



May Contain Hooves: Why and How the Government Should Implement Plain-Language Disclosure of Animal Products in Food Labels

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A large number of Americans are vegetarians or vegans due to ethical rather than dietary concerns. Current food labeling laws require affirmative disclosure of ingredients, but for a number of reasons often allow the use of ingredients which are or may be derived from animal or "slaughter" products, or the inclusion of minute amounts of such products as flavoring, without disclosure to the consumer, or even a reasonable means of discovery. Recent regulations, for instance the disclosure of potential allergens, show that there is a relatively simple means to correct this problem and do so with minimal disruption and cost to manufacturers.

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Introduction

It is hardly a shocking revelation that Americans remain largely unaware of what goes into the food they eat. Processed foods make up a majority of the American diet,¹ and a complex and interrelated series of government labeling laws and regulations require disclosure of most ingredients and the nutritional values of such products. However, such ingredients are often disclosed in highly technical language without notice of source, and requirements focused on nutrition often allow the undisclosed presence of minor flavoring ingredients.² As a result, there is no federal guidance specifically addressing the issue of the undisclosed presence of food ingredients that may violate some consumers' ethical or religious dietary concerns. While certain specific religious food restrictions have led to much scholarly debate and several state laws³, the idea of a more general system at the federal level to assist in ethical eating decisions has received comparatively little public consideration.

This absence is especially glaring in the case of vegetarians and vegans, who are regularly and almost certainly unknowingly exposed to foods containing non-vegetarian products such as gelatins processed from fish⁴ or the cartilage or hooves of slaughtered animals,⁵ shortenings,⁶ oleic compounds,⁷ and stearates⁸ derived from animal

¹ This has been true since at least the early 1970s, and perhaps much longer. See generally Arthur Koch, *The F.D.A. Knows-But Won't Tell: An Argument for Ingredient Labeling of Food Products*, 21 J. PUB. L. 281, 293 (1972).

² To take a random, well-known example, the label on a bag of Cheetos lists about thirty ingredients as ferrous sulfate, autolyzed yeast extract, and disodium guanylate, in addition to inherently ambiguous ingredients such as enzymes and natural flavor. The author of this Article, despite being a former organic chemist, is by no means familiar with all the ingredients disclosed on a bag of cheese puffs.

³ See, e.g., Gerald F. Masoudi, *Kosher Food Regulation and the Religion Clauses of the First Amendment*, 60 U. CHI. L. REV. 667, 670 (1993).

⁴ See IAN LENDLER, *ALCOHOLICA ESOTERICA* 28 (Penguin Books, 2005) (noting how many modern brewers clarify beer using isinglass, a gelatin made from a sturgeon's bladder).

⁵ S. SUZANNE NIELSEN, ED., *FOOD ANALYSIS* 158 (Birkhäuser, 3d ed. 2003).

⁶ RUTH WINTER, *A CONSUMER'S DICTIONARY OF FOOD ADDITIVES: DESCRIPTIONS IN PLAIN ENGLISH OF MORE THAN 12,000 INGREDIENTS BOTH HARMFUL AND DESIRABLE FOUND IN FOODS* 514 (Random House, 7th ed. 2009).

⁷ *Id.* at 396.

fats, and trace amounts of virtually any animal product under the catch-all term “natural flavoring(s).”⁹ Food producers, acting in a small but surprisingly opaque area of food labeling laws, have incorporated such products into a wide range of foods such as desserts or breads, which are almost universally vegetarian when homemade, but often (perhaps usually) contain meat products in their processed form. This Article argues for a minimalist government system of identification labeling which would identify all processed foods as vegetarian, vegan, or neither, thereby allowing consumers to make informed decisions regarding a common dietary concern stemming from deeply held moral or religious obligations.

I. Vegetarians and Vegans in the United States Are Severely Hindered in Their Dietary Choices by the Ubiquitous Nature of Animal Products in Processed Foods

Vegetarianism is most generally defined as a diet abstaining from any meat, such as beef, pork, poultry, and fish, as well as slaughter by-products.¹⁰ Generally, this definition is interchangeable with lacto-ovo-vegetarianism, which allows for the consumption of eggs, milk, and other animal products that are not slaughter products.¹¹ Slaughter products are defined, for purposes of this Article and as generally applied by lacto-ovo-vegetarians, as foods that are directly created through the slaughter of animals. Incidental animal deaths, even when systematic and large-scale, such as the culling of male chicks within the egg-laying industry,¹² therefore might be a serious cause for concern, but these deaths could not necessarily define a product as a slaughter product without the term losing its precise meaning.

Vegans further limit their diets to exclude animal products

⁸ *Id.* at 501.

⁹ 21 C.F.R. § 101.22(a)(3) (2011).

¹⁰ *Fact Sheet—Definitions*, VEGETARIAN SOC’Y OF THE UNITED KINGDOM LTD., <http://www.vegsoc.org/page.aspx?pid=644> (last visited Feb. 20, 2012).

¹¹ *Id.*

¹² David Fraser et al., *Farm Animals and Their Welfare in 2000*, in DEBORAH J. SALEM & ANDREW N. ROWAN, EDS., *THE STATE OF THE ANIMALS: 2001*, at 90 (Humane Soc’y Press, 2001).

including eggs and dairy, and usually avoid honey as well as the use of animal products such as wool.¹³ Vegan groups have often debated internally precisely what foods constitute “animal products.” For example, insect products such as honey have often been a point of contention—although most vegans abstain from honey, others do not believe that insects such as honeybees constitute animals.¹⁴ Although the movement’s founder¹⁵ Donald Watson specifically considered honey to be non-vegan,¹⁶ other vegans do not believe that avoiding the use of insect products is morally necessary and ultimately tenable logically, considering the widespread exploitation of insects and the use of insecticides in crop production.¹⁷ Such slippery slope arguments are evidenced by Watson’s general directive that “vegan products must, *as far as is possible and practical*, be entirely free from animal involvement.”¹⁸

According to a 2006 poll commissioned by the Vegetarian Resource Group and conducted by Zogby International, approximately 2.3% of the U.S. adult population is vegetarian, of whom between 1/3 and 1/2 are vegans.¹⁹ While an individual might adopt a vegetarian diet for numerous reasons, ethical concerns are clearly one of the leading motives. For example, the largest public-interest group in the world advocating vegetarianism is the highly visible animal rights organization People for the Ethical Treatment of Animals (PETA).²⁰ PETA operates under the motto, “[a]nimals are not ours to eat, wear,

¹³ *Id.*

¹⁴ Daniel Engber, *The Great Vegan Honey Debate: Is Honey the Dairy of the Insect World?* SLATE (July 30, 2008) <http://www.slate.com/id/2196205/>.

¹⁵ See <http://www.vegansociety.com/about/history.aspx> (“In November, Donald [Watson] organised a London meeting of six like-minded ‘non-dairy vegetarians’ at which it was decided to form a new society and adopt a new name to describe themselves - vegan derived from VEGeteriAN.”)

¹⁶ See generally VEGAN SOCIETY, <http://www.vegansociety.com/> (last visited Jan. 13, 2012).

¹⁷ See Engber, *supra* note 14.

¹⁸ COLLEEN PATRICK-GOUDREAU, VEGAN’S DAILY COMPANION: 365 DAYS OF INSPIRATION FOR COOKING 8 (2011)

¹⁹ Charles Stahler, *How Many Adults Are Vegetarian?*, 4 VEGETERIAN J. 1, 2 (2006), available at <http://www.fda.gov/OHRMS/DOCKETS/98fr/FDA-1998-P-0032-bkg-reference01.pdf> (discussing a 2006 national poll commissioned by the Vegetarian Resource Group).

²⁰ *About PETA*, PETA, <http://www.peta.org/about/> (last visited Feb. 2, 2012).

experiment on, or use for entertainment,”²¹ plainly demonstrating that while vegetarianism is first and foremost in its agenda, it is only part of a larger network of interconnected moral decisions. Many other major animal welfare organizations, including the Humane Society of the United States,²² do not explicitly promote vegetarianism but do advise their members to reduce their consumption of animal products and replace animal food products with plant-derived foods.²³ For the tens of millions of members of such organizations, and millions more unaffiliated individuals sharing similar views, the decision to abstain from eating some or all animal products is a dietary choice arising not from nutrition or taste, but rather personal philosophy.

Of those Americans following a vegetarian diet, millions do so due to a religious motivation or, sometimes, edict. The United States contains an estimated 1.1 million Hindus,²⁴ and most major types of Hinduism regard vegetarianism as an ideal.²⁵ An even larger number of Americans are Buddhists, although estimates vary widely from 2.5 million to perhaps as high as 4 million.²⁶ Many Buddhists also abstain from some or all animal products, following directives from their holy texts, the Sutras,²⁷ and from the Dalai Lama, who is himself a

²¹ *The Issues*, PETA, <http://www.peta.org/issues/default.aspx/> (last visited Feb. 1, 2012).

²² The Humane Society of the United States claims more than 11 million members. *About Us*, HUMANE SOC’Y OF THE U.S., <http://www.humanesociety.org/about/overview/> (last visited Feb. 2, 2012).

²³ *Statement on Farm Animals and Eating with Conscience*, HUMANE SOC’Y OF THE U.S., http://www.humanesociety.org/about/policy_statements/statement_farm_animals_eating.html (last visited Feb. 2, 2012).

²⁴ *Statistical Estimates of Minority American Religious Groups*, THE PLURALISM PROJECT AT HARVARD UNIV., <http://pluralism.org/resources/statistics/index.php> (last visited Feb. 3, 2012).

²⁵ For a general explanation, with cites to Hindu scripture, see Dr. Jai Maharaj, *Why Hindus Don’t Eat Meat*, FLEX.COM, <http://www.flex.com/~jai/articles/hinmeat.html> (last visited Feb. 1, 2012).

²⁶ See Engber, *supra* note 14.

²⁷ Multiple portions of Buddhist texts explicitly endorse vegetarianism. See, e.g., DHARMA REALM BUDDHIST ASS’N, *Lankavatara Sutra (The Buddha) on Meat Eating*, <http://www.drba.org/dharma/veggie/lankavatara.asp> (last visited Feb. 1, 2012) (“The Bodhisattva, whose nature is compassion, is not to eat any meat. . . . For fear of causing terror to living beings . . . let the Bodhisattva who is disciplining himself to attain compassion, refrain from eating flesh.”).

vegetarian.²⁸ Some prominent Jewish philosophers have argued that vegetarianism is a moral imperative in modern Judaism (although this is by no means the majority view within the faith).²⁹ Many smaller religious groups are partially or wholly vegan in their diets. Jains are obligate vegetarians, but many adherents go so far as to avoid all animal products and even plant foods that require indirectly killing insect or animals.³⁰ Rastafarians also typically follow a diet that largely avoids meat, and many devout members believe they are religiously compelled towards veganism.³¹

Such ethical concerns can manifest themselves in any number of ways, such as the voluntary boycotts which have been aimed at foie gras³² and veal³³, and have often lead to legislation at both state³⁴ and national levels.³⁵ Such narrow legislative and private measures demonstrate that livestock welfare issues are capable of building broad public support. But in spite of such specific activity, it remains extremely difficult for vegetarians to act upon a more generalized intention to avoid animal or slaughter products entirely, due to the glaring absence of any requirement of specific disclosure by producers of the inclusion of animal products in processed foods which would not

²⁸ See DALAI LAMA, *BUDDHA HEART, BUDDHA MIND: LIVING THE FOUR NOBLE TRUTHS* (2000). The Dalai Lama is not the spiritual leader of all or even most Buddhists, and many Buddhists feel no religious compulsion to become vegetarian.

²⁹ See, e.g., TSEVI YARON, *THE PHILOSOPHY OF RABBI KOOK* (1991) (concerning the religiously motivated vegetarianism of Abraham Isaac Kook, first Rabbi of the British Mandate of Palestine, later Israel).

³⁰ MATTHEW WARRENS, *WORLD RELIGIONS* 108 (Wadsworth Pub., 4th ed., 2003).

³¹ ANGELA WOOD ET AL., *MOVEMENT AND CHANGE* 81 (1997).

³² See, e.g., Hyatt Regency Lost Pines Resort & Spa, *Restaurants Boycott Foie Gras*, 4 HOTELIERS (Oct. 8, 2007) http://www.4hoteliers.com/4hots_nshw.php?mwi=3585 (discussing luxury restaurant chains boycotting foie gras).

³³ See, e.g., *HFA's National Veal Boycott*, HUMANE FARMING ASS'N, <http://www.hfa.org/vealBoycott.html> (examining Humane Farming Association's boycott of veal).

³⁴ For example, a number of states have enacted bans on veal crates. *California Animal Welfare Initiative Proposition Two*, UNIV. NEB.-LINCOLN CORNHUSKER ECON. (Sep. 2, 2009) http://agecon.unl.edu/c/document_library/get_file?folderId=2369822&name=DLFE-17921.pdf.

³⁵ See *Israel to Ban Force Feeding of Geese*, INDPT. ONLINE (IOL), (Jan 4, 2005) http://www.iol.co.za/index.php?set_id=14&click_id=143&art_id=qw1104849181969B226.

foreseeably contain them. It would be an exceptionally difficult task to catalogue the ways in which either animal or slaughter products are surreptitiously incorporated into food products, but a few examples should suffice for the present purpose.

One of the most common slaughter products present in the widest variety of foods is gelatin. Used generally as a thickening agent, gelatin is a colorless, odorless, and nearly tasteless solid.³⁶ When placed in a liquid, gelatin hydrolyzes and forms a lattice, thickening the liquid as does the starch in gravy, or, when present in sufficient amounts, forming a soft, flexible solid, such as the dish that bears its name.³⁷ While gelatin can be obtained through vegetarian sources such as seaweed,³⁸ virtually all commercial gelatin is obtained through cartilage and hooves collected from slaughtered animals.³⁹ Gelatin is used in (and this is by no means an exhaustive list) marshmallows, gummy candies, yogurts, puddings, sour cream, cottage cheese, frostings, pies, soups (especially low-calorie or cream-based), ice cream, and margarine.⁴⁰ It is also used to clarify (remove suspended and insoluble particulate from) juices and vinegars.⁴¹ Another form of gelatin, known as isinglass, is obtained from the swimbladders of certain fish,⁴² and used occasionally in Europe to clarify wines and beers, including Guinness.⁴³

There are a multitude of other slaughter products commonly used in food products, both in predictable and surprising forms. Tallow, a high-saturated, waxy fat derived from beef, is used to make chewing gums and some commercial cookies and snack foods (including Twinkies⁴⁴) due to its extremely high smoke point.⁴⁵ Stearic acid

³⁶ NIELSEN, *supra* note 5, at 158.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Gelatin: Frequently Asked Questions*, GELATIN MANUFACTURERS INSTITUTE OF AMERICA INC., <http://www.gelatin-gmia.com/html/qanda.html> (last visited Jan. 13, 2012).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² LENDLER, *supra* note 4, at 28.

⁴³ *Id.*

⁴⁴ The Twinkies label discloses this. *See also* TWINKIES (Mar. 6, 2001) <http://www.bbc.co.uk/dna/h2g2/alabaster/A516836>.

⁴⁵ WINTER, *supra* note 6, at 514.

compounds can be derived either from a variety of animal fats, but can also be obtained through chemical synthesis using vegetable oils, and both forms are used commercially.⁴⁶ Cysteine, an amino acid often derived from feathers and hair, is used as a leavening agent in baked goods,⁴⁷ and is used by both McDonalds and Dunkin' Donuts.⁴⁸ Myristic acid, derived from beef fat, is used in ice cream, chocolate, desserts, and baked goods.⁴⁹

Vegans can face even greater difficulties in finding processed foods which comport with their dietary choices. Albumin, derived primarily from egg whites, is used to thicken a variety of food products, and as an emulsifier in dressings and sauces.⁵⁰ Lecithin is obtained commercially in either egg yolks or a variety of vegetable sources, and is used in cereals, chocolates, margarine, and baked goods.⁵¹ Vegans who consider insects an animal for the purpose of defining animal products must avoid consuming ingredients such as carmine and shellac. Carmine, also known as cochineal, is a dark red-burgundy color produced by collecting and crushing large numbers of egg-bearing female beetles,⁵² and is used in a wide range of products including strawberry milks and yogurts, fruit juices, maraschino cherries, candies, as well as, surprisingly, lumpfish caviar, and artificial crab and lobster products.⁵³ Shellac is produced by harvesting the residues left by the larvae of another insect (in a manner which does not require killing them), creating a product which is ultimately used in food products such as the shiny coating on many candies and chocolates,⁵⁴ and also combined into a wax used on produce such as

⁴⁶ *Id.* at 501.

⁴⁷ *Id.* at 183.

⁴⁸ Sonja Y. Helman & John L. Cunningham, eds., VRG-NEWS: The Vegetarian Resource Group Newsletter 11.5-¶5 (Aug. 2007) <http://www.vrg.org/vrgnews/2007aug.htm> (last visited Mar. 13, 2012).

⁴⁹ See WINTER, *supra* note 6, at 65.

⁵⁰ *Id.* at 66.

⁵¹ *Id.* at 327.

⁵² Naomi Wolf, *Beetles for Breakfast: What the FDA Should Be Telling You*, 3 J. FOOD L. & POL'Y. 229, 235 (2007).

⁵³ *Id.* at 235-36.

⁵⁴ MILDA E. EMBUSCADO, EDIBLE FILMS AND COATINGS FOR FOOD APPLICATIONS 235, 302 (2009).

apples.⁵⁵

Animal products also often reside in catch-all phrases such as “enzymes” or “natural flavoring.” Under current FDA regulations, “[t]he term natural flavor or natural flavoring means constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, *meat, seafood, poultry, eggs, dairy products, or fermentation products thereof*, whose significant function in food is flavoring rather than nutritional.”⁵⁶ Further regulations make clear that this designation only applies to ingredients present in relatively small amounts, while the exact limit is not completely clear, by reference to general labeling requirements the amount of any ingredient included in the catchall of flavoring should not exceed 0.5 grams per serving without a separate listing.⁵⁷ Ironically, artificial flavorings pose no such dilemma, since by definition they exclude compounds derived from animal sources.⁵⁸ These requirements are entirely reasonable when viewed simply as an instrument to assist consumers in making nutritional decisions, as the catchall terms only apply to ingredients present in nutritionally insignificant amounts.⁵⁹ There is no way to determine what foods contain animal products under such catchall terms, because no disclosure requirement touches on them. However, in one highly publicized case, McDonalds disclosed that their french fries contained beef tallow under the heading natural flavoring, contradicting public claims by the company that their fries were vegetarian and sparking a controversy among Hindus in both America and abroad,⁶⁰ as well as

⁵⁵ *Id.*, see also WINTER, *supra* note 6, at 552-53.

⁵⁶ 21 C.F.R. § 101.22(a)(3) (2011).

⁵⁷ See generally *Consumer Information*, FDA, <http://www.fda.gov/Food/LabelingNutrition/ConsumerInformation/ucm078889.htm> (last visited Feb. 3, 2012). The FDA has repeatedly issued guidance to the effect that ingredients present in amounts greater than 0.5 grams per serving are nutritionally significant and must be disclosed in labels and advertising.

⁵⁸ 21 § C.F.R. 101.22(a)(1) (2011).

⁵⁹ At fewer than 0.5 grams per serving, any flavoring ingredient would contribute, at most, about 4 calories.

⁶⁰ *McDonald's To Settle Suits On Beef Tallow In French Fries*, N.Y. TIMES, Mar. 9, 2002, <http://www.nytimes.com/2002/03/09/us/mcdonald-s-to-settle-suits-on-beef-tallow-in-french-fries.html>.

several lawsuits.⁶¹

As mentioned previously, this list is by no means exhaustive. Animal products and slaughter products are used extensively in commercially prepared foods, due to expedience and cost-cutting. Many such ingredients are ambiguous, such as lecithin and stearate compounds, with consumers having no mechanism to determine whether the ingredient listed was derived from an animal, plant, or synthetic source. In other cases, the technical terminology used in no way notifies consumers that an animal source is implicated, as is the case with cysteine. Finally, catchall terms such as natural flavorings are simply inscrutable. The current regulatory framework for food labeling is simply insufficient and ineffectual for use by ethical or religious vegetarians or vegans.

II. Food Labeling Laws in the U.S. Allow the Incorporation of Animal Products into a Wide Array of Products, Often in a Manner in Which Consumers Are Not, or Even Could Not, be Aware

While probably taken for granted by consumers today, federal food labels and dietary guidelines are both relatively recent developments. Dietary guidance at the federal level was only officially instituted in 1980 and focused on seven basic and uncontroversial suggestions.⁶² While nutritional advice has continued to develop and improve, those original guidelines remain as an accurate restatement of the fundamentals of healthy eating: 1. Eat a Variety of Foods; 2. Maintain a Healthy Weight; 3. Avoid Too Much Fat, Saturated Fat, and Cholesterol; 4. Eat Foods with Adequate Starch and Fiber; 5. Avoid Too Much Sugar; 6. Avoid Too Much Salt; and 7. If You Drink Alcohol, Do So In Moderation.⁶³

Federal dietary guidelines have continued to promote a diet which

⁶¹ R.D. GRILLO, LEGAL PRACTICE AND CULTURAL DIVERSITY, 204-06 (2009).

⁶² First issued as an unnumbered publication, later reissued as HOME AND GARDEN BULL. NO. 232, *available at* <http://www.cnpp.usda.gov/Publications/DietaryGuidelines/1980/DG1980pub.pdf> (last visited Feb. 22, 2012).

⁶³ *Id.*

is primarily plant-based and avoids an excess of processed foods (perhaps ironically, given their continued proliferation).⁶⁴ Although federal dietary guidelines take no specific stance on the issue of vegetarianism, they do strongly suggest that consumers limit both their intake of meat and their total caloric intake, and have acknowledged that the typical vegetarian's diet is healthier than the average American's.⁶⁵

Federal food-labeling laws have followed a similar trajectory, gradually but consistently increasing in both scope and specificity. Historically, regulation of food focused primarily on government oversight and mandates aimed directly at producers. The basic regulatory framework was created by President Theodore Roosevelt's Administration in the aftermath of Upton Sinclair's famous expose on the slaughterhouse industry, *The Jungle*, and focused on sanitation and safety without directly involving consumers.⁶⁶ Federal regulations passed during this period focused on fundamental safety and the related problem of adulterated food products containing cheap, distasteful, or low-quality ingredients, with oversight by a new agency titled the Food & Drug Administration (FDA).⁶⁷ Early FDA regulations focused entirely on how a producer chose to market her goods: so long as food met minimum safety standards, the only additional requirement was that any claim or advertisement made with regards to that product was not inherently misleading to consumers.⁶⁸ By implication, this would not create an affirmative duty to disclose the contents beyond what was claimed. Over the next half-century, the FDA focused on passing a wide range of "Standards of Identity" defining and strictly regulating the permitted ingredients in any good marketed under specific food names. A typical example would be the regulation that any beverage sold or marketed as "orange juice" must contain a minimum percentage of citrus fruit juice, while an "orange

⁶⁴ See, e.g., *MyPyramid Food Intake Patterns*, U.S. DEP'T OF AGRIC. (Apr. 2005) at 1, http://www.choosemyplate.gov/food-groups/downloads/MyPyramid_Food_Intake_Patterns.pdf. (last visited Feb. 1, 2012).

⁶⁵ DONNA MAURER, VEGETARIANISM: MOVEMENT OR MOMENT? 103-04 (2002).

⁶⁶ U.S. GENERAL ACCOUNTING OFFICE, GAO/RCED 92-152, THE FEDERAL FOOD SAFETY INSPECTION SYSTEM: DANGEROUS TO YOUR HEALTH? 11 (1992).

⁶⁷ *Id.*

⁶⁸ Lawrence W. Reed, *Of Meat and Myth*, THE FREEMAN (Nov. 1994), 600, 600-02.

drink” merely referred to an orange, colored beverage with no minimum juice requirement.⁶⁹ As a result, such labeling standards were ultimately passive, and also often arbitrary, convoluted, and capricious.⁷⁰

In order to streamline and simplify labeling standards, Congress passed the Fair Packaging and Labeling Act (FPLA) in 1966, which placed more uniform requirements upon manufacturers to “conspicuously and legibly” disclose ingredients in packaged foods, and gave the Federal Trade Commission (FTC) the authority to enforce those disclosures.⁷¹ FPLA prohibits misleading or deceptive descriptions regarding the identity of food products, effectively assuming the role previously served by Standards of Identity, albeit in a more informal and indirect manner.⁷²

This requirement was expanded to all processed foods through the Nutrition Labeling and Education Act of 1990 (NLEA).⁷³ This Act was actually highly controversial at the time, although the overall labeling scheme has never been seriously challenged since.⁷⁴ The Act does not cover “unprocessed” foods, such as produce and unfrozen meats, as the FDA makes labeling of these foods optional but recommended⁷⁵—although it appears that virtually no suppliers who are not obligated to label their products have taken that suggested step.⁷⁶ The FDA has also used its rulemaking authority under the Act to repeatedly add labeling requirements in response to perceived demand by consumers, such as the requirement that caseinate from non-dairy sources (although chemically identical) include notification of that fact alongside the

⁶⁹ See *United States v. 88 Cases, More or Less, Containing Bireley’s Orange Beverage*, 187 F.2d 967, 973-74 (3d Cir. 1951) (discussing whether an “orange beverage” is properly classified as orange juice or orange drink).

⁷⁰ See generally Richard A. Merrill, “*Like Mother Used to Make*”: *An Analysis of FDA Food Standards of Identity*, 74 COLUM. L. REV. 561 (1972).

⁷¹ Fair Packaging and Labeling Act of 1966, 15 U.S.C. § 1451-1461(2006).

⁷² 16 C.F.R. § 500.4 (2011).

⁷³ Nutrition Labeling and Education Act of 1990, Pub. L. No. 101-535.

⁷⁴ See ROBERT SHAPIRO, *NUTRITION LABELING HANDBOOK* 55 (1995); see also MICHAEL HEASMAN & JULIAN MELLENTIN, *THE FUNCTIONAL FOODS REVOLUTION: HEALTHY PEOPLE, HEALTHY PROFITS?* (2001).

⁷⁵ *Id.*

⁷⁶ With regard to the lack of voluntary disclosure, as anyone who has been to a supermarket can attest, raw meat and produce for sale virtually never display nutritional information.

ingredient's listing, as well as disclosure of the actual source.⁷⁷

Additional recent standards have dealt with issues similar to the problem of hidden animal products. The first is the Organic Foods Production Act of 1990 (OFPA), designed to create and implement consistent standards for the marketing of organic foods.⁷⁸ Federal organic food labeling standards were enacted to address the absence of specific regulatory oversight in marketing and labeling in an area of significant and growing consumer demand.⁷⁹ Organic labeling systems faced the hurdle of implementing a single, consistent standard to a subjective judgment. To address this, the Act gives the United States Department of Agriculture (USDA) the power to regulate, and directs the agency to create a list of approved compounds which do not violate the vague definition of organic as "all natural."⁸⁰ This list was created and maintained by an oversight group including farmers, retailers, consumers, and environmental and regulatory experts, and operates as a private Standards Setting Organization.⁸¹ While this system has added needed clarity, and at least has attempted to create guidelines that balance consumer expectations with feasible and economic implementation and oversight, the definitions that it ultimately created have been controversial.⁸²

Another system recently instituted has dealt with the related issue of hidden allergens in processed foods. As noted by Congress in passing the Food Allergen Labeling and Consumer Protection Act of

⁷⁷ 21 C.F.R. § 101.4(d) (2011).

⁷⁸ 7 U.S.C. § 6501 (2006).

⁷⁹ Kenneth Amaditz, *The Organic Foods Act of 1990 and Its Impending Regulations: A Big Zero for Organic Food?* 54 FOOD DRUG L.J. 537, 539 (1997).

⁸⁰ 7 U.S.C. § 6517(a), (c)(1)-(2) (2006).

⁸¹ 7 U.S.C. § 6518(b)(6)-(7) (2006).

⁸² See Aubrey Parlet, *Organic Foods Production: What Consumers Might Not Know About The Use of Synthetic Substances*, 21 LOY. CONS. L. REV. 392 (2009); see also Michelle T. Friedland, *You Call That Organic?—The USDA'S Misleading Food Regulations*, 13 N.Y.U. ENVTL. L. J. 379 (2005); Christine Green, *The Cost of Low-Price Organics: How Corporate Organics Have Weakened Organic Food Production Standards*, 59 ALA. L. REV. 799 (2008); Kate L. Harrison, *Organic Plus: Regulating Beyond the Current Organic Standards*, 25 PACE ENVTL. L. REV. 211 (2008). As can be guessed from the articles' titles, a number of authors have argued that the organic standards currently in effect are insufficiently stringent or biased in favor of major commercial interests at the expense of consumers.

2004 (FALCPA),⁸³ the current food labeling regime is ineffective at notifying consumers of the presence of trace amounts of allergens with potentially serious health effects. Congress passed FALCPA to address a serious health issue, noting that, “in some cases, the common or usual name of an ingredient may be unfamiliar to consumers, and many consumers may not realize the ingredient is derived from, or contains, a major food allergen. . . .”⁸⁴ Furthermore, “in other cases, the ingredients may be declared as a class, including spices, flavorings, and certain colorings, or are exempt from the ingredient labeling requirements, such as incidental additives. . . .”⁸⁵ Several studies found that even the parents of children with severe food allergies were often unable to correctly identify the presence ingredients derived from major food allergens from food labels.⁸⁶ Individuals with food allergies therefore faced a problem similar to those with religious or ethical limitations: the difficulty of avoiding trace amounts of certain classes of ingredients which could often hide in confusing, technical or ambiguous terminology sometimes employed in food labels. FALCPA dealt with this issue by requiring mandatory disclosure of most potential classes of allergens (nuts, shellfish, etc.) on the label of all processed foods whenever they were present.⁸⁷

III. Implementation of a Minimal, Non-Intrusive Labeling Standard, That Identifies All Processed Food Products As Either “Vegetarian,” “Vegan,” Or “Containing Animal Products,” Could Be Accomplished Simply and in Keeping with Current Regulatory Systems

Similar to FALCPA, a simple system of identifying the presence of animal products in foods could assist vegetarians and vegans with only minimal additional regulation and cost. The continuing inclusion of

⁸³ Food Allergen Labeling and Consumer Protection Act of 2004, Pub. L. No. 108-282, tit. II.

⁸⁴ *Id.* 202(5)(B).

⁸⁵ *Id.* 202(5)(C).

⁸⁶ *Id.* 202(4).

⁸⁷ *Id.* 203.

animal products without consumers' knowledge occurs because they are present in small amounts or within catchall descriptors, or are disclosed in truthful but extremely technical terms which only indirectly (and sometimes completely fail to) disclose the ingredient's source.⁸⁸

Congress could create a system similar to FALCPA requiring that all processed foods subject to NLEA labeling requirements disclose whether a product is vegetarian, vegan, or neither. Such a labeling system would operate in a similar fashion as the voluntary systems implemented both within the United States and abroad.⁸⁹ Given that voluntary systems in the United States have been very limited, they do not serve to truly level the playing field in the way that a mandatory disclosure system would, as the purpose of a vegetarian indication is to refute a mistaken belief rather than confirm an accurate one. Similar to FALCPA's focus on allergens present in foods, the intention of such a system would be to make consumers aware of the nasty surprise of unforeseeable or undisclosed ingredients that they might seek to actively avoid. Therefore, such a system would function best by creating a requirement that all foods which are not vegetarian must state that fact clearly and in simple language: "Contains Animal Products: this product is neither vegetarian nor vegan."⁹⁰ Whether or not it is also mandated, genuinely vegetarian products would presumably use the same packaging location to confirm that they are, as expected, "Vegetarian."

A vegan indication on food labels could also be implemented in similar fashion, either in addition to the Vegetarian label or alternatively displaying itself prominently as "Vegan." Such a system

⁸⁸ This is not to imply that the psychological stress or even religious objections to the inadvertent consumption of animal products are to be equated with the serious health risks posed by allergens (as is the case with FALCPA), merely that the practical and economic considerations in implementing such a system are highly similar.

⁸⁹ Similar to the United States, no legal definition of either vegetarian or vegan exists in Europe. Private organizations have stepped in to create a privately run "European V-Label" that inspects and certifies both manufacturers and restaurants. *The "European V-Label"*, EUROPEAN VEGETARIAN UNION, <http://www.euroveg.eu/lang/en/events/v-label.php> (last visited Feb. 3, 2012).

⁹⁰ Alternatively, a simpler system would sidestep the ambiguities of a vegan label and only require labeling all processed foods as either "Vegetarian" or "Not Vegetarian."

would also probably require a separate standards-setting organization, whether public or private, to address the ambiguity inherent in the term vegan. Similar to organic labeling, a “vegan” label would require simplifying a set of abstract ethical concepts into concrete directives for use by producers, probably taking the form of a list of unacceptable ingredients or sources, similar to the database maintained under OFPA.⁹¹

Alternatively, if Congress were unable or unwilling to act, several agencies have broad authority to regulate food labels and could potentially promulgate similar requirements. The FDA currently administers food-labeling requirements, and has previously used its regulatory authority to pass rules requiring notification of ingredient sources in specific instances.⁹² The FDA therefore might have the authority to generally require food products to summarize their ingredients *in toto* as vegetarian, vegan, or containing animal products. The FTC, in its broad general authority to prohibit misleading or deceptive advertisements and business practices,⁹³ could promulgate a rule to the effect that food labels failing to explicitly inform consumers of the presence of animal products are likely to mislead consumers on a matter material to purchasing decisions. In either case, such a requirement would also be far more far-reaching in its effects than any previous source disclosure rules, and it may be politically unpopular for unelected administrators to initiate such an expansive new requirement without specific Congressional authorization. However, while such a rule might be more likely to prompt a legal challenge or a strong lobbying counterattack, in terms of administration and compliance the effect would likely be virtually identical to a statute.

Such a disclosure can be almost completely unobtrusive. To most consumers, the additional disclosures to food labels mandated by FALCPA are barely noticeable and have little or no meaning or effect – the notification that a chocolate bar “may contain trace amounts of

⁹¹ Another excellent reference is maintained by the Vegan Society, a UK-based group. See *Animal Substances*, VEGAN SOCIETY <http://www.vegansociety.com/lifestyle/animal-substances.aspx> (last visited Feb. 22, 2012).

⁹² 21 C.F.R. § 101.4(d) (2011) (requiring caseinate to describe its source as either “a milk derivative” or “non-dairy”).

⁹³ 15 U.S.C. § 45(a) (2006).

nuts” or was “processed in a facility that also handles nuts” is almost certainly irrelevant to their buying decisions, and does not affect the desirability of a product either positively or negatively. But to the minority of consumers who seek to avoid such products entirely, whether due to a food allergy as in the case of FALCPA, or an ethical objection as in the system proposed here, even that minimal indicator greatly simplifies their efforts.

Such a labeling system could also be remarkably inexpensive. Since food producers already must document and identify the ingredients used in their goods,⁹⁴ such a system would only require that producers obtain some meaningful assurance from manufacturers as to an ingredient’s source, in the same way they currently contract (either explicitly or implicitly) for quality and composition. Beyond that small disclosure requirement, producers would only bear the expense of a minimal retooling of their existing packaging. Any additional costs incurred would be created not through federal mandate, but some reflection of market forces and consumer choices once a more transparent system has been created.

IV. Greater Transparency Would Allow Consumers to Exercise Selectivity Between Products According to Their Personal Beliefs, and Potentially Move Consumers Toward a More Healthful Diet Already Implicitly Endorsed By Government Experts

Two potential arguments for implementing an animal product labeling system are either a value-neutral argument towards “invisible hand” market regulation based on consumer preferences, or an argument in favor of subtly influencing consumer choices toward a vegetarian or vegan diet. The former argument is grounded in the same basic concerns that led to the implementation of the first American food-labeling requirements over a century ago – that regardless of what consumers choose to eat, effective competition requires a certain degree of transparency. The latter is obviously a value judgment but is nonetheless consistent with the general public policy of moving

⁹⁴ I am assuming we are limiting the discussion to producers already operating under the FDCA and food labeling regulations, as discussed above.

consumers toward healthier eating habits.

There is little if any counterbalance to the natural tendency of rational, profit-seeking producers acting in a mostly opaque area of food regulation, to aggressively limit costs by whatever means possible. If consumers are completely unaware of the source of a final product, the most logical step for a producer is to seek the most easily available and cheapest materials of an acceptable level of quality. The widespread presence of slaughter products in a range of food products today demonstrates either that consumers are largely uninterested or uninformed. In the case of the former, the creation of an affirmative labeling requirement to food products will add a small expense by requiring limited additional communication with suppliers or documentation of sources and a limited redesign of current labels, but otherwise will have little or no effect. In the case of the latter, producers will incur additional costs as they adjust their sources to reflect consumer preferences and possibly phase out some products which become unprofitable or infeasible without the inclusion of products consumers find distasteful (literally or figuratively). At first glance this may appear extreme, but it would simply represent a market reaction to consumer preferences—and American courts have already consistently rejected the idea that cost savings might justify omissions required by existing food identity regulations.⁹⁵ To put it more simply, if consumers genuinely don't care about animal products in their food, then producers suffer no lasting harm. If consumers do care, then the market will have to adapt to genuinely reflect those concerns rather than exploiting ignorance.

Alternatively, it could be argued that a labeling system that discloses slaughter and other animal products should be promoted in the hopes that it might subtly move consumers towards adopting a vegetarian or vegan diet. Either diet would be in keeping with the nutritional guidelines promulgated by the federal government, and studies have shown that a vegetarian diet is tied to healthier body mass index⁹⁶ and reduced incidence of a variety of cancers.⁹⁷ Large-scale

⁹⁵ See *United States v. 88 Cases, More or Less, Containing Bireley's Orange Beverage*, 187 F.2d 967, 973 (3d. Cir 1951) (stating that "the purpose" of the Food, Drug, and Cosmetics Act was to prevent "economic adulteration" through dilution or substitution of cheaper components into familiar products).

⁹⁶ Michael Rosell, *Weight Gain over 5 Years in 21,966 Meat-eating, Fish-eating,*

metastudies have found that life expectancy for vegetarians is significantly increased over meat-eaters, although this number was comparable to individuals who also ate fish.⁹⁸ However, the same study found that vegans did not enjoy any decrease in mortality over meat-eating individuals.⁹⁹ The efficacy of promoting vegetarianism or veganism through a food-labeling scheme is probably limited in the present circumstances, however. Presumably, consumers who are not currently vegetarian or vegan will far have less concern over the incidental presence of such products in their food, given that they already directly consume meat. It is possible that increased awareness will subtly, or perhaps even unwittingly, influence such consumers towards a less meat-intensive diet, but it is difficult (if not impossible) to quantify the extent or likelihood of such a shift in general consumer attitudes from a single, small disclosure requirement.

To a certain extent, however, the value-neutral and pro-vegetarian arguments overlap simply because at present it is exceptionally difficult for any consumer to avoid animal products entirely. If one accepts the premise that foods containing undisclosed or unexpected animal products would be less desirable to at least a noticeable subset of consumers, then any action which increases consumer awareness in that regard will decrease the total demand for those products, even if the overall effect is ultimately limited or negligible.

V. Some Potential Criticisms of a Mandatory Labeling System: Industry Opposition, Consumer Confusion, and the Issue of Inherent Ambiguity

First and foremost, there is always a danger that consumers will misinterpret any additional information they are given. Consumers might mistakenly conflate vegetarian products with vegan products, or assume that foods marked as vegetarian are inherently healthier than

Vegetarian, and Vegan Men and Women in EPIC-Oxford, 30 INT'L J. OBESITY 1389, 1392 (2006).

⁹⁷ Timothy Key et al., *Mortality in Vegetarians and Nonvegetarians: Detailed Findings from a Collaborative Analysis of 5 Prospective Studies*, 70 AM. J. CLINICAL NUTRITION 516, 517 (1999).

⁹⁸ *Id.*

⁹⁹ *Id.*

comparable products that are not so labeled. For example, many countries have mandated labeling of foods containing or created using genetically modified organisms, and a number of producers in the U.S. have instituted their own systems.¹⁰⁰ Many producers have objected to “negative labeling” systems, whether mandatory or discretionary, on the grounds that these standards might be lax, non-existent, or under-enforced.¹⁰¹ One such controversy arose when some food producers began voluntarily labeling their food products as “not containing GMO’s” (Genetically Modified Organisms).¹⁰² Polls showed that consumers believe that foods derived from Genetically Modified Organisms are dangerous or unhealthy, while (at least at the time of the controversy) no data existed to support such a conclusion.¹⁰³ Producers were placed in a position in which they bore the risk of being penalized for dishonesty or omission by a supplier or farmer with whom they may have had limited or no contact, especially small or niche producers who had less market power and economic leverage over suppliers.¹⁰⁴

Similar criticisms could also be leveled at any potential vegetarian labeling system. For example, a wide variety of food products can be derived from either animal or plant sources, as discussed earlier. Although the sources may vary, the final products, except where some impurities remain, are typically indistinguishable. There is a significant risk that consumers will believe the products to be different, when in fact they are identical products derived through different processes, and may prefer one product due to that erroneous belief. However, this is similar to a problem posed on a smaller scale by the distinction drawn between artificial and natural flavorings, where consumers overwhelmingly prefer natural flavorings¹⁰⁵ even though in many instances they are less pure, not better tasting, less consistent, more expensive,¹⁰⁶ and, at times, actually less safe.¹⁰⁷ And in spite of the fact

¹⁰⁰ FOOD & AGR. ORG. OF THE U.N., THE STATE OF FOOD AND AGRICULTURE, 84 (2003-2004 ed., 2004).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 83.

¹⁰⁴ *Id.* at 84.

¹⁰⁵ See generally VERNAL S. PACKARD, PROCESSED FOODS AND THE CONSUMER: ADDITIVES, LABELING, STANDARDS, AND NUTRITION (1976).

¹⁰⁶ *Id.* at 67-69.

¹⁰⁷ For example, natural almond flavoring necessarily contains trace amounts of

that consumers sometimes draw incorrect inferences from the information so disclosed, the general disclosure requirement of distinguishing between natural and artificial flavorings has never been seriously challenged since its implementation.¹⁰⁸

There is also a risk that consumers will conflate the terms vegetarian and vegan, or fail to distinguish between the alternative forms of vegetarianism. On the simplest level, some consumers may be unaware that there is a difference between vegetarianism and veganism. Many more consumers will probably be uncertain as to the precise meaning of either term. For example, some Hindus avoid eggs but not dairy,¹⁰⁹ and some individuals who eat fish but no other meat¹¹⁰ consider themselves vegetarian. In the case of the former, one could overestimate the utility of an underinclusive label system (from their point of view, at least), and therefore actually be more inclined to consume foods they would otherwise avoid due to a false confirmation. In the case of the latter, there is a risk that following the label would be overinclusive—leading consumers to avoid foods that they actually would find permissible, thereby negatively affecting some producers. Either situation is a general risk posed by any labeling system, but more so by a simplified system as is promoted here. Defining terms on labels could mitigate this danger but would increase the space needed and overall complexity, and ultimately to some extent reduce the readability of labels. Given that the specific problem addressed by this paper is to some extent created by overly technical and complex food labels, and that more specific information is already available on the label, the author would argue that the benefits of a simple labeling

cyanide not found in the artificial version. Nevertheless, natural almond flavoring is used more widely, and commands a much higher price. ERIC SCHLOSSER, *FAST FOOD NATION: THE DARK SIDE OF THE ALL-AMERICAN MEAL* 126 (2002).

¹⁰⁸ After a diligent search, I could find no mention of litigation or lobbying efforts over the past few decades that challenged this disclosure requirement *in toto*. Meanwhile, a number of suits and challenges have sought to define the scope and meaning of the phrase “natural” in response to consumer interest in natural products. See AMERICAN BAR ASSOCIATION, SECTION OF INTELLECTUAL PROPERTY LAW, *ANNUAL REVIEW OF INTELLECTUAL PROPERTY LAW DEVELOPMENTS: 2009*, at 190-93 (2011).

¹⁰⁹ This diet is specifically termed lacto-vegetarianism. AMY CHRISTINE BROWN, *UNDERSTANDING FOOD: PRINCIPLES AND PREPARATION* 10 (2008).

¹¹⁰ These individuals are pesco-vegetarians. ARUN JAIN, *BE A VEGETARIAN: BE A PART OF THE GREEN REVOLUTION* 10 (2008).

system comparable to the existing allergen warnings on labels outweighs the risk of consumer confusion.

The issue of inherent ambiguity can be leveled more towards both vegetarianism and veganism. Vegetarianism, or more specifically lacto-ovo-vegetarianism, is a simpler standard, provided that an acceptable definition of animal can be determined: any foods which are directly collected through the slaughter of animals are not vegetarian.¹¹¹ However, given the distinction between lacto-ovo-vegetarianism and veganism, this definition necessarily overlooks incidental or indirect animal deaths, even when systematic or large-scale, such as the slaughtering of retired dairy cows¹¹² or the culling of male chicks in egg production.¹¹³ Consumers, upon learning of the nature of commercial dairy and egg production, may believe any food label which defines such products as vegetarian to be deceptive, for a minimalist labeling system would not necessarily coincide with sweeping changes in U.S. animal welfare laws (which would require many more difficult and complex regulatory changes).

Veganism, by comparison, includes a number of more subtle value judgments. Most, but not all, vegans avoid honey because its production requires the commercial use of bees,¹¹⁴ but those same honeybees are used to pollinate all commercial fruits and many vegetables,¹¹⁵ and this prohibition is not extended towards such plants.¹¹⁶ Further, commercial agriculture, even organic agriculture, place a large toll on native insect and wildlife populations, and can be fertilized with soils enriched with animal remains.¹¹⁷ Determining what

¹¹¹ Veganism, by including the “exploitation” or animals and indirect killing, raises a number of subjective and complex additional variables.

¹¹² ERIK MARCUS, VEGAN: THE NEW ETHICS OF EATING 128-29 (2000).

¹¹³ Fraser et al., *supra* note 12, at 90.

¹¹⁴ See Engber, *supra* note 14.

¹¹⁵ Indeed, the value of commercial honey bees as pollinators for virtually all crops from flowering plants may outweigh their economic value as a source of honey. See generally KEITH S. DELAPLANE & D. F. MAYER, CROP POLLINATION BY BEES (2000).

¹¹⁶ See, e.g., VEGETARIAN HEALTH GUIDE, <http://www.veghealthguide.com/fruits-vegetables/> (last visited Feb. 22, 2012)

¹¹⁷ VASANT GOWARIKER ET AL., THE FERTILIZER ENCYCLOPEDIA 457 (2009) (noting that organic fertilizer, as it only denotes materials of a biological rather than synthetic origin, includes nitrogen sources such as animal waste (manure and guano) and meat byproducts (fish, bone, and blood meal)).

constitutes an animal product can be a very subjective process, and a simple labeling system could easily oversimplify this issue by replacing a complex, nuanced assessment with a yes-or-no label. Similar to organic food-production labels (and the issue of incidental animal deaths and vegetarianism, mentioned above), government labels regulating an ambiguous standard could be significantly more lax or stringent than some consumers' expectations. Many vegans may find that their diets become more restrictive as a number of foods previously believed acceptable are labeled as "not vegan", even if they personally would not agree with that conclusion. However, such an outcome might be inevitable if such standards were to become more widespread, regardless of whether a government regulatory standard is involved or not.

Finally, there is the potential downside of success. If a vegetarian and vegan food-labeling system were successful, there is always the possibility that some consumers who were avoiding processed foods might become more comfortable with them and therefore begin to consume them more regularly and in larger quantities. Given the health concerns posed by processed foods,¹¹⁸ this increase might be undesirable as a matter of public policy. While this does rebut in some small way the argument that disclosure of animal products could serve to promote vegetarianism and thereby healthy eating, the likelihood of such a consumer response seems slight. Producers may have overlooked the possibility that greater transparency would increase their sales, but given the fact that many instances of forced disclosures have resulted in boycotts and lawsuits, food retailers have likely made a conscious and economically rational decision to generally forego disclosure of ingredients beyond existing federal requirements. Individuals concerned about animal welfare issues within the egg and dairy industries might be opposed to a vegetarian labeling system which does not simultaneously address livestock welfare issues.

The potential success of any such food labeling system, if success is

¹¹⁸ For one of many possible examples, trans fats, present largely in fried foods and processed foods, are strongly correlated with heart disease and other health risks. See Timi Gustafson R.D., *Despite of Recommendations for a Total Ban, Trans Fats Stick Around*, SEATTLE PI BLOG (Feb. 15 2012 3:31 PM) <http://blog.seattlepi.com/timigustafsonrd/2012/02/15/despite-of-recommendations-for-total-ban-trans-fats-stick-around>.

measured by consumers exercising discretion based on the presence or absence of animal products, could also lead to serious opposition by groups representing the meat and dairy industries, as well as by food product manufacturers. While the primary focus of this Article has been whether a mandatory disclosure system for animal products would be desirable and practical to implement and administer, the next logical question is whether such a system could ultimately be implemented in spite of the near certainty of strong industry opposition and lobbying efforts. Any affirmative labeling requirement could potentially significantly reduce the demand for common food additives such as animal-based gelatin, and therefore lower the selling price for such goods. Slaughterhouses and ranchers will likely suffer economically from such a shift, and unlike in the case of growers dealing with organic food labels, there is no clear path by which to adjust their operations and meet the new requirements. Large segments of the food industry, especially those with smaller profit margins, would likely oppose any measures that could potentially necessitate a shift towards more expensive, non-animal sources of certain ingredients. The livestock industry could also be strongly opposed to any measure that could reduce consumer tolerance and demand for their products generally. Given that there has been no attempt at either the state or federal level to enact vegetarian or vegan food labels, the level of political opposition that such a measure would incite is ultimately speculative. However, it is also possible that the lack of any such effort is itself indicative of opposition by politically active trade organizations, which may be either explicit opposition to vegetarian and vegan food labels or merely a general resistance to any additional disclosure requirements.

Ultimately, a minimalist vegetarian and vegan food-labeling system is merely an incremental step towards greater transparency in food production. Many of these concerns, especially with regards to potential consumer confusion or ambiguity in labeling, are equally applicable to the current regulatory system. The general opposition of the food industry to greater regulation has been overcome in the past by public pressure, and the first step in generating that public pressure has always been raising awareness of the existing problem and the possible remedies available. Additional, specific labeling requirements directed at animal products in food would serve

to increase general consumer awareness, greatly assist millions of American consumers in exercising their religious and ethical compulsions, and perhaps move consumers in some small way towards a greater consideration of the treatment of livestock. These requirements would serve to rectify a loophole in the current labeling system, and add transparency to an area of regulation that has become increasingly opaque, in contradiction to its intended purpose.

Conclusion

The widespread use of animal products in processed foods which would otherwise be vegetarian or vegan has likely proliferated because the minimal cost-savings or quality improvements gained by producers are not counterbalanced in any meaningful way without consumer awareness. The large number of American vegetarians and vegans, many partially or wholly driven by either ethics or religion, suggests that there is no shortage of concern. But due to limitations in the present system of food labeling, no mechanism exists to educate and inform those consumers about their food choices. The federal government should therefore act to ensure greater transparency in the marketplace, as it has many times before, by requiring clear and accurate disclosure of the ingredients in packaged foods, similar to existing requirements for disclosure of allergens. Ultimately, consumers might not care that they are eating animal products, but do producers have the right to keep them in the dark?