADMIN. (October 21, 2009), <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-letter-regarding-point-purchase-food-labeling>. For an overview of what food labeling is governed by the FDA and what is governed by the USDA, see Ralph Meer, *Understanding Key USDA and FDA Food Labeling Differences: Part One*, MERIEUX NUTRISCIENCES (June 28, 2018), <http://foodsafety.merieuxnutrisciences.com/2018/06/28/understanding-key-usda-fda-food-labeling-differences-part-one/> and Ralph Meer, *Understanding Key USDA and FDA Food Labeling Differences: Part Two*, MERIEUX NUTRISCIENCES (July 19, 2018), <http://foodsafety.merieuxnutrisciences.com/2018/07/19/understanding-key-usda-fda-food-labeling-differences-part-two/>. For a discussion on mandatory vs. voluntary GMO labeling, see *Food Labeling – An Overview*, THE NAT’L AGRIC. L. CTR., <https://nationalaglawcenter.org/overview/food-labeling/> (last visited Sept. 6, 2021).

³⁴⁰ *Guidance for Industry: Letter Regarding Point of Purchase Food Labeling*, *supra* note 339.

³⁴¹ Tobacco Products; Required Warnings for Cigarette Packages and Advertisements, 85 Fed. Reg. at 15,646.

³⁴² *R.J. Reynolds Tobacco Co. v. Food & Drug Admin.*, 696 F.3d 1205, 1222 (D.C. Cir. 2012).

shock, shame, and moral opprobrium to discourage people from becoming smokers; and can use its taxing and regulatory authority to make smoking economically prohibitive and socially onerous. And the government can certainly require that consumers be fully informed about the dangers of hazardous products.”³⁴³ The issue in *R.J. Reynolds*, the Court, said, was about the “scope of the government’s authority to force the manufacturer of a product to go beyond making purely factual and accurate commercial disclosures and undermine its own economic interest—in this case, by making ‘every single pack of cigarettes in the country [a] mini billboard’ for the government’s anti-smoking message.”³⁴⁴ In other words, said the Court, “how much leeway should this Court grant the government when it seeks to compel a product’s manufacturer to convey the state’s subjective—and perhaps even ideological—view that consumers should reject this otherwise legal, but disfavored, product?”³⁴⁵

These are critical questions to be sure. The D.C. Circuit ultimately held that the FDA’s 2011 GWLs “do not constitute the type of ‘purely factual and uncontroversial’ information, or ‘accurate statement[s],’ to which the *Zauderer* standard may be applied.”³⁴⁶ Noting that the FDA “concedes that the images are not meant to be interpreted literally,” the *R.J. Reynolds* court held that the 2011 GWLs were not “purely” factual because “they are primarily intended to evoke an emotional response, or, at most, shock the viewer into retaining the information in the text warning.”³⁴⁷ “These inflammatory images,” reasoned the *R.J. Reynolds* court, cannot rationally be viewed as pure attempts to convey information to consumers. They are unabashed attempts to evoke emotion (and perhaps embarrassment) and browbeat consumers into quitting.”³⁴⁸ The Court acknowledged that “none of these images are patently false,” but held that “they certainly do not impart purely factual, accurate, or uncontroversial information to consumers” and that “[c]onsequently, the images fall outside the ambit of *Zauderer*.”³⁴⁹

³⁴³ *Id.* at 1212.

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.* at 1216.

³⁴⁷ *Id.* (citing Brief for Appellants at 33, *R.J. Reynolds Tobacco Co. V. Food & Drug Admin.*, 696 F.3d 1205 (D.C. Cir. 2012) (No.11-5332) (quoting S. David (citing research showing that “pictures are easier to remember than words”); *id.* at 38 (citing FDA’s finding that a substantial body of scientific literature shows that emotional responses, such as worry and disgust, “reliably predict the likelihood that consumers will understand and appreciate the substance of the warnings”)).

³⁴⁸ *Id.* at 1216-17.

³⁴⁹ *Id.* at 1217.

Proponents of GWLs for animal-derived food will have to contend with the D.C. Circuit's holdings in *R.J. Reynolds*, but that case alone should not bar their efforts. First, it is likely that other circuits may see the issue differently, and until the U.S. Supreme Court rules on these issues, they remain unsettled. Second, the FDA's 2020 Rule provides important updates to its 2011 GWL strategy, including developing the images via a "a science-based, iterative research process" that focuses on presenting images in "a realistic and objective format devoid of non-essential element[.]"³⁵⁰ The FDA rejects the argument that when GWLs evoke an emotional response they cannot also be factual, reasoning that with regard to its 2020 GWLs, "an emotional reaction on the part of some individuals would not render the warnings or the health information they convey 'controversial' or 'inflammatory.'"³⁵¹ The same arguments could be made in with respect to GWLs for animal-derived food.

C. *Envisioning GWLs for Animal-derived Food*

Images of clear-cut rainforests, veal calves separated from their mothers, or pregnant pigs in cramped gestation crates may be disturbing to look at but do not render them "controversial" or any less "accurate" than less emotionally laden images might be.

We humans are loathe to consider—really pause and reflect—on the lived experience of the billions of cows, pigs, chicken, and sheep whose lives from birth to death are wholly controlled the animal agriculture industry. Before their flesh and bodily fluids ended up in yogurt tins, cartons of milk, pints of ice cream, or packages of shrink-wrapped bacon, ground beef, or chicken breasts, what lives did they live? What social relationships did they have? Were they allowed to bond with their young? Did they suffer injuries from overcrowding, or overmilking? How much of their natural lifespan was left on the day they were corralled into the slaughterhouse, their bodies worth more to the humans who owned them dead than alive? Did they ever see the light of day, feel sunshine on their faces, or grass under their feet?

In a telling moment that underscores how uncomfortable we humans are with the fact that we breed and kill other animals for the pleasure of our own appetites, the D.C. Circuit in *American Meat*

³⁵⁰ Tobacco Products; Required Warnings for Cigarette Packaging and Advertisements, 85 Fed. Reg. 15,638, 15,646 (Mar. 18, 2020) (codified at 21 C.F.R. pt. 1141).

³⁵¹ *Id.*

Institute v. U.S. Department of Agriculture failed to unequivocally reject the American Meat Institute’s (AMI) objection to the word “slaughter” being used on meat labels.³⁵² “Though it seems a plain, blunt word for a plain, blunt action, we can understand a claim that ‘slaughter,’ used on a product of any origin, might convey a certain innuendo,” the Court said, ultimately concluding that it need not address AMI’s objection because AMI did not object to “the truth of the facts required to be disclosed, so there is no claim that they are controversial in that sense,” and furthermore the more benign word “harvested” was permitted under the regulations as an alternative to “slaughtered,” and AMI did not object to use of that word.³⁵³

As for the “certain innuendo” that the word “slaughter” may convey, the D.C. Circuit did not elaborate, but in tacitly agreeing with AMI that it is a word that the meat industry may want to avoid on its packaging, the court acknowledged the cognitive dissonance that the animal agriculture industry seeks to perpetuate to keep its consumers from thinking too deeply about the lives—and deaths—of the animals whose bodies they are selling.

A closer look at the arguments offered against use of the word “slaughter” on meat labels reveals a deep discomfort within the meat industry of the idea of confronting consumers with factually accurate information about the death of the animals they are selling. The word “slaughtering” is “not accurate” and “offensive,” said one AMI member.³⁵⁴ “Consumers will have to think about slaughter every time they buy or prepare meat,” said another.³⁵⁵ “[R]equiring labels to declare ‘Born, Raised, and Slaughtered in the U.S.’ could adversely affect demand by bringing front and center the issue of slaughtering livestock,” said a third.³⁵⁶

That the word “slaughter” or other words that may force consumers to confront the fact that animals are killed for their meat and may evoke an emotional reaction does not make those words factually inaccurate. To the contrary. Proponents of GWLs for animal-derived food should not be deterred from using factually accurate words precisely *because* they are likely to elicit an

³⁵² *Am. Meat Inst. v. U.S. Dept. of Agric.*, 760 F.3d 18, 27 (D.C. Cir. 2014) (en banc).

³⁵³ *Id.*

³⁵⁴ Reply Brief for Appellants, at 8 n.2, *Am. Meat Inst. v. U.S. Dept. of Agric.*, 760 F.3d 18 (D.C. Cir. 2014) (en banc) (No. 13-5281).

³⁵⁵ *Id.*

³⁵⁶ *Id.*

emotional reaction. The truth has been sanitized for consumers for too long, and it does not serve the crisis we now face.

In envisioning what GWLs for animal-based food should look like, advocates should lean on the rhetorical tool Logos, partnering closely with scientists and experts to ensure the data information communicated is accurate. But they should also lean on the rhetorical tool Pathos, casting a vivid and emotionally provocative spotlight on the environmental harms, suffering, and exploitation inherent in the animal agriculture industry that has, for far too long, been too easy to ignore.

V. CONCLUSION

Our food culture is broken. Not only does “[f]ood in the Anthropocene represents one of the greatest health and environmental challenges of the 21st century,”³⁵⁷ but our relationship to food—in particular animal-derived meat, eggs, and dairy—is harmful in other ways as well. Our tendency to associate meat-eating with masculinity and strength and plant-eating with femininity and weakness is grounded in deeply-entrenched gender norms that perpetuate a form of idealized “traditional masculinity” that is itself harmful.³⁵⁸ Our seemingly insatiable appetite for meat and milk is harmful to the workers of the animal agriculture industry—a cohort that is disproportionately comprised of immigrants and people of color whose working conditions expose them to large-scale suffering and death for low wages, few benefits, and, more recently, perilous exposure to Covid-19.³⁵⁹ As if this multitude of harms were not enough, the greatest harms are borne by the billions of animals bred into existence each year for the sole purpose of commodification and consumption, with little regard for the quality of their lived experience, their social bonds, or their desire to life a life free from interventions like artificial insemination, cramped quarters, limited to no exposure to sunlight and grass, separation between mother and young, and an untimely death.³⁶⁰

This needs to stop. A 2019 report published by the Lancet Commission titled *Food in the Anthropocene: the EAT–Lancet Commission on healthy diets from sustainable food systems* urged that “global efforts are urgently needed to collectively transform

³⁵⁷ Willet et al., *supra* note 42, at 449.

³⁵⁸ See Gambert & Linné, *supra* note 58, at 133.

³⁵⁹ See Matthews & Pinkerton, *supra* note 54.

³⁶⁰ See Jacobs, *supra* note 53.

diets and food production.”³⁶¹ What is needed, argued Lancet, is “rapid adoption of numerous changes and unprecedented global collaboration and commitment: nothing less than a Great Food Transformation.”³⁶²

How, then, do we achieve a Great Food Transformation? Do plant based foods need to occupy the same rhetorical space as animal-derived food, reinforcing tropes of traditional masculinity, strength, and bleeding burgers, to create a meaningful paradigm shift? Or is something more disruptive, more norm-shattering, necessary to fundamentally change the way we humans think about food? Can an environmentally sustainable and animal-and-worker friendly plant-based food culture become dominant without the fear-based narratives that have so far kept animal meat in the center of our plates for generations?

As this article suggests, perhaps advocates of plant-based food should lean into fear and other emotion-driven narratives to achieve a paradigm shift in the way we think about food. Kathie Dannemiller’s “Formula for Change” ($C = D \times V \times F > R$) argues that change occurs when there is Dissatisfaction with how things currently are combined with a Vision of what alternative is possible, and the First concrete steps for realizing that vision.³⁶³ This article argues that we have these three ingredients in spades.

Of course, mandatory GWLs for animal-derived food won’t single-handedly solve the climate crisis or change our attitudes and cultural norms around food overnight. But, they could be an important component of a multi-faceted strategy that would need to include bold local, national, and international action and coordination undertaken by governments, industry, and civil society.³⁶⁴

³⁶¹ Willet et al., *supra* note 42, at 447.

³⁶² *Id.* at 448.

³⁶³ See Dannemiller & Jacobs, *supra* note 96, at 483.

³⁶⁴ See Willet et al., *supra* note 42, at 478 tbl.6 (illustrating “the Nuffield Ladder of Policy Intervention to Health Diets from Sustainable Food Systems” depicting potential action taken by government, industry, and civil society including a range of policy interventions: eliminate choice, restrict choice, guide choices through disincentives, guide choices through incentives, guide choice by changing default policy, enable choice, provide information, and do nothing).

See also Eliza Barclay, *The Way We Eat Could Doom Us as a Species. Here’s a New Diet Designed to Save Us.*, VOX (Jan. 24, 2019), <https://www.vox.com/2019/1/23/18185446/climate-change-planet-based-diet-lancet-eat-commission>.

Again, we have in our grasp all the ingredients for change in Dannemiller's formula. But for them to be successful, they must be greater than any existing resistance to change.³⁶⁵ As the Lancet Report says, there will be no Great Food Transformation "without people changing how they view and engage with food systems."³⁶⁶ And to do that, what's really needed is a change in how we view and engage with ourselves, who we are, and who we want to be.

Like any great transformation, the one before us will be messy, and it will be emotional. Change always is, even when we know logically that it is the right thing to do. But as Audre Lorde and other feminist scholars have so poignantly pointed out, there are uses for our anger, our rage, our pain, and our grief.³⁶⁷ Powerful emotions can be catalysts for powerful, sweeping, paradigm-shifting change. As we gather the science and data necessary to support policy decisions that may change our relationship to food forever, we should also expand our willingness to recognize those powerful and complicated emotions, and our vocabulary to describe them.³⁶⁸

Ultimately, Greta Thunberg is right: we need to panic. Not about the loss of our old ways of life, or about the decline of powerful and exploitative industries. We need a new narrative around food, one that rejects both the inherent injustices and climate-related harms bound up in animal-derived meat and dairy and the harms inherent in linking dominant food culture to the rhetoric of traditional masculinity. And we can leverage the rhetoric of fear, and panic, and rage as one tool among many that can combine to create a fundamental paradigm shift in our relationship to food. "I want you to panic," Thunberg said. "I want you to feel the fear I feel every day. And then I want you to act."³⁶⁹

³⁶⁵ See Dannemiller & Jacobs, *supra* note 96, at 483.

³⁶⁶ Willet et al., *supra* note 42, at 450.

³⁶⁷ See LORDE, *supra* note 34, at 127.

³⁶⁸ See, e.g., Pihkala, *supra* note 30 ("We need more vocabulary of the various forms of climate grief, and we need more thinking about the tasks and stages of grief in relation to them. We also need more thinking about the various other emotions that are connected with grief and anxiety, such as anger, frustration, and guilt. Study on "eco-anger" or "climate rage" has only just begun, as has research on "climate burnout" and "climate depression". Trauma dynamics is another area that needs more attention.").

³⁶⁹ Thunberg, *supra* note 13.