

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UPTON'S NATURALS CO.; and
THE PLANT BASED FOODS
ASSOCIATION,

Plaintiffs,

vs.

Civil Action No. CIV-20-938-F

KEVIN STITT, in his official
capacity as Oklahoma Governor; and
BLAYNE ARTHUR, in her official
capacity as Oklahoma Commissioner
of Agriculture,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Upton's Naturals Co. and the Plant Based Foods Association, by and through their undersigned counsel, hereby file this Complaint for Declaratory and Injunctive Relief and sue Oklahoma Governor Kevin Stitt and Oklahoma Commissioner of Agriculture Blayne Arthur, in their respective official capacities, as follows:

INTRODUCTION

1. This is a First Amendment challenge on behalf of plant-based food sellers against Oklahoma's recently enacted law that requires food companies to alter the content of their speech. Through messages on their labels, Plaintiffs clearly identify their products as plant-based. Oklahoma is nonetheless requiring Plaintiffs to enlarge these disclaimers to the size and prominence of their labels' largest text—their product names.

But there is no legitimate reason for this oversized-warning requirement, which treats Plaintiffs' healthy products like cigarettes or alcohol.

PARTIES

2. Plaintiff Upton's Naturals Co. ("Upton's Naturals") is an Illinois corporation that sells plant-based foods in many states, including Oklahoma, and is being harmed by the challenged law.

3. Plaintiff Plant Based Foods Association ("PBFA") is the national association of plant-based food manufacturers, ingredient suppliers, restaurants, and distributors. The Association consists of over 170 members, a substantial number of which sell plant-based foods in Oklahoma and are being harmed by the challenged law. PBFA is a California nonprofit corporation.

4. Defendant Kevin Stitt ("Governor Stitt") is the Governor of Oklahoma. As Governor, he has direct authority over executive branch personnel and law enforcement officers charged with enforcing the challenged law. He is being sued only in his official capacity.

5. Defendant Blayne Arthur ("Commissioner Arthur") is the Oklahoma Commissioner of Agriculture. Commissioner Arthur has direct authority over the Oklahoma Department of Agriculture, Food and Forestry's personnel and is charged with the responsibility of enforcing the related laws, regulations, and policies. She is being sued only in her official capacity.

JURISDICTION AND VENUE

6. Plaintiffs bring this civil rights lawsuit pursuant to the First Amendment to the United States Constitution, the Fourteenth Amendment to the United States Constitution, the Civil Rights Act of 1871, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, for violations of the First and Fourteenth Amendments to the United States Constitution.

7. Plaintiffs seek declaratory and injunctive relief against Oklahoma’s so-called “Meat Consumer Protection Act” (the “Act”). As of November 1, 2020, this Act will prohibit sellers of plant-based foods from using meat terms to describe their foods unless they have a disclaimer—in the same “size and prominence” as their product names—that their products are plant-based.

8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331, as Plaintiffs’ claim arises under federal law.

9. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b)(2) and 28 U.S.C. § 1391(e)(1), as a substantial part of the events giving rise to Plaintiffs’ claims occurred in this Court’s District.

STATEMENT OF FACTS

The Oklahoma Legislature passed the Act to protect the meat industry from competition

10. Prior to and during Oklahoma’s 2020 Legislative Session, powerful meat-industry lobbying groups asked the Oklahoma Legislature to make it more difficult for sellers of meat alternatives to compete with the meat industry.

11. The meat-industry groups advocating in favor of the Act included the Oklahoma Cattlemen’s Association and Oklahoma Pork Council.
12. The Act was passed as part of House Bill 3806.
13. According to the Oklahoma Cattlemen’s Association, it “brought” House Bill 3806 to the Oklahoma Legislature.
14. The lead sponsor for House Bill 3806 in the Oklahoma House of Representatives—Representative Toni Hasenbeck—was one of the Oklahoma Cattlemen’s Association’s members.
15. In lobbying for House Bill 3806, the Oklahoma Cattlemen’s Association worked closely with the Oklahoma Pork Council and the Oklahoma Department of Agriculture, Food and Forestry.
16. As a direct result of meat-industry groups’ lobbying, the Oklahoma Legislature passed the Act during its 2020 Legislative Session.
17. The Oklahoma Legislature passed the Act to protect meat-industry groups from competition by plant-based food sellers.
18. Representative Hasenbeck has said: “I am always willing to help our beef producers as they toil to raise a great product for our consumers.”
19. In August 2020, the Oklahoma Cattlemen’s Association recognized Representative Hasenbeck with a “Legislative Appreciation Award” for shepherding House Bill 3806 through the Oklahoma Legislature.
20. After the Oklahoma Legislature passed the Act, Governor Stitt signed the Act into law.

21. The Act will take effect on November 1, 2020.

22. The Act is to be codified through Sections 1-3 and 5-107 of Title 2 of the Oklahoma Statutes.

23. The Act expressly prohibits advertising “a product as meat that is not derived from harvested production livestock.”

24. However, “product packaging for plant-based items shall not be considered in violation of [the Act] so long as the packaging displays that the product is derived from plant-based sources in type that is uniform in size and prominence to the name of the product.”

25. Reading these provisions together, labels for plant-based foods may not use meat terms unless they have a disclaimer “that the product is derived from plant-based sources in type that is uniform in size and prominence to the name of the product” (the “Compelled Disclaimer”).

26. The Act defines “meat” as “any edible portion of livestock or part thereof.”

27. The Act defines “livestock” as “any cattle, bison, horses, sheep, goats, asses, mules, swine, domesticated rabbits, and chickens, turkeys, and other domesticated fowl, and any animal or bird in captivity.”

28. For purposes of the Act, beef is a type of meat.

29. The Act defines “beef” as “the flesh of a bovine animal.”

30. The Act defines “beef product” as an “edible product[] produced in whole or in part from beef, excluding milk and milk products.”

31. For purposes of the Act, chicken is a type of meat.

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