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THE INCREDIBLE, EDIBLE CHECKOFF: FARMERS, CONSUMERS, AND THE POLITICAL ECONOMY OF COMMODITY PROMOTION

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In 1990, country singer k.d. lang kicked up a storm among American cattlemen. Fresh off a Grammy for Best Female Vocal Performance for her 1989 album *Absolute Torch and Twang*, lang took to the airwaves with a message that was decidedly un-country. In a TV promo for the organization People for the Ethical Treatment of Animals, lang implored viewers to become vegetarian. "If you knew how meat was made you'd lose your lunch," lang said as she stroked a blinking cow named Lulu. "I'm from cattle country and that's why I became a vegetarian."

The response from rural America was swift and predictable. Country stations in Kansas, Nebraska, Oklahoma, Missouri, and Montana pulled lang's music from the rotation. "My problem is somebody with a name in this industry coming down hard on the number one industry in our state," explained a broadcaster and rancher in Wichita, Kansas, who eliminated lang's music from the rotation at the five radio stations he owned. "That's not what I call ladylike"— a veiled reference to the singer's butch appearance.[1]

As headlines about the beef between the singer and the industry subsided, America's cattlemen went on an organized public relations offensive.[2] With the goal of convincing Americans that cattle raisers "are dedicated to producing a wholesome food, caring for their animals and maintaining natural resources," a trade group called the Beef Board hired celebrity spokespeople to tout their love of meat, created promotional literature and video content on industry stewardship and conservation practices, and established extensive contacts with "thought leaders" in publishing, medicine, politics, and business.

[1] "Cattle Country's Beef With K.D. Lang," *Washington Post*, 2 July 1990.
[2] Lang was mentioned by name in the Beef Board's 1990 Annual Report. Beef Board, 1990 Annual Report, 18. http://www.beefboard.org/financial/files/CBB%20Annual%20Report%20FY1990.pdf

In 1990, cattlemen spent $33 million on such promotion. They bought airtime on major networks, with six television commercials running more than 750 times and reaching millions of Americans. Beef print ads—touting lean cuts of meat, photographs of sumptuous steaks, recipes, and grilling guides—appeared more than 216 times in 45 magazines. And nearly 2,000 radio spots transmitted the gospel of beef to American listeners. At the grocery store, consumers encountered the Beef Board's "Make It Easy with Beef" and "Savor the Sizzle" campaigns, which, according to participating grocery stores, boosted sales of fresh meat. The Beef Board also sought to engineer the appetites of the increasing numbers of Americans who consumed food outside the home.[3] The Board's outreach to the food service industry included article-style advertisements and recipes in restaurant trade publications. Noting that more children "are eating out today than ever before," the cattlemen included beef-centered kids recipes as part of a strategy to "help restaurants attract children." The restaurant promotion complemented the Beef Board's school-based youth outreach. In a set of wall posters intended for classroom display, "The Munchsters" helped children "develop language skills" with which they could later ask their parents for a hamburger. Although the wall posters and accompanying lesson plans were published by the National Livestock and Meat Board, the text on the front of the educational kit merely identified it as a "Preschool Nutrition Program."[4]

But the apotheosis of the cattlemen's strategy to influence trusted experts lay in its cultivation of doctors, nurses and dieticians. In 1988, the Council distributed 175,000 copies of a nutrition pamphlet about infants to obstetricians, and hundreds of thousands of copies of a nutrition guide for children to pediatricians. The following year, the Board identified health professionals as the key to combating growing concerns over the risks posed by red meat. Materials highlighting "modern beef's role in a healthy diet" were distributed at 38 dieticians' seminars in 1989 and 1990, passing into "the hands of more than 15,000 dieticians who counsel 15.7 million consumers each year." The Beef Board's substitution of "consumer" for "patient" was telling; such logic also guided the organization's relationship with doctors—"the persons most likely to

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[3] USDA Economic Research Service, "Food Away from Home," 2015. http://www.ers.usda.gov/topics/food-choices-health/food-consumption-demand/food-away-from-home.aspx.

[4] Beef Board, 1990 Annual Report, p. 12-16. http://www.beefboard.org/financial/files/CBB%20Annual%20Report%20FY1990.pdf.

initiate change in health-related consumer behavior." The Board designed an informational kit that included a brochure, a pocket guide, and a physician's reference paper highlighting the role that beef could play in a healthy lifestyle. "Endorsed by the American Academy of Family Physicians," and offered to 22,500 doctors, the kit was a source of great hope for cattlemen to steer consumer attitudes. "If these physicians present our materials to even a quarter of their patients each year, the industry message will reach nearly five million consumers with a credible third-party health message," the Board's Annual Report rhapsodized. Paul Saltman, a biochemistry professor at the University of California-San Diego, was paid as a spokesman for beef, sitting for 73 interviews in 1989 and 1990. Saltman, who did not have a medical degree but did have a doctorate in biochemistry, thereby conferring the authoritative "Dr." prefix, gained notoriety in 1987 for *The California Nutrition Book*, which argued that all foods, including Twinkies, candy bars, and Coca-Cola have important nutritional value.[5]

This lobbying and information effort was not planned and financed through a purely private trade association. It was paid for by the mandatory contributions of American cattle producers. The Beef Promotion and Research Act of 1985 inaugurated producer-financed promotion for the cattle industry, known among farmers and ranchers as the "checkoff." The word "checkoff" overstates the amount of control that farmers have over the assessment: farmers are bound by federal and state laws to pay an assessment of one dollar per head on each bovine at the time of sale. This money is collected by State Beef Councils, which keep a portion of it to spend locally. The remaining funds are sent to the Cattlemen's Beef Board (CBB), which pays for beef research and national promotional campaigns – like the one directed at k.d. lang.

Checkoff programs exist for hundreds of other commodities at both the state and the federal levels. Whether the product is beef or honey or alligator or wool, the checkoff functions in essentially the same way: producers pay a mandatory assessment on a per unit basis of each marketed commodity. The funds collected from these assessments go to a producer-controlled board, which uses them to pay for advertising and research without reference to specific farmers or brands, promising returns for the industry, not for any single producer. To date, nearly 300 studies have examined the effectiveness of checkoff promotion campaigns. The vast majority of these have found

[5] Beef Board, 1990 Annual Report, p. 14.

that the benefits of generic advertising—usually defined as producer surplus or profits—outweigh the costs.[6] A recent evaluation of the beef checkoff suggested that every dollar collected by the checkoff returned more than $11 to the beef industry.[7]

Because checkoffs have seemed admirably suited to increasing consumer demand, producer groups have frequently sought to enact them during market slumps or consumer panics. In the 1970s, egg producers lobbied Congress for a checkoff as American egg consumption reached all-time lows in the wake of concerns about cholesterol;[8] in the 1980s, pork and beef producers did the same thing in response to ever-growing chicken consumption. These campaigns have yielded some of the most memorable slogans of the late twentieth century: "Pork: the Other White Meat," "The Incredible Edible Egg," "Got Milk?" and the Motown-crooning California Raisins. Today, nine out of ten American farmers contribute to a checkoff program, raising an estimated $1 billion for producer-funded marketing activities. [9] But a vastly smaller proportion of farmers affirmatively supports the checkoffs, a fact underscored by the three separate challenges to the checkoff system that reached the Supreme Court in the late 1990s and early 2000s. The Court's most recent decision upheld the beef checkoff as an instance of "government speech." That is, it ruled that "Beef: It's What's For Dinner," was not the speech of a private trade association, but rather a message from the United States government. [10] As government speech, checkoff advertising is therefore exempt from First Amendment scrutiny.

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[6] John M. Crespi and Richard J. Sexton, "US Generic Advertising and Promotion Programs," in *US Programs Affecting Food and Agricultural Marketing*, Walter J. Armbruster and Ronald D. Knutson, eds. (New York, NY: Springer, 2013), 176.

[7] Harry M. Kaiser, "An Economic Analysis of the Cattlemen's Beef Promotion and Research Board Demand-Enhancing Programs." Kaiser, an agricultural economist at Cornell who directs the university's "Commodity Promotion Research Program," was hired by the Beef Board to perform an econometric study of the program's performance. Other evaluations have estimated slightly lower, but still substantial returns. Ronald Ward, an agricultural economist, estimated returns from the checkoff dollar at $5.55. It should be noted that many studies evaluating the efficacy of checkoffs, including the two cited here, are commissioned by the very commodity boards that administer checkoff programs. Gary W. Williams and Oral Capps Jr., "Measuring the Effectiveness of Checkoff Programs," *Choices* 21, No. 2. (2006), 73.

[8] "The Egg and You: a Scramble for Sales," *Los Angeles Times*, 1 August 1976.

[9] Crespi and Sexton, "US Generic Adertising and Promotion Programs," in *US Programs Affecting Food and Agricultural Marketing*, Armbruster and Knutson, eds., 171.

[10] A subset of First Amendment Constitutional law, the scholarship on government speech is vast and rapidly evolving. The concept has been invoked in debates ranging from the labeling of agricultural products to the sponsorship of license plates by the Sons of Confederate Veterans.
. For an introduction to the topic, Mark Yudof, *When Government Speaks*: Politics, Law, and Government Expression in America (Berkeley: University of California Press, 1983); Steven H. Shiffrin, "Government Speech," *UCLA Law Review* 27, no. 3. (1980); Randall P. Bezanson and William Buss, "The Many Faces of

This essay traces the evolution of checkoff programs: their inception as state-level initiatives in the early part of the century, their kudzu-like growth in the latter decades of the twentieth century, and finally, their recent heated contestation in the courts. Checkoffs constitute an important site of American political, agricultural and economic life: by a legislative act, farmers have collectively shaped consumer consciousness while helping to restructure internal industry dynamics, as well as global consumption patterns. And yet they have received virtually zero historical scrutiny from agricultural or political historians. William Winders' authoritative study of twentieth century farm policy makes no reference to farmer-funded promotion;[11] nor do checkoffs appear in American political development scholarship, which has frequently used agriculture as a case study in interest group politics, state capacity, and welfare state expansion.[12] Checkoffs have also escaped scrutiny from historians of business and advertising, despite the fact that the relationship between the government and the private sector has been a core interest of business historians since Louis Galambos announced the arrival of the "organizational synthesis" on the pages of this journal nearly a half century ago.[13] Indeed, aside from agricultural economics, a discipline closely aligned with the institutions and industries that administer checkoff programs (and, in many instances, a discipline paid by checkoff funds to evaluate the programs)[14], the greatest scrutiny of checkoffs has tended to come from food writers and those working in the field of nutrition.[15] Parke Wilde, a former agricultural economist at the

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Government Speech," *Iowa Law Review* 86 (2001); Joseph Blocher, "Viewpoint Neutrality and Government Speech," *Boston College Law Review* 52 (2011).

[11] For instance, William Winder's recent reassessment of 20th century American agriculture policy omits discussion of them. William Winders, *The Politics of Food Supply: US Agricultural Policy in the World Economy* (New Haven: Yale, 2009);

[12] For interest group politics see: John Mark Hansen, *Gaining Access: Congress and the Farm Lobby, 1919-1981* (Chicago: University of Chicago Press, 1991); William P. Browne, *Cultivating Congress: Constituents, Issues, and Interests in Agricultural Policymaking* (Lawrence, KS: University Press of Kansas, 1995); For state capacity literature see: Kenneth Feingold and Theda Skocpol, *State and Party in America's New Deal* (Madison: University of Wisconsin Press, 1995); Daniel Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928* (Princeton: Princeton University Press, 2001). For the agricultural welfare state: Adam Sheingate, *The Rise of the Agricultural Welfare State: Institutions and Interest Group Power in the United States, France and Japan* (Princeton: Princeton University Press, 2001).

[13] Louis Galambos, "The Emerging Organizational Synthesis in Modern Business History," *Business History Review* 44, No. 3 (1970), 279-290.

[14] Gary W. Williams and Oral Capps Jr., "Measuring the Effectiveness of Checkoff Programs," *Choices* 21 (2006), 73-78.

[15] Shane Hamilton observed similarly that journalists writing in the muckraking tradition have recently found success in "expoiting consumers' concerns over the 'dark side' of their meals' origins." Shane Hamilton, "Introduction," *Business History Review* 83 (2009), 237.

USDA and current professor of food policy at Tufts, has emerged as a leading critic of checkoffs. Highlighting the ways in which checkoffs pervert national nutritional goals, Wilde has publicized embarrassing facts that suggest the contradictory character of the USDA as a bureaucracy that oversees both nutrition and commodity promotion.[16] As Wilde and other critics have observed, checkoffs produce corporate alliances that would appear to run counter to USDA's nutritional goals.

For many food and agriculture critics, checkoffs are ethically, politically, and morally distasteful. But they emerge from a longstanding tradition within American political development. I argue that checkoffs embody a kind of "agricultural associationalism," in which "private" organizations are vested with state power in order to achieve public aims. Checkoffs do not represent the state's capitulation to "Big Ag" interests—as many food critics are apt to argue.[17] Rather, checkoffs have emerged historically as a tool for achieving longstanding policy goals: the management of commodity supply, and the boosting of farmer income. Checkoffs force us to think about the structure of American political economy, and the nature of consumer choice. They have long been a site where state regulatory initiatives and corporate interests have blended freely.

Synthesizing more than five decades of scholarship on American political life, historian Brian Balogh has recently called on historians to rethink the terms with which they characterize political institutions. Abandoning the progressive-conservative dichotomy, Balogh's associational framework focuses attention upon "the ways in which Americans have braided public and private actions, state and voluntary-sector institutions, to achieve collective goals without undermining citizens' essential belief in individual freedom."[18] Of course, associational governance structures do not reflect or ensure consensus, nor are they "democratic" in terms of facilitating access to state power. Indeed, the interest groups and trade associations that bear the closest

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[16] Parke Wilde, "Federal Communication about Obesity in the Dietary Guidelines and Checkoff Programs," *Obesity* 14 (2006), 967-973. Wilde also maintains a blog that functions as sort of a watchdog on the USDA's statements on nutrition. http://usfoodpolicy.blogspot.com/.

[17] See, for instance, Marion Nestle, *Food Politics: How the Food Industry Influences Nutrition and Health* (Berkeley: University of California Press, 2007).

[18] Balogh, *The Associational State: American Governance in the Twentieth Century* (Philadelphia: University of Pennsylvania Press, 2015).

relationship to the government tend to benefit "affluent families and powerful industries" above all.[19]

Effacing the hand of the state in the creation and operation of the beef checkoff—the program was merely born, it simply serves farmers—has been crucial to its success. Checkoffs can be seen as an example of what political scientist Suzanne Mettler calls "the submerged state." They illustrate the power that state-organized, state-empowered producers wield in shaping consumption. Just as the associational framework blurs partisan binaries, so too does it force us to reconsider narratives about the rise of consumerism in the second half of the twentieth century. The proliferation of checkoffs as part of the farm policy toolkit suggests that producers have played an overlooked role in the rise of the consumer economy. National checkoffs emerged as postwar America embraced material abundance as a central and legitimizing fact of American way of life[20]. Indeed, the very first federal checkoff—an assessment paid by shepherds to "increase domestic consumption of wool"—was enacted the same year that historian David Potter influentially argued that abundance lay at the heart of the American "national character."[21] Historians of consumption have usefully excavated the ways in which the state has actively encouraged consumption in the twentieth century—including fitful measures to regulate consumer safety in the Progressive era, an embrace of consumer spending as a route to recovery during the Depression, the postwar commitment to Keynesian prescriptions for full employment, and a renewed emphasis on product and environmental safety in the latter decades of the twentieth century[22]. As a tool for the regulation of abundance, checkoffs are of particular interest to historians of consumption, drawing attention to the ways in which the political economy of production shapes consumer habits.

[19] Suzanne Mettler, *The Submerged State: How Invisible Government Policies Undermine American Democracy* (Chicago: University of Chicago Press, 2011), 26.

[20] Robert M. Collins, *More: The Politics of Economic Growth in Postwar America* (Oxford: Oxford University Press, 2000).

[21] David Potter, *People of Plenty*: *Economic Abundance and the American Character* (Chicago: University of Chicago Press, 1954).

[22] James Harvey Young, *Pure Food: Securing the Federal Food and Drug Act of 1906 (*Princeton: Princeton University Press, 1989); Lizabeth Cohen, A Consumer's Republic: The Politics of Mass Consumption in Postwar America (New York: Knopf, 2003); Meg Jacobs, *Pocketbook Politics: Economic Citizenship in Twentieth Century America* (Princeton: Princeton University Press, 2005); Richard Harris and Sidney Milkis, *The Politics of Regulatory Change: A Tale of Two Agencies* (New York: Oxford, 1989); Samuel Hays, *Beauty, Health Permanence: Environmental Politics in the United States, 1955-1985* (New York: Cambridge, 1987).

This essay begins with a schematic overview of agriculture policy in the twentieth century, suggesting that attention to checkoffs can substantially recast our understanding of the relationship between the state and agricultural markets. It then moves to the historical origins of compulsory commodity promotion, which first appeared at the state level in the 1930s, and then at the federal level in the postwar era. Emerging as an associational response to the persistent problem of overproduction, checkoffs soon became a way for producers to combat negative perceptions of their commodity. Though they have proliferated as direct farm subsidies have diminished, checkoffs have never gone uncontested. The final section of this essay examines lawsuits brought by dissident producers over the pork and beef checkoff programs. The beef checkoff suit, which reached the Supreme Court in 2004, laid bare the ironies of agricultural associationalism: only by revealing the hand of the state could the fiction of producer control be maintained.

The Origins of Associationalism

Agricultural associationalism has deep roots in American political life.[23] Before the New Deal's inauguration of supply management, farmers had made halting and largely unsuccessful efforts at marketing their products cooperatively in order to raise prices. Indeed, cooperative marketing was explicitly encouraged by the Republican administrations of the 1920s, and especially by Herbert Hoover. As Secretary of Commerce, Hoover saw cooperative marketing organizations as the agricultural node of what he called "associationalism," or the governance through sector and professional interest groups.[24] Such associations, he hoped, could responsively construct and execute efficient, enlightened policy without building up the federal bureaucracy—modernizing the individualistic, entrepreneurial character of American institutions while avoiding the stultifying curse of bigness.

The Capper-Volstead Act, passed in 1922, was the signature piece of associational legislation passed on behalf of farmers, granting farm cooperatives exemption from anti-trust laws. This meant that an association of peach farmers, for

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[23] Charles Postel, *The Populist Vision* (New York: Oxford, 2007); Victoria Saker Woeste, *The Farmer's Benevolent Trust: Law and Agricultural Cooperation in America, 1865-1945* (Chapel Hill: UNC Press, 1998).
[24] Hawley, "Herbert Hoover, the Commerce Secretariat, and the Vision of an 'Associative State,' 1921-1928, *Journal of American History* 61, No. 1 (1974), 118-119.

example, could join together in the processing, handling, and marketing of their commodities with the aim of minimizing competition from other, non-cooperative peach farmers. Cooperatives were understood to be analogous to labor unions: collectivities that bargained for prices or wages on behalf of their members.

Associationalism was spectacularly unsuccessful for farmers because it did nothing to remedy the fundamental problem facing agriculture in the 1920s: overproduction. In the absence of legal compulsion, there was nothing to deter freeriding farmers from taking advantage of the higher prices bargained by the cooperative. The failure of agricultural cooperatives in the 1920s highlighted what economist Mancur Olson would later term a "collective action" problem. Individual action will not produce collective goods like a price floor on hogs achieved through cooperative marketing, or generic beef advertising with funds raised from voluntary contributions. The temptation to free ride increases with the size of the group, and thus legal compulsion and the use of "selective incentives" are the primary tools available to large associations of interest—whether unions, business cartels, or agricultural cooperatives. "A farmer who placed the interests of other farmers above his own would not necessarily restrict production to raise farm prices, since he knows that his sacrifice would not bring a noticeable benefit to anyone," Olson observed in *The Logic of Collective Action.* [25] The temptation to free ride exacerbated the problem of overproduction—for many farmers it made good sense not to join a cooperative, and produce to the hilt in the hopes that the cooperative would have bargained up the price of produce. This problem was only made worse by falling prices, which reached an all-time low by 1927.

Once Franklin Roosevelt took office, agriculture featured prominently in national economic recovery efforts. The watershed Agricultural Adjustment Act, passed as part of the flurry of legislative activity known as the "hundred days," inaugurated the basic pillars of modern farm policy: price supports and supply controls achieved through compulsion. In exchange for curtailing production, farmers of certain commodities were eligible to receive a guaranteed minimum support price from the government. The Supreme Court ruled the "first" AAA unconstitutional in 1936 because its support payments were financed by a tax on processors, but Congress passed a similar measure

[25] Logic of Collective Action, 64.

in 1938 that financed government supports through general treasury revenues. After the Second World War, price supports expanded to cover a greater number of commodities, and the level of support was raised.[26]

New Deal interventions changed American agriculture profoundly, but they were not wholly new. Even though the AAA represented unprecedented levels of state intervention into the agricultural economy, it was neither top-down nor did it repudiate the associationalism of the previous decade. The farmer-controlled committees that administered and enforced the AAA reflected an associational philosophy that relied on the coordinating leadership efforts of local elites in executing government policy. As David Hamilton has persuasively argued, the New Deal's expansion of governmental powers was "intended to facilitate—not replace—cooperative and voluntary efforts among farmers."[27] Politically, the commodity-based price supports of the New Deal transformed American agriculture policy into commodity policy. By the 1960s, organizations representing farmers who produced government-supported commodities came to play a defining role in Congressional farm policymaking.[28]

New Deal agriculture policy did not thwart overproduction. Farm output outstripped demand for most of the years between 1930 and 1970 as machines and chemicals made American farmers vastly more efficient.[29] During the Second World War and its immediate aftermath, foreign consumers absorbed much of this excess output. But throughout the 1950s, stocks of food and fiber swelled at taxpayer expense. Government-owned stocks of commodities grew from $1.3 billion in 1952 to $7.7 billion in 1959. As government-held stocks swelled, support prices shrank, but the principle of supply management remained intact, albeit at stingier levels.[30] It endured all the way until the passage of the Federal Agriculture Improvement and Reform Act (FAIR) in 1996, which eliminated price supports and production controls in an effort to bring American farmers closer to a "free market" in agriculture. But the problem of overproduction could also be framed as a problem of underconsumption. In the absence

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[26] Ibid., 7-10.
[27] David Hamilton, *From New Day to New Deal: American Farm Policy from Hoover to Roosevelt, 1928-1933* (Chapel Hill: UNC Press, 1991), 242.
[28] Hansen, 111; Winders, 6. Winders attributes debates over farm policy after 1950 to divisions between cotton and wheat producers, who favored supply management, and corn producers, who favored "market oriented" agriculture.
[29] Agricultural productivity has doubled since 1948, as the number of farms has fallen, farm size increased, and crop specialization intensified.
[30] Hansen, 109.

of effective controls on supply, farmers and agricultural officials turned toward the checkoff to address persistent, problematic abundance. Checkoffs were tools of demand management—a tool that first supplemented and later eclipsed supply management, as the federal government turned away from more overt interventions into the agricultural economy in the last years of the twentieth century.

From Over Production to Under-Consumption

Checkoffs originated at the state level, where legislatures saw them as a way to boost consumption during the Great Depression. In 1935, the Florida Legislature levied a tax on growers of oranges, grapefruits and tangerines. That money was used to fund advertising campaigns intended to whet the national appetite for sunshine-state citrus. It was overseen by the the Florida Citrus Commission, a board that blended state control with industry prerogatives. The Commission's members were appointed by the governor and confirmed by the state senate, but appointees were generally "practical citrus men", including growers, packers, processors, and shippers.[31] News of the Commission's creation was especially heralded by the advertising industry. *The New York Times'* "advertising news and notes" section observed in November 1937 that bone-chilled northeasterners would soon get an eyeful of Florida's orange sunshine. For the following six months, "Subways, elevated and suburban lines serving the metro districts of Boston and New York" would serve as space for ads touting Florida oranges, inviting passengers to imagine sunnier, sweeter places.[32] The agency initially handling the Commission's account, Rauthrauff and Ryan, was a powerhouse in the ad world, with accounts including Lifebuoy Soap (on whose behalf the euphemistic BO was invented), Gillette, Wrigley, and Tums. Florida citrus growers approached advertising with the seriousness and financial commitment that a state-mandated assessment could afford.

The Florida Citrus Commission was created in the midst of the Depression, as nearly every state in the nation looked to promote its internal resources –agriculture, industry, tourism—to find fresh revenue streams for bone-dry state coffers. According

[31] *Advertising by the States.* (Council of State Governments: Chicago, Ill., 1940), 12.
[32] "Advertising News," *New York Times*, 16 May 1936; "Advertising News," *New York Times*, 20 November 1937.

to a study conducted by the Council of State Governments on this new phenomenon of advertising by the states, "by 1939, every state in the union except Delaware made legal provisions to distribute information regarding its attraction and peculiar advantages."[33] Even amidst this increased promotional activity, the Citrus Commission stood out. The citrus excise gave the organization a budget of $750,000. The amount of money that went to promote Florida's oranges, tangerines and grapefruits was greater than the amount that went to promote the entirety of activities or products of any state in the US except for Pennsylvania, which appropriated $788,000 to promote its tourism, agriculture, and industry.[34]

Soon after the Commission was established, a suit was brought against it by the C.V. Floyd Citrus Company, which alleged that the tax was an unconstitutional property tax and that its imposition denied citrus growers their due process rights. The C.V. Floyd Citrus Company also argued that the tax was not imposed for a valid public purpose—that the state of Florida had, essentially, made a public purpose out of a private interest. The Supreme Court for the State of Florida disagreed, ruling in 1937 that the tax was in fact an excise tax, not a property tax, and that the State of Florida had a legitimate interest in promoting state agriculture. In the landmark *C.V. Floyd v. Florida Citrus Commission*, the citrus advertising tax was interpreted as a private instrument of the state: its power to exact a tax upon oranges, grapefruit, and tangerines entering the market was ruled to be a legitimate extension of the state's police power. The Citrus Commission did make a public purpose out of a private interest, but given the importance of the citrus trade to the State of Florida, this was justified and desirable. With the Florida Court's ruling as a constitutional green-light, several other states passed legislation authorizing producer assessments: Idaho vegetables (1937), Michigan apples (1939), Iowa milk (1937).[35]

The *Floyd* decision expanded the range of activities that states could support in the name of the public interest. They seized upon the checkoff as a tool to ensure that consumer demand for tobacco would match its vast supply. The vehicle for promoting North Carolina-grown tobacco was a non-profit corporation called Tobacco Associates. Its first president was the man who administered the New Deal tobacco program

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[33] *Advertising by the States.* (Council of State Governments: Chicago, Ill., 1940), 3.
[34] Ibid., 6.
[35] Henry Kinnucan and Stanley Thompson, *Commodity Advertising and Promotion* (Ames: Iowa State University Press, 1992).

during the 1930s, underscoring the institutional linkages between the New Deal-initiated regime of supply management and the postwar focus on demand. The language of the Tobacco Associates enabling act therefore emphasized the importance of tobacco to North Carolina's economy, deeming that the "promotion of export trade in flue-cured tobacco…is proper, desirable, necessary and in the public interest."[36] But like the Florida Citrus Code, the Tobacco Associates referendum was initiated at the behest of a private organization. From its inception at the iconic Sir Walter Raleigh hotel in the state's capital to its introduction on the floor of the North Carolina General Assembly by the chair of the body's House Agricultural committee (who was also a member of the Farm Bureau), Tobacco Associates typified the intermingling of public and private interests.

Like Florida's Citrus Code, North Carolina's Tobacco Associates Act relied upon a two-step process. First, a referendum would be held to determine grower support for the organization. If more than two thirds of eligible voters approved the plan to levy a tax of ten cents per tobacco acre, the levy would come into force for the fall marketing season. The two thirds popular approval required to trigger Tobacco Associates collections was not arbitrary. The USDA required the same percentage of farmers to approve the production restriction regulations and the federal marketing orders that formed the basis of much of agriculture policy during the twentieth century. For farmers across America, sixty-seven was the magic percentage that transformed coercion—crop reduction or assessments to pay for research and promotion—into a fact of life.

The law required that Tobacco Associates take out advertising space in newspapers to announce referendum date and polling places. As a result, the referendum was likely understood as an act initiated and undertaken by the State of North Carolina or the USDA, not a private group. After all, the publicity requirements suggested that the referendum was a public event; the spaces that the referendum occurred in were usually state spaces, such as schools; and the referendum's success relied upon the same turnout as the federal tobacco program—the government initiative with which tobacco farmers were the most familiar.

[36] North Carolina General Assembly. An Act to Enable Flue-Cured Tobacco Farmers in North Carolina to Hold A Referendum and to Promote Through Organized Effort the Export Sale of Flue-Cured Tobacco. (S.B. 255). *State of North Carolina Session Laws and Resolutions.* 1947. 647-648.

North Carolina Democrat Harold Cooley, the powerful chair of the House Committee on Agriculture, helped to nationalize the checkoff mechanism. While Tobacco Associates eyed foreign outlets for American flue-cured tobacco, other growers eyed Tobacco Associates as a model for self-financed promotion. Despite production controls, surpluses mounted in the 1950s, occasioning rancorous political debates over the future of American agriculture policy. Ezra Taft Benson, Eisenhower's famously conservative and controversial Secretary of Agriculture, led the charge against the high price support system inaugurated by the New Deal. [37] He was flanked by the American Farm Bureau Federation in a shared mission to institute an era of "free-enterprise," "market-oriented" agriculture. Southern cotton and tobacco growers, and their Democratic representatives, recoiled at the Secretary's deep and religious aversion to collective action achieved through government management.[38] Benson fanned the flames by repeatedly insisting that the price support system represented a "trend toward socialism in agriculture," and that state interventions in agriculture "weaken[ed] initiative" and "destroy[ed] character."[39]

Checkoffs were a potential alternative to the price support system. Rather than decreasing production, they offered the tantalizing solution of augmenting consumption. The national stomach rather than the national purse would underwrite American agriculture. Farmers who continued to look toward government as an indispensible organizer of chaotic agricultural markets were most likely to see checkoffs as a tool for dealing with the surplus problem. As Congressional Democrats held hearings throughout the 1950s to offer their own visions of a long-range farm program, growers' calls for federal commodity checkoffs became more insistent.

In 1957 and 1958, Congress considered legislation that would have authorized a nationwide checkoff on livestock to finance a meat promotion program. Supporters of the legislation argued that a checkoff, which would come in the form of an automatic deduction on the sale of livestock, offered a way for livestock raisers to help themselves. Of course, generic commodity advertising was not new, as hundreds of cotton maids,

[37] Wesley McCune, *Who's Behind Our Farm Policy* (New York: Preaeger, 1956).
[38] Edward L. Schapsmeier and Frederick H. Schapsmeier, "Farm Policy from FDR to Eisenhower: Southern Democrats and the Politics of Agriculture," Agricultural History 53, No. 1 (1979), 352-371.
[39] Edward L. Schapsmeier and Frederick H. Schapsmeier, "Eisenhower and Ezra Taft Benson: Farm Policy in the 1950s," Agricultural History 44, no. 4 (1970), 373 and 370.

tobacco queens, and "porkettes" around the country could attest.[40] But for cattlemen, the checkoff promised to immediately raise the amount of money available for advertising that had so far only been conducted on a voluntary basis. Compulsion was necessary to make collective action meaningful.

Harold Cooley ardently defended checkoffs at these hearings, touting the success of the program in boosting tobacco growers' incomes and sending American tobacco around the world. He was opposed by the Farm Bureau, which, in the words of AFBF president Charles Shuman, cast checkoffs as "an invasion of individual freedom of choice."[41] Opponents seized upon the language of compulsion to characterize collectively financed advertising. At the 1957 hearings on the subject of meat promotion, Cooley sparred with AFBF general counsel for more than thirty minutes on the merits and mechanics of compulsion versus voluntarism under the checkoff system. Repeatedly invoking Tobacco Associates as a successful checkoff program—and one that the North Carolina Farm Bureau actively supported—Cooley sought to expose the Farm Bureau's position as muddled and hypocritical, while also positing the checkoff as a legitimate, uncontroversial and longstanding feature of agriculture policy. "When we pass this bill, we just say to the livestock producers that they have the same rights and privileges that the citrus fruit people have…that the tobacco people have…that every body else has. What is wrong with letting the livestock people have the same rights which other groups have?"[42] Cooley overstated the case. The citrus and tobacco associations were enabled by state legislation. With the passage of the Wool Act in 1954, checkoffs went federal. Cooley's intervention shows ways in which state promotion programs paved the way for federal legislation, while also confirming the Farm Bureau's suspicion that checkoff programs would pave the way for commodity-specific policies—something that the Farm Bureau, as a "General Farm Organization," opposed.

Meat promotion did not make it into the final bill amending the Packers and Stockyards Act. But the battle continued. With endorsement from the National Wool Growers Association and the National Grange and with opposition from the Farm

[40] JB Devine, "Hop to the Top with the Iowa Chop: The Iowa Porkettes and Cultivating Agrarian Feminisms in the Midwest, 1964-1992," *Agricultural History* 83, No. 4 (2009), 477-502.
[41] "Wool Checkoff Dispute May Be Decisive In Establishing Spokesman for Farmers," Wall Street Journal, p7.
[42] *Promote Meat Consumption: Hearings on HR 11330 before the House Committee on Agriculture*, 85 Congress (1958), 122.

Bureau, sheep farmers voted overwhelmingly in favor of continuing deductions for wool promotion.[43] And with the passage of the 1966 Cotton Research and Promotion Act, farmers and government embarked on the most expansive venture in commodity promotion to-date. At the bill's hearings, Cooley once again sparred with Farm Bureau representatives, this time with the stalwart and terse Charles Shuman, the organization's president. Cooley held up Tobacco Associates as a model of a well-functioning promotion organization, arguing that the structure of the tobacco checkoff—the per unit assessment and the right to a refund—was a legal model for the proposed cotton promotion bill. Shuman objected to the political economy of delegated authority, arguing that legislation which "gives the power of the government to tax producers and then turn that money over to a non-governmental agency" was unconstitutional. Ultimately Cooley prevailed.

The passage of the 1966 Cotton Promotion and Research Act signaled the arrival of a new era in agricultural marketing— one in which expanding domestic consumption was explicitly understood as a tool for safeguarding production programs and boosting farmer income—even as the number of Americans engaged in farming was falling and farm operations growing. Checkoffs served as a state-created safety valve for the unsustainable surpluses mounting in government warehouses. Like the "Food-for-Peace" program, which was launched the same year as the wool checkoff, checkoffs helped producers to reconceive of American and foreign consumers as a vast stomach to be stretched and stuffed with the help of the government.

The checkoff is also an instrument of global demand— blanketing the globe in American commodities, brokering international commodity flows through associational institutions. Funds from the beef, lamb, corn, sorghum and soybean checkoff finance the U.S. Meat Export Federation (USMEF), a vertically integrated trade association that represents different components of the meat industry: producers, packers, processors, traders, and farm organizations. The USMEF is an associational institution, a private non-profit that operates with mandatory checkoff dues and grants from USDA Foreign Agricultural Service and Market Development Program funds. Just 5% of USMEF's budget comes from private sources, such as membership dues, whereas USDA grants

[43] "Wool Checkoff Dispute May Be Decisive In Establishing Spokesman for Farmers," WSJ, p7. "Sheep Farmers Vote Heavily for 'Checkoff,'" *Wall Street Journal*, 7 October 1959, 28.

constituted 38% of USMEF's $37 million in total revenue. Checkoff monies, particularly those derived from the beef and pork programs, account for 56% of USMEF revenues.[44]

The USMEF was chartered in 1975 as a cooperating agency that partnered with the USDA's Foreign Agriculture Service, an agency established in 1953 to promote the sale of US agricultural goods abroad. With the passage of Public Law-480, better known as the "Food for Peace" program, the Foreign Agriculture Service played an increasingly important role in overseeing American commodity flows toward developing markets for American commodities. Private-sector "cooperators" like the USMEF were the free-enterprise face of what was a very decidedly state-centered goal of alleviating commodity surpluses while winning the hearts, minds and stomachs of the developing world during the Cold War. "Bread, not guns, may well decide mankind's future today," wrote Minnesota Senator Hubert Humphrey in a 1958 government report entitled *Food and Fiber as a Force for Freedom*. Surveying the operations of "Food-for-Peace," Humphrey characterized the law as "a passport for the entry of United States trade and techniques into world markets" that would also "supply the greater economic needs of free peoples, and serve as a deterrent to war."[45] One year after the USMEF's establishment, one Iowa rancher testified at Senate hearing on the Agricultural Trade Act of 1978. Noting his "fundamental support" for "the activities of Government which assist or facilitate programs to expand foreign markets for our products," the cattleman nonetheless hoped to maintain a safe distance between the USMEF as a "private sector organization" and the activities of the US Foreign Agriculture Service and official trade representatives. "One reason for cooperators' effectiveness in other countries is [that]… they have not been identified as 'Government.'"[46] Once checkoff dollars began to finance the USMEF in the late 1980s, American meat abroad became more "Government" than ever. Whereas the "promotional state" of the late nineteenth and early twentieth century has been characterized as born of "private impulses, more than government policy," the late

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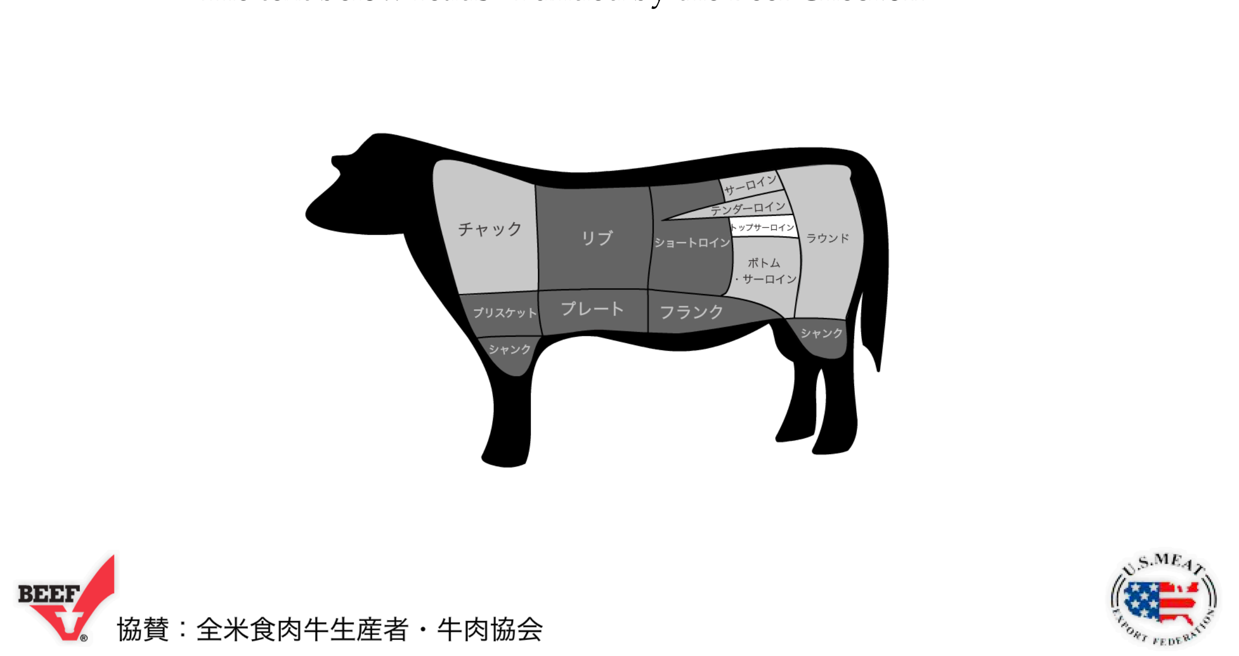
[44] JDS Professional Group. Independent Auditor's Report. "Financial Statements of the United States Meat Export Federation, Inc." 4 November 2014.
[45] 2.
[46] *Agricultural Trade Act of 1978: hearings before the Subcommittee on Department Investigations, Oversight, and Research of the Committee on Agriculture, House of Representatives, Ninety-Fifth Congress, Second Session ... February 28, March 1, and May 31, 1978.* 1978. Washington. 64.

twentieth century promotional state has rested on a hidden bedrock of state-compelled collective action.[47]

Headquartered in Denver, but with offices in South Korea, Japan, Hong Kong, mainland China, Singapore, Russia, Taiwan, Mexico and Brussels, the USMEF strives to open foreign markets to US-produced beef, pork and grains. Its techniques are largely the same as those utilized by the checkoff: trade shows, market research, advertising, public relations, and consumer education on meat utilization and recipe suggestions. The figure below represents consumer education for the Japanese market. On the Japan section of the USMEF's website, each cut of beef is supplemented with downloadable information on uses and butchering instructions.

Figure 1. A Beef Chart Translated into Japanese.
The text below reads "Funded by the Beef Checkoff" [48]



[47] Emily Rosenberg, *Spreading the American Dream: American Economic and Cultural Expansion, 1890-1945* (Macmillen: 1982), 38.
[48] Source: "Beef Cut Animations." United States Meat Export Federation. http://www.usmef.org/downloads/flash/beef-cut-animations/usmef_translated/usmef_japanese/

Between 1976 and 2013, American beef and pork exports rose 2495%.[49] While increased consumption of meat has been associated with economic development and globalization has increased overall trade volume, American farmers have, nonetheless, underwritten the costs of promoting American-style meat consumption in targeted markets. Earlier this year, the Shanghai office of the USMEF hosted a dinner for 158 Chinese meat industry officials. At the meeting of the U.S. Meat Traders Club, importers, distributors, retailers, and foodservice officials talked meat over a meal of U.S. St. Louis spare ribs with chocolate barbeque sauce and roasted U.S. pork butt with cider barbeque sauce.[50] In Japan, which had been the primary importer of American beef prior to the 2003 outbreak of bovine spongiform encephalopathy or "Mad Cow" disease, a "Southwest Barbecue Team" comprised of US cattlemen and a Texas pitmaster conducted seminars and cooking demonstrations at the Tokyo Prince Hotel Garden. The hotel's executive chef expressed a pleasant surprise at the tenderness achieved with through the Americans' "low-and-slow" cooking method.[51] American meat exporters await the business expected to result from the Trans-Pacific Partnership Agreement.[52] The checkoff's role in financing trade-promoting broker organizations like the USMEF is a potent of the state's role in structuring free markets.

Pizza Politics

Between 1954 and today, dozens of generic promotion programs have been authorized by Congress, and hundreds more operate within individual states.[53] They do more than promote commodity consumption through advertisements like the famous "Pork: the Other White Meat" or the "Got Milk?" campaigns. Checkoff dollars also fund scientific research intended to portray industries in a favorable light. For this reason, checkoffs have raised concerns from a public health perspective. A growing body of research in the history of science suggests that industry has played a large—if often overlooked—role in creating science that is used to prevent unfavorable regulation. In

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[49] **. Data Source: U.S. Census Bureau Trade Data. Figures available at USDA Global Agricultural Trade System Online. http://apps.fas.usda.gov/gats/ExpressQuery1.aspx.**

[50] https://www.usmef.org/news-statistics/member-news-archive/meat-traders-club-sial-food-show-highlight-usmef-shanghai-activities/

[51] https://www.usmef.org/news-statistics/member-news-archive/southwest-barbecue-team-delivers-flavor-to-japanese-foodservice-industry-consumers/

[52] http://www.usmef.org/support-for-the-trans-pacific-partnership/

[53] Crespi; Geoffrey Becker, "Federal Farm Promotion Programs," CRS Report to Congress, 2008. http://www.nodpa.com/checkoff_2008%20report%20on%20check%20off%20programs.pdf

their evocatively titled *Merchants of Doubt*, Naomi Oreskes and Erik Conway argue that "a small network of doubt mongers," generally financed by industry and conservative think tanks, have sponsored scientists skeptical of the scientific consensus surrounding tobacco smoking, acid rain, ozone depletion and global warming.[54] Such work draws attention to the politics of knowledge production in contemporary regulatory battles. Although the parallels between global warming denialism and beef boosterism may not seem obvious, a significant proportion of checkoff money finances scientific-sounding public relations efforts. In its quest to court health and nutrition "thought leaders," the beef checkoff not only funded the production and distribution of dozens of pro-beef pamphlets and brochures to doctors, nutritionists, teachers, food writers and journalists.[55] Checkoff dollars also funded studies into how best to influence such professionals. One such study optimistically noted that "better-informed physicians were more positive toward beef."[56] Beyond these offensive strategies, the beef checkoff also funded defensive efforts to "debunk negative myths about beef and the U.S. cattle industry." The Beef Board's 1993 Annual Report cited victories in this realm that included calming consumer fears after an E.coli outbreak at Jack in the Box fast food restaurants, and the inauguration of the "Myth Busters" program oriented toward "blunting and negating misinformation disseminated by anti-beef activists who attract all too much media coverage with their questionable, but highly theatrical public relations statements." The Beef Board struck a tone redolent of the industrial goliaths fighting the activist Davids of the past—a tone not unlike the chemical industry's dismissal of Rachel Carson as hysterical, or Big Tobacco's insistence that only "zealots" would partition a restaurant into smoking and nonsmoking sections.

Checkoff funding has facilitated partnerships between commodity producers, the USDA, and fast food establishments, underscoring the way in which government and private interests have not only co-produced the shape of the American economy, but also the shape of Americans' bodies. In 2002, cattlemen financed partnerships with Dunkin Donuts, Quiznos and Taco Bell resulting in a harvest of beefy products—the

[54] Naomi Oreskes and Erik Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming* (New York: Bloomsbury Press, 2010). See also David Michaels, *Doubt is Their Product: How Industry's Assault on Science Threatens Your Health* (Oxford: Oxford University Press, 2008); *Agnotology: The Making and Unmaking of Ignorance,* Robert Proctor and Londa Schiebinger, eds. (Palo Alto: Stanford University Press, 2008).
[55] Beef Board, 1990 Annual Report, 13.
[56] Beef Board, 1990 Annual Report , 17.

Steak, Egg and Cheese breakfast sandwich, the Bistro Beef sub, and the Steak Grilled Stuft Burrito.[57] Building off such promotional success, the following year the checkoff program partnered with Domino's Pizza, introducing America to the Philly Steak pizza, "made with premium quality sirloin steak."[58] Pizza has been a particularly capacious vehicle for commodity disposal. Enacted in 1983, the dairy checkoff is currently the largest of the federal checkoff programs with assessments totaling over $200 million per year from producers of fluid milk and other dairy products. Although more than half of this money is collected from fluid milk producers, milk consumption in the United States has been on a steady decline; but thanks to the checkoff program's assiduous industry partnerships, cheese consumption has soared. For instance, with the blessing of the USDA, the dairy checkoff has spent millions of dollars to increase American pizza consumption, including a promotional partnership with Domino's Pizza. The USDA's report to Congress on the partnership noted, "The promotional activities with Domino's included new product lines, use of more cheese than had been provided on similar items in the Domino's chain before the partnership, and the introduction of specialty cheeses into the company's recipes. In short, the assistance of dairy dollars was instrumental in positively affecting the pizza category, a category that is very important to the dairy industry."[59] Checkoff dollars also went toward Pizza Hut's development of the 3-Cheese Stuffed Crust Pizza and the "Summer of Cheese" advertising campaign. Similarly, a $35 million dollar partnership between the dairy checkoff program and Dominos resulted in the engineering of an even cheesier pizza—an industry trend that other delivery chains soon followed.[60]

Public relations aside, agricultural associationalism has epistemological consequences.[61] A significant proportion of checkoff money goes toward research intended to boost commodity consumption. Such research has funded applied

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[57] Beef Board, 2002 Annual Report, 4.
[58] Beef Board, 2003 Annual Report, 6.
[59] http://usfoodpolicy.blogspot.com/2014/02/usda-reports-on-pizza-consumption-and.html
[60] Michelle Simon, "White Washed: How Industry and Government Promote Dairy Junk Foods." Eat Drink Politics. http://www.eatdrinkpolitics.com/wp-content/uploads/SimonWhitewashedDairyReport.pdf
[61] There are few studies investigating the overall outcomes of checkoff-funded research. One analysis of research funded by the dairy checkoff "did not find consistent evidence that checkoff funded projects were more likely to support an obesity prevention benefit from dairy consumption." But , as the authors note, "industry sources are more likely to fund research on certain questions…which hold promise for results that are more favorable to the industry." By merely asking certain types of questions, checkoffs can still shape the kind of scientific knowledge produced. P. Wilde et. Al, "Relationship between funding sources and outcomes of obesity-related research," *Physiology and Behavior* 107 (2012), 175.

agricultural science—such as a an effort by university scientists to "develop a low-fat ground beef product." The acceptability of this checkoff chuck was tested by the USDA, which used the beef in the national school lunch program.[62] In 1989, the checkoff funded research at Texas A&M University that was later used by the USDA to "reflect the modern meat case more accurately" by codifying the nutrient composition of beef cuts.[63] As historians of science have suggested, industry-funded science frequently produces knowledge that works toward the profitability of the industry. In 1994, for instance, the beef checkoff financed a study conducted at the Baylor College of Medicine that "showed lean beef to be the equal of chicken when it comes to lowering cholesterol." Through further promotional efforts of the Beef Board, "some 27 million consumers quickly learned that what they thought they knew about beef wasn't necessarily true."[64] The pork checkoff has similarly funded pro-pork knowledge, including studies intended to allay concerns about animal welfare, environmental degradation, and human nutrition.[65] Though these studies are frequently conducted at major research institutions, particularly land grant colleges where researchers are increasingly dependents upon industry grants, the knowledge they create should not be considered politically neutral. In drawing attention to the ways in which organized producers and the state have historically shaped the market for meat, cheese, bacon and ice cream, the associationalist framework forces us to reckon with the political dimensions of scientific research, as well as scientific pronouncements by the state.

Farmers' Beef Over Checkoffs

Despite the questions raised about scientific integrity, the most serious challenges to the checkoffs have not come from food policy critics, but from producers themselves. Numerous farmers have followed in the footsteps of the C.V. Floyd Fruit Company in challenging the constitutionality of the checkoff. In the 1990s and 2000s, separate challenges from pork, beef, and mushroom producers reached the Supreme Court. Opponents of the checkoff have argued that the program abridges their constitutional rights. But the specific nature of producers' rights infringement is

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[62] Beef Board, 1990 Annual Report.
[63] Idem.
[64] Beef Board, 1994 Annual Report, 10.
[65] Pork Council. "Checkoff Funded Research Grants." http://www.pork.org/pork-checkoff-research/pork-checkoff-funded-research-grants/.

impossible to disentangle from the fact that checkoff programs have been perceived to favor big farms and meat packers. For corporate-scale operations, the checkoff poses relatively less financial strain than it does on smaller operators, particularly during lean times.[66] And processors and retailers free ride on commodity demand stimulation that they did not pay for. "I believe the campaign subsidizes the people who sell beef," explained one Wyoming cattleman in 2004. "The producers sell cattle."[67]

Opponents voiced two major types of complaints: those centering on the distribution of program benefits, and those focused on administrative accountability. Recent controversy over the pork checkoff illustrates both sets of concerns. Declaring that "pork and pork products are basic foods that are a valuable and healthy part of the human diet," Congress passed the Pork Promotion, Research and Consumer Information Act as part of the 1985 Farm Bill. After more than 70% of producers voted their assent in a referendum, the Pork checkoff went into effect in 1987. As with other federal checkoffs, the Department of Agriculture did not directly oversee the program. Rather, the 40 cents per hundredweight checkoff funds are collected and administered by the National Pork Board (NPB)—a body bacon-wrapped in several other layers of the associational bureaucracy. The 15 members of the Pork Board are nominated by the Pork Act Delegate Body. The 155-member PADB is itself a product of private-public governance, as its membership is culled from nominations to the Secretary of Agriculture submitted by state pork associations, farm organizations, and individual hog producers. As if appointment to one of the various bodies governing the checkoff funds was not complicated enough, a National Pork Board Nominating Committee screens and interviews candidates for Pork Board seats and presents its report to the Delegating Body.[68] This layered nomination and appointment process engendered a sense that the Pork Council was an elite body, fortified by opaque procedures intended to keep it that way.

For smaller producers, changes in the pork industry in the 1990s exacerbated the sense that the checkoff not only excluded them from governance but put them out of

[66] The challenge to the beef board began in the late 1990s, when beef prices had fallen so low that many operators found it difficult to cover production costs. Ronald A. Parsons, Jr., "Cattle on a Thousand Hills: Reflections on the Beef Checkoff Litigation," *South Dakota Law Review 57* (2012), 431.
[67] "Supreme Court Hears Case on Constitutionality of Ad Program," *Chicago Tribune*, 9 December 2004.
[68] "Report of the National Pork Checkoff Nominating Committee." March 2014. http://porkcdn.s3.amazonaws.com/sites/all/files/documents/NomBook2.pdf

business. For the first twelve years of the pork checkoff's existence, the total number of hog operations fell by more than 244,000. At the same time, large packers like Smithfield Farms began to integrate vertically, overseeing operations from "squeal to meal" by raising their own hogs for slaughter. In 1998, amidst a surplus of swine, hog prices fell spectacularly, down to prices unseen since the mid-1960s— and the lowest ever when adjusted for inflation.[69] Engulfed by a sense of crisis, some farmers turned against the checkoff as representing both a useless expense and a gift to the large corporations that profited while hog producers went under. As the farmer's share of retail prices fell to new lows, the 45 cents per hundredweight assessment began to look like a transfer of wealth from farmers to pork processors and advertisers. "Since the checkoff has been mandatory, I've paid in nearly $5000," explained one Minnesota hog farmer in 1998. "What did I get for my money? The lowest hog prices ever and a drastically lower share of the retail dollar."[70]

Federal checkoff legislation includes a self-destruct provision, allowing farmers to vote on its termination and disburse unused funds.[71] If ten percent of producers sign a petition calling for a referendum, the Secretary of Agriculture can call a referendum permitting producers to terminate the program by a majority vote.[72] The Campaign for Family Farms, a coalition of farm groups from Minnesota, Missouri, Iowa, Illinois, Wisconsin, Indiana and Kentucky, collected 19,000 signatures from disgruntled farmers all over the country—enough persuade Secretary Dan Glickman to hold a referendum on the checkoff's continuation.

The Pork Council had already been keeping an eye on dissident farm groups as a way of safeguarding the checkoff program. Using nearly $50,000 in checkoff funds, the Pork Council hired a Washington-based PR firm to investigate the Campaign for Family Farms.[73] The "probe" by the PR firm—a company whose other prominent clients included the embattled RJ Reynolds and Phillip Morris—revealed a deep anxiety on the

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[69] Federal Reserve Bank of Minneapolis. "District Hog Prices Hit Historic Lows," *Fed Gazette*, January 1999. https://www.minneapolisfed.org/publications/fedgazette/district-hog-prices-hit-historic-lows

[70] "Activists Seek to End Corporate Gravy Train," *Nevada Daily Mail*, 16 April 1999, 11. For more on the internecine battles within the hog industry see Carolyn Johnson, *Raising a Stink: The Struggle Over Factory Hog Farms in Nebraska* (Lincoln: Bison Books, 2003).

[71] "Termination and Suspension of Orders." 7 U.S.C. § 4812(b)(1)(A).

[72] Ronald A. Parsons, Jr., "Cattle on a Thousand Hills: Reflections on the Beef Checkoff Litigation," *South Dakota Law Review 57 (*2012), 432-433.

[73] S. Carter, "Mongoven, Biscoe & Duchin: Destroying Tobacco Control Activism from the inside," *Tobacco Control* 11, no. 2 (June 2002): 112–18.

part of big hog producers.[74] "They see us as a threat because we've exposed their corporate agenda," explained hog farmer whose dissident group was subject to investigation.[75] It also vindicated the suspicion that the checkoff literally financed the corporate consolidation that was running smaller producers out of business. The September 2000 referendum was framed as a David and Goliath showdown by the checkoff's opponents, including country superstar and Farm Aid president Willie Nelson. "It looks like the system is determined to keep the small family farmer and all small business people down in this country," Nelson announced outside his tour bus in Iowa. Supporters, on the other hand, argued that all farmers—big and small—benefitted from the research and promotion funded by the checkoff, and that compulsion was necessary to prevent free riding.[76]

Despite fears that the decade-long hemorrhage of small farmers would tilt referendum participation toward industrial producers, the checkoff's foes were vindicated at the polls. Though the Pork Council spent some $4 million to defeat the referendum, hog farmers voted 15,951 to 14,396 to eliminate the program.[77] For a brief period of time, it seemed as though the pork checkoff was headed to slaughter. But the USDA under the Bush Administration, headed by Secretary of Agriculture Ann Veneman, seemed to confirm suspicions that it wasn't just the Pork Council that was out to get small farmers: it was the government as well, a fact underscored by the presence of a the Pork Council CEO on the Bush administration's transition team at the Department of Agriculture.[78] Veneman threw out the results of the referendum, pointing toward improprieties in the initial collection of petition signatures. Under Veneman, the USDA saw the checkoff as instrumental for achieving the policy aim of "market enhancement." The Pork Council, for its part, continued to insist that the checkoff represented farmer self-help despite the referendum's result.

When checkoffs have been challenged in the courts, state and federal governments have argued assiduously that the assessments represent a compelling state interest. In *Glickman v. Wileman Brothers & Elliot, Inc.*, the USDA strenuously

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[74] *Trust Us, We're Experts*, 128-130.
[75] "Groups Denounce Checkoff for Probe," *Southeast Missourian*, 15 February 1997, 9A.
[76] "Farm Advocate Willie Nelson Works to Bring an End to Pork Checkoff," *Wilmington* (NC) *Morning Star*, 13 May 2000.
[77] In some areas, the spread between "yes" and "no" votes was stark: 60% of farmers in Iowa, the most hog-producing state, voted against the checkoff.
[78] "Hog farmers criticize Veneman for not terminating checkoff," *High Plains Journal*, 1 January 2001.

defended the checkoff against a challenge from California plum and nectarine growers. A group of California fruit growers contended that the generic advertising paid for by their dollars amounted to "compelled speech," violating their First Amendment rights. California tree fruit was regulated by the 1937 Agricultural Marketing Agreement Act; this New Deal-era legislation has been central to supply management in American agriculture, enabling the Secretary of Agriculture to restrict the quantity of a commodity so as to maintain "orderly marketing conditions for agricultural commodities in interstate commerce" by calibrating supply to anticipated demand. Farmers argued that their assessments paid for advertisements for things they did not grow—an argument made memorably, if ineffectively, by the counsel for the growers. Driving home the point that the collectivism of checkoff promotion was unsuited to fruit whose multiple varieties possessed different virtues, the lawyer for the growers speculated that Justice Scalia would not buy green plums at the grocery store because "you don't want to give your wife diarrhea."[79]

The growers had been vindicated in the Ninth Circuit, and so the government, under the name of Secretary Glickman, appealed to the Supreme Court, arguing that the abolition of the checkoff would undermine the very essence of the collective economic principles that lay at the heart of US agriculture policy.[80] After a poor oral argument by respondent's counsel—one that resulted in a subsequent malpractice suit brought by the farmers—the Supreme Court ruled in favor of the government. Justice John Paul Stevens framed the issue of the compelled subsidy not as one of free speech, but as one of economic policy. Checkoffs were consistent with the collective marketing of agricultural products that had existed since the New Deal. "The basic policy decision that underlies the entire statute rests on an assumption that in the volatile markets for agricultural commodities the public will be best served by compelling cooperation among producers in making economic decisions that would be made independently in a free market," Stevens wrote for the narrow 5-4 majority. "It is illogical, therefore, to criticize any cooperative program authorized by this statute on the ground that competition would provide greater benefits than joint action."[81]

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[79] Timothy Russell Johnson and Jerry Goldman, *Good Quarrel: America's Top Legal Reporters Share Stories from the Supreme Court* (Ann Arbor: University of Michigan Press, 2009), 75.
[80] "Outcome could alter or end more than one hundred federal and state programs that used more than one billion dollars annually in fees for marketing programs." Ibid., 77.
[81] *Glickman v. Wileman Bros., & Elliott, Inc.*, 521 US 457 (1997).

The Court's affirmation of agricultural associationalism did not settle the issue for the dissident pork producers. Indeed, a challenge to a mushroom advertising scheme renewed opponents' hopes for the abolition of mandatory assessments. In 1999, the Sixth Circuit Court of Appeals ruled that the Mushroom Promotion Act of 1990 was unconstitutional. The Court's logic in *Glickman* rested on interpreting the checkoff as an extension of the marketing order which had long abrogated the individual rights of producers in order to raise farm income. But, as lawyers for United Foods, a Tennessee-based food processor, argued, the mushroom act was not part of any larger regulatory scheme—no federal marketing orders governed the production of mushrooms. The Sixth Circuit Court agreed, writing that compelled speech was justified only "in the context of extensive regulation."[82] In 2001 the USDA's appeal reached the Supreme Court. As was true in the Glickman case, attorneys general of numerous states joined together to submit an amicus brief on behalf of the government. Because states administer hundreds of analogous checkoff programs—many of which are unconnected to broader collectivized marketing schemes—they had a stake in the outcome of the Court's decision. The brief emphasized the extent to which checkoffs, while not part of a broader regulatory scheme, constituted a form of economic regulation in and of themselves. Indeed, in an era in which the state was attempting to divest itself of the most overt forms of market interventions—tariffs, quotas, price floors, direct subsidies—checkoffs were one of the remaining tools for stabilizing farm prices.[83] In its own brief, the USDA also emphasized the independent regulatory role played by checkoffs, and it also raised the issue of government speech, arguing that the passage of the Mushroom Act "may be appropriately viewed as establishing a program of government speech," thus blunting any First Amendment objection to the program. In oral argument, the justices chastised lawyers for the state for not raising the government speech argument at an earlier stage in the litigation, a point reiterated in the Court's opinion. In a 6-3 decision that did not address the government speech argument, the Supreme Court upheld the Sixth Circuit's ruling in *United Foods*, ruling the Mushroom

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[82] *United Foods Inc. v. USDA*, 197 F. 3d 221 (1999).
[83] BRIEF OF AMICI CURIAE STATES OF CALIFORNIA, COLORADO, DELAWARE, MICHIGAN, NEBRASKA, NEVADA, OHIO, PENNSYLVANIA, AND WASHINGTON IN SUPPORT OF PETITIONERS 2001 WL 76239 (U.S.) (Appellate Brief) United States Supreme Court Amicus Brief. UNITED STATES OF AMERICA and UNITED STATES DEPARTMENT OF AGRICULTURE, Petitioners, v. UNITED FOODS, INC., Respondent.

Act unconstitutional. In the absence of broader regulations, stand-alone checkoffs had to fall.

In the wake of *United Foods*, the pork checkoff's supporters and opponents sought clarity from the courts. *Michigan Pork Producers v. Campaign for Family Farms* was decided by a U.S. District Court in Michigan the following year, becoming a decisive victory for anti-checkoff activists. Judge Richard Enslen's decision began with Thomas Jefferson –"to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical"—and ended with the declaration that the Pork Act "is at the bottom unconstitutional and rotten." The decision in *Michigan Pork Producers* rested comfortably upon logic of the *United Foods* decision—that pork, like mushrooms, was "not subject to a collectivized marketing order" and therefore checkoffs were not part of a larger regulatory scheme. But Judge Enslen also used the opinion to issue a philosophical denunciation of collectivized advertising. Enslen was remarkably sensitive to producers' claims that generic commodity advertising—despite high returns to the industry as a whole—could have detrimental economic impacts on individual producers. If such producers "had control of their own advertising dollars, they might spend it in different ways…for example a campaign to sell family farm products and to discourage the consumption of mass produced pork." And they surely would not fund the "research" and "education" programs that "propagate the view that large commercial farming operations are humane." Indeed, Enslen seemed skeptical of the entire concept of generic advertising, noting that the campaign to sell pork as "the other white meat" discourages the sale of bacon and ham. Whether "considered on either philosophical, political or commercial grounds," checkoffs involve "a kind of outrage which Jefferson loathed." For Enslen, "the government has been made tyrannical by forcing men and women to pay for messages they detest."[84]

Conclusion: Saving Self-Help Through State Speech

Agriculture in the twentieth and twenty-first centuries has hardly been a Jeffersonian endeavor, as the very existence of checkoffs indicates. While anti-checkoff activists celebrated a string of legal victories and the satisfaction of reading media

[84] *Michigan Pork Producers v. Campaign for Family Farms*, 174 F. Supp . 2d 637 (W.D. Michigan, 2001).

denunciations of their foes, lawyers for the government were honing the "government speech" argument—a defense for checkoffs left open by the *United Foods* decision.[85] A case winding its way through the federal courts on the constitutionality of the beef checkoff tested the appeal of the state's argument. The Supreme Court heard the case of *Johanns v. Livestock Marketing Association* in late 2004. Like pork producers, cattlemen had spent the late 1990s battling chronically low prices that frequently did not cover the cost of production. Under economic strain, many chafed at paying an assessment for advertising when they were losing money on each head of cattle they sold. And, like hog raisers who wanted to differentiate their bacon from generic "white meat," American cattlemen resented the fact that imported beef was also advertised through generic beef promotion.[86] As was true in the case of pork, Secretary of Agriculture Veneman appeared unconcerned with petitions from producers calling for a referendum.[87]

The arguments presented to the Supreme Court were, in many ways, an extension of the conversation started by *United Foods*. The solicitor general arguing on behalf of the USDA emphasized the close connection between the Beef Board and the USDA to support the argument that "Beef: It's What's for Dinner" should be interpreted as government speech. The Beef Board is comprised of members nominated by the Secretary of Agriculture from a pool of names supplied by producers. To save the checkoff program, lawyers for the government were, in effect, drawing the submerged state to the surface. The Beef Board, for its part, did not conceive of itself as a government entity. Boosters repeatedly emphasized the checkoff as an example of producer-driven "self-help." And Annual Reports describe the 111-member Beef Board as comprised of cattlemen (and one or two women) "nominated by fellow producers in their respective states or regions."[88] For cattlemen, a rock-ribbed Republican bunch generally opposed to federal power, particularly on behalf of the environment, land management, labor, and product safety, the idea that the Beef Board was government

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[85] Mark Champoux, "Uncovering Coherence in Compelled Subsidy of Speech Doctrine: *Johanns v. Livestock Marketing Association*, 125 SC 2055 (2005), *Harvard Journal of Law and Public Policy* 29, No. 3 , 1107-1117; The *New York Times,* hardly a routine observer of farm news, published two opinion pieces denouncing the pork checkoff in the wake of the *Michigan Pork Producer's* case. "The Other Political Pork," 10 November 2002; "Unconstitutional Farm Checkoffs," 1 November 2003.
[86] Ronald A. Parsons, Jr., "Cattle on a Thousand Hills: Reflections on the Beef Checkoff Litigation," *South Dakota Law Review 57 (*2012), 432-433.
[87] Idem.
[88] Beef Board, 2003 Annual Report, 12.

was anathema. For example, the Beef Board's 2002 annual report—titled "Connecting Cattlemen to Consumers"— described the checkoff program in distinctly market-oriented terms. The checkoff "fulfills its charge by making connections: It connects beef product innovators with manufacturers, safety researchers with processors, beef nutritionists with health influencers."[89] The checkoff program was merely a conduit for information, a transducer for the "flow of market signals back to producers—in short, connecting cattlemen to consumers." There is no federal government in this narrative of cowboy capitalism. And yet, only by being called "government" could this market in information, influence, innovation, and, of course, beef, flow freely.

Johanns affirmed the beef checkoff as a tool for state policy, therefore not subject to First Amendment scrutiny. "The Message set out in the beef promotions is from beginning to end the message established by the Federal Government," Justice Antonin Scalia for the ideologically diverse 6-3 majority. Congress, through the promulgation of the Beef Act, and the Secretary of Agriculture "have set out the overarching message and some of its elements, and they have left the development of the remaining details to an entity whose members are answerable to the Secretary."[90] Ironically, saving the checkoff meant revealing the hand of government. By calling checkoff promotion "government speech," the ruling seemingly recast associationalism as the work of a strong state. And yet, to deem commodity research and promotion the work of government underscores the extent to which the state has helped producers shape consumer tastes. Unbeknownst to many, American agricultural policy has conscripted foreign populations, as well as Americans as vehicles for surplus disposal. Agricultural associationalism forces historians to reckon with the strength of producers and the guiding hand of the state in the global marketplace for food and fiber. With state compulsion, American producers have stocked not only supermarket shelves, but have also supplied the slogans and the science that give meaning to consumption.

[89] Beef Board, 2002 Annual Report, 3.
[90] *Johanns v. Livestock Marketing Association*, 544 US 550 (2005).