



## **Written Testimony in Opposition of Senate Bill 188**

**Name:** Emily Hennessee

**Organization:** The Good Food Institute

**Bill:** Senate Bill 188

**Position:** Opposed

Dear Members of the Senate Finance Committee:

The Good Food Institute is a 501(c)(3) nonprofit organization that works with scientists, businesses, and policymakers to harness the power of food innovation and markets to create a sustainable, healthy, and just food system.

We are writing to urge you to oppose Senate Bill 188, which would censor the labels of plant-based and cultivated products by barring them from using meat terms. No one is confused by veggie burgers or plant-based bacon. Instead of doing anything to benefit consumers, this bill would add unlawful and unnecessary requirements to food labels already subject to federal regulation, confuse consumers, endanger people with allergies, and violate the First Amendment right to free speech.

First, plant-based and cultivated food labels are already subject to federal law, which prohibits misbranding. The Food and Drug Administration (FDA) has authority over plant-based food labels and prohibits mislabeling. To be clear, cultivated meat is not yet on the market, but when it is, the United States Department of Agriculture (USDA) will require premarket approval of labels and will inspect them to ensure they meet its standards.<sup>1</sup> This means that S.B. 188 is completely unnecessary, creating burdensome red tape for innovative companies and putting Maryland at odds with FDA and USDA's clear authority on this issue.<sup>2</sup>

Second, S.B. 188 would confuse consumers by requiring plant-based producers to do linguistic gymnastics on food labels. Banning the kind of commonsense labels that are already on store shelves would interfere with the free market and be unfair to consumers.

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<sup>1</sup> See Formal Agreement Between FDA and USDA Office of Food Safety, 3 (Mar. 7, 2019), <https://bit.ly/2EVzaEZ>.

<sup>2</sup> Not only are additional state restrictions unnecessary for plant-based and cultivated foods, but they would be preempted by the Food Drug and Cosmetic Act, Federal Meat Inspection Act, and the Poultry Products Inspection Act. 21 U.S.C. § 343-1 (“no state...may directly or indirectly establish under any authority...any requirement for the labeling of food of the type required by § 343(b), 343(d), 343(f), 343(h), 343(i)(1), or 343(k) of [the Food Drug and Cosmetic Act] that is not identical to the requirement of such section.”); *id.* § 678 (“Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter [of the Federal Meat Inspection Act] may not be imposed by any State”); *id.* § 467(e) (“Marking, labeling, packaging, or ingredient requirements ... in addition to, or different than those made under this chapter [of the Poultry Products Inspection Act] may not be imposed by any State”).



Additionally, S.B. 188 would prevent the labels of cultivated meat — which is real animal meat at the level of DNA<sup>3</sup> — from using meat terms, thereby endangering consumers and exposing sellers to liability. Consumers with red meat allergies need to know to avoid cultivated meat, because consuming it would cause potentially fatal allergic reactions to cultivated meat.<sup>4</sup> Banning meat terms from these labels is downright dangerous.

Finally, S.B. 188 violates the right to free speech, which can only be curtailed in the commercial context to further a compelling government interest. Similar laws in Missouri and Arkansas are currently in litigation on the grounds that they violate the First Amendment by preventing clear and accurate labeling of plant-based meat products. In December 2019, a federal court issued a preliminary injunction preventing enforcement of Arkansas' label censorship law — which sought to limit usage of meat terms on plant-based food labels — because it likely violates the First Amendment.<sup>5</sup> Maryland's legislature should not put the state in the position where it needs to decide whether to use taxpayers' money to defend a law that raises significant constitutional issues.<sup>6</sup>

There is no compelling reason for this legislation, given that plant-based meat producers have every incentive to tell consumers how their products are made because the fact that they are plant-based is central to their value proposition. And cultivated meat is not sold in Maryland or anywhere else.

We respectfully urge you to vote against unnecessary, unsafe, and unconstitutional government overreach. Please oppose S.B. 188. Thank you for your consideration and attention to this matter.

Sincerely,

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<sup>3</sup> Cultivated meat is produced by taking cells from an animal, growing them in a cultivator and harvesting the meat for consumption.

<sup>4</sup> Reported incidences of meat allergies have been increasing over the last several years. Am. Coll. of Allergy, Asthma & Immunology, *Meat Allergy*, <https://bit.ly/2kEkwa7> (last updated May 8, 2019). Red meat allergies in particular are on the rise in the southern, eastern, and central United States due to the increasing population of Lone Star ticks, whose bite can result in an allergy to red meat, potentially causing life-threatening anaphylaxis. *See generally Red meat allergy transmitted by lone star ticks on the rise*, CBS News (July 5, 2018), <https://cbsn.ws/2X2eeCw>; *see also* Steinke et al., *The alpha gal story: Lessons learned from connecting the dots*, 135 J. Allergy & Clinical Immunology 589 (Mar. 2015), <https://bit.ly/2rBlpCm>.

<sup>5</sup> *Turtle Island Foods v. Soman, Preliminary Injunction Order*, Dkt. No. 25, 19-cv-514-KGB (E.D. Ark., Dec. 11, 2019), <https://www.aclu.org/legal-document/turtle-island-foods-v-soman-preliminary-injunction-order>.

<sup>6</sup> *See generally* Nick Sibilla, *FDA Crackdown On Calling Almond Milk 'Milk' Could Violate The First Amendment*, Forbes (Jan. 31, 2019), <https://bit.ly/2v4s8bc>.