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NOTE

CHEESEBURGER KINGPINS: AMENDING COMMONSENSE CONSUMPTION ACTS AND VALIDATING FOOD ADDICTION AS A LEGAL CONCEPT

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Food is a powerful drug. Big companies have pumped meals full of addictive substances that keep people hooked on unhealthy foods at the expense of their health. Modern scientific research has demonstrated that hyper-palatable foods have the same neurological effects as other addictive substances. Given that unbridled consumption of food can have serious health effects, food addiction is a dangerous illness. Despite these deleterious impacts, the industry often evades robust regulation or liability. Instead, states have shielded Big Food from liability. Twenty-six states have passed statutes, called Commonsense Consumption Acts (CCAs), that bar the private regulation of Big Food through food-addiction tort and consumer protection lawsuits.

These statutes suffer from two main flaws. First, they are scientifically unfounded. They espouse untrue and harmful positions on food addiction's relationship with personal choice. Second, they inappropriately foreclose judicial consideration of food addiction. This limits plaintiffs' ability to seek redress for real harms and prevents judicial validation of food addiction. Most of the statutes hinder both tort and unfair and deceptive acts or practices claims alleging obesity-related harms, preventing the issue from being properly litigated. Food addiction should be given its day in court.

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CCAs should be amended to accord with modern science, track public sentiment, allow for plaintiffs to receive redress, and vitiate judicial consideration of food addiction.

INTRODUCTION

Sara Somers, a survivor of food addiction, once counseled that "there is a solution to the addiction of compulsively eating that is killing people."[1] Like many, Somers struggled with food addiction. Her life was plagued with, as she described, "sullenness, self-centeredness, self-pity at being fat, anger, blaming others, and an inability to stop bingeing once certain

1. Sara Somers, Saving Sara: A Memoir of Food Addiction, at xv (2020).

substances entered [her] system."[2] As with other substance-based addictions, food addiction left Somers feeling "helpless and powerless."[3] And yet, as so often happens, her addiction was met with resentment and "violence."[4] Although neuroscientists and psychologists validate food addiction as a disease,[5] many still consider it a "kind of defect of the will,"[6] not a medical condition. Food addicts are left rejected and discredited, without meaningful support to counter their addictions. But for Somers, food-addicted people do not lack "willpower."[7] Rather, they "exert tremendous will to overcome the prejudices that are heaped on them."[8]

The main prejudice, of course, is the erroneous assumption that food-addicted people can simply stop eating in great quantities.[9] Food, these critics decry, is not an addictive substance.[10] They surmise that the problem must be internal: Food-addicted people must be too lazy or too weak to get in shape. But neuroscience counsels the opposite. Scientific studies have validated the existence of food addiction.[11] For a startling example, when given the choice between drinking water laced with sugar or cocaine, most lab rats choose to abuse the sweets.[12] This jarringly simple fact reveals

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2. Id. at xi.

3. Id.

4. See id. (meaning intense vitriol and pushback).

5. See infra section II.A.

6. R. Jay Wallace, Addiction as Defect of the Will: Some Philosophical Reflections, 18 Law & Phil. 621, 621 (1999).

7. Somers, supra note 1, at xii.

8. Id.

9. See Lee J. Munger, Is Ronald McDonald the Next Joe Camel? Regulating Fast Food Advertisements that Target Children in Light of the American Overweight and Obesity Epidemic, 3 Conn. Pub. Int. L.J. 390, 410 (2004) ("Many believe the harm caused by eating fast food is indirect, remote, or caused by intervening circumstances, such as . . . poor personal and independent choices . . . ."). This perception is prevalent on the internet. Comments on popular social media websites reflect this troubling view. For example, the influencer Jesse Mulley, who has lost over two hundred pounds, maintains a video series called "Curls & Criticism" in which he responds to his detractors' comments while curling weights. See, e.g., Video Posted by Jesse Mulley (@progressive.overhaul), Instagram, Curls & Criticism: Part 6 (Nov. 10, 2024), https://www.instagram.com/reel/DCNEqzRtIiC/ (on file with the *Columbia Law Review*) (responding to a critic's charge that he shouldn't "act like loosing [sic] weight is something hard to do"). Many of those comments dismiss struggles with food addiction and weight loss. See, e.g., id.

10. See Bonnie Hershberger, Supersized America: Are Lawsuits the Right Remedy?, 4 J. Food L. & Pol'y 71, 90 (2008) ("Despite the multiple factors that can contribute to obesity, the public continues to believe that personal choice is more influential than unhealthy food offered by the food industry, so much so that a large majority of jurors deems lawsuits against fast-food companies to be bogus.").

11. See infra section II.A.

12. Magalie Lenoir, Fuschia Serre, Lauriane Cantin & Serge H. Ahmed, Intense Sweetness Surpasses Cocaine Reward, PLoS One, Aug. 1, 2007, at 1, 6, https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0000698&type=printable [https://perma.cc/VGH8-WCTH] ("[T]he discovery that intense sweetness takes precedence over cocaine, one of the most addictive and harmful substance currently known, suggests that highly sweetened beverages, such as those widely available in modern human

a growing conclusion in the scientific community: Food is an addictive substance.[13] Like drugs and alcohol, certain foods trigger the neural centers in the brain responsible for forming addictive behaviors.[14] Despite many scientific efforts to validate food addiction[15] and growing public acceptance,[16] the concept has yet to achieve legitimacy among policymakers.[17]

Concerningly, another set of actors is meticulously aware of the prevalence of food addiction—the food industry.[18] Food producers intentionally "pump[] edible and drinkable products full" of addictive additives like "sugar, caffeine, fat, sodium and carbs," employing the "same tactics" the tobacco industry used to hook the country on cigarettes.[19] Consumers across the United States become dependent on these "hyper-palatable" foods (HPFs), which contain calorically rich, unhealthy, and

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societies, may function as supernormal stimuli." (footnote omitted)); see also Denise Gellene, For Rats, Sweets Are the Drug of Choice, L.A. Times (Nov. 10, 2007), https://www.latimes.com/archives/la-xpm-2007-nov-10-sci-sweet10-story.html [https://perma.cc/52MT-ATEA] ("Researchers have learned that rats overwhelmingly prefer water sweetened with saccharin to cocaine, a finding that demonstrates the addictive potential of sweets."); Marta Zaraska, Food Can Be Literally Addictive, New Evidence Suggests, Sci. Am. (Sep. 11, 2023), https://www.scientificamerican.com/article/food-can-be-literally-addictive-new-evidence-suggests/ [https://perma.cc/P7K5-8X7P] ("Given the option, most rats will choose sugar instead of cocaine. Their lust for the carbohydrate is so intense that they will go as far as to self-administer electric shocks in their desperation to consume sugar. Rats aren't alone in this drive. Humans, it seems, do something similar.").

13. See Michael Moss, Hooked: Food, Free Will, and How the Food Giants Exploit Our Addictions 20–22 (2021) [hereinafter Moss, Hooked] (describing the Yale Food Addiction Scale, which measures the addictiveness of food).

14. See Nora D. Volkow, Gene-Jack Wang, Dardo Tomasi & Ruben D. Baler, The Addictive Dimensionality of Obesity, 73 Biological Psychiatry 811, 812 (2013) ("[R]esults strongly suggest the possibility that food and drugs may be competing for overlapping reward mechanisms.").

15. See, e.g., Jose Manuel Lerma-Cabrera, Francisca Carvajal & Patricia Lopez-Legarrea, Food Addiction as a New Piece of the Obesity Framework, Nutrition J., Jan. 2016, at 1, 3 (identifying food addiction as a causal factor for a multitude of adverse health conditions).

16. See Helen K. Ruddock & Charlotte A. Hardman, Food Addiction Beliefs Amongst the Lay Public: What Are the Consequences for Eating Behaviour?, 4 Current Addiction Reps. 110, 111 (2017) (outlining recent empirical studies indicating growing public belief in the existence of food addiction); see also Moss, Hooked, supra note 13, at 133 (describing the growing acceptance of the existence of food addiction among the public).

17. See, e.g., Personal Responsibility in Food Consumption Act of 2005, H.R. 554, 109th Cong. § 2(a) ("Congress finds that . . . fostering a culture of acceptance of personal responsibility is one of the most important ways to promote a healthier society . . . .").

18. See Mary Whitfill Roeloffs, Did Tobacco Companies Also Get Us Hooked on Junk Food? New Research Says Yes, Forbes (Sep. 8, 2023), https://www.forbes.com/sites/maryroeloffs/2023/09/08/did-tobacco-companies-also-get-us-hooked-on-junk-food-new-research-says-yes/ (on file with the *Columbia Law Review*) (describing the intentional choice of putting addictive ingredients in mass-produced foods).

19. Id.

addictive substances, driving up the profits for producers.[20] And given the lack of any meaningful regulation of HPFs, consumers are left to fend for themselves.[21]

Private law presents a potential alternative to redress this issue. Tort litigation has proven to be a viable tool for advancing the interests of consumers against large corporations peddling harmful products.[22] In recent years, the tobacco[23] and opioid[24] industries have settled lawsuits with multiple plaintiffs over the harms of their dangerously addictive goods. Persistent plaintiffs forced these industries to shift their practices, benefiting the health of consumers.[25] And media coverage of these massive lawsuits spurred widespread conversations about addiction.[26] The judiciary's constant reaffirmation of addiction in mass tort cases has legitimized it as a palatable legal concept.[27]

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20. Id. HPFs are food products that have high concentrations and "combinations of fat, sugar, sodium, and carbohydrates that are designed to maximize palatability and consumption." Tera L. Fazzino, Kaitlyn Rohde & Debra K. Sullivan, Hyper-Palatable Foods: Development of a Quantitative Definition and Application to the US Food System Database, 27 Obesity 1761, 1761–62 (2019). The "food industry has well-established food formulas" utilizing these ingredients to create exceedingly enticing foods. Id.

21. See Roeloffs, supra note 18 ("Despite growing evidence that such foods are harmful, there are no federal regulations in the United States regarding foods that are hyper-palatable.").

22. See Richard J. Pierce, Jr., Encouraging Safety: The Limits of Tort Law and Government Regulation, 33 Vand. L. Rev. 1281, 1282 (1980) ("Through tort law and safety regulation, the legal system places implicit values on human life in varying contexts and translates those values into either commands or inducements to reduce accident costs.").

23. Press Release, DOJ, Court Issues Order Requiring Cigarette Companies to Post Corrective Statements; Resolves Historic RICO Tobacco Litigation (Dec. 6, 2022), https://www.justice.gov/archives/opa/pr/court-issues-order-requiring-cigarette-companies-post-corrective-statements-resolves-historic [https://perma.cc/F3DF-H3YH].

24. Opioids, Nat'l Ass'n Att'ys Gen., https://www.naag.org/issues/opioids/ [https://perma.cc/3B7R-F9ZN] (last visited Oct. 6, 2025).

25. See, e.g., Walter J. Jones & Gerard A. Silvestri, The Master Settlement Agreement and Its Impact on Tobacco Use 10 Years Later, 137 Chest 692, 692 (2010) (discussing the decrease in tobacco use after the settlement of a class action lawsuit brought by state attorneys general against the tobacco industry).

26. For an example of media coverage on massive lawsuits that discuss the danger of addiction, see Who Is Really Benefiting From the Tobacco Settlement Money?, Am. Lung Ass'n: Each Breath (Feb. 2, 2016), https://www.lung.org/blog/who-benefit-tobacco-settlement [https://perma.cc/3YVE-BRCN] ("[T]here was a time when the tobacco industry even more openly and brazenly marketed tobacco products to our kids. It was then and continues today to be their business plan: they hook kids young, which can lead to a lifetime of addiction and tobacco industry profits.").

27. The Supreme Court recently recognized the validity of addiction as a legal concept. See Harrington v. Purdue Pharma L.P., 144 S. Ct. 2071, 2078 (2024) ("Because of the *addictive quality* of opioids, doctors had traditionally reserved their use for cancer patients . . . ." (emphasis added)). Producers of addictive products have recognized that judges consider addiction as a harm in mass tort cases, which has encouraged settlements. Christina Jewett & Julie Creswell, Juul Reaches $462 Million Settlement With New York, California and Other States, N.Y. Times (Apr. 12, 2023), https://www.nytimes.com/2023/04/12/health/juul-vaping-settlement-new-york-

In its most extreme form, food addiction can cause severe obesity, which is comorbid with a plethora of other health impacts.[28] Given the judicial and scientific validations of addiction litigation and coercive food practices,[29] food addiction seems, at first blush, a viable basis for tort litigation. Due to strong food industry lobbying and reactionary legislatures, however, a majority of states prohibit any sort of tort litigation alleging obesity-related harms against food providers.[30] They do this through misguided statutes, known as Commonsense Consumption Acts (CCAs), which were passed beginning in the early 2000s as a response to seemingly frivolous obesity-related tort litigation.[31] The statutes closed off judicial consideration of any obesity-related tort and, in some cases, explicitly denied that food addiction could be a scientific and legal concept.[32] Furthermore, they raised the burdens of proof for nontort claims, making any recovery for food addiction harms essentially impossible.[33] This foreclosure was premature. The statutes were passed before knowledge of food addiction became common among the scientific community or the American public.[34] Modern science undermines the

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california.html (on file with the *Columbia Law Review*) ("[Juul's settlement] follows other[s] . . . that took Juul to task for failing to warn young users that the high levels of nicotine in their e-cigarettes would prove addictive.").

28. See Lerma-Cabrera et al., supra note 15, at 3 (finding that food addiction has a high correlation "with binge eating disorder, compulsive-overeating, [and] bulimia nervosa," which in turn are all highly correlated with obesity).

29. The Supreme Court has even come close to acknowledging the addictive quality of food in a nontort context. In 2001, the Supreme Court admitted that the food industry, similarly to the tobacco industry, hooks its consumer base on harmful products. Though Justice Clarence Thomas stopped short of asserting that food is "addictive in the same way tobacco is," he acknowledged that "exposure to fast food advertising can have deleterious consequences that are difficult to reverse." Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 588 (2001) (Thomas, J., concurring in part and concurring in the judgment).

30. The National Restaurant Association spearheaded this initiative. See Cara L. Wilking & Richard A. Daynard, Beyond Cheeseburgers: The Impact of Commonsense Consumption Acts on Future Obesity-Related Lawsuits, 68 Food & Drug L.J. 229, 229 (2013) ("The National Restaurant Association . . . took a leadership role and mounted federal and state campaigns to enact 'tort reform' legislation immunizing the food industry from tobacco-like lawsuits.").

31. See id. (discussing food providers' lobbying efforts after early obesity-related tort litigation).

32. See, e.g., Colo. Rev. Stat. § 13-21-1102 (2025) (claiming that obesity is a matter of choice).

33. See infra section I.C.2.

34. According to Dr. Adrian Meule, "[i]n recent years, the concept of food addiction has become increasingly popular" with the American public. Adrian Meule, Back by Popular Demand: A Narrative Review on the History of Food Addiction Research, 88 Yale J. Biology & Med. 295, 295 (2015). His analysis of the scientific community's acceptance of food addiction is more nuanced. Meule argues that the scientific concept of food addiction has been around since the 1950s or earlier. Id. But Meule also concedes that "[a]lthough food addiction has been discussed in the scientific community for decades, it remains a highly controversial and heavily debated topic." Id. at 300. He also indicates that the recent validation "is reflected not only in a high number of media reports and lay literature, but

justifications for CCAs, directly contradicting the legislatures that invalidated food addiction as a legal concept. In light of these changed circumstances, state legislatures should reevaluate the viability of CCAs.

This Note argues that CCAs should be amended to recognize food addiction as a legal concept. Part I will address the history of addiction litigation, including the ill-fated attempts at pleading obesity-related torts and the subsequent barrage of CCA enactments. Part II will identify the two main issues with CCAs: their failure to accord with modern behavioral science and their premature foreclosure of judicial consideration of obesity and food addiction. Part III will advocate for the amendment of CCAs to legally validate food addiction and to open the courthouse doors to the possible adjudication of obesity litigation.

I. LEGAL AND HISTORICAL BACKGROUND OF FOOD ADDICTION

The law struggles to accommodate addiction. The disease's widespread, harmful impacts[35] and complex interaction with personal responsibility make it a difficult pill for the American legal system to swallow. This Part assesses legal frameworks for addiction. First, it tackles addiction's interaction with personal responsibility. It then evaluates the role of addiction in tort law, illustrating those principles with examples from tobacco and opioid litigation. After setting this groundwork, this Part explores past obesity-related tort litigation and its fallout, including the enactment of flawed CCAs.

A. *Addiction and Personal Responsibility*

Free will and personal choice are required for the assignment of legal liability.[36] The law presumes "a free agent confronted with a choice between doing right and wrong, and choosing freely to do wrong."[37] Tort law specifically presumes that actors should be held liable for the harms caused by their autonomous choices, whether those harms are intentional

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also in [the] substantial increase in the number of scientific publications." Id. at 295 (footnotes omitted). Therefore, though the concept may have existed before the modern era, it is only now being given popular legitimacy by the scientific community. See infra section II.A.

35. Addiction is harmful on a biological, social, and economic level. See Adam Felman, What Are the Complications of Addiction?, Med. News Today (Oct. 26, 2018), https://www.medicalnewstoday.com/articles/323461 [https://perma.cc/5QUH-KE6W] ("[Addiction] can lead to a range of adverse psychological, physiological, and personal effects.").

36. See Adam J. Kolber, Free Will as a Matter of Law, *in* Philosophical Foundations of Law and Neuroscience 9, 27–28 (Dennis Patterson & Michael S. Pardo eds., 2016) (describing free will as "a matter of law" with great "centrality" to the American legal regime).

37. United States v. Lyons, 739 F.2d 994, 995 (5th Cir. 1984) (Rubin, J., dissenting) (internal quotation marks omitted) (quoting Morissette v. United States, 342 U.S. 246, 250 n.4 (1952)).

or accidental.[38] The law's prioritization of free choice tracks the age-old philosophical tenet that autonomy is required to assign responsibility[39] for one's actions.[40] The logic is intuitive: Blame should only be assigned if the offender "could have done otherwise."[41] If the offender could not avoid their harmful conduct, then the assignment of blame would not track fundamental conceptions of fairness.[42]

Addiction poses a difficult challenge to traditional understandings of free will and responsibility. Philosophers argue that "addiction [is] a kind of defect of the will."[43] But because addicted persons lack control over their compulsive behavior, it is unclear that they have the capacity to choose otherwise.[44] In affected persons, the "craving" for the addictive material "is an irresistible urge."[45] If the urge to abuse an addictive substance is irresistible, then the addicted individual could not have possibly "done otherwise."[46] Therefore, the overwhelming compulsions of addiction undermine the traditional formulation of free will. Still, critics insist that the person is simply not resilient enough to overcome this tantalizing stimulus.[47] Through such a lens, the locus of responsibility is still, to some extent, placed on addicted people. They are "defective"

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38. See David G. Owen, Expectations in Tort, 43 Ariz. St. L.J. 1287, 1297–98 (2011) ("Autonomy entails the notion that people may—indeed, must—make choices based upon expected outcomes, and then act upon those choices.").

39. Responsibility, as used here, is meant to encompass both civil liability and criminal guilt.

40. See Matthew Talbert, Moral Responsibility, Stan. Encyc. Phil. (Oct. 16, 2019), https://plato.stanford.edu/entries/moral-responsibility/ [https://perma.cc/BB8U-LX2P] (last updated June 3, 2024) ("A largely unquestioned assumption was that free will is required for moral responsibility . . . ."); see also Immanuel Kant, Groundwork of the Metaphysics of Morals 63 (Lawrence Pasternack ed., Routledge 2002) (1785) ("Autonomy is therefore the ground of the dignity of human nature and of every rational nature." (emphasis omitted)).

41. Talbert, supra note 40 (emphasis omitted).

42. See Carlos J. Moya, Moral Responsibility: The Ways of Scepticism 1 (2006) ("We assume that . . . conditions for moral responsibility . . . are actually met by human beings. If we come to think that, at some particular occasion, they are not, we naturally soften or even withdraw our judgement."). This is, of course, a lofty ideal—the legal system punishes people for conduct beyond their control frequently. See, e.g., People v. Eckert, 138 N.E.2d 794, 796 (N.Y. 1956) ("Tersely stated, the indictment in this case accuses the defendant of having caused the death of one Dorothy Ann Sager as a result of having lost control of an automobile he was operating when he lost consciousness during an epileptic seizure . . . ."), abrogated by People v. Jennings, 504 N.E.2d 1079 (N.Y. 1986).

43. Wallace, supra note 6, at 621.

44. See Gary Watson, Excusing Addiction, 18 Law & Phil. 589, 591 (1999) (stating that it is a common presumption that "addictions involve *compulsion*").

45. James A. Halikas, Kenneth L. Kuhn, Ross Crosby, Gregory Carlson & Frederick Crea, The Measurement of Craving in Cocaine Patients Using the Minnesota Cocaine Craving Scale, 32 Comprehensive Psychiatry 22, 22 (1991).

46. Talbert, supra note 40 (emphasis omitted).

47. See Wallace, supra note 6, at 621 (proposing that the defect is internal to the will of the addicted person).

because of their inability to resist the irresistible. By pinning the blame on addicted persons, this narrative of defect presumes their personal responsibility for their disease and exposes them to significant prejudice.

Modern advances in neuropsychology have buttressed the understanding of addiction as a disease beyond the autonomous control of the individual.[48] Neuroscientists have discovered the neural networks that constitute "the brain's common pathways of addiction."[49] Addiction can be broken down into three physical stages, each involving different networks in the brain: binge, withdrawal, and craving/anticipation.[50] In the binge stage, the addictive substance triggers the individual's reward systems, which "produce[s] feelings of pleasure."[51] After coming down from the intoxication, the individual experiences withdrawal, which includes "negative emotions and, sometimes, symptoms of physical illness."[52] Withdrawal triggers the brain's stress system and correspondingly decreases the "activity of the dopamine system" that gave the initial pleasure reward.[53] These neurological reactions occur whether the stimulant is a drug or a "natural reinforcer[] such as *food*."[54] In response to the withdrawal, the individual develops a strong craving, during which they are "preoccupied with using substances again."[55] Craving is accompanied by anticipation of further use of the substance, which eventually becomes its own dopaminergic reward.[56]

The decision to give in to a craving is governed by the prefrontal cortex, the brain structure responsible for "executive function," or "the ability to . . . make decisions[] and regulate one's own actions, emotions, and impulses."[57] The prefrontal cortex's ability to inhibit cravings is diminished by "increased activity of stress circuitry."[58] Over time, the

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48. See Richard J. Bonnie, Addiction and Responsibility, 68 Soc. Rsch. 813, 813 (2001) ("Remarkable scientific achievements over the past 25 years—especially in the last decade—have significantly advanced our understanding of addiction in a variety of respects.").

49. Id. The neuroscience involved in addiction is decidedly complex. A cursory explanation is offered here.

50. HHS, Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health 2-6 to -8 (2016), https://www.hhs.gov/sites/default/files/facing-addiction-in-america-surgeon-generals-report.pdf [https://perma.cc/LWC3-4G2J] [hereinafter HHS, Addiction in America].

51. Id. at 2-8 to -9 (explaining that the "dopamine and opioid signaling system" within the brain's basal ganglia sends neurotransmitters that give the individual a pleasure reward).

52. Id. at 2-12.

53. Id. at 2-13.

54. Id. (emphasis added).

55. Id. at 2-15.

56. See Stephen M. Stahl, Stahl's Essential Psychopharmacology: Neuroscientific Basis and Practical Applications 544 (5th ed. 2021) ("Once addicted, the brain is no longer rewarded principally by the drug itself, but as well by *anticipation* of the drug and its reward.").

57. HHS, Addiction in America, supra note 50, at 2-16.

58. Id. at 2-17.

individual loses the ability to exert executive control over their cravings.[59] Addictive behavior becomes a "compuls[ion]," which is the "performance of repetitive and dysfunctionally impairing behavior that has no adaptive function."[60] These compulsions are undertaken habitually and thoughtlessly as a response to the anticipation of the addictive substance.[61] Once addictive behavior becomes compulsive, it is an inexorable habit, "not any longer being simply naughty or giving in to temptation."[62] At this stage, addiction becomes a "chronic disease" that neurologically undermines the addicted individual's capacity to exert their free will over their actions.[63] Mental health professionals have ratified this understanding by classifying substance abuse and addiction disorders as their own category of mental diseases in the *Diagnostic and Statistical Manual of Mental Disorders*.[64]

The upshot is simple: Addiction is incompatible with the traditional understanding of individual free will. The addicted individual does not possess the same ability to choose freely as an unencumbered person. Addictive substances rewire the individual's brain, robbing them of their neurological capacity to say "no" to the addictive substance. Pinning the locus of responsibility for addictive behavior on the individual, as many philosophers and critics do,[65] is misguided. This poses significant issues for a legal system that rests on a powerful presumption of free choice in its governing structures.

B. *Addiction in Tort and Consumer Protection Law*

In recent decades, individuals harmed by addiction have looked to tort law for redress.[66] The law struggles with how to handle addiction and personal responsibility.[67] On one hand, federal law defines an addict as

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59. See Stahl, supra note 56, at 539 (explaining that addiction "can be viewed as *conditioned responses* to the *conditioned stimuli* of . . . having craving and withdrawal").

60. Id. at 538 (emphasis omitted).

61. Id.

62. Id. at 544.

63. Bonnie, supra note 48, at 814; see also Stahl, supra note 56, at 544 ("Addiction is a horrible disease.").

64. Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 545 (5th ed., text rev. 2022) [hereinafter DSM-5-TR]. The *DSM-5-TR* is the most updated version of the American Psychiatric Association's "guide in the diagnosis of mental disorders." Id. at 5.

65. See, e.g., Ayn Rand, The Comprachicos, *in* The New Left: The Anti-Industrial Revolution 152, 202 (1971) (arguing that all people have the "deep-down knowledge that drug addiction is nothing but a public confession of personal impotence").

66. See Nora Freeman Engstrom & Robert L. Rabin, Pursuing Public Health Through Litigation: Lessons From Tobacco and Opioids, 73 Stan. L. Rev. 285, 289 (2021) (describing the uptick of addiction litigation since the 1950s).

67. See Michael Louis Corrado, Addiction and Responsibility: An Introduction, 18 Law & Phil. 579, 579 (1999) ("The law appears to be inconsistent in its treatment of addicts.

"any individual who . . . is so far addicted . . . as to have lost the power of self-control with reference to his addiction."[68] On the other hand, the law is sometimes skeptical of addiction's undermining effect on free will.[69] This tension in the law touches the entire legal system, as free will is a requisite for assigning responsibility.[70] Tort law, however, has cautiously embraced addiction by allowing plaintiffs to recover in some addiction lawsuits.[71] This section seeks to explain the doctrinal role of addiction in tort law and expands on the theory underlying the tobacco and opioid litigation.

The tension between addiction and free will has become increasingly prevalent in tort law. One might think that addiction could plausibly be construed as an actionable harm. The Restatement of Torts conceptualizes harm in a direct and corporal manner.[72] Plaintiffs asserting bodily harm "usually provide[] objective evidence of its existence and extent," which courts look to in order to determine whether the claim can be remedied.[73] The classic examples of tortious bodily harms include "physical injury, illness, disease, impairment of bodily function, and death."[74] Addiction is a disease[75] that manifests with objective evidence[76] and can certainly cause death or impairment of bodily function.[77] If addiction were classified as a

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It sometimes treats them as if they are responsible for what they do, and sometimes as if they are not responsible for what they do.").

68. 21 U.S.C. § 802(1) (2018) (defining "addict" in the context of narcotic drug use).

69. See, e.g., Powell v. Texas, 392 U.S. 514, 525 (1968) (plurality opinion) ("[T]here is serious question whether the record can be read to support a finding of either loss of control or inability to abstain."); see also Norman S. Miller & Sara Spratt, Addictions and the Law, *in* Principles of Addictions and the Law: Applications in Forensic, Mental Health, and Medical Practice 17, 31–32 (Norman S. Miller ed., 2010) ("In general, the law views alcohol and drug addiction as an illness in an individual who bears responsibility for its consequences, including punishment and therapeutic treatments. The individual is not completely guilty or absolved from criminal or civil responsibilities because of addictive disease.").

70. See supra notes 36–48 and accompanying text.

71. See infra section I.B.1.

72. See Restatement (Third) of Torts: Physical & Emotional Harm § 4 (Am. L. Inst. 2010) (defining physical harm as "the physical impairment of the human body . . . includ[ing] physical injury, illness, disease, impairment of bodily function, and death").

73. Id. § 4 cmt. b.

74. Id. § 4.

75. See Bonnie, supra note 48, at 814 (describing addiction as a "chronic disease").

76. See DSM-5-TR, supra note 64, at 546–48 (providing the diagnostic benchmarks for substance use disorder).

77. See, e.g., Harms of Cigarette Smoking and Health Benefits of Quitting, Nat'l Cancer Inst., https://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cessation-fact-sheet [https://perma.cc/AY5Y-FVYR] (last updated Dec. 19, 2017) ("Cigarette smoking and exposure to tobacco smoke cause about 480,000 premature deaths each year in the United States. Of those premature deaths, about 36% are from cancer, 39% are from heart disease and stroke, and 24% are from lung disease." (footnote omitted) (citing HHS, The Health Consequences of Smoking—50 Years of Progress (Jonathan M. Samet, Terry F. Pechacek, Leslie A. Norman & Peter L. Taylor eds., 2014),

legally cognizable physical harm, then individuals would be able to sue those responsible for causing their addiction—namely, the large industries that market addictive substances.[78]

Yet, despite the fact that addiction arguably meets the Restatement's criteria, tort law does not consider addiction *itself* a bodily harm.[79] This is, in part, because of the traditional conception that "addiction [is] a kind of defect of the will."[80] If an individual voluntarily uses a product, then their addiction tort claim may be muddled with legal questions of "assumption of risk, contributory (and . . . comparative) negligence, general and specific causation, and damages."[81] Tort law is skeptical of providing recourse for a "harmful state to which one has willingly exposed oneself."[82] Since American law carries a default of personal choice, tort doctrine does not consider addiction as a harm in its own right.[83]

Instead, courts treat "addiction as a harm only for purposes of warning obligations."[84] Tort law affords remedies when a company designs a product that is "defective because . . . the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor."[85] Plaintiffs have utilized these failure-to-warn claims to sue big industries

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https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf [https://perma.cc/8T2X-Z7LK])).

78. See Gregory Keating, Accountability and Addictive Wrongs, Torts, Jotwell (Oct. 26, 2021), https://torts.jotwell.com/accountability-and-addictive-wrongs/ [https://perma.cc/YP7C-ZA4S] ("But addiction . . . is also an impairment of agency . . . . It robs people of their normal power of control over what they consume; it defeats the normal capacity to avoid using products that you know to be dangerous to your health. It is a harm, and a devastating one.").

79. See id. (explaining that tort law "does not count becoming addicted as a harm in itself"). Note that tort doctrine is not without its detractors on this score. Many scholars continue to assert that addiction is a physical, as opposed to purely mental, illness. See, e.g., Michael Lyvers, Drug Addiction as a Physical Disease: The Role of Physical Dependence and Other Chronic Drug-Induced Neurophysiological Changes in Compulsive Drug Self-Administration, 6 Experimental & Clinical Psychopharmacology 107, 107 (1998).

80. See Wallace, supra note 6, at 621 (restating the traditional view that addiction is a failure of willpower, not an uncontrollable impulse).

81. See Engstrom & Rabin, supra note 66, at 297. A recent attempt by a plaintiff to establish food addiction in a tort action was dismissed because of a failure to "plead more than the mere possibility of causation." See Martinez v. Kraft Heinz Co., No. 25-377, 2025 WL 2447793, at *2 (E.D. Pa. Aug. 25, 2025) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007)).

82. Avihay Dorfman, Assumption of Risk, After All, 15 Theoretical Inquiries L. 293, 293 (2014).

83. See, e.g., Engstrom & Rabin, supra note 66, at 298 n.59 ("At trial, the tobacco companies leaned heavily on an assumed-risk defense (essentially, 'you knew that smoking could cause cancer') . . . .").

84. See Keating, supra note 78 ("Tort doctrine . . . does not count becoming addicted as a harm in itself.").

85. Restatement (Third) of Torts: Prods. Liab. § 2(c) (Am. L. Inst. 1998).

that market addictive products and have sometimes been successful.[86] Plaintiffs can argue that the defendant company's failure to warn of its harmfully addictive product rendered it tortiously defective. Addiction, according to plaintiffs, is a risk that manufacturers should have warned their consumers about.[87] That risk harms plaintiffs in the form of serious bodily injury or illness.[88] Seizing on this strategy, plaintiffs pursuing addiction claims against tobacco and opioid companies have created a roadmap that could be utilized for food-addiction torts.

Addiction also plays a role in another form of consumer protection litigation: unfair and deceptive acts and practices (UDAP) lawsuits. UDAP statutes "prohibit deceptive practices in consumer transactions and, in many states, also prohibit unfair or unconscionable practices."[89] Plaintiffs with addiction-related harms will often plead that the product manufacturers "have a statutory duty to refrain from fraudulent, unfair, and deceptive acts or trade practices in the design, development, manufacture, promotion and sale of" addictive products.[90] The relevant legal considerations differ according to the UDAP statute at issue.[91] And though UDAP claims are freestanding statutory causes of action, their similarity to common law doctrines makes them "relatively common companions" to tort claims.[92] Like closely related tort doctrines, UDAP statutes provide addiction-afflicted plaintiffs another route to redress.

The survey of addiction litigation that follows is not comprehensive. Rather, it is intended to demonstrate the role that addiction plays in tort and consumer protection claims. And perhaps more crucially, it is meant to show the judiciary's growing acceptance of addiction as a relevant legal consideration or concept.

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86. See infra sections I.B.1–2.

87. See Restatement (Third) of Torts: Prods. Liab. § 2(c); see also Castano v. Am. Tobacco Co., 84 F.3d 734, 737 (5th Cir. 1996) (pleading a failure-to-warn tort in tobacco litigation).

88. See Restatement (Third) of Torts: Physical & Emotional Harm § 4 (Am. L. Inst. 2010) (defining physical harm as "the physical impairment of the human body . . . includ[ing] physical injury, illness, disease, impairment of bodily function, and death").

89. Carolyn L. Carter, Nat'l Consumer L. Ctr., Consumer Protection in the States: A 50-State Report on Unfair and Deceptive Acts and Practices Statutes 1 (2009), https://www.nclc.org/wp-content/uploads/2022/08/report_50_states.pdf [https://perma.cc/REV8-9Q3A].

90. First Amended Complaint at 46, 455, Martinez v. Kraft Heinz Co., Inc., No. 25-377 (E.D. Pa. Sep. 22, 2025) (on file with the *Columbia Law Review*) (emphasizing that the addictive products at issue were "hyper-palatable food[s]").

91. See Carter, supra note 89, at 1 (providing a brief summary of the different UDAP statutes across each of the fifty states).

92. James Cooper & Joanna Shepherd, State Unfair and Deceptive Trade Practices Laws: An Economic and Empirical Analysis, 81 Antitrust L.J. 947, 966 (2017).

1. *Tobacco Litigation.* — Cigarette smokers sued Big Tobacco under addiction tort doctrine.[93] *Castano v. American Tobacco Co.*, one of the early tobacco litigation challenges, "broke sharply with prior cases. Whereas prior cases had sought compensatory and sometimes punitive damages for smokers' personal injuries or wrongful deaths, *Castano* focused, instead, on *addiction*."[94] *Castano*'s watershed gambit convinced the district court of the legitimacy of the addiction claims, and the plaintiffs succeeded in certifying their class.[95] Using addiction, rather than death or injury, as the risk in a failure-to-warn claim "expanded the size of the class and permitted the plaintiffs to dodge tricky questions concerning general and specific causation."[96] But the *Castano* litigation was short-lived.[97] It was quickly overshadowed by a litany of lawsuits in which states sued Big Tobacco, alleging public harms.[98] The public litigation culminated in the Master Settlement Agreement (MSA), in which Big Tobacco agreed to shell out $206 billion toward outstanding healthcare reimbursement claims.[99]

In the wake of the MSA, individual addiction litigation returned.[100] The results have been mixed, with about half the cases ending in plaintiff victories and half resolving in favor of the tobacco companies.[101] But courts are increasingly willing to validate addiction as a theory of risk underlying tort claims.[102] In 2006, the Florida Supreme Court vacated a $750,000 trial verdict for an individual plaintiff but, importantly, held that the addiction theory in nicotine litigation "w[ould] have res judicata effect" in

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93. See, e.g., Castano v. Am. Tobacco Co., 84 F.3d 734, 737 (5th Cir. 1996) ("The gravamen of their complaint is the novel and wholly untested theory that the defendants fraudulently failed to inform consumers that nicotine is addictive and manipulated the level of nicotine in cigarettes to sustain their addictive nature."). Big Tobacco refers to the large tobacco companies that "are the force behind the tobacco epidemic that currently kills more than 8 million people every year." What Is 'Big Tobacco'?, STOP (Feb. 13, 2025), https://exposetobacco.org/news/who-is-big-tobacco/ [https://perma.cc/M9XN-Q9EQ].

94. Engstrom & Rabin, supra note 66, at 300 (citing *Castano*, 84 F.3d at 737).

95. Castano v. Am. Tobacco Co., 160 F.R.D. 544, 560 (E.D. La. 1995), rev'd, 84 F.3d 734.

96. Engstrom & Rabin, supra note 66, at 301.

97. The Fifth Circuit determined that the district court's certification was incorrect, as the "predominance inquiry, or lack of it, squarely presents the problems associated with certification of immature torts." *Castano*, 84 F.3d at 749.

98. See Engstrom & Rabin, supra note 66, at 303 (describing the argument made first by Mississippi, and then by several other states, that the industry's conduct constituted a harm against not just those who actually smoked but also the general public).

99. Id. at 305.

100. See id. at 306 (discussing the revival of pre-*Castano* individualized addiction litigation).

101. See Robert L. Rabin, Tobacco Control Strategies: Past Efficacy and Future Promise, 41 Loy. L.A. L. Rev. 1721, 1741–42 (2008) ("The scorecard, in the immediately ensuing years, was mixed: a handful of trial court victories (invariably subjected to long appeals) and a roughly equal number of defeats.").

102. See Engstrom & Rabin, supra note 66, at 307 ("Plaintiffs surely fare better than they did in the first forty years of tobacco litigation . . . .").

subsequent tort suits.[103] Despite mixed results, courts have *validated* addiction as a relevant legal consideration in tort law.[104]

2. *Opioid Litigation.* — The opioid epidemic presented the next wave of addiction torts. In 1995, the FDA approved Purdue Pharma's new drug, OxyContin.[105] OxyContin "contained a novel time-release mechanism," which enabled one pill to "slowly and continuously release its oxycodone over time," allowing Purdue to load an individual pill with a much larger dose of narcotics.[106] Purdue Pharma misleadingly claimed that this mechanism made "OxyContin . . . less prone to abuse and addiction than other prescription opioids," a falsity it emphasized in its marketing.[107] Subsequently, OxyContin became Purdue Pharma's most successful product, accounting for ninety percent of its prescription sales by 2001.[108] Contrary to Purdue Pharma's assertions, OxyContin was incredibly addictive, and the narcotic quickly became the most abused opioid.[109]

Opioid addiction lawsuits against Purdue Pharma quickly followed.[110] Plaintiffs "were typically coping with and seeking compensation for addiction or the loss of a loved one" and alleged that Purdue "failed to exercise reasonable care in the painkiller's design, marketing, and promotion."[111] This flurry of litigation was largely unsuccessful, as tort

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103. Engle v. Liggett Grp., Inc., 945 So. 2d 1246, 1269 (Fla. 2006) (per curiam).

104. See, e.g., Boeken v. Philip Morris, Inc., 26 Cal. Rptr. 3d 638, 678 (Ct. App. 2005) (validating this theory); Henley v. Philip Morris, Inc., 9 Cal. Rptr. 3d. 29, 62 (Ct. App. 2004) (same); Williams v. Philip Morris Inc., 176 P.3d 1255, 1257–58 (Or. 2008) (same).

105. Letter from Robert F. Bedford, Acting Dir., Div. of Anesthetic, Critical Care & Addiction Drug Prods., FDA, to James H. Conover, Exec. Dir., Drug Regul. Affs. & Compliance, Purdue Pharma L.P. 1 (Dec. 12, 1995), https://www.accessdata.fda.gov/drugsatfda_docs/appletter/pre96/020553ltr.pdf (on file with the *Columbia Law Review*) ("[T]he application is approved effective on the date of this letter.").

106. Engstrom & Rabin, supra note 66, at 308 (citing Barry Meier, Pain Killer: An Empire of Deceit and the Origin of America's Opioid Epidemic 8–9 (2d ed. 2018)).

107. Barry Meier, Origins of an Epidemic: Purdue Pharma Knew Its Opioids Were Widely Abused, N.Y. Times (May 29, 2018), https://www.nytimes.com/2018/05/29/health/purdue-opioids-oxycontin.html (on file with the *Columbia Law Review*).

108. U.S. Gen. Acct. Off., GAO-04-110, Prescription Drugs: OxyContin Abuse and Diversion and Efforts to Address the Problem 9 (2003), https://www.gao.gov/assets/gao-04-110.pdf [https://perma.cc/4Y3Q-PN8G].

109. See Art Van Zee, The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy, 99 Am. J. Pub. Health 221, 225 (2009) ("OxyContin was associated with higher rates of abuse, and it became the most prevalent abused prescription opioid by 2004.").

110. See, e.g., Complaint ¶ 28, Burton v. Purdue Pharma, L.P., No. 01CIB005, 2001 OH C.P. Ct. Pleadings LEXIS 16 (Ohio Ct. C.P. Apr. 25, 2001) (alleging, in the first lawsuit of its kind, that "[t]he manufacturers and distributors of OxyContin . . . did not adequately or appropriately disclose related drug information to physicians in the United States").

111. Engstrom & Rabin, supra note 66, at 310 (citing Abbe R. Gluck, Ashley Hall & Gregory Curfman, Civil Litigation and the Opioid Epidemic: The Role of Courts in a National Health Crisis, 46 J.L. Med. & Ethics 351, 353 (2018); Rebecca L. Haffajee &

doctrines (such as the learned intermediary exception and the wrongful conduct rule) prevented plaintiff success.[112] Purdue, recognizing that the lawsuits were likely to fail, used the opportunity to push harmful narratives about addicted persons. The pharmaceutical giant consistently resorted to stigmatizing plaintiffs as helpless addicts who were not entitled to relief.[113] Purdue's defenses, when combined with the pitfalls in tort law, effectively halted much of this litigation.[114] Despite their failure, however, courts (including the Supreme Court of the United States) have seemingly accepted that addiction is a cognizable risk for failure-to-warn cases.[115]

Individual plaintiffs and certified classes have had a mixed record of success in their claims against tobacco and opioid producers. But throughout the litigation, courts have consistently affirmed that addiction is a legitimate risk for failure-to-warn torts. Though this conflicts with traditional "notions of personal responsibility,"[116] addiction litigation remains viable in tort and consumer protection law. By acknowledging that addiction undermines an individual's ability to behave according to their own free will, courts have helped to legitimate addiction as a devastating illness inflicted on the public through wrongful conduct by manufacturers.

Michelle M. Mello, Drug Companies' Liability for the Opioid Epidemic, 377 NEJM 2301, 2301 (2017)).

112. These barriers hold little weight for purposes of the present discussion. But plaintiffs in opioid lawsuits had marked difficulty overcoming the learned intermediary exception, which immunizes producers from warning claims when an "intermediary," such as a doctor, has a duty to warn the consumer. See Restatement (Third) of Torts: Prods. Liab. § 2 cmt. i (Am. L. Inst. 1998) (describing the reasonableness standard for the learned intermediary exception). Despite the unfortunate legal outcomes for the patients, the underlying theory—that addiction is a cognizable harm for warning defects claims—remained viable. In fact, an underlying premise of the learned intermediary exception is that a doctor has a duty to "fulfill[] [their] disclosure obligations" about addiction. Engstrom & Rabin, supra note 66, at 311. Other tort barriers, such as causation issues or the wrongful-conduct rule, contain similar analyses. See id. at 311–12.

113. See Arthur Gale, Correspondence, Sacklers Sacked but Purdue Still Caused Opioid Epidemic, 119 Mo. Med. 109, 109 (2022) ("Purdue told its representatives to tell doctors that only persons with an 'addictive personality' became addicts.").

114. See Engstrom & Rabin, supra note 66, at 310 (relating that these claims "tended to founder").

115. See Harrington v. Purdue Pharma L.P., 144 S. Ct. 2071, 2078 (2024) (recognizing, in dicta, the underlying addiction theory behind the tort claims). In this case, the Court indicated that "nothing in U.S. bankruptcy law allows courts to release legal claims against non-debtors without the consent of the people who sued them." Dietrich Knauth, US Supreme Court *Purdue* Ruling Makes Mass Litigation Tougher to Resolve in Bankruptcy, Reuters (June 27, 2024), https://www.reuters.com/legal/us-supreme-court-purdue-ruling-makes-mass-torts-tougher-resolve-bankruptcy-2024-06-27/ [https://perma.cc/M9BZ-CM42]. This makes the resolution of mass torts through the bankruptcy process far more difficult. Though important, the broader implications of this holding are outside the scope of this Note.

116. Allan M. Brandt, The Cigarette Century: The Rise, Fall, and Deadly Persistence of the Product that Defined America 341 (2007).

C. *Obesity-Related Tort Litigation*

As the tobacco and opioid litigation demonstrates, addiction can serve as a viable theory for tort litigation. This section chronicles how the legal system applied this logic to the food-addiction context. These ill-fated attempts to allege food-addiction torts elicited a strong public reaction that culminated in the enactment of the flawed CCAs.

1. Pelman v. McDonald's Corp. — The legal community's acceptance of addiction in tort claims opened the door to a world of possibilities for potential lawsuits.[117] Addiction tort claims have graced the headlines for decades, drawing much legal and public scrutiny.[118] Commentators quickly began to draw comparisons between consumer protection litigation and another industry known for its disastrous contributions to public health crises: the food industry.[119] Big Food's[120] responsibility for the current obesity crisis is noticeably similar to Big Tobacco's culpability for lung disease, cancer, and other ailments.[121] It utilizes the same "playbook" as Big Tobacco, intentionally pushing unhealthy and addictive substances while blaming the consumer.[122] Its actions have substantially contributed to the global epidemic of obesity.[123] Obesity is comorbid with a litany of

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117. See Engstrom & Rabin, supra note 66, at 300–01 ("Among other virtues, this focus on addiction—not injury—expanded the size of the class and permitted the plaintiffs to dodge tricky questions concerning general and specific causation.").

118. See, e.g., Suzanne Zhou, Evita Ricafort, Davi Bressler & Rachel Kitonyo Devotsu, Litigation in Tobacco Control: Past, Present and Future, 31 Tobacco Control 291, 291 (2022) ("Many types of tobacco control litigation . . . raise questions of global significance.").

119. See, e.g., Jonathan Bailor, Opinion, Big Food Is the New Big Tobacco. We Must Take Them On, Newsweek (Aug. 4, 2021), https://www.newsweek.com/big-food-new-big-tobacco-we-must-take-them-opinion-1615780 (on file with the *Columbia Law Review*).

120. This Note uses the term "Big Food" to describe "the domination of a major market by just a few large companies" in the food industry. Grace Hussain, How Power and Influence Corrupts Big Food Companies, Sentient (Jan. 13, 2023), https://sentientmedia.org/big-food/ [https://perma.cc/U7E6-58J6]. There are a "few major players" that "tend to have products in every aisle of the supermarket." Id. Big Food companies include the major fast-food giants, Kellogg's, Nestlé, and General Mills, among others. Id.

121. See Kevin D. Hall, Did the Food Environment Cause the Obesity Epidemic?, 26 Obesity 11, 12 (2018) ("[P]lausible explanations invoke complex changes in the overall food environment and the associated alterations in normative eating behaviors.").

122. See Michael F. Jacobson, Big Food: Sounds a Lot Like Big Tobacco, HuffPost (June 2, 2015), https://www.huffpost.com/entry/big-food-big-tobacco_b_7486934 (on file with the *Columbia Law Review*) (last updated June 2, 2016) ("[E]xecutives at some of the nation's largest food and beverage companies seem to have learned a lot from their counterparts at Big Tobacco in aggressively promoting consumption of unhealthy foods and, in the same breath, blaming the consumer.").

123. See Controlling the Global Obesity Epidemic, WHO, https://www.who.int/activities/controlling-the-global-obesity-epidemic [https://perma.cc/7TK6-EG6U] (last visited Oct. 7, 2025) ("[O]besity is predominantly a 'social and environmental disease' . . . ."); see also Hall, supra note 121, at 12–13 (arguing "that the food environment is likely the primary driver of the obesity epidemic").

conditions that cause serious health issues.[124] Further, the costs of obesity on the healthcare system are immense, burdening hospitals and the public.[125] The striking similarity between the tobacco and food industries is no accident: Many Big Food companies produced both tobacco and HPFs.[126] "RJR Nabisco, for instance, once simultaneously contained the companies that made Camel cigarettes and Chips Ahoy! cookies."[127]

The resemblance between these industries prompted some plaintiffs' lawyers to formulate creative attacks against Big Food. In the early 2000s, one lawyer, Samuel Hirsch, instigated two obesity-related tort cases against fast-food companies.[128] In both cases, the plaintiffs sued fast-food providers, claiming that the fast-food industry was liable, at least in part, for their obesity.[129]

The plaintiff in the first lawsuit[130] withdrew his complaint before he could try it in court.[131] Hirsch's second suit, which he filed on behalf of obese teenagers, lasted far longer.[132] The case, *Pelman v. McDonald's Corp.*, bounced between the Southern District of New York and the Second Circuit before finally being tossed from the docket.[133] In their original complaint, the plaintiffs alleged three tort claims.[134] The first tort claim lodged a novel and bold theory, asserting that McDonald's was liable simply for serving "foods high in fat, salt, sugar, and cholesterol content, which cause adverse health problems."[135] The second tort claim alleged a failure-to-warn claim premised on McDonald's "failure to warn consumers of its products['] ingredients, levels of fat, salt, sugar, and cholesterol, and the dire health problems that can ensue."[136]

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124. Controlling the Global Obesity Epidemic, supra note 123; see also infra section II.A.

125. Wilking & Daynard, supra note 30, at 230 ("The current medical cost of adult obesity in the U.S. is estimated at $147–$210 billion per year . . . .").

126. See Jacobson, supra note 122 ("Until the mid-2000s, the companies that manufacture Marlboro and Virginia Slims cigarettes were part of the same conglomerate, Philip Morris (now Altria), which manufactured Kraft Macaroni & Cheese and Kool Aid.").

127. Id.

128. Jonathan Benloulou, *Pelman v. McDonald's*: An In-Depth Case Study of a Fast Food & Obesity Lawsuit 4–5 (2005) (Third Year Paper, Harvard Law School), https://dash.harvard.edu/entities/publication/73120378-a203-6bd4-e053-0100007fdf3b [https://perma.cc/88YV-NW2K].

129. Id. at 5, 8.

130. See Complaint ¶¶ 34–54, Barber v. McDonald's Corp., No. 23145/2002 (N.Y. Sup. Ct. filed Jul. 24, 2002), 2002 WL 32388034 (detailing the plaintiff's claims against Big Food, which included failure-to-warn claims about the contents of the food).

131. Benloulou, supra note 128, at 5.

132. Pelman v. McDonald's Corp., 237 F. Supp. 2d 512 (S.D.N.Y. 2003).

133. Benloulou, supra note 128, at 5.

134. See id. at 11–12. The plaintiffs also alleged two other state law claims. See id.

135. Id. at 11.

136. Id. at 12–13.

In evaluating McDonald's subsequent motion to dismiss, the court found that the plaintiffs could not recover on either of these grounds. The court held that they had not sufficiently alleged that "McDonalds products are so extraordinarily unhealthy that they are outside the reasonable contemplation of the consuming public or that the products are so extraordinarily unhealthy as to be dangerous in their intended use."[137] Much of the court's analysis centered around the fact that the "consequences of . . . over-consumption are common knowledge," meaning that McDonald's did not have a duty to warn the plaintiffs of the harm.[138]

Importantly, however, the court reserved a different analysis for the third tort claim. This claim alleged that McDonald's intentionally, negligently, or recklessly distributed food that "caused its consumers to become physically or psychologically addicted to products that cause adverse health effects."[139] This incredibly novel claim was the first to premise a theory of tort liability on food addiction.[140] The court noted that the contention's "exact basis" in tort doctrine was "unclear," a testament to its boldness.[141] The court struggled with how to treat the claim, oscillating between a design defect tort (that the products were unreasonably dangerous because they are addictive) and a warning defect tort (that McDonald's failed to warn of the addictive nature of the product).[142] In evaluating the claim, the court noted that food addiction could provide a way around the roadblocks for the other two tort claims, as addiction to food is not "a danger that is so open and obvious, or so commonly well-known, that McDonalds' customers would be expected to know about it."[143] But the court found the allegation to be too vague to support relief.[144] In its vagueness analysis, the court noted that food addiction was a "hypothesis" and "the subject of current investigations."[145] Consequently, the court dismissed the addiction claim for lack of specificity.[146]

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137. *Pelman*, 237 F. Supp. 2d at 532.

138. Id. The court also found an issue with the plaintiffs' proffered theory of causation. See id. at 540 (noting that the complaint "fails to allege with sufficient specificity that the McDonalds' products were a proximate cause of the plaintiffs' obesity and health problems").

139. Benloulou, supra note 128, at 13.

140. Id.

141. *Pelman*, 237 F. Supp. 2d at 542; see also id. at 516 ("This action presents unique and challenging issues.").

142. Id. at 537, 543.

143. Id. at 542.

144. See id. ("[T]o allow a complaint to survive merely because it alleges product liability on the basis of addiction would be to allow any complaint that alleges product liability based on the addictive nature of the products to survive dismissal . . . .").

145. Id.

146. Id. at 542–43. The court also gestured at the potential issue of proving proximate cause for the addiction claim. Id. at 543.

After the court dismissed the case with leave to amend,[147] the plaintiffs reformulated their complaint. This reformulation excluded the addiction claim,[148] meaning that the court did not need to address the addiction issues brought in the initial complaint.[149] The *Pelman* court's treatment of this claim remains the most prominent example of a court reckoning with food addiction as a legal consideration in tort or consumer protection law.[150]

2. *Commonsense Consumption Acts.* — Obesity litigation provoked intense public reaction in the media and the court of public opinion.[151] The *Pelman* case generated national attention.[152] Commentators, outraged at the lawsuits, argued that they were frivolous and asserted that people could avoid obesity by choosing to eat healthier foods and to live more active lifestyles.[153] Much of the public saw "obesity [as] a matter of individual responsibility and, at some level, [a] moral failure."[154] Implicit in this critique is the presumption that food intake is a personal choice and not a compulsion or addiction. For many Americans, the *Pelman* suit served as an example of greedy people trying to cash in on poor personal choices.

Food companies rode the wave of public sentiment to double down on their practices. In response to *Pelman*, McDonald's argued that it is a "commonly understood" fact that eating hamburgers and french fries "over a prolonged period may have consequences to one's waistline and potentially to one's health."[155] Much of the public shared the same sentiment. Food lobbyists, claiming that the lawsuits were frivolous, waged

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147. Id. at 543.

148. See Amended Verified Complaint ¶¶ 74–79, Pelman v. McDonald's Corp., 272 F.R.D. 82 (S.D.N.Y. 2010) (No. 02 Civ. 07821 (DCP)), 2003 WL 23474873 (premising the remaining tort claims on design and general warning defect and omitting addiction from the complaint, while also keeping the UDAP claims); see also Benloulou, supra note 128, at 32 (describing the procedural history of this part of the litigation).

149. The *Pelman* class was eventually denied certification, ending the litigation. *Pelman*, 272 F.R.D. at 100.

150. See Michelle M. Mello, Eric B. Rimm & David M. Studdert, The McLawsuit: The Fast-Food Industry and Legal Accountability for Obesity, 22 Health Affs. 207, 208 (2003).

151. E.g., id. at 207 ("This litigation provoked an intense, mostly negative response in the news media and the court of public opinion.").

152. See Saul Wilensky & Kerry C. O'Dell, Where's the Beef? The Challenges of Obesity Suits, Bloomberg L. (June 21, 2013), https://news.bloomberglaw.com/product-liability-and-toxics-law/wheres-the-beef-the-challenges-of-obesity-suits (on file with the *Columbia Law Review*) (describing the reaction to *Pelman* as a "media firestorm").

153. See Marc Santora, Teenagers' Suit Says McDonald's Made Them Obese, N.Y. Times (Nov. 21, 2002), https://www.nytimes.com/2002/11/21/nyregion/teenagers-suit-says-mcdonald-s-made-them-obese.html (on file with the *Columbia Law Review*) ("Most [McDonald's patrons interviewed] said they found the lawsuit absurd.").

154. Mello et al., supra note 150, at 214.

155. Defendants' Consolidated Opposition to Plaintiffs' Motion to Remand and Reply in Support of Defendants' Motion to Dismiss at 1, Pelman v. McDonald's Corp., 237 F. Supp. 2d 512 (S.D.N.Y. 2003) (No. 02 CV 7821 (RWS)), 2002 WL 32495997.

an aggressive war against future potential lawsuits.[156] This national fervor, aided by aggressive lobbying from Big Food, emboldened state legislatures to act.

Despite their win in *Pelman*, the fast-food companies quickly deployed their substantial lobbying apparatus to nip these suits in the bud.[157] Given the industry's immense wealth and influence, its lobbying efforts paid off.[158] From 2003 to 2013, twenty-six states passed CCAs, also known as "cheeseburger bills," to immunize the fast-food industry from obesity-related torts.[159] A similar effort occurred on the federal level: The United States House of Representatives passed its own CCA, only for the Senate to rebuff it.[160] Because CCAs "place accountability for obesity on the consumer, making it more difficult to sue food manufacturers,"[161] the food industry gained immunity from many cognizable obesity-related tort suits.[162]

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156. See Melanie Warner, The Food Industry Empire Strikes Back, N.Y. Times (July 7, 2005), https://www.nytimes.com/2005/07/07/business/the-food-industry-empire-strikes-back.html (on file with the *Columbia Law Review*) ("Food and restaurant companies, fearing they would be hammered with enormous judgments, as the tobacco industry was, immediately began fighting back, waging an aggressive campaign to make it impossible for anyone to sue them successfully for causing obesity or obesity-related health problems.").

157. See Christopher S. Carpenter & D. Sebastian Tello-Trillo, Do Cheeseburger Bills Work? Effects of Tort Reform for Fast Food, 58 J.L. & Econ. 805, 806 (2015) (describing how the National Restaurant Association quickly began pushing for legislation limiting food companies' liability).

158. See Wilking & Daynard, supra note 30, at 230.

159. See id. (describing the restaurant industry's lobbying efforts on these bills); see also Ala. Code § 6-5-732) (2026); Ariz. Rev. Stat. Ann. §§ 12-683(4), 12-688 (2025); Colo. Rev. Stat § 13-21-1102 (2025); Fla. Stat. Ann. § 768.37 (West 2025); Ga. Code Ann. § 26-2-432 (2025); Idaho Code § 39-8702 (2025); 745 Ill. Comp. Stat. Ann. 43/10 (West 2025); Ind. Code Ann. § 34-30-23-3 (West 2025); Kan. Stat. Ann. § 60-4801(a) (West 2025); Ky. Rev. Stat. Ann. § 411.610 (West 2025); La. Stat. Ann. § 9:2799.6(A) (2025); Me. Rev. Stat. Ann. tit. 14, § 170(2) (2025); Mich. Comp. Laws § 600.2974(1) (2026); Mo. Ann. Stat. § 537.595(3) (2025); N.C. Gen. Stat. § 99E-42 (2025); N.D. Cent. Code § 19-23-01(1) (2025); Ohio Rev. Code Ann. § 2305.36(C) (2025); Or. Rev. Stat. § 30.961(2) (2025); S.D. Codified Laws § 21-61-2 (2026); Tenn. Code Ann. § 29-34-205(a) (2025); Tex. Civ. Prac. & Rem. Code Ann. § 138.002(a)(1)–(2) (West 2025); Utah Code § 78B-4-303(1) (2025); Wash. Rev. Code § 7.72.070(1) (2025); Wis. Stat. & Ann. § 895.506(1) (2026); Wyo. Stat. Ann. § 11-47-103(a) (2025); Okla. Stat. tit. 76, § 37(B)(2) (2012) (repealed 2013). Oklahoma's CCA was struck down as unconstitutional on unrelated grounds in 2013. Douglas v. Cox Retirement Props., Inc., 302 P.2d 789, 792 (Okla. 2013). In 2025, the legislature enacted a new CCA with the same language. Okla. Stat. tit 76, § 41 (2025).

160. Personal Responsibility in Food Consumption Act of 2005, H.R. 554, 109th Cong.

161. Barbara L. Atwell, Obesity, Public Health, and the Food Supply, 4 Ind. Health L. Rev. 3, 18 (2007) (citing Lorraine M. Buerger, Comment, The Safe Games Illinois Act: Can Curbs on Violent Video Games Survive Constitutional Challenges?, 37 Loy. U. Chi. L.J. 617, 659–60 (2006)).

162. Food Industry Cooks Up Ways to Stymie Suits, Chi. Trib. (Aug. 15, 2003), https://www.chicagotribune.com/2003/08/15/food-industry-cooks-up-ways-to-stymie-suits/?clearUserState=true (on file with the *Columbia Law Review*) (last updated Aug. 21, 2021) (discussing the food industry's goal to prevent lawsuits).

State legislatures made their motives clear when passing these bills. They clearly defined obesity and other illnesses related to food addiction as "long-term manifestations of poor *choices* that are habitually made by those individuals."[163] CCAs are thus mired in an understanding of obesity that puts the choice of the consumer—not the misdeeds of Big Food—at the forefront of the obesity debate.

CCAs broadly prevent claims that arise from the repeated consumption of food and attempt to recover damages from said consumption, namely for obesity-related healthcare costs.[164] There are two types of CCAs: broad CCAs, which prevent all obesity-related claims (with limited exceptions), and narrow CCAs that specifically prohibit obesity-related tort claims.[165]

Broad CCAs immunize entities from any suit arising under state law stemming from the long-term consumption of food.[166] The statutes generally shield entities from any liability for these kinds of claims.[167] For example, Missouri's broad CCA immunizes Big Food companies from "civil liability under any state law, including all statutes, regulations, rules, common law, public policies, court or administrative decisions or decrees, or other state actions having the effect of law, for any claim arising out of weight gain, obesity, or a health condition associated with weight gain or obesity."[168]

These statutes frequently hold exceptions for claims that allege "knowing and willful" violations of state or federal regulations.[169] This is a hefty burden for plaintiffs, who must prove that the violation was committed with intent to deceive or with actual knowledge that the violation harmed consumers.[170] To prove this, plaintiffs must search through "an avalanche" of discovery to try to find evidence of intent or knowledge.[171] To make matters worse, CCAs in ten states heighten the

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163. Colo. Rev. Stat § 13-21-1102(1) (emphasis added).

164. Wilking & Daynard, supra note 30, at 231.

165. Id. at 232.

166. See, e.g., Tex. Civ. Prac. & Rem. Code Ann. § 138.002(a) (West 2025) ("Except as otherwise provided by this section, a manufacturer, seller, trade association, livestock producer, or agricultural producer is not liable under any law of this state for any claim arising out of weight gain or obesity . . . .").

167. See, e.g., Colo. Rev. Stat. § 13-21-1104(1) (providing sweeping immunity for any claim arising from obesity).

168. Mo. Ann. Stat. § 537.595(3) (2025).

169. Wilking & Daynard, supra note 30, at 232–33.

170. See, e.g., Idaho Code § 39-8704(4) (2025) (defining "[k]nowing and willful" as when "[t]he conduct constituting the violation was committed with the intent to deceive or injure consumers or with actual knowledge that such conduct was injurious to consumers").

171. See Bernadette Bollas Genetin, "Just a Bit Outside!": Proportionality in Federal Discovery and the Institutional Capacity of the Federal Courts, 34 Rev. Litig. 655, 657 (2015) ("[M]ethods of creating, saving, and using information have changed, resulting in an avalanche of information that is available—in varying formats—for discovery.").

pleading requirements for these claims.[172] This standard requires plaintiffs to plead specific violations *before discovery*.[173] After the pleading, the court will enter a mandatory stay of discovery pending the defendant's motion to dismiss.[174] This heightened standard poses a formidable burden to succeeding on obesity-related claims.

Broad CCAs can also flout UDAP claims against Big Food.[175] UDAP statutes were initially passed to "level the playing field by creating statutory claims without intent requirements."[176] Heightened pleading requirements, contrarily, force the plaintiff to plead specific intent before discovery.[177] As a result, CCAs could "reverse consumer protection legal reforms with respect to UDAP claims stemming from the long-term consumption of food."[178] Broad CCAs not only immunize defendants from basic obesity-related torts, but they raise the burden on plaintiffs trying to argue some food-related UDAP claims. Put simply, broad CCAs prevent judicial consideration of essentially all obesity lawsuits.[179]

Narrow CCAs, however, immunize entities from tort-based obesity claims only.[180] These claims do not conflict with UDAP statutes but still foreclose the possibility of plaintiffs bringing any obesity-related *tort* claim.[181] The statutes allow for UDAP claims relating to unhealthy food, which permits actionable claims in which the defendant has made a "misrepresentation to the public."[182] But only nine states—the minority of

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172. See Wilking & Daynard, supra note 30, at 233 (describing the standard).

173. Id.

174. Id.

175. Id. "Every state has a consumer protection law that prohibits deceptive practices, and many prohibit unfair or unconscionable practices as well. These statutes . . . provide bedrock protections for consumers." Carter, supra note 89, at 5.

176. Wilking & Daynard, supra note 30, at 233 (citing Dee Pridgen & Richard M. Alderman, Consumer Protection and the Law § 1.1 (2011–2012 ed. 2012)).

177. See id. ("CCAs could be interpreted to require plaintiffs seeking recovery for obesity-related health harms to plead sufficient facts to establish the alleged conduct was done knowingly and willfully, while being denied any discovery . . . .").

178. Id.

179. Plaintiffs could still argue product defect claims for personal harms—for example, if a food item gave them serious food poisoning. See Restatement (Second) of Torts § 402A cmt. i (Am. L. Inst. 1965) ("Good butter is not unreasonably dangerous merely because, if such be the case, it deposits cholesterol in the arteries and leads to heart attacks; but bad butter, contaminated with poisonous fish oil, is unreasonably dangerous.").

180. For example, Louisiana's statute bars claims for "personal injury or wrongful death based on an individual's consumption of food or nonalcoholic beverages in cases where liability is premised upon the individual's weight gain, obesity, or a health condition related to weight gain or obesity and resulting from his long-term consumption of a food or nonalcoholic beverage." La. Stat. Ann. § 9:2799.6(A) (2025).

181. Wilking & Daynard, supra note 30, at 233–34.

182. See id. at 234 (citing Fla. Stat. Ann. § 768.37 (West 2012); Me. Rev. Stat. Ann. tit. 14, § 170(3) (West 2012); Mich. Comp. Laws § 600.2974(2)(b) (2012); Or. Rev. Stat. § 30.961(3)(d) (2012); Wyo. Stat. Ann. § 11-47-103(b) (2012)) ("[These CCAs] should not impact claims filed by consumers or state AGs under state UDAP statutes or for violations of other food-related statutory provisions.").

the twenty-six states with CCAs—tailor their statutes this carefully.[183] And of those nine, two states[184] still impose the heightened pleading standard that makes it difficult for plaintiffs to make it to discovery.[185] Further, UDAP claims do not necessarily allow for food-addiction tort claims. UDAP claims only apply to "unfair and deceptive tactics in the marketplace" that are "inappropriate."[186] There is less flexibility to plead addiction-related harms under a UDAP statute than a tort cause of action.

CCAs effectively prohibit food-addiction tort claims and severely hinder similar UDAP lawsuits. The addictive quality of HPFs[187] is the risk that the defendants should warn consumers about.[188] The "harm" that many food-addicted plaintiffs suffer is "weight gain, obesity, or a health condition associated with weight gain or obesity."[189] Given that defendants are immunized from liability arising from these harms, most food-addiction torts will stumble out of the gate.

UDAP claims do not fair much better against CCAs. Even CCAs that allow for UDAP suits for false advertising of foods bar claims seeking to recover for a "personal injury" from the repeated consumption of food.[190] Therefore, though a plaintiff could potentially argue a UDAP claim that the defendant failed to warn of addictive foods, they would have difficulty disambiguating it from the "personal injury" immunization.[191] Even narrow CCAs make food-addiction torts difficult to cognize.

Regardless of the level of immunity, all twenty-six statutes reflect one goal—immunizing the food industry from obesity-related tort claims.[192]

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183. Ariz. Rev. Stat. Ann. §§ 12-683(4), 12-688 (2025); Fla. Stat. Ann. § 768.37 (West 2025); La. Stat. Ann. § 9:2799.6(A); Me. Rev. Stat. Ann. tit. 14, § 170(2) (West 2025); Mich. Comp. Laws § 600.2974(1) (2026); Or. Rev. Stat. § 30.961(2) (2025); S.D. Codified Laws § 21-61-2 (2026); Wash. Rev. Code § 7.72.070(1) (2025); Wyo. Stat. Ann. § 11-47-103(a) (2025).

184. Mich. Comp. Laws § 600.2974(3), (4); Or. Rev. Stat. § 30.963(2), (3).

185. See Wilking & Daynard, supra note 30, at 233–34 (highlighting that these CCAs "impose heightened pleading requirements and stays of discovery pending a motion to dismiss to exempted claims").

186. Carter, supra note 89, at 5.

187. See infra section II.A.

188. See Restatement (Third) of Torts: Prods. Liab. § 2(c) (Am. L. Inst. 1998); see also Castano v. Am. Tobacco Co., 84 F.3d 734, 737 (5th Cir. 1996) (pleading a failure-to-warn tort in the tobacco litigation).

189. Mo. Ann. Stat. § 537.595(3) (2025).

190. Wilking & Daynard, supra note 30, at 233–34.

191. Id.

192. In the wake of CCAs, plaintiffs have rarely filed obesity-related tort claims. Filed claims were quickly dismissed. See Ctr. for Sci. in the Pub. Int. v. Burger King Corp., 534 F. Supp. 2d 141, 144 (D.D.C. 2008) (dismissed on standing grounds); see also California Judge Dismisses Happy Meal Lawsuit, Fox News (Apr. 5, 2012), https://www.foxnews.com/politics/california-judge-dismisses-happy-meal-lawsuit [https://perma.cc/YKL2-VG6M] (last updated Dec. 23, 2015) (describing the dismissal of a lawsuit claiming that McDonald's Happy Meal toys were unfairly coercing children's diets). Two recent lawsuits have sought recovery from Big Food. In *Martinez v. Kraft Heinz Co.*, the

This agenda is explicitly premised on the belief that the repeated overconsumption of unhealthy food is a choice, not an irresistible compulsion.[193]

II. FOOD ADDICTION AND CCAS

CCAs presume that food, unlike tobacco and opioids, cannot be addictive enough to cause obesity-related harms. Rather, they posit that individuals should have the willpower—or as the Acts themselves label it, "commonsense"—to choose healthier options. This Part asserts that CCAs are problematic for two crucial reasons: First, they are scientifically inaccurate and do not reflect modern understandings of food addiction. Second, they improperly restrain courts' ability to adjudicate harms arising from food addiction. When combined, these two issues prevent the validation of food addiction—a harm that should not remain unremedied.

A. *CCAs Do Not Recognize Scientific Evidence of Food Addiction*

Food addiction was first coined by researchers in 1956.[194] Overeaters Anonymous, an organization like Alcoholics or Narcotics Anonymous that helps food addicts, was founded in 1960.[195] But in its earliest stages, food addiction was not taken seriously as a scientific concept.[196] This hesitation was, perhaps, warranted. In the abstract, the concept seems farfetched. Food, which humans must consume every day, is obviously distinct from something like tobacco or opioids. The former is a daily requirement, whereas the latter is an unnecessary luxury or a powerful narcotic. How could something so innocuous, like a cheeseburger, be addictive?

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plaintiffs alleged that the HPFs made by the defendant were "addictive in nature and heavily marketed to children" and pointed out that the food industry had "[a]dopt[ed] the tobacco industry's techniques" and "implemented addiction science techniques." No. 25-377, 2025 WL 2447793, at *1 (E.D. Pa. Aug. 25, 2025). The plaintiff's claims were dismissed. Id. at *4. The plaintiff has moved for leave to file an amended complaint. Plaintiff's Motion for Leave to Amend the Complaint and for Reconsideration of the Order Granting Defendants' Omnibus Motion to Dismiss, Martinez v. Kraft Heinz Co., No. 2:25-cv-0037 (E.D. Pa. filed Sep. 22, 2025). The suit was brought in Pennsylvania, which does not have a CCA. See Senate Bill 1260, Pa. Gen. Assembly, https://www.palegis.us/legislation/bills/2003/sb1260 [https://perma.cc/364D-L4CX] (last visited Feb. 21, 2026) (showing that the 2004 CCA bill did not make it out of committee). In another suit, the city of San Francisco has brought UDAP claims against companies who sell HPFs, seeking redress for healthcare costs associated with obesity. See Heather Knight, San Francisco Sues Ultraprocessed Food Companies, N.Y. Times (Dec. 2, 2025), https://www.nytimes.com/2025/12/02/us/san-francisco-ultraprocessed-food-lawsuit.html?smid=nytcore-ios-share (on file with the *Columbia Law Review*) (detailing the lawsuit, which is in its early stages at the time of writing).

193. See, e.g., Colo. Rev. Stat. § 13-21-1102 (2025) (describing obesity as a choice).

194. Theron G. Randolph, The Descriptive Features of Food Addiction: Addictive Eating and Drinking, 17 Q.J. Stud. on Alcohol 198 (1956).

195. Meule, supra note 34, at 297 (providing a historical account of the development of the concept of food addiction, including the rise of support organizations).

196. Id. at 296.

Despite this air of innocence, food is an addictive substance. Studies indicate that food consumption has the same neurologically rewarding effect as the consumption of other addictive substances.[197] And while the concept of food addiction isn't without its controversies, "some researchers strongly support[] [food addiction's] validity."[198] This acceptance draws on the fundamental neurobiology underlying addiction.[199] Researchers have demonstrated that food addiction follows the same three neurobiological steps discussed above.[200]

Food addicts binge HPFs, which could be "as addictive as drugs"[201] and may elicit a similar "neural response to rewarding stimuli" in the basal ganglia.[202] These HPFs are engineered to be addictive. Unlike natural foods, which "typically have one main palatability-related nutrient," HPFs have "combinations of palatability-inducing nutrients (fat, sugar, sodium, and/or carbohydrates) present at thresholds that do not occur in nature."[203] The unnatural combination of nutrients in HPFs "can excessively activate our brain reward system, leading to a highly rewarding eating experience."[204] As a result, HPFs elicit dopamine responses more

197. Id. at 299.

198. Id. There is an ongoing debate in the literature as to whether the term "food addiction" or "eating addiction" is more appropriate. Food addiction places the emphasis on the actual food. Proponents of the term food addiction argue that this is appropriate, as highly palatable agents in food (sugars, fats, etc.) are addictive. Eating addiction proponents counter that it is difficult to scientifically pin down one addictive agent in food (contrary to something like tobacco, where nicotine is the addictive agent). Thus, they argue that the term eating addiction should be used to emphasize that the disorder is a behavioral addiction, like gambling addiction. See generally Johannes Hebebrand et al., "Eating Addiction", Rather Than "Food Addiction", Better Captures Addictive-Like Eating Behavior, 47 Neurosci. & Biobehav. Revs. 295 (2014) (providing an overview of this debate).

199. See supra notes 48–64 and accompanying text.

200. See supra section I.A; see also Soumya Ravichandran et al., Alterations in Reward Network Functional Connectivity Are Associated With Increased Food Addiction in Obese Individuals, Sci. Reps., Feb. 9, 2021, at 1, 2, https://www.nature.com/articles/s41598-021-83116-0 (on file with the *Columbia Law Review*) ("While it is believed that food addiction is distinct from other behavioral eating disorders, it does share the characteristics o[f] withdrawal, tolerance, impulsivity, and emotional reactivity seen with substance-use disorders and other addictive behaviors.").

201. Aymery Constant, Romain Moirand, Ronan Thibault & David Val-Laillet, Meeting of Minds Around Food Addiction: Insights From Addiction Medicine, Nutrition, Psychology, and Neurosciences, Nutrients, Nov. 2020, at 1, 2, https://www.mdpi.com/2072-6643/12/11/3564 (on file with the *Columbia Law Review*).

202. I. García-García, A. Horstmann, M.A. Jurado, M. Garolera, S.J. Chaudhry, D.S. Margulies, A. Villringer & J. Neumann, Reward Processing in Obesity, Substance Addiction and Non-Substance Addiction, 15 Obesity Revs. 853, 854 (2014).

203. Jennifer L. Humphrey, Q & A With Researcher Tera Fazzino: What to Know About 'Hyperpalatable' Foods, Kan. U. Life Span Inst. (Sep. 5, 2023), https://lifespan.ku.edu/news/article/2023/09/05/q-researcher-tera-fazzino-what-know-about-hyperpalatable-foods [https://perma.cc/YAJ5-V66H].

204. Id.

effectively than other foods.[205] "[L]ike drugs of abuse, these highly processed foods may be more likely to trigger addictive-like biological and behavioral responses due to their unnaturally high levels of reward."[206] Research has demonstrated that the food industry has intentionally hooked the public on unhealthy foods.[207] Chains like McDonald's, Burger King, Taco Bell, Wendy's, and Kentucky Fried Chicken push these addictive foods to maximize consumers' frequent binging.[208]

This strategy carries serious consequences. There is a relationship between binge eating, food addiction, and morbid obesity.[209] Due to the disastrous health impacts and prevalence of obesity,[210] it is considered a global epidemic.[211] The foods most likely to forge addictive connections—"[p]alatable foods (such as sugar, salt, and fat)"—are also the foods highest in caloric content.[212] The repeated overconsumption of these

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205. See García-García et al., supra note 202, at 853 ("[N]eurobehavioural studies point at the existence of some parallels between obesity and addiction, including similarities in the brain's dopaminergic system." (citations omitted)).

206. Erica M. Schulte, Nicole M. Avena & Ashley N. Gearhardt, Which Foods May Be Addictive? The Roles of Processing, Fat Content, and Glycemic Load, PLoS One, Feb. 18, 2015, at 3, https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0117959 [https://perma.cc/ANQ7-H3KZ].

207. See Moss, Hooked, supra note 13, at 127–59; Michael Moss, Salt Sugar Fat: How the Food Giants Hooked Us, at xxvi, 6–24 (2013) (providing an overview of how food companies use salt, sugar, fat, and marketing to "shap[e] America's eating habits"); see also Nell Boeschenstein, How the Food Industry Manipulates Taste Buds With 'Salt Sugar Fat', NPR (Feb. 26, 2013), https://www.npr.org/sections/thesalt/2013/02/26/172969363/how-the-food-industry-manipulates-taste-buds-with-salt-sugar-fat [https://perma.cc/VKE2-2SUG] (chronicling Big Food's intentional efforts to hook their consumers on hyper-palatable foods).

208. See Jacobson, supra note 122 ("[C]ompanies persuade, lure, and manipulate customers—including children—into making the very decisions that companies say should be up to them."); see also Megan Hageman, The 7 Most Addictive Fast-Food Items Ever, According to Science, Eat This, Not That! (Apr. 13, 2025), https://www.eatthis.com/most-addictive-fast-foods/ [https://perma.cc/VV42-LV4M] (describing how various fast-food brands use ingredients such as sugar, sodium, and fat in highly addictive foods).

209. See Bruna Campana, Poliana Guiomar Brasiel, Aline Silva de Aguiar & Sheila Cristina Potente Luquetti Dutra, Obesity and Food Addiction: Similarities to Drug Addiction, Obesity Med., Dec. 2019, at 1, 4, https://doi.org/10.1016/j.obmed.2019.100136 (on file with the *Columbia Law Review*).

210. Obesity can lead to numerous health issues, including heart disease, strokes, type 2 diabetes, certain cancers, sleep apnea, osteoarthritis, fatty liver disease, and heightened vulnerability to various diseases, such as COVID-19. Obesity, Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/obesity/symptoms-causes/syc-20375742 [https://perma.cc/K2ZZ-ZGSB] (last visited Oct. 7, 2025).

211. Controlling the Global Obesity Epidemic, supra note 123.

212. Campana et al., supra note 209, at 2. Though HPFs are only defined as "any type of food that may be difficult to stop eating," which might include some foods that are addictive and not calorie rich, there is still clear "overlap" between the two categories. Daiil Jun, Jeffrey M. Girard, Corby K. Martin & Terra L. Fazzino, The Role of Hyper-Palatable Foods in Energy Intake Measured Using Mobile Food Photography Methodology, Eating Behavs., Apr. 2025, at 1, 2, https://doi.org/10.1016/j.eatbeh.2025.101983 (on file with the *Columbia Law Review*). Indeed, the authors find that "fat and sodium HPF are the most

addictive, calorie-dense foods naturally leads people to dangerously gain weight.[213] Those addicted to calorically rich HPFs are likely to gain weight after the intense binges that are symptomatic of addiction.

After the binge and accompanying dopaminergic reward, food addicts experience symptoms of withdrawal.[214] As occurs with other substances, withdrawal activates the amygdala, which releases stress neurotransmitters.[215] Studies indicate that there is "similar increased activation in the right amygdala for obesity and substance addiction."[216] These stress chemicals decrease the inhibitory function of the prefrontal cortex to curtail "addiction-related enhanced activity."[217] Though the *Diagnostic and Statistical Manual of Mental Disorders* does not "yet" recognize food addiction as a "formal diagnosis,"[218] the "[d]iagnostic criteria for [substance abuse disorder] represent a cluster of cognitive, behavioral, and physiological symptoms, and most of them can apply to some patients by replacing 'substance' with 'certain food.'"[219] The scientific evidence is clear—food addiction is eerily similar to other substance use disorders. For food-addicted persons, the choice to consume unhealthy food "become[s] mindless, compulsive eating, out of control, and associated with marked distress."[220] At this stage, the compulsion to eat is "not any longer being

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prevalent type of HPF in the food environment[] and comprise most of our meals and snacks," meaning that "the foods individuals in the US encounter at most eating occasions may challenge energy balance." Id. at 6. Therefore, HPFs make it difficult for Americans to consume a healthy caloric balance.

213. See Causes: Obesity, NHS, https://www.nhs.uk/conditions/obesity/causes/ [https://perma.cc/2YX4-EKUX] (last updated Feb. 15, 2023) (describing high-calorie foods as a cause of obesity); see also Campana et al., supra note 209, at 1 (explaining the connection between food addiction and obesity). Granted, not every food-addicted person is obese. Cf. Stahl, supra note 56, at 575 (explaining that not every person with a binge eating disorder is obese). And reciprocally, not every obese person is addicted to food. See Overweight and Obesity: Causes and Risk Factors, Nat'l Heart Lung & Blood Inst., https://www.nhlbi.nih.gov/health/overweight-and-obesity/causes [https://perma.cc/DQL2-HKUP] (last updated Mar. 24, 2022) (listing multiple causes for obesity). This being said, the statistics demonstrate that food addiction is far more prevalent in obese populations than people of average weight. See Constant et al., supra note 201, at 5–6 (noting a study that found that "[food addiction] prevalence was higher in overweight/obese patients (24.9%) than in subjects with normal weight (11.1%)").

214. See Constant et al., supra note 201, at 9 ("From this perspective, pharmacological criteria, namely craving towards palatable food and withdrawal symptoms, could constitute the main . . . solid indicators of [food addiction] . . . .").

215. See García-García, supra note 202, at 854 ("[P]articipants scoring higher on questionnaires reflecting an 'addictive' or 'compulsive' pattern of eating behaviour . . . exhibited higher activity in the amygdala . . . .").

216. Id. at 864 (conducting a meta-analysis of eighty-seven studies).

217. Id. at 860.

218. Stahl, supra note 56, at 575; see also DSM-5-TR, supra note 64, at 543–666 (identifying various types of addiction diagnoses but not including food addiction as one of them).

219. Constant et al., supra note 201, at 2.

220. Stahl, supra note 56, at 575. Importantly, Professor Stephen Stahl is discussing binge eating disorder. However, he is attempting to characterize it as "falling within the

simply naughty or giving in to temptation"[221] but, rather, a neurological disease that disrupts free personal choice.

Despite this scientific evidence, regulators have failed to significantly help food addicts.[222] In other areas of the law, statutes recognize that people in active addiction are not always able to exercise free will. The federal definition of an addict as someone who has "lost the power of self-control"[223] cuts against the common perception that drug use is a matter of choice and moral responsibility.[224] Additionally, the Americans with Disabilities Act (ADA) prevents employment discrimination against addicts in recovery for substance misuse.[225] The ADA premises this protection on the theory that substance abuse disables the capacity of the user to make decisions or engage in "major life activities."[226] The law is no stranger to making exceptions for those who have limited or nonexistent self-control in exercising their consumption.

Yet CCAs make no such accommodations. By defining obesity as a "choice" and foreclosing any sort of food-addiction claim, the statutes *explicitly* invalidate food addiction as a legal concept.[227] This is not only bad policy, but it is also not in keeping with modern scientific understandings of food addiction. Put simply, CCAs are outdated and do not correctly validate the severity of food-addiction harms perpetuated by Big Food providers. This understanding is willfully ignorant of the scientific basis emphasizing the connection between unhealthy foods and addictive eating.[228] CCAs should be amended to rectify this misstatement of science.

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category of an impulsive–compulsive disorder" that supports the idea of food addiction as a "formal diagnosis" and "behavioral addiction." Id.

221. Id. at 544.

222. See Roeloffs, supra note 18 ("Despite growing evidence that such foods are harmful, there are no federal regulations in the United States regarding foods that are hyper-palatable.").

223. 21 U.S.C. § 802(1) (2018).

224. Mello et al., supra note 150, at 214.

225. See 42 U.S.C. § 12114(b)(1) (2018) (recognizing substance abuse as a disability).

226. See ADA Nat'l Network, The Americans With Disabilities Act, Addiction, and Recovery for State and Local Governments 1 (2021), https://adata.org/sites/adata.org/files/files/ADA_Addiction_Recovery_and_Govt-2021FINAL.pdf [https://perma.cc/L5NR-DHJY] ("The Americans with Disabilities Act (ADA) ensures that people with disabilities have the same rights and opportunities as everyone else. This includes people with addiction to alcohol and people in recovery from opioid and other drugs.").

227. See Colo. Rev. Stat. § 13-21-1102 (2025) ("Obesity and many other conditions that are detrimental to the health and well-being of individuals are frequently long-term manifestations of poor *choices* . . . . Despite commercial influences, individuals remain ultimately responsible for the *choices* they make . . . ." (emphasis added)).

228. Cf. Moss, Hooked, supra note 13, at 33–51 (describing significant scientific recognition of food addiction).

B. *CCAs Inappropriately Prevent the Judiciary From Considering Food-Addiction Lawsuits*

Judicial consideration of addiction-related harms can express their danger and prevalence to the community at large. For instance, in the wake of the tobacco litigation, "Americans' trust of Big Tobacco 'plummeted to extremely low levels.'"[229] By allowing this litigation to proceed instead of opting for statutory tort reform, decisionmakers permitted the public and the legal establishment to grapple with addiction. CCAs are a kind of statutory tort reform that completely forecloses obesity-related tort claims. Without CCAs, obesity-related torts could serve as an effective check on the food industry.[230] Instead, potential litigants have been stopped in their tracks. The passage of CCAs completely chilled any lawsuits that could have the potential to be as impactful as the tobacco litigation.[231]

Perhaps more importantly, the foreclosure of these suits is inappropriate on an institutional level. By preventing the common law from adjudicating obesity claims, judges are denied the possibility to validate or reject food addiction as a legal concept. In a common law system, judicial consideration of specific topics allows for increased flexibility. The common law develops legal rules "on a case-by-case . . . basis,"[232] making adjudication responsive to the facts of the dispute. The common law's responsiveness to controversies allows it to incrementally develop, by analogy, as new information comes to light. By slamming the courthouse doors closed, CCAs do not allow courts to properly consider whether food addiction is a viable legal theory of risk underpinning an obesity-related tort claim. This robs the common law system of the flexibility it usually employs.

The fact-intensive flexibility of the judiciary can play an important expressive function.[233] When they issue judgments, courts express the values a society holds.[234] By considering and validating a type of addiction

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229. See Engstrom & Rabin, supra note 66, at 358 (quoting Michael McCann, William Haltom & Shauna Fisher, Criminalizing Big Tobacco: Legal Mobilization and the Politics of Responsibility for Health Risks in the United States, 38 Law & Soc. Inquiry 288, 314 (2013)).

230. See Grace Thompson, Note, How Commonsense Consumption Acts Are Preventing "Big Food" Litigation, 41 Seattle U. L. Rev. 695, 712 (2018) ("CCAs should be repealed to make room for tobacco-like litigation that many experts expected to plague the food industry.").

231. See id.; see also Food Industry Cooks Up Ways to Stymie Suits, supra note 162 (discussing the few attempted lawsuits regarding obesity-related torts).

232. Frank B. Cross, Identifying the Virtues of the Common Law, 15 Sup. Ct. Econ. Rev. 21, 23 (2007).

233. See Philip Bobbitt, Constitutional Fate: Theory of the Constitution 185 (paperback ed. 1984) ("Constitutional decisionmaking has, therefore, an expressive function. Of course it is a commonplace to observe that this is true of law generally.").

234. See Cass R. Sunstein, On the Expressive Function of Law, 144 U. Pa. L. Rev. 2021, 2022 (1996) ("Many people support law because of the statements made by law, and disagreements about law are frequently debates over the expressive content of law.").

as a legal concept, the courts can communicate the prominence of said addiction in society, the public interest in addressing it, and the vulnerability of the victims.[235] Take, for example, the tobacco litigation. When first confronted with litigation, tobacco corporations (and much of the American public) did not consider smoking a serious addiction.[236] Now, after years of heavily publicized litigation, nicotine addiction and the hazards of smoking are well known, recognized even by cigarette producers.[237] After the judiciary's engagement with the issue, smoking has become starkly less popular.[238] As part of the MSA, the tobacco companies were forced to fund an independent national foundation organized to curb tobacco use.[239] This foundation, known as the Truth Initiative, "has prevented millions of young people from becoming smokers—including 2.5 million between 2015 and 2018 alone—and helped drive down the youth smoking rate from 23% in 2000."[240] By validating addiction as a tort concept, the judiciary expressed the importance of decreasing tobacco use. The expressive function of the judiciary helped to combat the tobacco addiction crisis.

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235. See id. at 2031–33 (explaining the importance of judicial expression of community values).

236. See Jack E. Henningfield, Christine A. Rose & Mitch Zeller, Tobacco Industry Litigation Position on Addiction: Continued Dependence on Past Views, 15 Tobacco Control, at iv27, iv27 (Supp. 2006) ("In 1994, the heads of the major US tobacco companies gave sworn testimony before the US Congress that they did not believe that nicotine was addictive.").

237. Press Release, Truth Initiative, Big Tobacco Finally Forced to Tell the Truth About Its Deadly Products Through Court-Ordered Ads (Nov. 27, 2017), https://truthinitiative.org/press/press-release/big-tobacco-finally-forced-tell-truth-about-its-deadly-products-through-court [https://perma.cc/FAM2-4SEC] ("In 2006, the tobacco industry . . . was ordered to tell the truth about the deadly and harmful effects of cigarettes. Now, after fighting and delaying the court's order for 11 years, Big Tobacco has finally been forced to begin publishing advertisements, or 'corrective statements' outlining these truths.").

238. See Frank A. Sloan & Justin G. Trogdon, The Impact of the Master Settlement Agreement on Cigarette Consumption, 23 J. Pol'y Analysis & Mgmt. 843, 852 (2004) ("The MSA and the separate state settlements have led to a significant decrease in smoking since their implementation.").

239. See The Master Settlement Agreement: 4 Ways the Landmark Tobacco Settlement Changed Tobacco Control, Truth Initiative (Nov. 30, 2023), https://truthinitiative.org/research-resources/tobacco-prevention-efforts/master-settlement-agreement-4-ways-landmark-tobacco [https://perma.cc/3RL7-7DSB] ("The MSA called for the establishment of an independent national foundation to oversee a comprehensive program of public education and study of tobacco with the goal of reducing youth tobacco use and subsequent death and disease from tobacco-related harms.").

240. Id.

Of course, private civil actions are not the only methods of regulation. States[241] and the federal government[242] can pass legislation or issue regulations,[243] including food laws, to deal with widespread issues. Legislation and regulations also possess potent expressive power in their own right.[244] Governments could issue regulations to curtail food addiction.[245] Political remedies, however, encounter two crucial pitfalls. First, the legitimacy of their pronouncement is often questioned due to partisan polarization, thus dampening their expressive potential. Second, the generality of political regulations prevents the strong confirmation of the veracity of the underlying facts, allowing for public doubt as to the law's factual legitimacy. Both issues would be resolved by allowing judicial consideration of food addiction.

Legislatures and executives, the "political branches," were designed to be responsive to the plights of their constituencies.[246] In response to ideological splits among voters, however, the political branches are deeply divided, with partisan antipathy being "deeper and more extensive[] than at any point in the last two decades."[247] This partisan gulf causes "gridlock," the inaction created by "separated institutions sharing and competing for

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241. See 2023 Update on State Food Safety Legislation, Nat'l Env't Health Ass'n (Oct. 3, 2023), https://www.neha.org/food-safety-legislation-update [https://perma.cc/V7U4-U9NS]; see also, e.g., Establishing State Agency Food Purchasing Goals for New York State Agricultural Products, N.Y. Comp. Codes R. & Regs. tit. 9, § 9.32 (2026) (mandating food purchasing laws for New York).

242. See, e.g., 21 U.S.C. § 331(a) (2018) (prohibiting "[t]he introduction or delivery for introduction into interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded"); id. § 393 (establishing the FDA to issue food-related regulations).

243. Hereinafter, this Note will refer to statutes and administrative rules jointly as "regulations."

244. See James Huffman, The Presumption of Constitutionality and the Demise of Economic Liberties, 128 Penn. St. Dick. L. Rev. 1, 3 (2023) ("[D]eference has taken the form of a presumption of constitutionality—a supposition that the actions of the Executive and Congress are authorized by the Constitution, leaving those who would claim otherwise with the burden of proving unconstitutionality."). Note that the current Supreme Court has peeled back the presumption of legality for regulations. See Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2265 (2024) ("Presumptions have their place in statutory interpretation, but only to the extent that they approximate reality.").

245. See, e.g., Christina Jewett & Julie Creswell, Kennedy's Vow to Take On Big Food Could Alienate His New G.O.P. Allies, N.Y. Times (Nov. 15, 2024), https://www.nytimes.com/2024/11/15/health/rfk-big-food-artificial-dyes-trump.html (on file with the *Columbia Law Review*) [hereinafter Jewett & Creswell, Big Food] (last updated Nov. 17, 2024) (describing HHS Secretary Robert F. Kennedy, Jr.'s promise to take on Big Food and their unhealthy practices through FDA regulation).

246. See Caleb Nelson, Adjudication in the Political Branches, 107 Colum. L. Rev. 559, 562 (2007) ("[T]he protection of 'public rights' belonging to the body politic.").

247. Pew Rsch. Ctr., Political Polarization in the American Public: How Increasing Ideological Uniformity and Partisan Antipathy Affect Politics, Compromise and Everyday Life 6 (2014), https://www.pewresearch.org/wp-content/uploads/sites/4/2014/06/6-12-2014-Political-Polarization-Release.pdf [https://perma.cc/T49Y-9TMX].

power."[248] Such inaction can prevent meaningful reform in crucial areas. Take, for example, HHS Secretary Robert F. Kennedy, Jr.'s pledge to take on Big Food.[249] Despite these promises, Secretary Kennedy may run directly into "one of the country's most powerful industries whose traditional allies are Republicans."[250] And despite Secretary Kennedy's promises, the Trump Administration has continued to cozy up to Big Food.[251] Some experts even posit that Secretary Kennedy's statements are little more than a cover for President Donald Trump's deregulatory agenda.[252] Consequently, even "simple" regulations would likely result in a "knockdown battle for the multibillion-dollar food sector."[253] Even nonbinding guidelines, like Secretary Kennedy's new food pyramid that advocates for minimal consumption of HPFs,[254] are marred by the influence of political interests.[255] The politicization of this issue can prevent meaningful regulation from taking effect.

Politics, however, does more than cause gridlock—it begets a pernicious effect on public legitimacy. The legitimacy of regulation rests on the public complying with the directives of political actors.[256] In an age

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248. Sarah A. Binder, Going Nowhere: A Gridlocked Congress, Brookings Inst. (Dec. 1, 2000), https://www.brookings.edu/articles/going-nowhere-a-gridlocked-congress/ [https://perma.cc/SN8J-VZED].

249. See Jewett & Creswell, Big Food, supra note 245 (describing Secretary Kennedy's promises).

250. Id.

251. See Cecilia Nowell, Inside RFK Jr's Conflicted Attempt to Rid America of Junk Food, The Guardian (July 8, 2025), https://www.theguardian.com/environment/2025/jul/08/rfk-jr-junk-food [https://perma.cc/6VYB-JFPB] (explaining the views of some food policy experts who argue that President Donald Trump's decision to appoint several cabinet members who favor deregulatory policies or have connections to the food industry undermines Secretary Kennedy's efforts to call out the role of ultra-processed food in the chronic disease crisis).

252. See id. ("The Trump administration and Maha movement have 'hijacked the food movement in order to use it as publicity for the kind of cuts that are being made,' she said. It's also being used to 'forward an agenda' . . . focused more on cutting programs than reforming industry." (quoting Marion Nestle, Professor Emerita, N. Y. Univ.)).

253. Jewett & Creswell, Big Food, supra note 245.

254. See Kerry Breen, RFK Jr.'s New Food Pyramid Emphasizes Protein, Healthy Fats. Here's What to Know About the Dietary Guidelines., CBS News, https://www.cbsnews.com/news/dietary-guidelines-rfk-jr-sugar-processed-foods-gut-health/ [https://perma.cc/MU98-2FMZ] (last updated Jan. 7, 2006) ("For the first time, the recommendations are calling for Americans to avoid eating highly processed foods.").

255. See Alice Callahan & Maggie Astor, Several of Kennedy's Dietary Advisers Have Ties to Meat and Dairy Interests, N.Y. Times (Jan. 9, 2026), https://www.nytimes.com/2026/01/09/well/dietary-guidelines-conflicts-of-interest.html (on file with the *Columbia Law Review*) ("[T]he new guidelines, which . . . emphasize protein, meat, cheese and milk, were informed by a panel of experts with several ties to the meat and dairy industries.").

256. See Tom R. Tyler & Jonathan Jackson, Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement, 20 Psych. Pub. Pol'y & L. 78, 79 (2014) ("Traditional examinations of the relationship between

of increased polarization,[257] public confidence in the political branches is waning.[258] The public is more likely to see regulation as "politics," serving the interests of politicians, as opposed to the meaningful reform of good government.[259]

Unlike the legislative branch, the American judiciary has been intentionally insulated from partisan politics.[260] The goal of the judiciary is to have "neither force nor will, but merely judgment."[261] The judiciary's lack of politicization means that its judgments are, at least theoretically, objective interpretations of the law and societal values.[262] Regulation by the political branches, on the other hand, does not serve the same expressive function—that is, affirming commonly held values—as effectively as the judiciary.[263] A regulation recognizing food addiction

communities and legal authorities have emphasized the importance of public compliance with laws and the decisions of duly constituted legal authorities.").

257. See Pew Rsch. Ctr., supra note 247, at 6, 9 (describing increasing political polarization in the American public over the last two decades).

258. See P'ship for Pub. Serv., The State of Public Trust in Government 2024, at 4 (2024), https://ourpublicservice.org/wp-content/uploads/2024/05/The-State-of-Public-Trust-in-Government_2024.pdf [https://perma.cc/P7UB-YH5U] (reporting that, in the spring of 2024, "66% [of Americans] believe[d] the federal government is incompetent, up 10 percentage points" from the organization's 2022 survey).

259. See Callie McQuilkin, We Confuse Politics With Government. They're Not the Same., Corn. U.: ILR Buff. Co-Lab Sch. of Indus. & Lab. Rel. (Aug. 4, 2021), https://www.ilr.cornell.edu/buffalo-co-lab/we-confuse-politics-government-theyre-not-same [https://perma.cc/EM8H-AAPG] ("Politics might involve personal gain or electoral advantage; government should be above those concerns. Politics pits the parties against each other; in good government, they ideally (key caveat) work toward the same common goal of advancing American well-being.").

260. See The Federalist No. 78, at 402 (Alexander Hamilton) (George W. Carey & James McClellan eds., Gideon ed. 2001) ("[T]he judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution; because it will be least in a capacity to annoy or injure them."). At the federal level, the appointment and life tenure protections serve as political insulation. Id.; see also U.S. Const. art. III, § 1, cl. 2 ("The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour . . . ."). Many states, however, still elect judges on a partisan ticket. Michael Kang, Election Briefing Series: American Judicial Elections, U.S. Dep't St. (June 27, 2024), https://2021-2025.state.gov/briefings-foreign-press-centers/2024-elections-fpc/judicial-elections [https://perma.cc/4BY8-XJH6]. As Professor Michael Kang notes, the goal of judicial elections is often to distance judges from politics. During America's earlier years, state judicial appointments came with a presumption that "judges really had become partisan hacks, that they had started to do what the politician wanted them to do; they weren't really applying the law in an objective way." Id. In response, states moved to election systems to "reduce politicization." Id. Therefore, even within partisan elections, the intent is to insulate the judiciary from politics.

261. The Federalist No. 78, supra note 260, at 402 (emphasis omitted).

262. See Sunstein, supra note 234, at 2022 ("The social meanings of actions are very much a function of existing social norms. . . . What can be said for actions can also be said for law.").

263. This cuts against the traditional logic of separation of powers, which posits that the legislature should be responsive to the values of the people. See The Federalist No. 52, at 273 (James Madison) (George W. Carey & James McClellan eds., Gideon ed. 2001) ("As

would potentially be delegitimized by half of the country purely based on the political party of its enactor. Judges, alternatively, are not political actors and "mostly decide issues in accordance with rule of law values."[264] Judicial proclamations are not as tainted with the stain of politics and thus carry a more powerful expressive function.

Political regulations are also necessarily general. Congress is constitutionally prohibited from passing legislation criminalizing specific individuals.[265] Congressional regulation of specific individuals, while potentially permissible, faces high constitutional burdens.[266] Administrative agencies may exert some level of individual adjudication,[267] but only in a narrowing set of cases.[268]

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it is essential to liberty, that the government in general should have a common interest with the people; so it is particularly essential, that the [legislature] should have an immediate dependence on, and an intimate sympathy with, the people."). But this presumption has soured in the modern day, when political polarization and economic elites have captured legislative action. See Martin Gilens & Benjamin I. Page, Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens, 12 Persps. on Pol. 564, 576 (2014) ("In the United States, our findings indicate, the majority does *not* rule—at least not in the causal sense of actually determining policy outcomes. When a majority of citizens disagrees with economic elites or with organized interests, they generally lose."). Meanwhile, the judiciary has demonstrated a willingness to overrule legislative judgements "where new dimensions of freedom become apparent to new generations, often through perspectives that begin in pleas or protests and then are considered in the political sphere and the judicial process." Obergefell v. Hodges, 576 U.S. 644, 660 (2015).

264. Bruce A. Green & Rebecca Roiphe, Public Confidence, Judges, and Politics on and off the Bench, 87 Law & Contemp. Probs. 183, 185 (2024) (citing Charles Gardner Geyh, Can the Rule of Law Survive Judicial Politics?, 97 Corn. L. Rev. 191, 206–14 (2012)). Professors Bruce Green and Rebecca Roiphe concede that judges are "not immune to political and other biases" but affirm that most judges use the rule of law, and not politics, as their guiding light. See id. ("[T]he public perception of judges as politicians in robes is largely a misperception, or at least an exaggeration, predicated on public skepticism of whether judges' shared professional values counterbalance their personal and political interests.").

265. See U.S. Const. art. I, § 9, cl. 3 ("No Bill of Attainder or ex post facto Law shall be passed.").

266. This point was forcefully argued in the First Amendment context during the recent TikTok litigation. See, e.g., Brief for Petitioners at 26–27, TikTok Inc. v. Garland, 145 S. Ct. 57 (2025) (per curiam) (No. 24-656), 2024 WL 5264712 ("Laws 'singl[ing] out' particular speakers 'present[] such a potential for abuse' that they are presumptively unconstitutional." (alterations in original) (quoting Minneapolis Star & Trib. Co. v. Minn. Comm'r of Revenue, 460 U.S. 575, 585, 592 (1983))).

267. See, e.g., 15 U.S.C. § 78d-1(a) (2018) (allowing the SEC to delegate individual adjudications to an administrative law judge).

268. See, e.g., Sec. & Exch. Comm'n v. Jarkesy, 144 S. Ct. 2117, 2140 (2024) (Gorsuch, J., concurring) ("Yes, ALJs enjoy some measure of independence as a matter of regulation and statute from the lawyers who pursue charges on behalf of the agency. But they remain servants of the same master—the very agency tasked with prosecuting individuals . . . .").

In the adjudication of private rights, such as in tort law, the power to hear claims rests solely with the judiciary.[269] The judiciary's role is, simply, to "resolve a dispute," frequently "between private . . . actors."[270] As part of that adjudication, the judge will hear the specific facts of the case and issue a written opinion with a "relatively detailed account of conflict between the parties and how that conflict came to be presented to the adjudicator."[271] The judge applies the law to the facts of the case and analyzes the legal legitimacy of those facts.[272] This individualized, fact-intensive adjudication carries special affirming power: Judges affirm factual truths and sustain their legal salience. For example, in tobacco litigation, a judge analyzing the facts determines that a plaintiff's nicotine addiction is factually true and that this fact carries legal significance.[273] In the eyes of the public, this rigorous individual adjudication affirms the veracity of a fact and its application to disputes. Congress's generalized legislation, tainted by the political process, does not carry the same individual scrutiny. Therefore, adjudication carries more affirming power than a general, politically influenced regulation. By slamming the courthouse doors to these disputes, tort reform inappropriately prevents the judicial affirmation of certain harms, such as food addiction, as relevant legal considerations.

Tort reform surrounding the COVID-19 pandemic presents an illustrative case study.[274] "The COVID-19 pandemic was an unprecedented public health crisis . . . ."[275] As of September 2025, the World Health Organization has identified almost 800 million infections.[276] COVID-19

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269. See U.S. Const. art. III, § 1, cl. 1 ("The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.").

270. Thomas W. Merrill, Legitimate Interpretation—Or Legitimate Adjudication?, 105 Corn. L. Rev. 1395, 1402 (2020).

271. Id. at 1404 (citing Lon L. Fuller, Anatomy of the Law 94 (1968)).

272. See id. at 1405 ("Yet the adjudicator will recite them in order to clarify how the parties came into conflict and how the various dimensions of that conflict have been resolved or have remained unresolved through earlier stages in the adjudication.").

273. See, e.g., Engle v. Liggett Grp., Inc., 945 So. 2d 1246, 1271 (Fla. 2006) (per curiam) (emphasizing that tobacco addiction is real, and that Big Tobacco's deceptions on the market could give rise to legal liability).

274. See Kevin M. Lewis, Joshua T. Lobert, Wen W. Shen & Jon O. Shimabukuro, Cong. Rsch. Serv., R46540, COVID-19 Liability: Tort, Workplace Safety, and Securities Law 1 (2020), https://www.congress.gov/crs_external_products/R/PDF/R46540/R46540.2.pdf [https://perma.cc/C257-UKNF] ("Although the COVID-19 pandemic is still unfolding, a number of plaintiffs have already filed tort lawsuits seeking compensation for personal injuries resulting from alleged coronavirus exposure . . . ." (footnote omitted)).

275. Clayton J. Masterman, COVID-19 Tort Reform, 34 Health Matrix 133, 134 (2024).

276. See COVID-19 Cases, World, WHO: WHO COVID-19 Dashboard, https://data.who.int/dashboards/covid19/cases (on file with the *Columbia Law Review*) (last updated Feb. 7, 2026) (showing 779,125,257 total reported cases worldwide).

opened the door to several types of tort claims.[277] Plaintiffs filed many such lawsuits, mainly against businesses for facilitating COVID-19 exposure.[278] Forty-six states quickly passed statutory reforms, however, immunizing or strongly protecting defendants from COVID-19-related tort claims.[279] These statutes stopped individual COVID-19 tort adjudications in their tracks.[280] Much of the country's COVID-19 response was left to "swift[]" political regulations at the local, state, and federal level.[281] Many of these measures "imposed a tremendous economic cost on the United States"[282] and quickly became hot-button political issues.[283] There is broad disagreement among Americans over whether COVID-19 was a legally salient justification for governments' responsive measures[284] and, shockingly, whether it was even a significant public health threat.[285]

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277. See Masterman, supra note 275, at 138–46 (describing the potential for medical malpractice suits, negligence claims against a defendant that exposed the plaintiff to COVID-19, premises liability claims against businesses that negligently facilitated COVID-19 exposure, and product defect claims for faulty tests or medical equipment).

278. See, e.g., Requena v. Pilgrim's Pride Corp., 599 F. Supp. 3d 469, 472 (E.D. Tex. 2022) (alleging that the defendant corporation negligently exposed an employee to COVID-19 while she worked at one of its poultry processing plants); Benjamin v. JBS S.A., 516 F. Supp. 3d 463, 467 (E.D. Pa. 2021) (asserting several common law claims against the defendant corporation in the COVID-19-related death of an employee, including negligence, fraudulent misrepresentation, intentional misrepresentation, and wrongful death).

279. See Masterman, supra note 275, at 148 ("As of January 2022, 46 states have implemented some form of COVID-19 tort reform.").

280. See, e.g., *Requena*, 599 F. Supp. 3d at 472 ("[T]he Texas Legislature passed the Pandemic Liability Protection Act ("PLPA"), which establishes how an employer may be liable for exposing its employee to COVID-19. Because the Requenas have not produced evidence that satisfies some of the PLPA's elements, the court grants Pilgrim's Pride's Motion for Summary Judgment.").

281. Masterman, supra note 275, at 146.

282. Id. at 147.

283. See Reza Mousavi & Bin Gu, When Local Governments' Stay-at-Home Orders Meet the White House's "Opening Up America Again", PLoS One, Mar. 20, 2024, at 1–2, https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0298115 [https://perma.cc/K6D9-656U] ("[R]esidents' political views affect their compliance with social distancing orders imposed in response to the spread of COVID-19."); see also Giovanni Russonello, On Politics: Stay at Home? States Can't Agree, N.Y. Times (May 14, 2020), https://www.nytimes.com/2020/05/14/us/politics/coronavirus-lockdown-economy.html (on file with the *Columbia Law Review*) (describing the political fight over stay-at-home orders).

284. See Lisa Lerer, Big Government or Big Hassle?, N.Y. Times (Apr. 16, 2020), https://www.nytimes.com/2020/04/16/us/politics/stay-at-home-protests.html (on file with the *Columbia Law Review*) (discussing the belief among some citizens that COVID-19 was not a legally salient reason for lockdowns).

285. See No, COVID-19 Is Not the Flu, Johns Hopkins Bloomberg Sch. Pub. Health (Oct. 20, 2020), https://publichealth.jhu.edu/2020/no-covid-19-is-not-the-flu [https://perma.cc/A26N-LBUS] (rejecting the claim that "COVID-19 is just the flu" (internal quotation marks omitted)).

Allowing judicial consideration *may* have helped remedy these divides. If courts had been able to evaluate individual COVID-19 tort claims, judges could have ascertained the facts of the cases and determined, as a legal matter, whether defendants acted negligently in their facilitation of COVID-19 exposure. Additionally, the separation of judges from the political branches could have acted as a unifying force in the face of rampant polarization. By preventing judicial consideration, tort reform prevented the potential for the expressive function of the judiciary.[286] This foreclosed the opportunity for the legal legitimization of COVID-19 and denied private relief for severely wounded plaintiffs.[287]

Just like COVID-19 tort reform statutes, CCAs inappropriately rob the courts of their common law adjudicatory role and their ability to affirm societal values. Widespread legislative interference of this sort works as a usurpation of power from the traditional torts system. As a result, the judiciary has had limited occasion to give serious attention to this issue.[288] The unfortunate results of this interference are compounded by the fact that the judiciary is particularly "well-suited to address regulation of private behavior that has public consequences, such as . . . food consumption."[289]

And, of course, stripping the courts of the power to hear food-addiction claims also prevents harmed plaintiffs from seeking redress for their maladies.[290] Not only are courts prevented from affirming the validity of food addiction, but they are barred from assisting victims of Big Food's malicious practices. To level the balance and allow for judicial expression and plaintiff recuperation, state legislatures should amend CCAs to prop open the courthouse doors.

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286. The judiciary has been understood to play an expressive function since the founding. As Chief Justice John Marshall stated, "The Judicial Department comes home in its effects to every man's fireside: it passes on his property, his reputation, his life, his all." Proceedings and Debates of the Virginia State Convention of 1829–30, at 616 (Richmond, Samuel Shepherd & Co. 1830).

287. See, e.g., Requena v. Pilgrim's Pride Corp., 599 F. Supp. 3d 469, 483 (E.D. Tex. 2022) (granting summary judgement for the defendant employer even though the court found it to have "knowingly refused to implement or comply with applicable government-promulgated COVID-19 standards," because it was immunized by Texas's tort reforms). As Professor Clayton Masterman points out, the empirical evidence demonstrates that tort reform may have decreased COVID-19 infections by encouraging individuals to take greater precautions. Masterman, supra note 275, at 175–76. But this does not change the fact that affected individuals, such as Requena, were denied private relief.

288. See Amended Verified Complaint ¶¶ 58–81, Pelman v. McDonald's Corp., 272 F.R.D. 82 (S.D.N.Y. 2010) (No. 02 Civ. 07821 (DCP)), 2003 WL 23474873 (premising the remaining tort claims on design and general warning defect claims and omitting addiction from the complaint).

289. Ashley B. Antler, Note, The Role of Litigation in Combating Obesity Among Poor Urban Minority Youth: A Critical Analysis of *Pelman v. McDonald's Corp.*, 15 Cardozo J.L. & Gender 275, 290 (2009).

290. See Merrill, supra note 270, at 1402 (describing the judiciary's role in "resolv[ing] a dispute" that arises "between private . . . actors").

CCAs are out of touch with modern understandings of behavioral neuroscience and psychology. They prevent potential judicial validation of food addiction conceptually. And crucially, they foreclose an avenue for suffering people to seek legal redress. Given their flawed nature and disastrous effects, these statutes should be rectified to legitimize the existence of food addiction.

III. REPEALING AND AMENDING CCAS

CCAs are bad legislation. They are scientifically outdated, effectuate bad policy, and inappropriately prevent judicial consideration of food addiction.[291] And yet more than half of the states have them on the books.[292] State legislatures have two possible remedies for this issue: repealing or amending CCAs.

A. *The Challenge of Repealing CCAs*

First, they could repeal the legislation. But states may be reticent to repeal, as they have an interest in protecting the court system from what they perceive as wasteful lawsuits.[293] The first two claims in *Pelman*, in fact, exhibit why states may want some form of obesity-related tort immunization.[294] Broadly, these two claims alleged that McDonald's negligently administered and failed to warn about its foods' obesity-causing qualities.[295] The court rejected both claims. To the court, the consequences of overconsumption were "common knowledge," which alleviated McDonald's from any potential liability.[296] Even setting aside the question of legal viability, the acceptance of such theories would open the doors to an untold number of lawsuits.[297] To the extent these ill-fated tort claims appear frivolous to the eyes of the courts or the legislature, states may espouse a valid interest in preventing a flood of litigation.[298] Completely repealing CCAs, then, might not be the best option.

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291. See supra Part II.

292. Jennifer L. Pomeranz, Leslie Zellers, Michael Bare & Mark Pertschuk, State Preemption of Food and Nutrition Policies and Litigation: Undermining Government's Role in Public Health, 56 Am. J. Preventative Med. 47, 51 (2019).

293. See Scott DeVito & Andrew Jurs, "Doubling Down" for Defendants: The Pernicious Effects of Tort Reform, 118 Penn. St. L. Rev. 543, 599 (2014) (finding that tort reform legislation is associated with a reduction in lawsuits).

294. See supra notes 134–142 and accompanying text.

295. See Benloulou, supra note 128, at 11–12 (asserting that McDonald's is liable simply for serving or failing to warn about "foods high in fat, salt, sugar, and cholesterol content, which cause adverse health problems").

296. Pelman v. McDonald's Corp., 237 F. Supp. 2d 512, 532 (S.D.N.Y. 2003).

297. Because food addiction as a distinct legal concept played no role in these claims, this Note does not comment on their validity.

298. See Paul H. Rubin & Joanna M. Shepherd, Tort Reform and Accidental Deaths, 50 J.L. & Econ. 221, 223 (2007) ("Most state tort reforms are based on the premise that too many tort claims are filed and damage awards are too high.").

As the *Pelman* court conceded, the addiction theory changes the analysis, as addiction is not "a danger that is so open and obvious, or so commonly well-known, that McDonalds' customers would be expected to know about it."[299] Therefore, food addiction could provide a viable, nonfrivolous theory for a failure-to-warn tort claim. But for such a claim to be possible, the CCAs, which prevent these claims,[300] need to be amended. Amendments should prioritize legitimizing food addiction, recognizing it as a legal risk and allowing plaintiffs to pursue addiction failure-to-warn claims.[301] These efforts would reopen the courthouse doors, allowing for full judicial consideration of food addiction.

B. *CCAs Should Be Amended to Recognize Food-Addiction Claims*

States should change bad statutes.[302] Therefore, CCAs should be amended to accomplish three goals: the recognition of food addiction as a real issue; the allowance of some obesity-related torts, pursuant to a modern understanding of food addiction; and, at the very least, lowering the burden of proof for potential UDAP claims.

1. *CCAs Should Accord With Science and Popular Sentiment.* — First and foremost, states ought to amend statutes to accord with scientific understandings of food addiction. Legislatures have an interest in ensuring that their statutes don't effect absurd results.[303] The language employed by multiple states—that is, that food addiction is a "choice[]"[304]—should be taken off the books. Instead, states should adopt language validating the existence of food addiction. Today, "[t]he concept of food addiction is widely endorsed amongst members of the lay public."[305] This understanding is reflected in controlled surveys and "the plethora of books, magazine articles, and self-help groups all dedicated to 'curing' people of their addiction to food."[306] Various studies indicate that the public has a high degree of awareness concerning food addiction, with one such study demonstrating that eighty-six percent of Americans and

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299. *Pelman*, 237 F. Supp. 2d at 542. True, as this Note recognizes, the public is starting to become more familiar with food addiction as a concept. See infra section III.B.1. But public acceptance of the validity of food addiction as addiction does not equate to the requisite public *understanding* of the mechanisms by which individuals become addicted to food. The public might not be as familiar with the presence of addictive HPFs in any given food item, especially when the manufacturer takes steps to market the product as healthy. Therefore, this dicta from *Pelman* could still provide a route for redress.

300. See, e.g., Ala. Code § 6-5-732(2) (2026); Ky. Rev. Stat. Ann. § 411.610 (West 2025).

301. See infra sections III.B.1–.2.

302. John Stossel, Government Should Repeal Bad Laws, Manhattan Inst. (Feb. 5, 2020), https://manhattan.institute/article/government-should-repeal-bad-laws [https://perma.cc/3WH7-ZPXE].

303. Id.

304. Colo. Rev. Stat § 13-21-1102 (2025).

305. See Ruddock & Hardman, supra note 16, at 111.

306. Id.

Australians believe that some foods are addictive.[307] A legislative affirmation of food addiction would express its scientific salience[308] and would reflect popular sentiment among the legislatures' constituencies.[309] Updating this language would rectify CCAs' scientific inaccuracies.[310] This specific amendment would come with minimal costs—amending statutory language to validate food addiction does not, itself, carry any substantive changes to the law. It does, however, carry a powerful affirmation of food addiction as truth.[311]

2. *CCAs Should Allow for Food-Addiction Obesity-Related Torts.* — Though recognizing food addiction is scientifically important, it also carries significant ramifications for obesity-related torts. CCAs should be amended further to allow certain obesity-related tort lawsuits. Though some torts could still be prohibited, food-addiction torts should be permitted. A revised statute should allow plaintiffs to file obesity-related tort claims premised on a defendant's failure to warn about the addictive qualities of their HPFs. These claims would contend that Big Food negligently provided addictive substances without proper warning to the plaintiff, causing the plaintiff a personal harm in the form of obesity (and its comorbidities).[312] This is a similar theoretical model that was judicially validated in the tobacco and opioid litigation.[313]

Like those cases, food-addiction torts would center the "gravamen of their complaint" around the theory that Big Food "fraudulently failed to inform consumers that [their food] is addictive and manipulated . . . [their food] to sustain their addictive nature."[314] Breaches of duty may cause personal harms for which plaintiffs should be able to recover—just as some of the tobacco and opioid plaintiffs did. Therefore, validating food addiction and allowing for obesity-related torts would "make room for tobacco-like litigation that many experts expected to plague the food industry."[315] These claims would grant private parties the capacity to hold Big Food "accountable for [its] actions,"[316] and would allow for judicial

307. See id.

308. See Bobbitt, supra note 233, at 185.

309. See Ruddock & Hardman, supra note 16, at 111 (describing the increasingly popular recognition of food addiction).

310. See Charles G. Morris, The Inefficient Statute, 13 Yale L.J. 430, 430 (1904) (highlighting that laws without the support of the constituency lack legitimacy).

311. Cf. Sunstein, supra note 234, at 2022 (explaining that the law functions as an expression of societal values).

312. See Pelman v. McDonald's Corp., 237 F. Supp. 2d 512, 542 (S.D.N.Y. 2003) (alleging this exact type of claim).

313. See supra sections I.B.1–.2.

314. Cf. Castano v. American Tobacco Co., 84 F.3d 734, 737 (5th Cir. 1996) (discussing the framing of such a claim in the context of tobacco litigation rather than food-addiction litigation). The omitted material is meant to demonstrate how easily food could be substituted, under this model, for nicotine and cigarettes.

315. Thompson, supra note 230, at 712.

316. Id.

reckoning with food addiction. And with amended CCAs, the expressive function of the judiciary could validate the legitimacy of food addiction and impress the importance of the fight for accountability on the public.[317] Even if these tort claims *failed*, as they did in the early tobacco[318] and opioid litigation,[319] the courts would still be able to validate food addiction as a factual and real harm.[320] By amending CCAs to allow obesity-related torts premised on food addiction, courts could validate the concept itself.

3. *CCAs Should Be Amended to Lower Burdens on UDAP Claims.* — CCAs seriously hinder another path to recovery for obese people: They limit the potential of UDAP claims alleging obesity-related harms. Broad CCAs all but completely prevent plaintiffs from bringing obesity lawsuits against private actors, even under UDAP claims.[321] Narrow CCAs categorically ban obesity-related tort claims while allowing for some UDAP lawsuits.[322] Both types of CCAs allow for some action, so long as plaintiffs can prove the defendants knowingly or willingly violated advertising or labeling regulations in the sale of their food.[323] These exemptions are often accompanied by provisions heightening the pleading standard, which requires specific pleadings before discovery, for plaintiffs attempting to try UDAP claims in court.[324] These barriers make UDAP claims alleging obesity harms nearly impossible.

Though states might be hesitant to allow obesity-related torts, they will likely be more amenable to loosening the leash on UDAP claims. Unlike tort law, UDAP plaintiffs must prove "unfair and deceptive tactics in the marketplace" that are "inappropriate."[325] This serves as a check on frivolous lawsuits that is absent in tort law. Therefore, states should be less hesitant to allow UDAP claims to proceed. At the very least, states should minimize CCAs' requisite burden of proof needed for obesity UDAP

317. See Samuel Enoch Stumpf, The Moral Element in Supreme Court Decisions, 6 Vand. L. Rev. 41, 55 (1952) ("[I]f the judge . . . feels that society is seeking a change in the values which law will protect, it is . . . he who must decide to adjust his judgment to the new values . . . ."); see also supra notes 256–265 and accompanying text.

318. See supra notes 98–105 and accompanying text.

319. See supra notes 110–115 and accompanying text.

320. Courts have validated nicotine and opioid addiction, which lends credence to their legitimacy in tort law and in society. See, e.g., Harrington v. Purdue Pharma L.P., 144 S. Ct. 2071, 2078 (2024) (recognizing the underlying addiction theory behind the tort claims). Admittedly, these obesity-related tort claims would face difficult barriers to success—namely in proving that the defendant's food was the proximate cause of the plaintiff's obesity. For a discussion of this issue, see Benloulou, supra note 128, at 46. Though these barriers would be difficult to surmount, many stand to benefit from courts' ability to consider them and potentially validate the reality of food addiction.

321. See, e.g., Mo. Ann. Stat. § 537.595(3) (2025) (immunizing defendants from "civil liability under any state law . . . for any claim arising out of weight gain, obesity, or a health condition associated with weight gain or obesity").

322. See, e.g., Ala. Code § 6-5-732 (2026).

323. See Wilking & Daynard, supra note 30, at 231–32.

324. E.g., Mich. Comp. Laws § 600.2974(3) (2026); Or. Rev. Stat. § 30.963(2) (2025).

325. See Carter, supra note 90, at 5.

claims. CCAs require plaintiffs to prove a "knowing and willful" violation of state or federal law to bring any claim.[326] This standard is often required at the pleading stage and is incredibly prohibitory to potential plaintiffs.[327]

As in tort law, the answer lies in the negligence standard. Negligence is a less stringent standard than knowledge or intent: The plaintiff simply must prove that the defendant did not act reasonably under the circumstances.[328] Put another way, negligent actors did not take reasonable precautions to avoid the harm.[329] This standard is kinder to plaintiffs who, instead of having to prove knowledge at the pleading, would have to demonstrate that the defendant acted unreasonably. Lowering the burden, especially at the pleading stage, would open the courthouse doors to more obesity claims. Obesity UDAP suits could still carry some level of important judicial expression—such as communicating Big Food's intentional campaign to induce food addiction. Its reliance on an unfair practice, however, may obfuscate the independent expression of the harm of food addiction, whereas in tort law, the claim would be premised on it. Though perhaps not as validating in the expressive function as allowing obesity-related torts, this would still allow for private action to hold Big Food accountable for its transgressions.[330]

4. *Impact of the Proposed CCA Amendments.* — These amendments would further three distinct goals: validating food addiction, expanding available lawsuits for harmed consumers, and remedying policy issues.

First, by amending CCAs to explicitly recognize food addiction, the legislatures would legitimize it as a real issue. This is scientifically correct, remedies flawed statutes, and carries a powerful expressive affirmation that society considers food addiction a serious problem. Though this validation is important, the second proposed amendment, which would allow for judicial consideration of the claims, is even more critical. By allowing adjudication of food-addiction torts, an amended CCA would create the potential for the firm validation provided by the fact-intensive and flexible common law system. Even if a state only lessened the burden on UDAP practices, the judiciary could still confirm the existence of food addiction. Therefore, all three amendments would give the courts ample occasion to validate the existence of food addiction—which the current legal regime sorely and erroneously lacks.

Second, relaxing CCAs could allow for food addiction to find its rightful place in tort doctrine. The *Pelman* court barely considered such a

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326. See Wilking & Daynard, supra note 30, at 231–32.

327. See id. at 233 (emphasizing the outsized burden this places on plaintiffs attempting to access discovery).

328. See Restatement (Second) of Torts § 283 (Am. L. Inst. 1965).

329. See id. § 284 cmt. A ("The actor, as a reasonable man, should realize that his act involves an unreasonable risk of causing an invasion of an interest of another . . . .").

330. See Thompson, supra note 230, at 712.

claim due to the lack of scientific backing when the case was filed.[331] The claim was subsequently dropped before it could be considered further.[332] Now, with modern science, claims like this may have merit (as the *Pelman* court itself recognized[333]). This could potentially allow Big Food litigation to be the next Big Tobacco litigation, opening the courthouse doors to negligent failure-to-warn claims. Further, these amendments would minimize the tension between CCA and UDAP claims. Without broad immunization, consumers could use UDAP claims tied to obesity to proceed in the food context. This would effectuate UDAPs' goal of "level[ing] the playing field by creating statutory claims without intent requirements"[334] for obesity lawsuits. Even if courts declined to vindicate plaintiffs in obesity-related tort cases, the courts would still have the chance to decide that on an institutional level. This could have major common law and expressive impacts.[335]

Third, even if courts determine that some subsets of these lawsuits are frivolous,[336] the threat of obesity negligence claims would encourage better policy choices by Big Food.[337] Potential lawsuits would induce food providers to "take responsibility for [their] role in this problem."[338] Allowing for obesity-related torts would create a "threat of litigation," which would foster "healthier products" or compel "food manufacturers to market their products in the most informative and candid manner possible."[339] The potential for litigation could help to make our society healthier. An amended CCA would solve the scientific, policy, and institutional concerns that plague current legislation. State legislatures should not hesitate to embrace these changes.

CONCLUSION

CCAs are bad legislation. They are not in keeping with modern understandings of food addiction. They effectuate bad policy. And they inappropriately rob the common law courts of their institutional duty to hear and settle novel tort claims. They should be amended to validate food addiction and allow the courts to consider modern research regarding food and behavior. This amendment would correct scientific falsehoods and give courts the chance to weigh in. Though these claims may not prove

331. Pelman v. McDonald's Corp., 237 F. Supp. 2d 512, 527 (S.D.N.Y. 2003).

332. Benloulou, supra note 128, at 33.

333. *Pelman*, 237 F. Supp. 2d at 533.

334. Wilking & Daynard, supra note 30, at 233.

335. See supra section II.B.

336. See Matthew Walker, Low-Fat Foods or Big Fat Lies?: The Role of Deceptive Marketing in Obesity Lawsuits, 22 Ga. St. U. L. Rev. 689, 691 (2006) ("[T]he determination as to when a lawsuit is 'frivolous' is a legal decision that should be left to the courts, and [CCAs] would be premature, given the failure of obesity lawsuits to date.").

337. See id. at 709–10.

338. Id. at 709.

339. Id. at 709–10.

to be successful in the courtroom, they could still go a long way in changing food industry practices. Most crucially, amending CCAs would finally vindicate the legitimacy, veracity, and danger of food addiction in the United States.