

No. 14-17111

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

THE STATE OF MISSOURI, EX REL. CHRIS KOSTER, ATTORNEY
GENERAL; THE STATE OF NEBRASKA, EX REL. JON BRUNING,
ATTORNEY GENERAL; THE STATE OF OKLAHOMA, EX REL. E. SCOTT
PRUITT, ATTORNEY GENERAL; THE STATE OF ALABAMA, EX REL.
LUTHER STRANGE, ATTORNEY GENERAL; THE COMMONWEALTH OF
KENTUCKY, EX REL. JACK CONWAY, ATTORNEY GENERAL;
AND TERRY E. BRANSTAD, GOVERNOR OF THE STATE OF IOWA,

Plaintiffs/Appellants,

v.

KAMALA D. HARRIS, ATTORNEY GENERAL OF CALIFORNIA; AND KAREN
ROSS, SECRETARY OF THE CALIFORNIA DEPARTMENT OF FOOD AND
AGRICULTURE,

Defendants/Appellees;

THE HUMANE SOCIETY OF THE UNITED STATES,
AND THE ASSOCIATION OF CALIFORNIA EGG FARMERS,

Defendant-Intervenors/Appellees.

ON APPEAL FROM THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA • HON. KIMBERLY J. MUELLER, DISTRICT JUDGE • CASE NO.
2:14-cv-00341-KJM-KJN

APPELLANTS' BRIEF

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JURISDICTIONAL STATEMENT

Appellants brought this action in the U.S. District Court for the Eastern District of California under 28 U.S.C. §§ 1331 and 1343(a)(3) and 42 U.S.C. §§ 1983 and 1988, challenging two impending provisions of California law as contrary to the United States Constitution.

On October 2, 2014, the district court entered a Final Judgment in accordance with its Order of the same day dismissing the Amended Complaint with prejudice and without leave to amend for want of subject-matter jurisdiction, concluding that Plaintiffs/Appellants lacked *parens patriae* standing to challenge the constitutionality of California Health and Safety Code § 25996 and California Code of Regulations, title 3, § 1350(d).

Plaintiffs/Appellants filed a timely notice of appeal on October 24, 2014 in compliance with FRAP 4(a)(1)(A). This Court has appellate jurisdiction under 28 U.S.C. § 1291 to review the final judgment of the district court.

STATEMENT OF THE ISSUES PRESENTED

1. Whether Appellants have *parens patriae* standing to challenge two provisions of California law enacted in violation of the Commerce and Supremacy Clauses of the United States Constitution.
2. Whether Appellants' Commerce and Supremacy Clause challenges to California legislation are ripe for review.
3. Whether the district court abused its discretion by dismissing Appellants' complaint without leave to amend.

ADDENDUM

Pursuant to Circuit Rule 28.2-7, Appellants include an Addendum bound with this brief.

STATEMENT OF THE CASE

The States of Missouri, Iowa, Nebraska, Oklahoma, Kentucky, and Alabama (“Appellants” or “Plaintiff States”) brought this action against the Attorney General of California (“CAG”) and the Secretary of the California Department of Food and Agriculture (“CDFA”) (collectively, “California”) on March 5, 2014,¹ to declare unconstitutional and enjoin enforcement of two new provisions of California law governing the sale of shell eggs: Assembly Bill 1437 (“AB1437”)² and CDFA Shell Egg Food Safety regulation 1350(d) (“1350”)³ (collectively, “Shell Egg Laws”).

In our Amended Complaint, Appellants asserted the following facts:

¹ Missouri filed its original complaint on February 3, 2014 as the sole plaintiff. [ER101]. Shortly thereafter, five other States sought to join the case. An Amended Complaint was filed on March 5, 2014 by the States of Missouri, Nebraska, Oklahoma, and Alabama; the Commonwealth of Kentucky; and Iowa Governor Terry E. Branstad. [ER102-03]. The only new allegations in the Amended Complaint related to the volume of egg production and sales in each of the five new Plaintiff States. [ER39-43].

² Cal. Health & Safety Code §§ 25996-97.

³ Cal. Code Regs. tit. 3, §§1350(d)(1).

Californians consume more than nine billion eggs per year, nearly half of them produced by caged hens in other states.

The American egg industry comprises 280 million egg laying hens and produces nearly 80 billion eggs for human consumption every year. More than half of those eggs come from just five states: Iowa, Ohio, Indiana, Pennsylvania, and California. [ER70]. Despite its place among the top five producers, California is a net importer of eggs: in the 12-month period from July 1, 2012, through June 30, 2013, California's residents consumed over 9 billion eggs while the State's farmers produced only 5 billion. [ER44]. The other 4 billion eggs are imported from other states. [ER44].

Nearly a third of California's imports—about 1.3 billion eggs—come from Iowa, the nation's largest egg producer. [ER75]. Of those, 1 billion are shipped in their shells; the rest are cracked and packaged as liquid or powder. [ER75]. Missouri produces another 13% of California's imports—nearly 600 million eggs (415 million of them in their shells)—which accounts for one third of Missouri's total annual production. [ER75]. The precise number of eggs imported from Alabama, Nebraska,

Oklahoma, and Kentucky is unknown,⁴ [ER44] but University of California Poultry Specialist Don Bell identifies Alabama, Nebraska, and Kentucky among the states whose eggs account for another 5.6% of total California imports. [ER44, 75].

The vast majority of eggs produced in the United States—approximately 90%—are laid by hens in conventional cage systems. [ER75]. The remaining 5% are laid by hens housed in a variety of cage-free environments. [ER75]. Conventional cage systems typically house between 4 and 7 birds per cage and provide about 67 square inches of space per bird. [ER36]. They have a number of advantages over cage-free housing systems, including better hygiene; cleaner eggs; lower mortality; a low risk of disease and parasitism; fewer problems with feather pecking and cannibalism because of the small group size in the cage; better foot health; and fewer problems with air quality (dust and

⁴ The State of Nebraska is one of the top ten largest egg producers in the United States, with production totaling 2.723 billion eggs in 2012. [ER39]. The State of Alabama is one of the top fifteen largest egg producers in the United States, with production totaling 2.139 billion eggs in 2012. [ER40]. Kentucky farmers produced approximately 1.037 billion eggs in 2012 and generated approximately \$116 million in revenue for the state. [ER41]. Oklahoma farmers produced more than 700 million eggs in 2012 and generated approximately \$90 million in revenue for the state. [ER41].

ammonia). [ER67]. However, conventional cages also restrict hens' movement and prohibit some of their natural behavior. [ER67]. By contrast, cage-free housing systems permit hens significantly more space to move about and engage in a wider range of natural behaviors, but they are more expensive to operate, raising production costs at least 20% over those associated with conventional cage systems. [ER69].

California voters ban conventional cages from California egg farms.

In 2008, California voters approved a ballot initiative called "Proposition 2" that, starting January 1, 2015, would make it illegal in California to "tether or confine any covered animal [including egg-laying hens], on a farm, for all or the majority of any day, in a manner that prevents such animal from (a) Lying down, standing up, and fully extending his or her limbs; and (b) Turning around freely." [ER61]. Violation of Prop 2's prohibitions would constitute a misdemeanor punishable by up to a \$1,000 fine and 180 days in county jail. [ER62]. Because Prop 2's mandate is described in terms of animal behavior rather than numerical dimensions, it is not clear how much more space Prop 2 requires; however, most experts agree that continuing to house 4-7 hens in industry-standard conventional cages systems providing 67

square inches per hen would not comply with Prop 2 and would have to be replaced.⁵

Economists predict that Prop 2 will force egg producers out of California by increasing in-state production costs.

Before Prop 2 was adopted, economists and animal welfare scholars at the University of California—Davis modeled the likely effects of the law on the California egg industry. [ER45]. One study concluded that building new cage-free housing or retrofitting existing facilities to be cage-free would cost in the range of \$10 to \$40 per bird. [ER69]. Housing California’s 20 million egg-laying hens in compliance with Prop 2 would therefore require between \$200 and \$800 million in

⁵ For example, CDFA commissioned a study by University of California—Davis animal welfare researcher Dr. Joy Mench, who used “kinematic analysis to evaluate the space required for Hy-Line W36 hens, the strain most commonly used in U.S. egg production, to stand up, lie down, fully extend their wings (i.e. extend both wings, a behavior called ‘wing flapping’), and turn around freely.” [ER63]. She found that wing flapping required the most floor space of all four behaviors—322 square inches of floor space. [ER64]. Because wing flapping is the rarest of the behaviors that must be accommodated under Prop 2, and because Prop 2 does not expressly require that every bird be able to flap its wings simultaneously, Dr. Mench concluded that the minimum floor space required per bird decreases as the number of birds per enclosure increases. [ER65]. For example, an enclosure housing one hen would require 322 square inches, an enclosure with ten hens would have to provide 134.2 square inches per bird, and an enclosure housing 10,000 hens would need only 87.3 square inches per bird. [ER66].

capital improvements. [ER69]. Another study calculated the necessary capital outlay at \$385 million.[ER78]. In addition to these one-time capital investments, researchers estimated that the larger enclosures required by Prop 2 would raise ongoing production costs in California by at least 20% relative to out-of-state competitors. [ER75].

Based on their calculations, the UC-Davis researchers concluded that the expected impact of Prop 2

would be the almost complete elimination of egg production in California within the six-year adjustment period. Non-cage production costs are simply too far above the costs of the cage systems used in other states to allow California producers to compete with imported eggs in the conventional egg market.

[ER45]. Nonetheless, the researchers offered a ray of hope for the state's egg farmers:

If a shift to non-cage production were to be imposed nationwide, the implications are different. We would expect consumer costs to rise substantially, by at least 25 percent, and perhaps much more. *Under this scenario, lower-cost eggs produced from caged hens would not be available to supply U.S. consumers, unless it was possible to expand low-cost egg production in Canada or Mexico for shipments to U.S. markets. Egg production in the United States would continue with reduced volumes, but consumers would pay more and consume fewer eggs because of the higher price.*

[ER69 (emphasis added)].

The California Legislature passes AB1437 to protect California's egg industry from interstate competition.

Faced with the negative impact Prop 2 would have on California's egg industry starting in 2015, the California Legislature in 2010 passed AB1437, which added three more sections (§§ 25995 through 25997) to the California Health and Safety Code. [ER46]. Section 25996 provides that,

Commencing January 1, 2015, a shelled egg may not be sold or contracted to sell for human consumption in California if it is the product of an egg-laying hen that was confined on a farm or place that is not in compliance with animal care standards set forth in [§ 25990].

[ER46].

The stated purpose of AB1437 is “to protect California consumers from the deleterious, health, safety, and welfare effects of the sale and consumption of eggs derived from egg-laying hens that are exposed to significant stress that may result in increased exposure to disease pathogens including salmonella.” § 25995(e); [ER72-73]. However, no scientific study conducted to date has found any correlation between cage size or stocking density and the incidence of salmonella in egg-

laying hens. [ER47]. Additionally, the most recent studies establish there is no correlation between cage size or stocking density and stress levels in egg-laying hens. [ER47].

The legislative history of AB1437 suggests that the bill's true purpose was not to protect public health but rather to protect California's egg farmers from the market effects of Prop 2 by "leveling the playing field" for out-of-state egg producers. [ER48]. An analysis by the California Assembly Committee on Appropriations following its May 13, 2009, committee hearings on AB1437 stated as follows:

Rationale. With the passage of Proposition 2 in November 2008, 63% of California's voters determined that it was a priority for the state to ensure the humane treatment of farm animals. However, the proposition only applies to in-state producers. *The intent of this legislation is to level the playing field so that in-state producers are not disadvantaged.* This bill would require that all eggs sold in California must be produced in a way that is compliant with the requirements of Proposition 2.

[ER48 (emphasis added)].

After AB1437 passed both the California Assembly and the California Senate, the California Health and Human Services Agency ("CHHS") prepared an Enrolled Bill Report for the Governor. [ER48]. That report stated in pertinent part, "Supporters of Proposition 2

claimed that giving egg-laying hens more space may reduce this type of salmonellosis by reducing the intestinal infection with *Salmonella* Enteritidis via reducing the stress of intensive confinement. Scientific evidence does not definitively support his conclusion.” [ER48].

Summarizing the arguments pro and con concerning AB1437 later in its report, CHHS further stated that one of the arguments against the enactment of the legislation is that there is “[n]o scientific evidence to support assertion of salmonella prevention.” [ER48, 80].

Indeed, the California Department of Food and Agriculture (“CDFA”) concedes in the Legal Impact section of its own Enrolled Bill Report for AB1437 that the bill’s purported public health rationale is likely untenable. [ER49]. If AB1437 were to be challenged on Commerce Clause grounds, the CDFAs warned, California

. . . . will have to establish that there is a public health justification for limiting the confinement of egg-laying hens as set forth in section 25990. *This will prove difficult because, given the lack of specificity as to the confinement limitations, it will invariably be hard to ascribe any particular public health risk for failure to comply.* . . . [W]e doubt that the federal judiciary will allow the state to rely exclusively upon the findings of the Legislature, such as they are, to establish a public health justification for section 25990.

[ER49, 83 (emphasis added)].

Despite the absence of any scientific evidence to support the bill's purported public health rationale, CDFa urged the Governor to sign AB1437 into law for purely economic reasons:

RECOMMENDATION AND SUPPORTING ARGUMENTS:

SIGN. In November 2008, voters passed Proposition 2, requiring California farm animals, including egg-laying hens, have room to move freely. Approximately 35% of shell eggs consumed in California are imported from out of state. California is the fifth largest producer behind Iowa, Ohio, Indiana and Pennsylvania, in that order. *This will ensure a level playing field for California's shell egg producers* by requiring out of state producers to comply with the state's animal care standards.

[ER49-50, 81 (emphasis added)]. Later in the same report, CDFa warned the Governor that the danger in not signing the bill was competition, not contamination:

When Proposition 2 requirements are implemented in 2015, *[California's] producers will no longer be economically competitive with out-of-state producers*. Without a level playing field with out-of-state producers, companies in California will no longer be able to operate in this state and will either go out of business or be forced to relocate to another state. *This will result in significant loss of jobs and reduction of tax revenue in California*.

[ER50, 82 (emphasis added)].

In his signing statement, Governor Schwarzenegger made no mention of AB1437's purported public health rationale at all. [ER50]. The only purposes he cited for enacting the law were protecting California farmers from the market effects of Prop 2: "The voters' overwhelming approval of Proposition 2 demonstrated their strong support for the humane treatment of egg producing hens in California. By ensuring that all eggs sold in California meet the requirements of Proposition 2, this bill is good for both California egg producers and animal welfare." [ER50, 85].

CDFR promulgates additional cage-size regulations that may or may not be coterminous with Prop 2 and AB1437.

Amid the uncertainty concerning Prop 2 and AB1437's behavior-based cage-size requirements, CDFR promulgated additional regulations in 2013 "to assure that healthful and wholesome eggs of known quality are sold in California." 3 CA CCR § 1350; [ER46].

Section 1350 went into effect in two phases. In Phase I, California egg farmers must have implemented by July 1, 2013: (1) Salmonella Enteritidis preventions measures for the production, storage, and

transportation of shell eggs, (2) a Salmonella monitoring program that tests for the presence Salmonella Enteritidis at five points during an egg-laying hen's life cycle, and (3) a program for vaccinating hens against Salmonella on at least three occasions. 3 CA CCR § 1350(c)(1)-(3). Phase II establishes minimum cage-sizes for egg-laying hens based on the average floor space per bird. Effective January 1, 2015:

. . . no egg handler or producer may sell or contract to sell a shelled egg for human consumption in California if it is the product of an egg-laying hen that was confined in an enclosure that fails to comply with the following standards. . . . An enclosure containing nine (9) or more egg-laying hens shall provide a minimum of 116 square inches of floor space per bird.

3 CA ADC § 1350(d)(1). It is not clear whether the square-inch requirements under §1350(d) are coextensive with the behavior-based requirements of AB1437. [ER46]. If egg farmers may satisfy AB1437 by complying with §1350, UC Davis agricultural economist Dr. Hoy Carmen estimates the cost of producing eggs will increase by at least 12%. [ER47, 77]. On the other hand, if AB1437 requires entirely cage-free production, Dr. Carmen predicts production costs will increase by more than 34%. [ER47, 77].

Appellants challenge California’s attempt to regulate commercial conduct within our sovereign borders.

As the Shell Egg Laws’ effective date approached, Appellants became concerned that “[our] econom[ies] and status within the federal system will be irreparably injured if the California Legislature—who were not elected by, and are not answerable to, the people of [our states]—is allowed to regulate and increase the cost of egg production in [our own territory].” [ER39]. To protect our legislative authority and preserve our position among our sister states as co-equal sovereigns, Appellants turned to the federal courts for judicial relief.

On March 5, 2014, Appellants filed a two-count Amended Complaint alleging the Shell Egg Laws violate the Commerce Clause of the United States Constitution because (a) they were enacted solely to protect California egg producers from out-of-state competitors, (b) they have the purpose and effect of discriminating against interstate commerce, and (c) they regulate commercial activity occurring entirely within the Plaintiff States. [ER57]. Anticipating that California would claim its Shell Egg Laws are permissible food safety measures (notwithstanding their facial economic-protectionist legislative history), Appellants alleged *in the alternative* that the Laws violate the

Supremacy Clause because regulations regarding the production of eggs to be sold through interstate commerce are expressly preempted by the Federal Egg Products Inspection Act, 21 U.S.C. § 1052(a). [ER51-53].

In late March and early April 2014, the Humane Society of the United States (“HSUS”) and the Association of California Egg Farmers (“ACEF”) moved to intervene and filed separate motions to dismiss. [ER104]. California filed its own motion to dismiss on April 9, 2014. [ER105]. The district court granted HSUS and ACEF leave to intervene on June 3, 2014. [ER107]. Three groups of amici curiae filed briefs with the court as well—two in support of the pending motions to dismiss, and one in opposition. [ER107-11].

The district court dismisses for lack of jurisdiction and denies Appellants leave to amend as futile.

On October 2, 2014, the district court dismissed our Amended Complaint on two jurisdictional grounds without reaching the merits of Appellants’ dormant Commerce Clause or Supremacy Clause claims. [ER9-34]. First, the court concluded Appellants lacked standing to challenge the Shell Egg Laws because we had failed to allege the Laws would harm our citizens as a whole. [ER15]. Second, the court concluded our claims were not justiciable because we had failed to

allege a genuine threat of enforcement by California. [ER21-23]. The court further concluded that our pleading deficiencies could not be cured through amendment because Appellants brought this case only to protect our egg farmers:

It is patently clear plaintiffs are bringing this action on behalf of a subset of each state's egg farmers and their purported right to participate in the laws that govern them, not on behalf of each state's population generally. In light of the nature of the allegations in plaintiffs' first amended complaint and the arguments made at hearing, leave to amend would be futile, as plaintiffs lack standing to bring this action on behalf of each state's egg farmers.

[ER34].

SUMMARY OF THE ARGUMENT

The judgment against Appellants should be reversed because the district court erred in ruling that Appellants lacked *parens patriae* standing and that our claims were not ripe for review. First, Appellants sufficiently alleged that the Shell Egg Laws harm the economic well-being of our citizens and exclude them from the benefits that flow from our participation in the federal system. Second, Appellants sufficiently alleged that our claims are ripe for review because the harm caused by the Shell Egg Laws had already begun to occur. Our farmers were forced to choose—well in advance of the Laws’ effective date—between losing access to the nation’s largest market or dramatically increasing their production costs, which would also raise price our consumers pay for eggs. In any event, Appellants claims are surely ripe for review *now that the Shell Egg Laws are in effect and being enforced*.

Even assuming Appellants had not sufficiently pleaded standing and ripeness, the district court abused its discretion by dismissing the First Amended Complaint *with prejudice* because leave to amend would not have been futile. The judgment should be reversed and the case remanded for further proceedings

ARGUMENT

I. The district court erred in dismissing the First Amended Complaint for lack of *parens patriae* standing because Appellants have sufficiently alleged injury-in-fact to our quasi-sovereign interests.

In three separately filed motions to dismiss, Appellees argued that Plaintiff States lacked *parens patriae* standing to challenge the Shell Egg Laws because we “allege only speculative harm to a handful of private egg producers who could sue on their own.” [ER86-92]. The district court granted all three motions, concluding that

plaintiffs have not brought this action on behalf of their interest in the physical or economic well-being of their residents in general, but rather on behalf of a discrete group of egg farmers whose businesses will allegedly be impacted by [the Shell Egg Laws]. Plaintiffs are therefore only nominal parties without real interests of their own.

[ER26]. The court’s ruling was erroneous and should be reversed because Appellants sufficiently alleged injury-in-fact to our quasi-sovereign interests in (1) the economic well-being of our people, and (2) securing the benefits that should flow from Appellants’ participation in our federal system of government.

A. Standard of Review

Standing is a question of law, which this Court reviews de novo. *Jewel v. Nat'l Sec. Agency*, 673 F.3d 902, 907 (9th Cir. 2011). “To invoke a federal court’s subject-matter jurisdiction, a plaintiff needs to provide only ‘a short and plain statement of the grounds for the court’s jurisdiction.’” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (quoting Fed.R.Civ.P. 8(a)(1)). “Accepting the plaintiff’s allegations as true and drawing all reasonable inferences in the plaintiff’s favor, the court determines whether the allegations are sufficient as a legal matter to invoke the court’s jurisdiction.” *Id.*

Though a plaintiff “must allege ‘factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,’” *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)), “[s]pecific facts are not necessary; the statement need only ‘give the defendant fair notice of what the ... claim is and the grounds upon which it rests.’” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) (emphasis added). “General factual allegations of injury resulting from

the defendant's conduct may suffice, as [federal courts] ‘presum[e] that general allegations embrace those specific facts that are necessary to support the claim.’ *Jewel*, 673 F.3d at 907 (quoting *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 889 (1990))(emphasis added).

“A court may not resolve genuinely disputed facts where the question of jurisdiction is dependent on the resolution of factual issues going to the merits.” *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987). Rather, the court “assumes the truth of allegations in a complaint or habeas petition, unless controverted by undisputed facts in the record.” *Id.* Dismissal is appropriate only “where it appears *beyond doubt* that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Id.* “This standard, often cited in Rule 12(b)(6) motions, ... is equally applicable in motions challenging subject matter jurisdiction when such jurisdiction may be contingent upon factual matters in dispute.” *Id.*

B. To establish *parens patriae* standing, a State must allege injury-in-fact to a quasi-sovereign interests.

Article III of the Constitution limits the judicial power of the United States to “Cases” and “Controversies.” U.S. Const. Art. III, § 2. “The doctrine of standing gives meaning to these constitutional limits by identifying those disputes which are appropriately resolved through the judicial process.” *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014) (internal quotations omitted). For a private party to establish the “irreducible constitutional minimum” required for Article III standing, she must plead three elements. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, she must allege “an ‘injury-in-fact’—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent.” *Id.* (internal citations omitted). Second, “the injury has to be fairly ... trace[able] to the challenged action of the defendant.” *Id.* Third, “it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.”” *Id.* “At bottom, the gist of the question of standing is whether petitioners have such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the

presentation of issues upon which the court so largely depends for illumination.” *Massachusetts v. E.P.A.*, 549 U.S. 497, 517 (2007).

States, however, “are not normal litigants for the purposes of invoking federal jurisdiction.” *Id.* at 518. Though States must still establish Article III standing by alleging an injury-in-fact to a legally protected interest, they “have interests and capabilities beyond those of an individual by virtue of their sovereignty.” *Oregon v. Legal Servs. Corp.*, 552 F.3d 965, 970 (9th Cir. 2009). Given their unusual interests, States are “entitled to special solicitude” in a standing analysis.

Massachusetts, 549 U.S. at 521. When the issue on appeal is whether a plaintiff has standing to sue, the Supreme Court has observed that “[i]t is of considerable relevance that the party seeking review here is a sovereign State and not, as it was in *Lujan*, a private individual.” *Id.*

One of the ways—perhaps the chief way—in which States are afforded “special solicitude” is their capacity to bring legal action on behalf of their citizens as “*parens patriae*.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 600 (1982) (“*Snapp*”). To establish *parens patriae* standing, a State must satisfy the same elements necessary for private party standing—injury-in-fact,

causation, and redressability. *Table Bluff Reservation (Wiyot Tribe) v. Philip Morris, Inc.*, 256 F.3d 879, 885 (9th Cir. 2001). What’s different about *parens patriae* standing is the kind of interest at stake. Rather than alleging an injury to its own pecuniary interest (*e.g.*, damage to state property or breach of a state contract), a State suing in its capacity as *parens patriae* “must assert an injury to what has been characterized as a ‘quasi-sovereign’ interest.” *Snapp*, 458 U.S. at 601.

A “judicial construct that does not lend itself to a simple or exact definition,” *id.*, the term “quasi-sovereign interest” originated with Justice Holmes in *State of Ga. v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907). In that case, the State of Georgia brought an action to enjoin copper smelters in Tennessee from discharging sulfurous gases that were destroying forests, orchards, and crops in five Georgia counties. *Id.* Writing for the Court, Justice Holmes rejected the smelters’ argument that Georgia lacked standing simply because the State did not own the affected lands itself:

This is a suit by a state for an injury to it *in its capacity of quasi-sovereign*. In that capacity the state has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain.

...

When the states by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining *quasi-sovereign interests*.

Tennessee Copper Co., 206 U.S. 230, 237 (1907) (emphasis added).

Justice Holmes did not define the term further, but subsequent cases have described quasi-sovereign interests as “a set of interests that the State has in the well-being of its populace.” *Snapp*, 458 U.S. at 602 (1982). “Although the articulation of such interests is a matter for case-by-case development—neither an exhaustive formal definition nor a definitive list of qualifying interests can be presented in the abstract—certain characteristics of such interests are so far evident. These characteristics fall into two general categories.” *Id.* at 607. “First, a State has a quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general.” *Id.* “Second, a State has a quasi-sovereign interest in not being discriminatorily denied its rightful status within the federal system.” *Id.*

In this case, Appellants alleged injury-in-fact to quasi-sovereign interests in both categories.

1. Appellants sufficiently alleged injury-in-fact to our quasi-sovereign interest in the economic well-being of our people.

The Supreme Court has “long recognized that a State’s interests in the health and well-being of its residents extend beyond mere physical interests to economic and commercial interests.” *Snapp*, 458 U.S. at 609. A State may establish *parens patriae* standing based on this quasi-sovereign interest by showing that unlawful conduct or the enforcement of an unconstitutional regulation “limits the opportunities of [its] people, shackles [its] industries, retards [its] development, and relegates [the State] to an inferior economic position among [its] sister States.” *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 451, 65 S. Ct. 716, 723, 89 L. Ed. 1051 (1945). States often rely on this quasi-sovereign interest to establish *parens patriae* standing when alleging (a) violations of the “dormant” Commerce Clause, (b) economic isolation, or (c) discrimination against their citizens.

- a. **Dormant Commerce Clause claims usually implicate a State’s quasi-sovereign interest in the economic well-being of its people.**

Even before Justice Holmes coined the term “quasi-sovereign interest,” the Supreme Court had already recognized *parens patriae* standing in a dormant Commerce Clause case involving one State’s pretextual use of public health laws to block goods from other states being sold within its borders. In *Louisiana v. Texas*, Louisiana brought an original action in the Supreme Court to enjoin a Texas quarantine that had the practical effect of embargoing all interstate commerce between New Orleans and the State of Texas. 176 U.S. 1, 4 (1900). In its demurrer for lack of subject-matter jurisdiction, Texas argued:

this suit is in reality for and on behalf of certain individuals engaged in interstate commerce, and while the suit is attempted to be prosecuted for and in the name of the state of Louisiana, said state is in effect loaning its name to said individuals, and is only a nominal party, the real parties at interest being said individuals in the said city of New Orleans, who are engaged in interstate commerce.

Id. at 12 (1900). The Supreme Court disagreed with Texas, concluding that Louisiana had brought its claim on behalf of its citizens in general and not simply on behalf of the New Orleans merchants’ who were unable to ship goods into Texas:

. . . [T]he state of Louisiana presents herself in the attitude of *parens patriae*,... [alleging] that the state of Texas is intentionally absolutely interdicting interstate commerce as respects the state of Louisiana by means of unnecessary and unreasonable quarantine regulations. . . . [T]he cause of action must be regarded, not as involving any infringement of the powers of the state of Louisiana, or any special injury to her property, but as asserting that the state is entitled to seek relief in this way because the matters complained of affect her citizens at large.

Louisiana, 176 U.S. at 19 (emphasis added).⁶

⁶ Though the Supreme Court ultimately concluded it did not have jurisdiction, it was not because Louisiana lacked standing as *parens patriae*. Rather, jurisdiction was lacking because the Court held Texas was not the real party in interest. The Supreme Court's original jurisdiction is limited to controversies between States, and the Court concluded that Louisiana was really complaining about the misconduct of particular Texas officials:

in order that a controversy between states, justiciable in this court, can be held to exist, something more must be put forward than that the citizens of one state are injured by the maladministration of the laws of another. . . . [A] controversy between states does not arise unless the action complained of is state action, and acts of state officers in abuse or excess of their powers cannot be laid hold of as in themselves committing one state to a distinct collision with a sister state.

Id. at 22.

Since *Louisiana v. Texas*, the Supreme Court has generally found that a State has *parens patriae* standing when suing to invalidate a Sister State's laws under the "dormant" aspect of the Commerce Clause.

The Supreme Court also found *parens patriae* standing in *Pennsylvania v. West Virginia*, where two States alleged that a third had given its own citizens a right of first refusal to purchase natural gas produced in that state. 262 U.S. 553, 592 (1923). In that case, the Court held that Pennsylvania and Ohio had a "twofold interest" in challenging the West Virginia law. First, the States had standing "as the proprietor of various public institutions and schools whose supply of gas will be largely curtailed or cut off by the threatened interference with the interstate current." *Id.* at 591. But in addition to their pecuniary interests as purchasers of natural gas in their own right, Pennsylvania and Ohio had a separate interest "*as the representative of the consuming public whose supply will be similarly affected.*" *Id.* at 591 (emphasis added). This latter interest in the economic well-being of their citizens was sufficient in itself to give both States *parens patriae* standing:

The private consumers in each State ... constitute a substantial portion of the State's population. Their health, comfort and welfare are seriously jeopardized by the threatened withdrawal of the gas from the

interstate stream. *This is a matter of grave public concern in which the State, as representative of the public, has an interest apart from that of the individuals affected.*

Id. at 592 (emphasis added); see also *Maryland v. Louisiana*, 451 U.S. 725, 737 (1981) (challenging Louisiana tax on the “first use” of previously untaxed natural gas coming into the State); *Louisiana*, 176 U.S. at 19 (Louisiana challenged Texas quarantine that prevented the shipment of goods from New Orleans to ports in Texas); *Connecticut v. Cahill*, 217 F.3d 93 (2nd Cir. 2000)(Connecticut challenged New York statute prohibiting non-residents from taking lobsters in certain waters).

In this case, as in *Pennsylvania*, Plaintiff States allege that our Sister State has enacted laws which impose substantial burdens on interstate commerce that will result in our citizens paying higher prices for a certain commodity. [ER57]. The district court attempted to distinguish our challenge to California’s Shell Egg Laws from Pennsylvania’s challenge to West Virginia’s natural gas law in several ways:

Pennsylvania concerned the total withdrawal of gas by West Virginia from the Pennsylvania market; gas was a vital commodity used and depended upon by millions

of citizens. *Pennsylvania*, 262 U.S. at 553. To change to another fuel source would have cost more than \$100 for each domestic consumer and more than \$100 million in 1923 dollars between the plaintiff states of Pennsylvania and Ohio. *Id.* However, Appellants here allege nothing to suggest eggs are a vital commodity necessary to preserve plaintiffs' citizens' health, comfort and welfare. And even if Appellants had alleged such additional facts, Appellants further allege only potential "disruptions" in the supply of eggs, not the total withdrawal of this commodity from the plaintiff states.

[ER27 (emphasis added)]. For purposes of *parens patriae* standing, however, these are distinctions without a difference. The Supreme Court did not refer to natural gas as a "vital commodity" anywhere in *Pennsylvania*. Rather, it found that "the gas carried into Pennsylvania and Ohio ... is *not negligible*, but amounts to *billions of cubic feet per year*." *Pennsylvania*, 262 U.S. at 590 (emphasis added). The volume of eggs Appellants ship into California is *not negligible* either, but amounts to *billions of eggs per year*. Indeed, *California imports more than a billion eggs from Iowa alone*, as well as one out of every three eggs produced in the state of Missouri.

[ER44].

Pennsylvania alleged that West Virginia's preferential sale of gas to its own citizens "will halt or curtail many industries which seasonally

use great quantities of the gas and wherein thousands of persons are employed and millions of taxable wealth are invested.” *Id.* at 584-85.

Appellants similarly alleged in this case that,

because demand for eggs varies greatly throughout the year, egg producers in other states cannot simply maintain separate facilities for their California-bound eggs. In high-demand months, Plaintiffs’ farmers may not have enough eggs to meet California demand if only a fraction of their eggs are produced in compliance with AB1437. In low-demand months, there may be insufficient California demand to export all compliant eggs, forcing Plaintiffs’ farmers to sell those eggs in their own states at higher prices than their competitors. *Given those inefficiencies, Plaintiffs’ egg farmers must choose either to bring their entire operations into compliance with AB1437 so that they always have enough supply to meet California demand, or else simply leave the California marketplace.*

[ER53-54 (emphasis added)].

Pennsylvania alleged that “chang[ing] to other fuel would require an adjustment of heating and cooking appliances at an average cost of more than \$100 for each domestic consumer, or an aggregate cost exceeding \$30,000,000 in Pennsylvania.” *Pennsylvania*, 262 U.S. at 590.

In this case, Appellants alleged similar costs:

- “Missouri farmers produced nearly two billion eggs in 2012 and generated approximately \$171 million in revenue for the state,” [ER38].

- “Almost one third of eggs are sold in California,” which based on the previous figure generates about \$54 million in revenue for the state. [ER39].
- If they want to continue selling their eggs in California “Missouri farmers ... must ... invest over \$120 million in new hen houses,” which “will raise the cost of eggs in Missouri and make them too expensive to export to any state other than California.” [ER37, 39].
- “the cost of producing eggs will increase by at least 12% [and possible by] more than 34%.” [ER46].
- “Missouri’s economy ... will be irreparably injured if the California Legislature ... is allowed to regulate and increase the cost of egg production in Missouri.” [ER37].
- “Iowa is the number one state in egg production. Iowa farmers produce over 14.4 billion eggs per year.” [ER42].
- “Approximately 9.1% of those eggs—1.07 billion eggs per year—are sold in California.” [ER42].
- “Iowa farmers have more than 51 million egg-laying hens. ... The cost to Iowa farmers to retrofit existing housing or build new housing that complies with [the Shell Egg Laws] would be substantial.” ER42].
- The Shell Egg Laws “ha[ve] the effect of increasing the costs of egg production in Iowa, [and] will have a detrimental impact upon and cause irreparable harm to Iowa’s economy.” [ER42-43].

If there are material differences between the quantum of fact alleged by Pennsylvania and those alleged by Appellants—such that the former

had *parens patriae* standing while the latter do not—they are not found in the district court’s dismissal order.

Finally, in *Great Atl. & Pac. Tea Co. v. Cottrell*, a Louisiana milk producer brought a dormant Commerce Clause challenge to invalidate a Mississippi regulation prohibiting the sale of milk produced in another State unless that other State permitted the sale of milk from Mississippi on a reciprocal basis. 424 U.S. 366, 367-69 (1976). In its defense, the State of Mississippi alleged that it was really *Louisiana* that was violating the Commerce Clause by refusing reciprocity with Mississippi in bad faith. *Id.* at 379. The Supreme Court rejected Mississippi’s argument, holding:

[T]o the extent, if any, that Louisiana is unconstitutionally burdening the flow of milk in interstate commerce by erecting and enforcing economic trade barriers to protect its own producers from competition under the guise of health regulations, the Commerce Clause itself creates the necessary reciprocity. ***Mississippi*** and its producers ***may pursue [a] constitutional remedy by suit in state or federal court challenging Louisiana's actions as violative of the Commerce Clause.***

Id. at 379-380 (emphasis added). In other words, *Cottrell* stands for the proposition that a State (*e.g.*, *Iowa*) has *parens patriae* standing to seek declaratory and injunctive relief against a Sister State (*e.g.*, *California*)

where the plaintiff State alleges that that the Sister State's purported "health regulations" (*e.g.*, § 1350(d)) intentionally inhibit interstate commerce (*e.g.*, by mandating out-of-state producers adopt new, significantly more expensive production methods) in an effort to protect in-state producers (*e.g.*, ACEF and its members) from out-of-state competition (*e.g.*, Iowa's egg farmers).

b. Claims of economic isolation implicate a State's quasi-sovereign interest in the economic well-being of its people.

The Supreme Court has also found *parens patriae* standing where a State challenges conduct that effectively isolates its markets from other States by increasing the costs associating with selling goods across state lines. In *State of Georgia v. Pennsylvania R. Co.*, for example, Georgia alleged several railroad companies had conspired to restrain trade between Georgia and other States by fixing arbitrary and noncompetitive freight rates. 324 U.S. 439 (1945). In terms similar to those used in Appellants' Amended Complaint (and quoted as bullet points in the previous subsection of this brief), Georgia alleged that the consequences of the defendants' anti-competitive conduct were:

- (a) to deny to many of Georgia's products equal access with those of other States to the national market;

(b) to limit in a general way the Georgia economy to staple agricultural products, to restrict and curtail opportunity in manufacturing, shipping and commerce, and to prevent the full and complete utilization of the natural wealth of the State;

(c) to frustrate and counteract the measures taken by the State to promote a well-rounded agricultural program, encourage manufacture and shipping, provide full employment, and promote the general progress and welfare of its people; and

(d) to hold the Georgia economy in a state of arrested development.

Id. at 444. The defendant railroads argued that Georgia did not have *parens patriae* standing because it was merely a nominal party suing to vindicate the interests of private plaintiffs that could have brought suit themselves. *Id.* at 445. The Supreme Court disagreed:

If the allegations of the bill are taken as true, the economy of Georgia and the welfare of her citizens have seriously suffered as the result of this alleged conspiracy. Discriminatory rates are but one form of trade barriers. ...They may stifle, impede, or cripple old industries and prevent the establishment of new ones. They may arrest the development of a State or put it at a decided disadvantage in competitive markets. ... Georgia as a representative of the public is complaining of a wrong, which if proven, limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States. These are matters of grave public concern in which Georgia has an interest

apart from that of particular individuals who may be affected.

Id. at 450-51 (emphasis added).

Like Georgia, Appellants brought this suit as representatives of the public and have complained of a wrong that, *if proven*, limits the opportunities of our people:

Either [our farmers] can incur massive capital improvement costs to build larger habitats for some or all of their egg-laying hens, or they can walk away from the largest egg market in the country. For example, Missouri farmers—who export one third of their eggs to California each year—must now decide whether to invest over \$120 million in new hen houses or stop selling in California.

[ER37].

Though it was required to accept all of Appellants' allegations as true and draw all reasonable inferences in our favor, *see Leite*, 749 F.3d at 1121, the district court *rejected* a number of allegations from the First Amended Complaint: “To the extent plaintiffs argue the implementation of AB 1437 may result in an increase in the cost of eggs, which may injure their citizens who are egg consumers, *this argument is without merit.*” [ER24 (emphasis added)]. The district court also drew inferences in *Defendants'* favor. Citing a single

paragraph in the First Amended Complaint, in which Appellants alleged that the bottom could fall out of the Midwest egg market *if* all of our egg farmers choose not to sell any more eggs in California, the district court *speculated* that the Shell Egg Laws “may benefit plaintiffs’ citizens rather than injure them.” [ER24].

The district court’s suggestion that a precipitous drop in egg prices would be *good* for Appellants’ citizens is myopic. It ignores the long term consequences to consumers if the egg farmers in Appellants’ States are forced out of business, which ultimately reduces competition and results in *higher* prices. In any event, “a State is entitled to assess its needs, and decide which concerns of its citizens warrant its protection and intervention.” *Snapp*, 458 U.S. at 612 (Brennen, J. concurring) (“I know of nothing—except the Constitution or overriding federal law—that might lead a federal court to superimpose its judgment for that of a State with respect to the substantiality or legitimacy of a State's assertion of sovereign interest.”)

“Even *assuming* plaintiffs’ citizens may be faced with an increase in the cost of eggs,” the district court concluded that “this speculative argument alone does not satisfy the requirement of showing an injury

in fact” because “no *constitutional injury* occurs when a manufacturer passes on higher costs in the form of price increases.’” [ER24 (emphasis added)] The latter statement is a direct quote from *Table Bluff*, 256 F.3d at 885, but it has been cited out of context in a way that implies a far broader holding than this Court could ever have intended.

In *Table Bluff*, several Native American tribes sued the nation’s four largest cigarette manufacturers, alleging that the 1998 Master Settlement Agreement (“MSA”) between the tobacco industry and 46 States violated tribe members’ *due process rights* by increasing the price of cigarettes. 256 F.3d at 881-84. Rejecting the tribes’ novel due process theory, the Ninth Circuit cited an Oklahoma district court decision holding that smokers “have no recognized property interest in paying a certain sum to a retailer to purchase a tobacco product.” *Id.* at 885 (quoting *Hise v. Philip Morris Inc.*, 46 F. Supp. 2d 1201 (N.D. Okla. 1999)). Returned to its original context, the *only* “constitutional injury” this Court held not to “occur[] when a manufacturer passes on higher costs in the form of price increases,” is an injury to the constitutional right to *due process*, not the constitutional right to *participate in*

interstate commerce.⁷ Thus, district court’s conclusion that an increase in the cost of eggs could never satisfy the injury in fact requirement was erroneous.

c. Claims of discrimination against a State’s citizens implicate that State’s quasi-sovereign interest in the economic well-being of its people.

Another line of cases vindicating States’ quasi-sovereign interests in the well-being of their citizens involves claims of discrimination. In *Snapp*, for example, the Commonwealth of Puerto Rico alleged that defendant apple growers had discriminated against Puerto Rican workers in favor of foreign laborers. 458 U.S. at 607-08. The defendants moved to dismiss for lack of standing, arguing that fewer than 1,000 Puerto Rican workers had been denied employment, which “could not have a substantial direct or indirect effect on the Puerto Rican economy.” *Id.* at 608. The district court agreed with the defendants

⁷ The district court’s broad reading of *Table Bluff*—which suggests that causing consumers to pay higher prices *never* results in a constitutional injury—undermines its attempt to distinguish the “potential disruption” of the egg market in this case from the “total withdrawal” of natural gas in *Pennsylvania*. [ER27]. If increasing the prices paid by consumers could *never* result in a constitutional injury, why would it matter that “chang[ing] to another fuel source would have cost more than \$100 for each domestic consumer”? [ER27 (citing *Pennsylvania*, 262 U.S. at 553)].

that Puerto Rico, having a total populations of almost 3 million people, lacked standing to sue on behalf of fewer than 1,000 workers who had been denied employment. *Id.* at 609.

On writ of certiorari, the Supreme Court held that the trial court had taken “too narrow a view of the interests at stake.” *Id.* at 609. Lamenting its long experience with the “the political, social, and moral damage of discrimination,” the Court concluded that “a State has a substantial interest in assuring its residents that it will act to protect them from these evils.” *Id.* at 609. “Just as we have long recognized that a State's interests in the health and well-being of its residents extend beyond mere physical interests to economic and commercial interests, *we recognize a similar state interest in securing residents from the harmful effects of discrimination.*” *Id.* at 609 (emphasis added).

Despite the relatively small number of jobs at issue in *Snapp*, the Supreme Court refused “to draw any definitive limits on the proportion of the population of the State that must be adversely affected by the challenged behavior.” 458 U.S. at 607; *see also Com. of Mass. v. Bull HN Info. Sys., Inc.*, 16 F. Supp. 2d 90, 98-99 (D. Mass. 1998) (holding State had *parens patriae* standing to sue private company for discriminating

against 50 employees on the basis of age); *People v. Peter & John's Pump House, Inc.*, 914 F. Supp. 809, 812 (N.D.N.Y. 1996)(*parens patriae* standing to sue night club for discriminating against eight African American patrons). “Although more must be alleged than injury to an identifiable group of individual residents, *the indirect effects of the injury must be considered as well* in determining whether the State has alleged injury to a *sufficiently substantial segment* of its population.” *Id.*; see also *People v. 11 Cornwell Co.*, 695 F.2d 34, 36 (2d Cir. 1982) vacated sub nom. *People v. 11 Cornwell Co.*, 718 F.2d 22 (2d Cir. 1983) (including past victims of discrimination against developmentally disabled adults when analyzing whether discrimination against 8 potential residents of a group home constituted a sufficiently substantial segment of the population). “One helpful indication in determining whether an alleged injury to the health and welfare of its citizens suffices to give the State standing to sue as *parens patriae* is whether the injury is one that the State, if it could, would likely attempt to address through its sovereign lawmaking powers.” *Id.* at 607.

2. Appellants sufficiently alleged that the Shell Egg Laws exclude our citizens from the benefits that flow from our participation in the federal system.

“Distinct from but related to the general well-being of its residents, the State has an interest in securing observance of the terms under which it participates in the federal system.” *Snapp*, 458 U.S. at 601–02. “In the context of *parens patriae* actions, this means ensuring that the State and its residents are not excluded from the benefits that are to flow from participation in the federal system.” *Id.* While it “must be more than a nominal party, . . . *a State does have an interest, independent of the benefits that might accrue to any particular individual, in assuring that the benefits of the federal system are not denied to its general population.*” *Id.* at 608 (emphasis added).

In *Snapp*, Puerto Rico claimed *parens patriae* standing based on this second interest as well, alleging that its workers had been denied the benefits of access to domestic work opportunities under the Wagner-Peyser Act and the Immigration and Nationality Act of 1952, Puerto Rico sued to vindicate *Id.* at 607-08. The Supreme Court agreed:

“[W]e find that Puerto Rico does have *parens patriae* standing to pursue the interests of its residents in the Commonwealth’s full and equal participation in the federal employment service [program]. Unemployment

among Puerto Rican residents is surely a legitimate object of the Commonwealth's concern. Just as it may address that problem through its own legislation, it may also seek to assure its residents that they will have the full benefit of federal laws designed to address this problem. . . . Indeed, the fact that the Commonwealth participates directly in the operation of the federal employment scheme makes even more compelling its *parens patriae* interest in assuring that the scheme operates to the full benefit of its residents.

Id. at 609-10.

As in *Snapp*, Appellants have alleged injury to our quasi-sovereign interest in preserving our rightful place as co-equal sovereigns in our federal system. Where Puerto Rico sued to vindicate its citizens' rights under the Wagner-Peyser Act to receive federal jobs benefits available to all Americans, 29 U.S.C. § 49 et seq., Appellants have sued to vindicate our citizens' rights under the Commerce Clause to buy and sell goods throughout the United States and to have a voice in creating the laws that govern our means of production. As Justice Jackson once explained,

Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by *the certainty that he will have free access to every market in the Nation*, that no home embargoes will withhold his export, *and no foreign state will by customs duties or regulations exclude them*. Likewise, *every consumer may look to the free competition from*

every producing area in the Nation to protect him from exploitation by any. Such was the vision of the Founders.

H. P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 539, 69 S. Ct. 657, 665, 93 L. Ed. 865 (1949) (emphasis added).

The Commerce Clause has two distinct purposes, one more readily apparent than the other. At the most basic level, the Commerce Clause “subordinates each state's authority over interstate commerce to the federal power of regulation.” *Am. Libraries Ass’n v. Pataki*, 969 F. Supp. 160, 175-76 (S.D.N.Y. 1997). At the same time, the “it embodies a *principle of comity* that mandates *that one state not expand its regulatory powers in a manner that encroaches upon the sovereignty of its fellow states.*” *Id.* at 176 (emphasis added). “The need to contain individual state overreaching . . . arises not from any disrespect for the plenary authority of each state over its own internal affairs but out of a recognition that *true protection of each state’s respective authority is only possible when such limits are observed by all states.*” *Id.*

The Supreme Court recognized the twin aspects of the Commerce Clause in *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568, 116 S. Ct. 1589, 1595, 134 L. Ed. 2d 809 (1996). In that case, the Court considered

whether a jury may consider a defendants' conduct outside the judicial forum when awarding punitive damages. *Id.* at 572-73. The Court held that a jury could not do so without violating the Due Process Clause. But it also suggested that the second aspect of the Commerce Clause also prohibited Alabama for imposing its own policy choices on conduct that occurs in another state:

Alabama may insist that BMW adhere to a particular disclosure policy in that State. *Alabama does not have the power, however, to punish BMW for conduct that was lawful where it occurred and that had no impact on Alabama or its residents. Nor may Alabama impose sanctions on BMW in order to deter conduct that is lawful in other jurisdictions.*

Id. at 572-73. Under the Commerce Clause, reasoned the Court,

one State's power to impose burdens on the interstate market for automobiles is not only subordinate to the federal power over interstate commerce, but is also constrained by the need to respect the interests of other States. We think it follows from these principles of state sovereignty and comity that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States.

Gore, 517 U.S. at 571-72 (internal citations omitted); *see also Healy v.*

Beer Institute, 491 U.S. 324, 335–336 (1989) (noting that the

Constitution has a “special concern both with the maintenance of a

national economic union unfettered by state-imposed limitations on interstate commerce and with the autonomy of the individual States within their respective spheres”).

While these decisions support Appellants’ underlying dormant Commerce Clause claim—the merits of which are *not* presently before this Court—they also support Appellant’s *parens patrie* standing to challenge the Shell Egg Laws. *Snapp* holds that a State may establish *parens patriae* standing by alleging an injury to its quasi-sovereign interest in “securing observance of the terms under which it participates in the federal system.” *Am. Libraries Ass’n*, 969 F. Supp. at 175-76. One of those terms is the “*principle of comity* that mandates ...one state not expand its regulatory powers in a manner that encroaches upon the sovereignty of its fellow states.” *Id.* at 176 (emphasis added). Just as this principle prohibits Alabama from imposing sanctions for BMW’s lawful conduct in Mississippi, it also prohibits California from imposing sanctions on Missouri farmers for their lawful conduct in Missouri.

Appellants have a quasi-sovereign interest in securing California’s observance of the principles of comity embodied in the Commerce

Clause. We have a quasi-sovereign interest in ensuring that our residents are not excluded from the benefits of those principles. We have *parens patriae* standing to challenge the Shell Egg Laws.

II. The district court erred in dismissing the First Amended Complaint as non-justiciable.

The justiciability of Appellants' claims was challenged by Appellee California in its motion to dismiss. [ER89-90]. Granting California's motion, the court concluded that Appellants had not alleged a concrete plan by any of our farmers to violate the law, nor any genuine threat of prosecution. [ER31]. And since the laws had not yet gone into effect at the time of the dismissal, "[t]he court can thus make no reasonable inference that any of the states or their producers would suffer prosecution." *Id.*

The district court's ruling was erroneous and should be reversed. Appellants sufficiently alleged that our egg farmers have exported nearly two billion eggs to California in each of the last several years and would continue to do so after January 1, 2015 but for the fear of prosecution under the Shell Egg Laws.

A. Standard of Review

The issue of justiciability under Article III is reviewed de novo by the court of appeals. *Renee v. Duncan*, 686 F.3d 1002, 1010 (9th Cir. 2012).

B. Appellants' challenge to the Shell Egg Laws was ripe for review when we filed our First Amended Complaint.

When Appellants filed the Amended Complaint,⁸ we were only required to allege facts that would support the reasonable conclusion that direct injury would be sustained as a result of the operation and enforcement of AB1437 and §1350 in order to obtain relief from the court. When “plaintiffs seek to establish standing to challenge a law or regulation that is not presently being enforced against them, they must demonstrate a realistic danger of sustaining a direct injury as a result

⁸ The Shell Egg Laws became effective on January 1, 2015, after the district court dismissed the First Amended Complaint with prejudice. Consequently, the Record on Appeal does not include any reference to the injuries Appellants have sustained since the Laws went into effect. If this Court determines the allegations in the First Amended Complaint were not ripe at the time this case was filed, it should grant Appellants the opportunity to file a Second Amended Complaint alleging these additional injuries.

of the statute's operation or enforcement." *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1154 (9th Cir. 2000) (internal quotations omitted). Appellants did not need to wait until actual injuries occurred and were entitled to obtain relief which would prevent injuries or prosecution from happening. "[O]ne does not have to await the consummation of threatened injury to obtain preventive relief." *Pennsylvania*, 262 U.S. at 593 (emphasis added).

Entitlement to relief before prosecution is specifically available for conduct arguably involving a constitutional interest. "When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979) (internal quotations omitted). "If the injury is certainly impending, that is enough." *Pennsylvania*, 262 U.S. at 593 (emphasis added).

The facts alleged by Appellants at the time of filing the First Amended Complaint are sufficient to establish a realistic danger of

direct injury resulting from the enforcement of AB1437 and §1350. Specifically, Appellants alleged that our farmers have a history of exporting nearly 2 billion shell eggs to California each of the last several years—including 10% of Iowa’s annual production and one third of Missouri’s. It is reasonable to infer from their prior course of dealing that our farmers would continue to export a like number of eggs to California each year in the future unless prohibited from doing so. [ER44]. Over 90% of the eggs Appellants’ farmers ship to California are laid by hens housed in conventional cages that do not comply with AB1437 and §1350. [ER74, 76].

Starting January 1, 2015, Appellants’ farmers must *label* any eggs they export to California as “California Shell Egg Food Safety Compliant” or “CA SEFS Compliant.” Cal. Code Regs. tit. 3, § 1354. They cannot simply continue selling non-compliant eggs and wait to see whether the law is enforced, because the labeling requirement imposes an affirmative duty on the farmer to certify that the eggs are compliant. Even assuming there were no genuine threat of prosecution of for violating the minimum cage-size provisions of the Shell Egg Laws, Appellants farms must either comply, lie, or walk away. If they comply,

they lose profits. If they walk away, they lose profits. If they lie, they are defrauding the State of California. The present injury is having to make the choice. The district court erred in ruling that such an injury was not clearly impending.

III. The district court abused its discretion by dismissing the First Amended Complaint with prejudice and committed legal error in concluding that it would have been futile to grant Appellants leave to amend.

The parties never briefed whether amending the complaint would be futile. The district court made its futility determination sua sponte after concluding, “It is patently clear plaintiffs are bringing this action on behalf of a subset of each state’s egg farmers and their purported right to participate in the laws that govern them, not on behalf of each state’s population generally.” [ER33-34]. “In light of the nature of the allegations in plaintiffs’ first amended complaint and the arguments made at hearing,” the court explained in its dismissal order, “leave to amend would be futile, as plaintiffs lack standing to bring this action on behalf of each state’s egg farmers.” [ER33-34].

A. Standard of Review

“The trial court’s denial of leave to amend a complaint is reviewed for an abuse of discretion,” *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011), “but whether the denial rests on an accurate view of law is reviewed de novo.” *Gordon v. City of Oakland*, 627 F.3d 1092, 1094–95 (9th Cir.2010). “The standard for granting leave to amend is generous.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 701 (9th Cir.1990) (noting that leave to amend should be granted when a court can “conceive of facts” that would render the plaintiff’s claim viable). “[A] district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.” *United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Const. Trades Dep’t, AFL-CIO*, -----F.3d-----, No. 12-36049, 2014 WL 5437926, at *9 (9th Cir. Oct. 28, 2014). “Dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment.” *Krainski v. Nevada ex rel. Bd. of Regents of Nevada Sys. of Higher Educ.*, 616 F.3d 963, 972 (9th Cir. 2010).

B. It is an abuse of discretion for a district court to dismiss with prejudice a case over which it lacks subject-matter jurisdiction.

Once the district court determined that subject-matter jurisdiction was lacking, it was an abuse of discretion to dismiss this case *with prejudice*.

“The dismissal of the action with prejudice constitutes a final judgment *on the merits*.” *Int’l Union of Operating Engineers-Employers Const. Indus. Pension, Welfare & Training Trust Funds v. Karr*, 994 F.2d 1426, 1429 (9th Cir. 1993) (emphasis added); *Hall v. Labatt*, 101 F.3d 705 (9th Cir. 1996) (“a dismissal with prejudice is ‘[a]n adjudication on the merits, and final disposition, barring the right to bring or maintain an action on the same claim or cause’”) (quoting Black’s Law Dictionary 421 (West 5th ed. 1979)). Yet, “[i]f a case is not ripe for adjudication, a federal court lacks jurisdiction to hear it under Article III and must dismiss the case *without reaching its merits*.” *Cagle v. Abacus Mortgage, Inc.*, No. 2:13-CV-02157-RSM, 2014 WL 4402136, at *5 (W.D. Wash. Sept. 5, 2014)(citing *Portland Police Ass’n v. City of Portland*, 658 F.2d 1272, 1274 (9th Cir.1981)(emphasis added). It therefore follows that where a plaintiff “lack[s] standing, the district

court lack[s] subject matter jurisdiction to address the merits of his claim and should ... dismiss[] it without prejudice.” *Wasson v. Brown*, 316 F. App’x 663, 664 (9th Cir. 2009) (emphasis added).

This Court has repeatedly admonished lower courts that dismissals for lack of subject matter jurisdiction should be *without prejudice*. *Kelly v. Fleetwood Enterprises, Inc.*, 377 F.3d 1034, 1036 (9th Cir. 2004) (“because the district court lacked subject matter jurisdiction, the claims should have been dismissed without prejudice”).⁹ The only

⁹ See also *Farren v. Option One Mortgage Corp.*, 467 F. App’x 692, 693 (9th Cir. 2012) (district court properly denied motion to amend as futile but should have dismissed without prejudice since dismissal was based on lack of subject-matter jurisdiction); *Davenport v. McHugh*, 372 F. App’x 820 (9th Cir. 2010) (“Because the district court lacked subject matter jurisdiction, Davenport’s action should have been dismissed without prejudice.”); *Levi v. State Bar of California*, 391 F. App’x 633, 634 (9th Cir. 2010) (“dismissals for lack of subject matter jurisdiction ... should be dismissed without prejudice”); *Kendall v. Dep’t of Veterans Affairs*, 360 F. App’x 902, 903 (9th Cir. 2009) (“because the district court lacked subject matter jurisdiction, Kendall’s claims concerning the denials of benefits should have been dismissed without prejudice”); *City of Oakland, Cal. v. Hotels.com LP*, 572 F.3d 958, 962 (Aug. 20, 2009) (“we affirm the dismissal for lack of subject matter jurisdiction but remand so that the dismissal is without prejudice”); *Townsend v. Whole Foods Mkt.*, 324 F. App’x 673 (9th Cir. 2009) (internal citation omitted) (“dismissals for lack of subject matter jurisdiction ... should be dismissed without prejudice.”); *Siler v. Dillingham Ship Repair*, 288 F. App’x 400, 401 (9th Cir. 2008) (“a dismissal for lack of subject matter jurisdiction is not an adjudication on the merits”); *Marcum v. Grant*

exception to this general rule appears to be those cases in which sovereign immunity presents an absolute bar to the jurisdiction of any court. *See, e.g., Craan v. U.S. Army Corps of Engineers*, 337 F. App'x 682, 683 (9th Cir. 2009) (“Ordinarily, a case dismissed for lack of subject matter jurisdiction should be dismissed without prejudice so that a plaintiff may reassert his claims in a competent court. Here, however, the bar of sovereign immunity is absolute: no other court has the power to hear the case, nor can the [the plaintiffs] redraft their claims to avoid the exceptions to the FTCA.”); *Frigard v. United States*, 862 F.2d 201, 204 (9th Cir. 1988) (same). This case does not present an issue of sovereign immunity. Therefore, the district court committed a per se abuse of discretion when it dismissed Plaintiffs’ Amendment Complaint with prejudice.

Cnty., 234 F. App'x 527, 528 (9th Cir. 2007) (remanding because dismissal for lack of jurisdiction should have been without prejudice).

C. The district court erroneously concluded that granting leave to amend would be futile.

Appellants should be granted leave to amend their complaint because it is not clear that the complaint cannot be perfected by inclusion of additional allegations. “The court considers five factors in assessing the propriety of leave to amend—bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff has previously amended the complaint.” *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004). Futility alone has been recognized by this court as a reasonable ground for dismissal with prejudice, but only after the district court has afforded the plaintiff ample opportunity to state its claims. *See, e.g., Sylvia Landfield Trust v. City of Los Angeles*, 729 F.3d 1189, 1196 (9th Cir. 2013) (affirming the district court’s denial of leave to amend for futility where the plaintiff had been permitted to amend its complaint twice before, and its proposed third amended complaint still failed to state any claims).

Although the complaint has been amended once in this case, it was amended by stipulation of the parties *before* California had filed its motion to dismiss and before either HSUS or ACEF had even requested leave to intervene. Moreover, the only amendments to our original

complaint were allegations specific to the five additional plaintiffs—for whom the “Amended Complaint” was the original. More importantly, the district court in *Sylvia Landfield Trust* determined that leave to amend would be futile only after its review of plaintiff’s proposed Third Amended Complaint showed no likelihood of ever stating a claim. *Id.* It was an abuse of discretion to deny Appellants the same opportunity to cure the purported deficiencies.

The district court further abused its discretion by citing the suspected motivation of Appellants as a factor in determining the futility of their claim. The district court drew an inference that Appellants brought this case only to vindicate the interests of egg farmers in their respective states, and cited “the nature of the allegations” as a basis for the futility of amendment. [ER34]. At the motion to dismiss stage, any dispute as to Appellants’ motivation – an issue of fact – should have been resolved in Appellants’ favor. The only question properly before the district court was whether Appellants could allege any set of facts that, if true, would establish standing and ripeness.

CONCLUSION

For the reasons stated above, this Court should reverse the district court's judgment and order dismissing the Amended Complaint with prejudice, and remand for further proceedings. In the alternative, this Court should reverse the district court's judgment and order dismissing the Amended Complaint with prejudice, and remand with instructions to grant the Plaintiffs leave to amend the complaint.

March 4, 2015

Respectfully submitted,

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STATEMENT OF RELATED CASES

Appellants are not aware of any related cases pending before this Court.

CERTIFICATE OF COMPLIANCE

I certify that pursuant to F.R.A.P. 32(a)(7)(C) and Ninth Circuit Rules 28-4 and 32-1, this brief is proportionally spaced in 14 point Century Schoolbook and contains 11,847 words, exclusive of those parts of the brief exempted by Rule 32 (a) (7)(B)(iii). I have relied on Microsoft Word's calculation feature to calculate the word limit.

March 4, 2015

/s/ J. Andrew Hirth
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PROOF OF SERVICE

I am employed in the Office of the Attorney General of the State of Missouri. I am over the age of 18 and not a party to this action. My business address is: Attorney General's Office, Supreme Court Building, P.O. Box 899, Jefferson City, MO 65102.

On March 4, 2015, I electronically filed the foregoing document described as APPELLANTS' BRIEF, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit via the appellate CM/ECF system.

I certify that the following participants in this case are registered as CM/ECF users and will receive electronic service accomplished by the appellate CM/ECF system. I also certify that those listed will receive the exact same document filed with the CM/ECF system by electronic service via email and USPS.

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ADDEND OF PERTINENT LAW

In accordance with F.R.A.P. 28 and Ninth Circuit Rule 28-2.7, pertinent provisions of the U.S. Constitution, the California Code of Health and Safety, and CDFA regulations are set forth verbatim below.

U.S. Constitution Art. I, § 8

The Congress shall have Power . . .

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes....

U.S. Constitution Art. III, § 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; –to all Cases affecting Ambassadors, other public Ministers and Consuls; –to all Cases of admiralty and maritime Jurisdiction; –to Controversies to which the United States shall be a Party; –to Controversies between two or more States; –between a State and Citizens of another State; –between Citizens of different States; –between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

U.S. Constitution Art. VI

...

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Proposition 2
(Cal. Health & Safety Code § 25990)

§ 25990. Prohibitions

In addition to other applicable provisions of law, a person shall not tether or confine any covered animal, on a farm, for all or the majority of any day, in a manner that prevents such animal from:

- (a) Lying down, standing up, and fully extending his or her limbs;
and
- (b) Turning around freely.

AB 1437
(Cal. Health & Safety Code §§ 25996-97)

§ 25996. Prohibition on sale or contract for sale of shelled eggs for human consumption for failure to comply with animal care standards

Commencing January 1, 2015, a shelled egg shall not be sold or contracted for sale for human consumption in California if the seller knows or should have known that the egg is the product of an egg-laying hen that was confined on a farm or place that is not in compliance with animal care standards set forth in Chapter 13.8 (commencing with Section 25990).

§ 25997. Violation; punishment

Any person who violates this chapter is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed 180 days or by both that fine and imprisonment.

CDFA Shell Egg Food Safety Rule 1350 (Cal. Code Regs. tit. 3, §1350)

§ 1350. Shell Egg Food Safety.

(a) In accordance with Food and Agricultural Code section 27521(a), to assure that healthful and wholesome eggs of known quality are sold in California, commencing July 1, 2013, any egg producer or egg handler as defined in sections 27510 and 27510.1 of the Food and Agricultural Code, shall ensure all flocks with a hatching date after July 1, 2013 comply with the requirements of this section.

(b) Registered egg producers or egg handlers whose shell eggs are processed with a treatment such as pasteurization to ensure safety, shall be exempt from the requirements of this section. A “treatment” or “treated” means a technology or process that achieves at least a 5-log destruction of SE for shell eggs as defined in 21 CFR section 118.3.

(c) Registered egg producers or handlers with 3,000 or more laying hens shall incorporate all of the provisions specified in subsections (c)(1), (2), and (3) in their facility operations:

(1) Implement *Salmonella enterica* serotype Enteritidis (SE) prevention measures in accordance with the Food and Drug Administration, Department of Health and Human Services' requirements for the production, storage, and transportation of shell eggs as specified in 21 CFR Part 118;

(2) Implement a SE environmental monitoring program which includes testing for SE in “chick papers,” (the papers in which chicks are delivered) and the house environment when the pullets are 14-16 weeks of age, 40-45 weeks of age, 4-6 weeks post-molt, and pre-depopulation; and

(3) Implement and maintain a vaccination program to protect against infection with SE which includes at a minimum two attenuated live vaccinations and one killed or inactivated vaccination, or a demonstrated equivalent SE vaccination program approved by the Department.

(d) Commencing January 1, 2015, no egg handler or producer may sell or contract to sell a shelled egg for human consumption in California if it is the product of an egg-laying hen that was confined in an enclosure that fails to comply with the following standards. For purposes of this section, an enclosure means any cage, crate, or other structure used to confine egg-laying hens:

(1) An enclosure containing nine (9) or more egg-laying hens shall provide a minimum of 116 square inches of floor space per bird. Enclosures containing eight (8) or fewer birds shall provide a minimum amount of floor space per bird as follows, using formula $322 + [(n-1) \times 87.3] / n$, where “n” equals the number of birds:

Number of Birds	Square Inches per Bird
1	322
2	205
3	166
4	146
5	135
6	127
7	121
8	117

(2) The enclosure shall provide access to drinking water and feed trough(s) without restriction.

No. 14-17111

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE STATE OF MISSOURI, EX REL. CHRIS KOSTER, ATTORNEY
GENERAL; THE STATE OF NEBRASKA, EX REL. JON BRUNING,
ATTORNEY GENERAL; THE STATE OF OKLAHOMA, EX REL. E. SCOTT
PRUITT, ATTORNEY GENERAL; THE STATE OF ALABAMA, EX REL.
LUTHER STRANGE, ATTORNEY GENERAL; THE COMMONWEALTH OF
KENTUCKY, EX REL. JACK CONWAY, ATTORNEY GENERAL;
AND TERRY E. BRANSTAD, GOVERNOR OF THE STATE OF IOWA,

Plaintiffs/Appellants,

v.

KAMALA D. HARRIS, ATTORNEY GENERAL OF CALIFORNIA; AND KAREN
ROSS, SECRETARY OF THE CALIFORNIA DEPARTMENT OF FOOD AND
AGRICULTURE,

Defendants/Appellees;

THE HUMANE SOCIETY OF THE UNITED STATES,
AND THE ASSOCIATION OF CALIFORNIA EGG FARMERS,

Defendant-Intervenors/Appellees.

ON APPEAL FROM THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA • HON. KIMBERLY J. MUELLER, DISTRICT JUDGE • CASE NO.
2:14-cv-00341-KJM-KJN

EXCERPTS OF RECORD

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT CALIFORNIA**

THE STATE OF MISSOURI, ex rel.
Chris Koster, Attorney General; THE
STATE OF NEBRASKA, ex rel. Jon
Bruning, Attorney General; THE STATE OF
OKLAHOMA, ex rel. E. Scott Pruitt,
Attorney General; THE STATE OF
ALABAMA, ex rel. Luther Strange,
Attorney General; THE
COMMONWEALTH OF KENTUCKY, ex
rel. Jack Conway, Attorney General; and
TERRY E. BRANSTAD, Governor of the
State of Iowa,

Plaintiffs,

v.

KAMALA D. HARRIS, solely in her official
capacity as Attorney General of California;
and KAREN ROSS, solely in her official
capacity as Secretary of the California
Department of Food and Agriculture,

Defendants,

THE HUMANE SOCIETY OF THE
UNITED STATES and THE
ASSOCIATION OF CALIFORNIA EGG
FARMERS,

Defendant-Intervenors.

Case No. 2:14-cv-00341-KJM-KJN

**NOTICE OF APPEAL and
REPRESENTATION
STATEMENT**

Courtroom: 3, 15th floor
Judge: Hon. Kimberly J.
Mueller
Action Filed: 02/03/2014

1 Notice is given that THE STATE OF MISSOURI, ex rel. Chris Koster,
 2 Attorney General; THE STATE OF NEBRASKA, ex rel. Jon Bruning, Attorney
 3 General; THE STATE OF OKLAHOMA, ex rel. E. Scott Pruitt, Attorney General;
 4 THE STATE OF ALABAMA, ex rel. Luther Strange, Attorney General; THE
 5 COMMONWEALTH OF KENTUCKY, ex rel. Jack Conway, Attorney General;
 6 and TERRY E. BRANSTAD, Governor of the State of Iowa—Plaintiffs in the
 7 above named case—do hereby appeal to the United States Court of Appeals for the
 8 Ninth Circuit from (1) the District Court’s October 2, 2014 ORDER dismissing
 9 Plaintiffs’ First Amended Complaint with prejudice and without leave to amend,
 10 and (2) from the District Court’s October 2, 2014 JUDGMENT IN A CIVIL
 11 CASE.

12 As required by F.R.A.P. 12(b) and Ninth Circuit L.R. 3-2(b), the following
 13 is a list of all parties to this action and the information regarding their counsel:

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Dated: October 24, 2014

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CERTIFICATE OF SERVICE

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I hereby certify that on October 24, 2014, I electronically filed **PLAINTIFFS' NOTICE OF APPEAL and REPRESENTATION STATEMENT** with the Clerk of the Court by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ J. Andrew Hirth
J. ANDREW HIRTH

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUDGMENT IN A CIVIL CASE

STATE OF MISSOURI, ET AL.,

CASE NO: 2:14-CV-00341-KJM-KJN

v.

KAMALA D. HARRIS, ET AL.,

XX — Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER FILED ON 10/2/14**

Marianne Matherly
Clerk of Court

ENTERED: **October 2, 2014**

by: /s/ A. Kastilahn
Deputy Clerk

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STATE OF MISSOURI, et al.,
Plaintiffs,
v.
KAMALA D. HARRIS, et al.,
Defendants.

No. 2:14-cv-00341-KJM-KJN

ORDER

This case raises constitutional challenges to California legislation governing the sale of shell eggs. The legislation, scheduled to take effect on January 1, 2015, bans the sale of shell eggs within California by producers or handlers if the eggs are the product of an egg-laying hen that was confined in an enclosure that fails to comply with certain animal care standards. Plaintiffs are six states who challenge the legislation as unconstitutional, saying it violates the Commerce and Supremacy Clauses of the United States Constitution.

On August 11, 2014, the court heard the separate motions to dismiss brought by defendants Kamala Harris and Karen Ross (“defendants”) and defendant-intervenors the Association of California Egg Farmers (“ACEF”) and the Humane Society of the United States (“HSUS”). John Hirth and Peggy Whipple appeared for plaintiffs; Susan Smith appeared for

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1 defendants; Brian Boynton appeared for defendant-intervenor ACEF; and Bruce Wagman and
2 Rebecca Cary appeared for defendant-intervenor HSUS.¹

3 After carefully considering the parties' papers and arguments, defendants' motions
4 to dismiss are GRANTED for lack of standing, without leave to amend.

5 I. PROCEDURAL HISTORY

6 On February 3, 2014, the State of Missouri initiated this action asserting two
7 alternative causes of action under the federal Commerce and Supremacy Clauses. Compl., ECF
8 No. 2 (relying on U.S. CONST. art. I, § 8, cl. 3 and U.S. CONST. art. VI, cl. 2).

9 On March 5, 2014, a first amended complaint was filed by the State of Missouri,
10 the State of Nebraska, the State of Oklahoma, the State of Alabama, the Commonwealth of
11 Kentucky and Terry Branstad, the Governor of the State of Iowa (collectively "plaintiffs"). First
12 Am. Compl. ("FAC"), ECF No. 13.

13 HSUS and ACEF filed motions to intervene on March 26, 2014 and April 8, 2014,
14 respectively. ECF Nos. 27, 33. On June 3, 2014, following the parties' briefing on the motions
15 to intervene, the court granted HSUS's alternative motion for permissive intervention and
16 ACEF's motion to intervene as of right. ECF No. 57.

17 On April 9, 2014, defendants filed a motion to dismiss. ECF No. 36. HSUS
18 moved to dismiss plaintiffs' first amended complaint on March 26, 2014, ECF No. 27-2, and
19 ACEF moved to dismiss or alternatively for judgment on the pleadings on April 25, 2014, ECF
20 No. 45. Plaintiffs filed a combined opposition to all three motions to dismiss on May 16, 2014.
21 ECF No. 54. Defendants and defendant-intervenors HSUS and ACEF filed separate replies on
22 June 5, 2014. ECF Nos. 58-60.

23 Amici I and Amici II filed motions for leave to file amicus curiae briefs on April
24 22, 2014 and June 10, 2014, respectively. ECF Nos. 44, 63. On July 1, 2014, the court granted

25
26 ¹ The court notes the following parties were identified as present in the audience and
27 observing the August 11, 2014 hearing: Edward Johnson and Jonathon Townsend were present
28 for amici Animal Legal Defense Fund, Compassion Over Killing, Inc. and Farm Sanctuary, Inc.
(collectively "Amici I") and Paige Tomaselli was present for amici Center For Food Safety,
Consumers Union, Food & Water Watch, Food Animal Concerns Trust, Healthy Food Action, the
Institute for Agriculture and Trade Policy and Public Justice, P.C. (collectively "Amici II").

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1 the motions. ECF No. 70. On July 2, 2014, both amici filed briefs in support of the outstanding
2 motions to dismiss. ECF Nos. 71, 72. On July 15, 2014, plaintiffs responded to the amici briefs,
3 ECF No. 75, and on July 22, 2014, ACEF and Amicis I and II filed a response thereto. ECF Nos.
4 76, 77.

5 On July 25, 2014, amicus Missouri Liberty Project filed a motion for leave to file
6 an amicus curiae brief in opposition to defendants’ motion to dismiss, which was granted by the
7 court on July 28, 2014. ECF Nos. 82, 84. Amicus Missouri Liberty Project filed its brief on July
8 29, 2014. ECF No. 88.

9 II. ALLEGATIONS OF THE FIRST AMENDED COMPLAINT

10 Plaintiffs allege as follows in their first amended complaint. The California
11 Legislature passed AB 1437, “which requires egg farmers in other states to comply with
12 behavior-based enclosure standards identical to those in [Proposition] 2 if they want to continue
13 selling their eggs in California.”² FAC ¶ 5. As a result, “[e]gg producers in Missouri, Nebraska,
14 Oklahoma, Alabama, Kentucky, and Iowa face a difficult choice”: “[e]ither they can incur
15 massive capital improvement costs to build larger habitats for some or all of their egg-laying
16 hens, or they can walk away from the largest egg market in the country.” *Id.* ¶ 6. “[T]he people
17 most directly affected by California’s extraterritorial regulation—farmers in our states who must
18 either comply with AB 1437 or lose access to the largest market in the United States—have no
19 representatives in California’s Legislature and no voice in determining California’s agricultural
20 policy.” *Id.* ¶ 7.

21 Plaintiffs bring this action and assert standing under the *parens patriae* doctrine³
22 because each plaintiff state “has quasi-sovereign interests in protecting its citizens’ economic
23 health and constitutional rights as well as preserving its own rightful status within the federal
24 system.” *Id.* ¶¶ 10, 17, 22, 27, 32. All plaintiffs posit each state’s “economy and status within the

25 _____
26 ² As explained below, Proposition 2 (“Prop 2”) addresses the use of conventional cage-
systems for housing egg-laying hens. *See* FAC ¶¶ 56–57.

27 ³ The *parens patriae* doctrine is defined as: “A doctrine by which a government has
28 standing to prosecute a lawsuit on behalf of a citizen, esp. on behalf of someone who is under a
legal disability to prosecute the suit.” BLACK’S LAW DICTIONARY 1221 (9th ed. 2009).

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1 federal system will be irreparably injured if the California Legislature—who were not elected by,
 2 and are not answerable to, the people of [each plaintiff state]—is allowed to regulate and increase
 3 the cost of egg production in [each plaintiff state].” *Id.* ¶¶ 13, 19, 24, 29, 34. With regard to the
 4 State of Missouri, “[a]most one third of [the] eggs” produced by Missouri’s farmers are sold in
 5 California. *Id.* ¶ 12. With regard to the State of Iowa, it is the “number one state in egg
 6 production” and “[a]pproximately 9.1% of [the state’s] eggs . . . are sold in California.” *Id.*
 7 ¶¶ 37–38, 53–54. “The cost to Iowa farmers to retrofit existing housing or build new housing that
 8 complies with [AB 1437] would be substantial.” *Id.* ¶ 41. The increased cost of production “will
 9 have a detrimental impact upon and cause irreparable harm to Iowa’s economy.” *Id.* ¶ 43. The
 10 States of Nebraska and Alabama are among the top fifteen largest egg producers in the United
 11 States. *Id.* ¶¶ 18, 23. The States of Kentucky and Oklahoma produced 1.037 billion and 700
 12 million eggs in 2012, respectively. *Id.* ¶¶ 28, 33. “Precise figures on the number of eggs
 13 imported into California from other states are scarce, but University of California Poultry
 14 Specialist Don Bell identifies Alabama, Nebraska, and Kentucky among the states whose eggs
 15 account for another 5.6% of total California imports.” *Id.* ¶ 55.

16 In 2008, California voters approved Prop 2 “to prohibit the cruel confinement of
 17 farm animals’ within California.” *Id.* ¶ 56 (quoting FAC Ex. A, ECF No. 13-1). Starting in 2015,
 18 Prop 2 will prohibit California egg producers from housing egg-laying hens in enclosures that
 19 prevent them from standing, lying down, turning around and fully extending their limbs,
 20 effectively banning the use of conventional cage-systems. *Id.* ¶ 57. The cost of complying with
 21 Prop 2 “would have placed California egg producers at a significant competitive disadvantage
 22 when compared to egg producers in Missouri and other states.” *Id.* ¶ 61. “Faced with the
 23 negative impact Prop 2 would have on California’s egg industry,” the California Legislature
 24 passed AB 1437 in 2010, which requires out-of-state egg farmers to comply with the same
 25 requirements set forth in Prop 2. *Id.* ¶¶ 63–64. The California Department of Food and
 26 Agriculture promulgated regulations establishing minimum dimensions, set forth in section 1350
 27 of title 3 of the California Code of Regulations (“section 1350”). *Id.* ¶ 65. Prop 2 provides
 28 “California egg farmers 2,249 days to come into compliance with its mandate” and AB 1437

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1 provides plaintiffs’ “egg farmers only 1,640 days” to comply. *Id.* ¶ 67. “The stated purpose of
 2 AB 1437 is ‘to protect California consumers from the deleterious, health, safety, and welfare
 3 effects of the sale and consumption of eggs derived from egg-laying hens that are exposed to
 4 significant stress that may result in increased exposure to disease pathogens including
 5 salmonella.” *Id.* ¶ 68. Plaintiffs allege the purpose of AB 1437 “was not to protect public health
 6 but rather to protect California farmers from the market effects of Prop 2 by ‘leveling the playing
 7 field’ for out-of-state egg producers.” *Id.* ¶ 70.

8 Even assuming AB 1437 serves a legitimate public health purpose within
 9 California by limiting the methods of production of California-bound eggs outside California,
 10 plaintiffs allege the statute is “expressly and implicitly preempted by the Federal Egg Products
 11 Inspection Act,” 21 U.S.C. § 1031, because one of its express purposes “is to protect human
 12 health in connection with the consumption of shell eggs.” *Id.* ¶¶ 76–81.

13 AB 1437 “imposes a substantial burden on interstate commerce by forcing
 14 Plaintiffs’ farmers either to forgo California’s markets altogether or accept significantly increased
 15 production costs just to comply with California law.” *Id.* ¶ 84.

16 Those higher production costs will increase the price of eggs
 17 outside California as well as in. Because demand for eggs varies
 18 greatly throughout the year, egg producers in other states cannot
 19 simply maintain separate facilities for their California-bound eggs.
 20 In high-demand months, Plaintiffs’ farmers may not have enough
 21 eggs to meet California demand if only a fraction of their eggs are
 22 produced in compliance with AB1437. In low-demand months,
 23 there may be insufficient California demand to export all compliant
 24 eggs, forcing Plaintiffs’ farmers to sell those eggs in their own
 25 states at higher prices than their competitors. Given those
 26 inefficiencies, Plaintiffs’ egg farmers must choose either to bring
 27 their entire operations into compliance with AB1437 so that they
 28 always have enough supply to meet California demand, or else
 simply leave the California marketplace.

24 *Id.* ¶ 85. The “necessary capital improvements” to comply with AB 1437 and section 1350
 25 (collectively “shell egg laws”) “will cost Plaintiffs’ farmers hundreds of millions of dollars.” *Id.*

26 ¶ 86. Even choosing to forgo the California market will impose a substantial burden on interstate

27 //

28 //

1 commerce because plaintiffs’ farmers would produce a surplus of eggs resulting in a decrease in
2 the price of eggs “and potentially forcing some [of plaintiffs’ egg] producers out of business.” *Id.*
3 ¶ 88.

4 Plaintiffs’ action is ripe for review because “the injury to Plaintiffs’ farmers is
5 certainly impending” as “any of [plaintiffs’] farmers who continue to export their eggs to
6 California will face criminal sanctions beginning January 1, 2015 unless they take action now to
7 come into compliance by the law’s effective date.” *Id.* ¶ 89 (quotations and citation omitted).
8 “Whichever path they follow, an incorrect choice spells doom for their businesses. Coming into
9 compliance will necessarily increase productions [sic] costs; if the law is eventually struck down,
10 the farmer will not be able to compete with egg producers still using cage-systems.” *Id.* ¶ 92.

11 With regard to a violation of the Commerce Clause, plaintiffs allege (1) AB 1437
12 and section 1350 “are protectionist measures intended to benefit California egg producers at the
13 expense of Plaintiffs’ egg producers by eliminating the competitive advantage [their] producers
14 would enjoy once Prop 2 becomes effective;” (2) the provisions “have the purpose and effect of
15 regulating conduct” outside California; and (3) they “impose a substantial burden on interstate
16 commerce by forcing Plaintiffs’ egg producers either to increase their production costs . . . or
17 forgo the largest market in the United States” with no legitimate state purpose. *Id.* ¶¶ 96–101.

18 With regard to plaintiffs’ alternative Supremacy Clause claim, plaintiffs allege
19 even if the court finds AB 1437 and section 1350 serve a legitimate, non-discriminatory purpose,
20 “the statute and regulations would be in conflict with the express terms of 21 U.S.C. § 1052(b).”
21 *Id.* ¶ 103. “[B]ecause Congress evidenced its intention to occupy the entire field of regulations
22 governing the quality and condition of eggs by imposing uniform national standards, the Federal
23 Egg Products Inspection Act . . . implicitly preempts” AB 1437 and section 1350. *Id.* ¶ 104.

24 III. THE SHELL EGG LAWS

25 A. Section 1350

26 California’s shell egg food safety regulation provides for the implementation of
27 specified requirements “to assure that healthful and wholesome eggs of known quality are sold in
28 California” FAC Ex. H, ECF No. 2-8; *see also* Cal. Code Regs. tit. 3, § 1350. Under

Case 2:14-cv-00341-KJM-KJN Document 102 Filed 10/02/14 Page 7 of 25

1 section 1350(c), egg producers or handlers shall incorporate three specified provisions aimed at
2 the prevention of *Salmonella* contamination in shell eggs:

3
4 (1) Implement *Salmonella enterica* serotype Enteritidis (SE)
5 prevention measures in accordance with the Food and Drug
6 Administration, Department of Health and Human Services'
7 requirements for the production, storage, and transportation of shell
8 eggs as specified in 21 CFR Part 118;

9 (2) Implement a SE environmental monitoring program . . . ; and

10 (3) Implement and maintain a vaccination program to protect
11 against infection with SE

12 Cal. Code Regs. tit. 3, § 1350(c)(1)–(3).

13 Section 1350 also provides for specific confinement specifications for egg-laying
14 hens:

15 (d) Commencing January 1, 2015, no egg handler or producer may
16 sell or contract to sell a shelled egg for human consumption in
17 California if it is the product of an egg-laying hen that was confined
18 in an enclosure that fails to comply with the following standards.
19 For purposes of this section, an enclosure means any cage, crate, or
20 other structure used to confine egg-laying hens:

21 (1) An enclosure containing nine (9) or more egg-laying
22 hens shall provide a minimum of 116 square inches of floor
23 space per bird. Enclosures containing eight (8) or fewer
24 birds shall provide a minimum amount of floor space per
25 bird as follows, using formula $322 + [(n-1) \times 87.3]/n$, where
26 "n" equals the number of birds:

<i>Number of Birds Square Inches Per Bird</i>	
1	322
2	205
3	166
4	146
5	135
6	127
7	121
8	117

27 *Id.* § 1350(d).

28 B. Assembly Bill 1437

Assembly Bill 1437 was approved by the Governor of California on July 6, 2010.

FAC Ex. D, ECF No. 13-4; *see also* CAL. HEALTH & SAFETY CODE § 25995. The legislative

//////

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1 findings and declarations regarding treatment of egg-laying hens read as follows:

2

3

(a) According to the Pew Commission on Industrial Farm Production, food animals that are treated well and provided with at least minimum accommodation of their natural behaviors and physical needs are healthier and safer for human consumption.

4

5

(b) A key finding from the World Health Organization and Food and Agricultural Organization of the United Nations Salmonella Risk Assessment was that reducing flock prevalence results in a directly proportional reduction in human health risk.

6

7

8

(c) Egg-laying hens subjected to stress are more likely to have higher levels of pathogens in their intestines and the conditions increase the likelihood that consumers will be exposed to higher levels of food-borne pathogens.

9

10

(d) Salmonella is the most commonly diagnosed food-borne illness in the United States.

11

12

(e) It is the intent of the Legislature to protect California consumers from the deleterious, health, safety, and welfare effects of the sale and consumption of eggs derived from egg-laying hens that are exposed to significant stress and may result in increased exposure to disease pathogens including salmonella.

13

14

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CAL. HEALTH & SAFETY CODE § 25995. Beginning on January 1, 2015, “a shelled egg shall not

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be sold or contracted for sale for human consumption in California if the seller knows or should

17

have known that the egg is the product of an egg-laying hen that was confined on a farm or place

18

that is not in compliance with animal care standards set forth in Chapter 13.8 (commencing with

19

Section 25990).” *Id.* § 25996. The prohibitions set forth in Chapter 13.8, titled “Farm Animal

20

Cruelty,” state:

21

In addition to other applicable provisions of law, a person shall not tether or confine any covered animal, on a farm, for all or the majority of any day, in a manner that prevents such animal from:

22

23

(a) Lying down, standing up, and fully extending his or her limbs;
and

24

25

(b) Turning around freely.

26

CAL. HEALTH & SAFETY CODE § 25990. An “egg-laying hen” is defined as “any female

27

domesticated chicken, turkey, duck, goose, or guinea fowl kept for the purpose of egg

28

production.” *Id.* § 25991(c). “Enclosure” is defined as “any cage, crate, or other structure

Case 2:14-cv-00341-KJM-KJN Document 102 Filed 10/02/14 Page 9 of 25

1 (including what is commonly described as . . . a ‘battery cage’ for egg-laying hens) used to
2 confine a covered animal.” *Id.* § 25991(d). “Farm” is defined as “the land, building, support
3 facilities, and other equipment that are wholly or partially used for the commercial production of
4 animals or animal products used for food or fiber; and does not include live animal markets.” *Id.*
5 § 25991(e).

6 A violation of the law constitutes a misdemeanor and is punishable with a fine of
7 not more than \$1,000 or imprisonment for not more than 180 days or both. *Id.* § 25997. The
8 regulation states the provisions “are in addition to, and not in lieu of, any other laws protecting
9 animal welfare, including the Penal Code. This chapter shall not be construed to limit any state
10 law or regulation protecting the welfare of animals, nor shall anything in this chapter prevent a
11 local governing body from adopting and enforcing its own animal welfare laws and regulations.”
12 *Id.* § 25997.1.

13 IV. LEGAL STANDARDS FOR A MOTION TO DISMISS FOR LACK OF STANDING

14 The jurisdiction of the federal courts is limited to resolving cases and
15 controversies. U.S. CONST. art. III, § 2, cl. 1; *Warth v. Seldin*, 422 U.S. 490, 499 (1975).
16 Because of this limited jurisdiction, cases lie outside the jurisdiction of the court unless proven
17 otherwise. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 376–78 (1994). There are a
18 number of “doctrines that cluster about Article III,” including standing and ripeness, that may
19 support a challenge to subject matter jurisdiction raised by either party or sua sponte by the court.
20 *Allen v. Wright*, 468 U.S. 737, 750 (1984) (quotations and citation omitted); Fed. R. Civ. P.
21 12(b)(1). A Rule 12(b)(1) jurisdictional attack may be either facial or factual. *White v. Lee*, 227
22 F.3d 1214, 1242 (9th Cir. 2000) (citation omitted). In a facial attack, as in this action, the
23 complaint is challenged on its face as failing to support federal jurisdiction, whereas, in a factual
24 attack, the challenger provides evidence, through affidavits or otherwise, that an alleged fact is
25 false resulting in a lack of subject matter jurisdiction. *See Safe Air for Everyone v. Meyer*, 373
26 F.3d 1035, 1039 (9th Cir. 2004). In a facial attack, allegations in the complaint are taken as true
27 and construed in the light most favorable to a plaintiff.

28 ////

1 V. ANALYSIS

2 A. Standing Under The *Parens Patriae* Doctrine

3 i. The Parties' Arguments

4 Plaintiffs bring this action in their capacity as *parens patriae*, asserting they have
5 standing because each plaintiff State “has quasi-sovereign interests in protecting its citizens’
6 economic health and constitutional rights as well as preserving its own rightful status within the
7 federal system.” FAC ¶¶ 10, 17, 22, 27, 32. Defendants challenge plaintiffs’ standing to pursue
8 their Commerce Clause and Supremacy Clause claims as *parens patriae*, arguing they fail to
9 allege an “interest apart from the private egg producers.” ECF No. 36 at 13. Defendants assert
10 plaintiffs fail to allege a quasi-sovereign interest because the first amended complaint does not
11 properly allege an injury to a sufficiently substantial segment of the plaintiff states’ populations.
12 *Id.* at 14 (quoting *Table Bluff Reservation (Wiyot Tribe) v. Philip Morris, Inc. (Table Bluff)*, 256
13 F.3d 879, 885 (9th Cir. 2001)).

14 HSUS and ACEF also move to dismiss plaintiffs’ first amended complaint for lack
15 of standing. HSUS argues, in part, plaintiffs cannot bring this case “on behalf of an unspecified
16 number of unnamed egg producers from their states.” ECF No. 27-2 at 11–13. Similarly, ACEF
17 argues “to the extent the complaint alleges any injury at all, . . . it is limited to the economic harm
18 that would allegedly befall some unspecified egg farmers residing within their borders who may
19 intend to sell eggs in California after January 1, 2015” ECF No. 45-1 at 16 (noting “for all
20 their emphasis on the egg producers within their territories, [p]laintiffs never disclose how many
21 companies belong in this limited group”).

22 Plaintiffs oppose, arguing they have “sufficiently alleged injury to quasi-sovereign
23 interests” because they “have alleged an effort to restrain interstate commerce by imposing higher
24 costs on [their] producers if they want to compete in California.” ECF No. 54 at 21. Plaintiffs
25 further argue, “California’s disruption of the egg supply and the fluctuation of egg prices that
26 disruption will cause in [p]laintiff States are ‘matter[s] of grave public concern’” *Id.* at 22
27 (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 591 (1923)). Plaintiffs also rely on *Alfred*
28 *L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez (Snapp)*, 458 U.S. 592 (1982), in support of

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1 their argument “challeng[ing] the violation of [their] citizens’ right under the Commerce Clause
2 to the free flow of goods across state lines without undue burdens imposed by individual states.”
3 ECF No. 54 at 22.

4 During the hearing on the motions to dismiss, plaintiffs averred they are not
5 bringing this action on behalf of the egg industry alone, but rather on behalf of each state’s
6 residents, explaining “all of the quantifiable things that we could allege in the complaint will
7 affect the production of eggs . . . [b]ut our claim is larger than . . . simply harm to the egg
8 producers.” Hr’g Tr. at 3, ECF No. 91.⁴ Plaintiffs argued “this case is actually about . . . one
9 state’s decision to protect its farmers from competition by closing its borders to its sister states
10 unless they submit to regulation without representation.” *Id.* at 4. Plaintiffs posited during the
11 hearing “that the California egg laws that [they] are challenging effectively remove from the
12 people of Missouri the ability to set public policy themselves regarding agricultural regulations.
13 And -- if they want to participate in the California marketplace.” *Id.* at 4–5. Plaintiffs offered
14 *Snapp* as their best authority in support of their argument, explaining that in this action, “we are
15 talking about a statute that effectively blocks, at the California border, eggs from out of state that
16 don’t comply with California’s own notions of proper animal husbandry.” *Id.* at 7. In that regard,
17 plaintiffs argued non-residents do not have “political recourse” if they disagree with the policy.
18 *Id.* at 8. Plaintiffs further clarified the issue they raise in this action is “the right of the people to
19 participate in the laws that govern them.” *Id.* Plaintiffs provided the following analogy to best
20 explain their position:

21 [I]magine that the State of Missouri decides to enact legislation that
22 requires all grapes to be harvested by people with Bachelor’s
23 degrees or greater in horticulture or viticulture and, in addition to
24 that, passes a law that says you can’t sell the product of a grape
unless it was harvested by someone with a Bachelor’s degree or a
Master’s degree in Missouri.

25

26
27
28 ⁴ References to the motion hearing transcript use the transcript page number, not the
corresponding ECF page number.

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1 So if you had a California farmer or a California wine producer
 2 who sells a third of its wine into Missouri . . . what does that person
 3 do? Do they -- they have several options. They can reduce their
 4 production . . . [t]hey can lower all of their prices . . . [o]r they can
 5 acquiesce to Missouri's regulations.

6

7 The problem there is because they cannot -- they have no way --
 8 that vintner has no way of challenging Missouri law in a political
 9 process, the only thing they can do is urge their own legislature to
 10 retaliate.

11 *Id.* at 9–10. Plaintiffs argued AB 1437 is “an attempt by California to say in Missouri you have to
 12 follow this set of procedures so that when your eggs show up at the border, we will let them in.”

13 *Id.* at 37. Plaintiffs pointed to paragraphs seven and thirteen of the first amended complaint in
 14 support of their standing argument.⁵ *Id.* at 40. Plaintiffs argued they cannot point to “how much
 15 money our folks have lost because the law hasn't gone into effect yet,” but they have sufficiently
 16 alleged “we have to make a choice now” and “it would cost about 120 million dollars in capital
 17 improvements.” *Id.* at 41–42. Plaintiffs explained to the court the egg producers in their states
 18 already “have gambled one way or another,” either choosing to come into compliance with
 19 California's law or choosing not to come into compliance. *Id.* at 43. Finally, plaintiffs argued,
 20 “the other issue here with having no voice in the law is if our folks spend 120 million dollars to

21 _____
 22 ⁵ Paragraph seven alleges:

23 By conditioning the flow of goods across its state lines on the
 24 method of their production, California is attempting to regulate
 25 agricultural practices beyond its own borders. Worse, the people
 26 most directly affected by California's extraterritorial regulation-
 27 farmers in our states who must either comply with AB1437 or lose
 28 access to the largest market in the United States-have no
 representatives in California's Legislature and no voice in
 determining California's agricultural policy.

FAC ¶ 7. Paragraph thirteen alleges:

Missouri's economy and status within the federal system will be
 irreparably injured if the California Legislature-who were not
 elected by, and are not answerable to, the people of Missouri-is
 allowed to regulate and increase the cost of egg production in
 Missouri.

FAC ¶ 13.

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1 come into compliance, and then next year the California legislature amends the law again, well,
2 then we'd have to go through the whole process, and we have no political way of blocking that
3 law from being changed." *Id.* at 44.

4 ii. Legal Standards

5 "Whether a party has a sufficient stake in an otherwise justiciable controversy to
6 obtain judicial resolution of that controversy is what has traditionally been referred to as the
7 question of standing to sue." *Sierra Club v. Morton*, 405 U.S. 727, 731–32 (1972). "[A] plaintiff
8 must demonstrate standing for each claim he seeks to press" and "separately for each form of
9 relief sought." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 335 (2006) (citations omitted). In
10 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), the Supreme Court defined "the
11 irreducible constitutional minimum of standing." First, there must be an invasion of plaintiffs'
12 legally protected interest, an injury-in-fact, which is both concrete and particularized and actual
13 and imminent; second, there must be a causal connection between the injury and the challenged
14 conduct; and third, it must be likely that the injury will be redressed by a decision in plaintiffs'
15 favor. *Id.* at 560–61; *see also Cigarettes Cheaper! v. State Bd. of Equalization*, No. 2:11-CV-
16 00631-JAM-EFB, 2011 WL 2560214, at *1 (E.D. Cal. June 28, 2011). It is plaintiffs' burden to
17 establish their standing to sue. *Lujan*, 504 U.S. at 560.

18 "The Supreme Court has recognized that 'States are not normal litigants for the
19 purposes of invoking federal jurisdiction,' and have interests and capabilities beyond those of an
20 individual by virtue of their sovereignty." *Oregon v. Legal Servs. Corp.*, 552 F.3d 965, 970 (9th
21 Cir. 2009) (quoting *Massachusetts v. EPA*, 549 U.S. 497, 518 (2007)).

22 Under the doctrine of *parens patriae*, a State cannot establish standing if it is "only
23 a nominal party without a real interest of its own." *Snapp*, 458 U.S. at 600. "Rather, to have such
24 standing the State must assert an injury to what has been characterized as a 'quasi-sovereign'
25 interest, which is a judicial construct that does not lend itself to a simple or exact definition." *Id.*
26 at 601. "Although the Supreme Court has never clearly defined what constitutes a quasi-
27 sovereign interest, it does not include 'sovereign interests, proprietary interests, or private
28 interests pursued by the State as a nominal party.'" *Dep't of Fair Emp't & Hous. v. Lucent*

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1 *Techs., Inc.*, 642 F.3d 728, 737 n.2 (9th Cir. 2011) (quoting *Snapp*, 458 U.S. at 602). Rather, it
2 “consist[s] of a set of interests that the State has in the well-being of its populace.” *Snapp*,
3 458 U.S. at 602. “A quasi-sovereign interest must be sufficiently concrete to create an actual
4 controversy between the State and the defendant.” *Id.* In other words, “[p]arens patriae’
5 standing allows a sovereign to bring suit on behalf of its citizens when the sovereign ‘allege[s]
6 injury to a sufficiently substantial segment of its population,’ ‘articulate[s] an interest apart from
7 the interests of particular private parties,’ and ‘express[es] a quasi-sovereign interest.’” *Table*
8 *Bluff*, 256 F.3d at 885 (quoting *Snapp*, 458 U.S. at 607). While such interests are “a matter for
9 case-by-case development,”

10 [t]hese characteristics fall into two general categories. First, a State
11 has a quasi-sovereign interest in the health and well-being-both
12 physical and economic-of its residents in general. Second, a State
has a quasi-sovereign interest in not being discriminatorily denied
its rightful status within the federal system.

13 *Snapp*, 458 U.S. at 602. As the Ninth Circuit has explained:

14 Generally, a state has been granted standing under the *parens*
15 *patriae* doctrine in situations involving the abatement of public
16 nuisances, such as global warming, flooding, or noxious gases. *See*
17 *Massachusetts*, 549 U.S. 497, 127 S. Ct. 1438 (2007)
(Massachusetts had standing to sue the EPA for failing to issue
18 rules regarding the emission of greenhouse gases); *North Dakota v.*
19 *Minnesota*, 263 U.S. 365, 44 S. Ct. 138, 68 L. Ed. 342 (1923)
(North Dakota had standing to sue Minnesota for allegedly creating
20 conditions leading to flooding of farmland); *Georgia v. Tenn.*
21 *Copper Co.*, 206 U.S. 230, 27 S. Ct. 618, 51 L. Ed. 1038 (1907)
(Georgia had standing to sue for an injunction to prevent the
22 defendant copper companies from discharging noxious gases over
23 Georgia’s territory). In other cases, states have been granted
standing to represent the economic interests of their residents. *See*
24 *Snapp*, 458 U.S. 592, 102 S. Ct. 3260 (Puerto Rico had standing to
25 sue defendant apple farmers for subjecting its workers to conditions
26 more burdensome than those established for temporary foreign
workers in violation of the Wagner-Peyser Act); *Georgia v. Pa. R.*
27 *Co.*, 324 U.S. 439, 65 S. Ct. 716, 89 L. Ed. 1051 (1945) (Georgia
had standing to bring suit against railroads for conspiracy to fix
28 freight rates in a manner that discriminated against Georgia
shippers in violation of federal antitrust law); *Pennsylvania v. West*
Virginia, 262 U.S. 553, 43 S. Ct. 658, 67 L. Ed. 1117 (1923)
(Pennsylvania had standing to sue for an injunction preventing
West Virginia from giving other states a preferential right of
purchase and curtailing the supply of gas carried to Pennsylvania).

As the Supreme Court noted in *Snapp*, the common thread among
these cases is each state’s quasi-sovereign interest in the health and

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1 well-being of its residents and a quasi-sovereign interest in “not
2 being discriminatorily denied its rightful status within the federal
system.” 458 U.S. at 607

3 *Oregon*, 552 F.3d at 970–71. Before establishing these requirements, plaintiffs “still must allege
4 injury in fact to the citizens they purport to represent as *parens patriae*.” *Table Bluff*, 256 F.3d at
5 885.

6 iii. Analysis

7 a. Injury in Fact to Citizenry

8 With regard to the threshold requirement, that plaintiffs “must allege injury in fact
9 to the citizens they purport to represent as *parens patriae*,” *id.*, plaintiffs fail to allege how the
10 citizens of each state are in fact injured by AB 1437. While plaintiffs allege the egg farmers in
11 each state may suffer an injury in the form of increased costs of production, this injury does not
12 affect the citizens plaintiffs purport to represent. *See, e.g.*, Hr’g Tr. at 4 (explaining during oral
13 argument plaintiffs are “appearing as *parens patriae* in the interest of [their] citizens”). In fact, as
14 plaintiffs allege, AB 1437 applies only to egg producers, not plaintiffs’ residents in general. FAC
15 ¶ 5 (alleging California passed AB 1437, “which requires egg farmers in other states to comply
16 with behavior-based enclosure standards identical to those in Prop 2 if they want to continue
17 selling their eggs in California”); *see also id.* ¶ 61 (alleging AB 1437 requires out-of-state egg
18 farmers to comply with the same requirements set forth in Prop 2). To the extent plaintiffs argue
19 the implementation of AB 1437 may result in an increase in the cost of eggs, which may injure
20 their citizens who are egg consumers, this argument is without merit. First, the allegations in
21 plaintiffs’ complaint point to a potential decrease in the cost of eggs, FAC ¶ 88, which may
22 benefit plaintiffs’ citizens rather than injure them. Second, even assuming plaintiffs’ citizens may
23 be faced with an increase in the cost of eggs, this speculative argument alone does not satisfy the
24 requirement of showing an injury in fact. *Table Bluff*, 256 F.3d at 885 (citing with approval the
25 reasoning in *Hise v. Philip Morris, Inc.*, 46 F. Supp. 2d 1201, 1209–10 (N.D. Okla. 1999), “that
26 no constitutional injury occurs when a manufacturer passes on higher costs in the form of price
27 increases”).

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1 With regard to whether plaintiffs have sufficiently alleged interests apart from
2 those of private parties, *see Table Bluff*, 256 F.3d at 885, the allegations in the first amended
3 complaint amount only to generalized grievances on behalf of plaintiffs' egg farmers and
4 potential injuries the farmers face as a result of the shell egg laws. Other than plaintiffs'
5 conclusory allegation that each plaintiff State "has quasi-sovereign interests in protecting its
6 citizens' economic health and constitutional rights as well as preserving its own rightful status
7 within the federal system," FAC ¶¶ 10, 17, 22, 27, 32, plaintiffs fail to set forth any allegations
8 that support a finding they are bringing this action to protect their citizens' economic health or the
9 well-being of each state's populace. *Snapp*, 458 U.S. at 602. Rather, the allegations throughout
10 the first amended complaint specifically focus on the impact of AB 1437 on plaintiffs' egg
11 farmers. *See, e.g.*, FAC ¶ 7 ("the people most directly affected by California's extraterritorial
12 regulation [are the] farmers in our states"). If there were any doubt, plaintiffs clarify in their
13 opposition brief that "[p]laintiffs here have alleged an effort to restrain interstate commerce by
14 imposing higher costs on our producers if they want to compete in California." ECF No. 54 at 21.

15 A finding that plaintiffs are not bringing this action on behalf of a substantial
16 segment of their populations is further bolstered by plaintiffs' representations to the court during
17 oral argument, that not all of their egg farmers have chosen to forgo compliance with AB 1437.
18 Hr'g Tr. at 43–44 ("All of the producers in our states have gambled one way or another. They've
19 -- if they have not come into compliance, they have gambled that the law will be struck down . . .
20 . If they have come into compliance, they have gambled that the statute will be upheld because
21 they would have invested hundreds of millions of dollars in the bringing their -- their facilities
22 into compliance And because of the lag time, I think a lot of them have made the choice one
23 way or the other."). In other words, a fair construction of the complaint is that plaintiffs bring this
24 action on behalf of only those egg farmers who have not brought their farming procedures into
25 compliance with California's laws and regulations. A subset of plaintiffs' egg farmers is not
26 tantamount to the citizenry of plaintiffs' states and the court "cannot accept such a claim as 'an
27 interest apart from the interests of particular private parties.'" *Oregon*, 552 F.3d at 974 (quoting
28 *Snapp*, 458 U.S. at 607); *see also Estados Unidos Mexicanos v. DeCoster*, 229 F.3d 332, 335 (1st

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1 Cir. 2000) (*parens patriae* “is a judicially created exception that has been narrowly construed”).
2 The court concludes plaintiffs have not brought this action on behalf of their interest in the
3 physical or economic well-being of their residents in general, but rather on behalf of a discrete
4 group of egg farmers whose businesses will allegedly be impacted by AB 1437. Plaintiffs are
5 therefore only nominal parties without real interests of their own. *Snapp*, 458 U.S. at 600.

6 b. Quasi-Sovereign Interests

7 With regard to whether plaintiffs have sufficiently articulated quasi-sovereign
8 interests, *see Table Bluff*, 256 F.3d at 885, they argue “[a]s in [*Georgia v. Pa. R. Co.*], . . .
9 Plaintiffs here have alleged an effort to restrain interstate commerce by imposing higher costs on
10 our producers if they want to compete in California.” ECF No. 54 at 21. Further, plaintiffs state
11 that, similar to *Georgia*, these restraints will shackle each state’s industries and relegate the states
12 to an inferior economic position compared to states unaffected by California’s shell egg laws. *Id.*
13 Plaintiffs also claim, as in *Pennsylvania*, 262 U.S. at 592, the health, comfort, and welfare of
14 plaintiffs’ citizens are “seriously jeopardized by the threatened [disruption of] the supply of [a
15 vital commodity] in the interstate stream.” *Id.* at 22 (alterations in original). Finally, plaintiffs
16 argue “[t]he gravamen of the Amended Complaint is that California is attempting to regulate
17 conduct that occurs in [plaintiffs’ states],” and, consequently, plaintiffs’ citizens have been left
18 “at the mercy of legislators they did not elect and cannot vote out of office.” *Id.* In response to
19 this attempted regulation in violation of the Commerce Clause, plaintiffs claim they “assert the
20 same quasi-sovereign interest identified by Puerto Rico in *Alfred L. Snapp & Son*—preserving
21 our rightful place as co-equal sovereigns in our federal system.” *Id.*

22 Plaintiffs’ analogies are inapt. In *Georgia*, the plaintiff set forth numerous
23 allegations concerning the general effects the defendants’ conduct would have on the state’s
24 citizens and economy, including “limit[ing] in a general way the Georgia economy to staple
25 agricultural products, . . . restrict[ing] and curtail[ing] opportunity in manufacturing, shipping and
26 commerce, and . . . prevent[ing] the full and complete utilization of the natural wealth of the
27 State.” *Georgia*, 324 U.S. at 444. Unlike the extensive allegations made in *Georgia*, plaintiffs
28 here have presented no allegations concerning the effects of California’s shell egg laws on the

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1 states' general populations beyond fluctuating egg prices that may in fact result in lower egg
2 prices for consumers in the Midwest. ECF No. 13 at 20. As already noted, plaintiffs' remaining
3 allegations exclusively concern plaintiffs' farmers, which plaintiffs have not demonstrated are a
4 "sufficiently substantial segment" of their populations. *Snapp*, 458 U.S. at 607. Far from
5 "shackling" plaintiffs' industries, plaintiffs have alleged nothing to suggest California's shell egg
6 laws will detrimentally affect anyone outside of an identifiable group of individual egg farmers.

7 Plaintiffs also attempt to equate the withdrawal of gas in *Pennsylvania* to a
8 potential "disruption" in the supply of eggs within plaintiffs' borders. However, *Pennsylvania*
9 concerned the total withdrawal of gas by West Virginia from the Pennsylvania market; gas was a
10 vital commodity used and depended upon by millions of citizens. *Pennsylvania*, 262 U.S. at 553.
11 To change to another fuel source would have cost more than \$100 for each domestic consumer
12 and more than \$100 million in 1923 dollars between the plaintiff states of Pennsylvania and Ohio.
13 *Id.* Plaintiffs here allege nothing to suggest eggs are a vital commodity necessary to preserve
14 plaintiffs' citizens' health, comfort and welfare. Even if plaintiffs had alleged such additional
15 facts, plaintiffs fundamentally allege only potential "disruptions" in the supply of eggs, not the
16 total withdrawal of this commodity from the plaintiff states. As noted, potential changes in
17 supply and demand could result in price fluctuations that may even benefit the majority of
18 plaintiffs' citizens at times. These allegations do not establish an inability for citizens to obtain a
19 vital resource or purchase a substitute good.

20 Similarly, plaintiffs' comparison to *Snapp* is premised on defendants' alleged
21 violation of the Commerce Clause. However, in *Snapp*, the Commonwealth of Puerto Rico
22 established *parens patriae* standing to "pursue the interests of its residents in the
23 Commonwealth's full and equal participation in the federal employment service scheme
24 established pursuant to the Wagner-Peyser Act and the Immigration and Nationality Act of
25 1952." *Snapp*, 458 U.S. at 609. The Commonwealth brought its claim based on allegations of a
26 violation of certain federal acts that guaranteed employment benefits. *Id.* at 609–10. Here,
27 plaintiffs do not assert a quasi-sovereign interest in assuring their residents benefit from
28 identifiable federal legislation. *Cf. Maryland v. Louisiana*, 451 U.S. 725, 737–39 (1981) (finding

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1 Maryland maintained a quasi-sovereign interest in securing benefits of the Natural Gas Act for its
2 residents). Indeed, as noted above, plaintiffs bring this action on behalf of egg farmers, not the
3 general populace of their states. Plaintiff states' conclusory allegation that each has a quasi-
4 sovereign interest in "preserving its own rightful status within the federal system," FAC ¶¶ 10,
5 17, 22, 27, 32, without more, is insufficient to establish *parens patriae* standing.

6 Finally, plaintiffs argue that if their egg farmers choose to withdraw from the
7 California egg market, resulting in a flood of the "markets in the remaining 49 states with surplus
8 eggs while artificially driving up the price of eggs in California," this would "negatively impact
9 anyone employed in egg production or sales" in plaintiffs' states. ECF No. 54 at 25; *see also*
10 Hr'g Tr. at 39–40 (arguing other people such as egg transporters and distributors are affected by
11 the price of eggs). Plaintiffs continue that while the number of egg producers in one plaintiff
12 state may be small, "the number of egg consumers in each state numbers in the millions" and
13 those consumers are affected by California's shell egg laws. ECF No. 54 at 25 (emphasis
14 omitted).

15 To the extent plaintiffs argue the first amended complaint establishes a quasi-
16 sovereign interest based on each state's egg consumers' economic well-being, this argument fails.
17 As noted, the first amended complaint does not allege an injury to consumers as a result of the
18 shell egg laws but rather an injury to plaintiffs' egg farmers. The section of the first amended
19 complaint where plaintiffs address a potential increase in the price of eggs focuses on the impact
20 of a potential increase on plaintiffs' egg farmers, alleging the higher production costs may
21 ultimately "forc[e] Plaintiffs' farmers to sell those eggs in their own states at higher prices than
22 their competitors," FAC ¶ 85, which "will cost Plaintiffs' farmers hundreds of millions of
23 dollars," *id.* ¶ 86. At the same time, plaintiffs allege a decrease in the market price of eggs, which
24 would presumably benefit plaintiffs' consumers, that will potentially force some of plaintiffs' egg
25 producers out of business. *Id.* ¶ 88. These allegations fail to establish a quasi-sovereign interest
26 in the economic well-being of plaintiffs' egg consumers but rather assert an interest in plaintiffs'
27 egg farmers' businesses. In sum, plaintiffs fail to articulate how this action would benefit
28 plaintiffs' residents in general as egg consumers. *See, e.g., Ohio v. GMAC Mortg., LLC*, 760 F.

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1 Supp. 2d 741, 784 (N.D. Ohio 2011) (noting “[t]he fact that the State chose to act on behalf of a
2 group of residents . . . does not, by itself, automatically turn the action into an action that benefits
3 all Ohio consumers” (quotations omitted)). Plaintiffs therefore lack standing to pursue their
4 claims in this action under the *parens patriae* doctrine. *Oregon*, 552 F.3d at 974.

5 B. Justiciability

6 1. Arguments and Relief Requested

7 Plaintiffs argue their complaint “presents a case or controversy ripe for review,”
8 FAC at 21, because California’s shell egg laws “have already caused ‘concrete, particularized,
9 and actual’ injury to Plaintiffs, and additional injury is ‘clearly impending.’” ECF No. 54 at 23.
10 Plaintiffs claim that, “[a]bsent some additional action by . . . this Court, any of our farmers who
11 continue to export their eggs to California will face criminal sanctions beginning January 1, 2015
12 unless they take action now to come into compliance by the law’s effective date.” FAC ¶ 89.
13 They argue at least 1.5 billion eggs were exported by plaintiffs’ farmers to California in 2012 and,
14 thus, “it is hardly speculative for Plaintiffs to allege that a similar number would be shipped to
15 California again in 2015.” ECF No. 54 at 23. Further, plaintiffs argue it is not speculative “to
16 allege that the vast majority of eggs produced in Plaintiff States . . . do not comply with AB1437
17 and §1350.” *Id.* Rather, plaintiffs claim “[i]f history is any predictor of future events, it is
18 eminently reasonable for the court to infer that egg producers in Plaintiffs [sic] States would
19 continue to ship 1.5 billion eggs to California per year but for AB1437 and §1350.” *Id.* at 23
20 (emphasis omitted). Plaintiffs also make reference to the criminal provisions of AB 1437, noting
21 the law “provides that a violation of § 25996 shall constitute a misdemeanor punishable by up to a
22 \$1,000 fine and 180 days in county jail.” FAC ¶ 64. Finally, plaintiffs contend it is not
23 “speculative that AB1437 and §1350 will become effective on January 1, 2015 or that Defendants
24 will carry out their oaths to enforcement [sic] them.” ECF No. 54 at 23.

25 Plaintiffs seek declaratory and injunctive relief based on the Declaratory Judgment
26 Act. FAC ¶ 105. The Act provides in “a case of actual controversy within its jurisdiction, . . .
27 any court of the United States, upon the filing of any appropriate pleading, may declare the rights
28 and other legal relations of any interested party seeking such declaration.” 28 U.S.C. § 2201(a).

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1 However, “[t]he mere existence of a statute, which may or may not ever be applied to plaintiffs, is
2 not sufficient to create a ‘case or controversy’ within the meaning of Article III, and is thus
3 insufficient to satisfy the ‘actual controversy’ requirement of the Declaratory Judgment Act.” *W.*
4 *Mining Council v. Watt*, 643 F.2d 618, 627 (9th Cir. 1981).

5 When questioned during the hearing regarding any imminent injury flowing from
6 AB 1437, plaintiffs argued they do not have an affidavit itemizing which egg farmers intend to
7 sell eggs in California; but the court “should take everything that we allege as true and then
8 decide whether there is a -- whether we’ve stated a claim.” Hr’g Tr. at 23. Plaintiffs referred the
9 court to egg sales from last year, arguing the court can infer, for example, Missouri egg farmers
10 will continue to sell one third of their eggs in California. *Id.* Finally, plaintiffs argued:

11 The -- if we were required, in order to bring this claim, to predict in
12 advance the harm that will occur next year in a quantifiable
13 number, you know, if -- and, in fact, to some extent I have done that
14 by saying 120 million dollars is the cost of doing this. That is one
potential harm. But there are also harms related to the loss of sale
[sic]. Those are things that have not happened but they are clearly
impending.

15 *Id.* at 44.

16 2. Analysis

17 Regarding questions of justiciability, “[w]hether framed as an issue of standing or
18 ripeness, the inquiry is largely the same: whether the issues presented are ‘definite and concrete,
19 not hypothetical or abstract.’” *Wolfson v. Brammer*, 616 F.3d 1045, 1058 (9th Cir. 2010)
20 (quoting *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000)).
21 “Where a dispute hangs on future contingencies that may or may not occur, it may be too
22 impermissibly speculative to present a justiciable controversy.” *In re Coleman*, 560 F.3d 1000,
23 1005 (9th Cir. 2009) (citation and internal quotations omitted). “[W]hile it is well-established
24 that an individual need not await prosecution under a law or regulation before challenging it, we
25 require a genuine threat of imminent prosecution and not merely an imaginary or speculative fear
26 of prosecution.” *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 772–73 (9th Cir. 2006)
27 (citation and internal quotations marks omitted).

28 ////

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1 When evaluating whether a claimed threat of prosecution is genuine, we
2 consider:

3 (1) whether the plaintiff has articulated a concrete plan to violate
4 the law in question; (2) whether the prosecuting authorities have
5 communicated a specific warning or threat to initiate proceedings;
6 and (3) the history of past prosecution or enforcement under the
7 challenged statute.

8 *Wolfson*, 616 F.3d at 1058 (citing *San Diego Cnty. Gun Rights Comm. v. Reno*, 98 F.3d 1121,
9 1126–28 (9th Cir. 1996)). “Plaintiffs bear the burden of showing that the [law in question] is
10 actually being enforced. A specific warning of an intent to prosecute under a criminal statute may
11 suffice to show imminent injury and confer standing,” but “a general threat of prosecution is not
12 enough to confer standing.” *San Diego*, 98 F.3d at 1127 (citation omitted). Further, allegations
13 amounting to a “chilling effect” on plaintiffs’ desire and ability to engage in conduct prohibited
14 by the law in question “are not an adequate substitute for a claim of specific present objective
15 harm or a threat of specific future harm.” *Id.* at 1129 (quoting *Laird v. Tatum*, 408 U.S. 1, 13–14
16 (1972)).

17 As noted, plaintiffs’ argument as to harm focuses on the potential harm plaintiffs’
18 egg farmers will face. *See, e.g.*, Hr’g Tr. at 44. Plaintiffs allege nothing additionally to suggest
19 their claimed threat of prosecution is genuine. Plaintiff states fail to articulate any concrete plan
20 by their egg farmers to violate California’s shell egg laws. Plaintiffs allege in conclusory fashion
21 their “farmers who continue to export their eggs to California will face criminal charges,” FAC
22 ¶ 89, but plaintiffs allege nothing to indicate any of their egg farmers will or intend to continue to
23 export their eggs to California. Further, that plaintiffs’ farmers would likely prefer exporting
24 their eggs to California as they have done in the past or that their enclosures do not currently
25 comply with California’s shell egg laws does not amount to a “concrete plan to violate the law[s]
26 in question.” *Wolfson*, 616 F.3d at 1058 (citing *San Diego*, 98 F.3d at 1126–28). Indeed,
27 plaintiffs assume some of their egg farmers have chosen to comply with AB 1437. Hr’g Tr. at
28 43–44. Though California’s shell egg laws may create a “chilling effect” in that plaintiffs’ egg
producers must “[e]ither . . . incur massive capital improvement costs . . . or . . . walk away from
the largest egg market in the country,” FAC ¶ 6, rather than violate California law by supplying

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1 California with eggs that do not meet required standards, this generalized effect does not amount
2 to a threat of specific future harm. As the Ninth Circuit has recognized, “[e]very criminal law, by
3 its very existence, may have some chilling effect on personal behavior. That was the reason for
4 its passage.” *San Diego*, 98 F.3d at 1129 (alteration in original) (quoting *Doe v. Duling*, 782 F.2d
5 1202, 1206 (4th Cir. 1986)).

6 Plaintiffs also do not identify any threat to initiate proceedings made against their
7 egg farmers. Within their complaint, plaintiffs reference only the language of AB 1437 itself.
8 This is far from a specific warning of an intent to prosecute. Plaintiffs also reference defendants’
9 “oaths,” but, as noted above, “a general threat of prosecution is not enough to confer standing.”
10 *San Diego*, 98 F.3d at 1127. Lastly, as California’s shell egg laws have not yet gone into effect,
11 there is no history of past prosecution or enforcement under the challenged statute. Defendants
12 are correct in arguing “[t]he court can thus make no reasonable inference that any of the states or
13 their producers would suffer prosecution.” ECF No. 36 at 16.

14 To the extent plaintiffs argue their claims are brought on behalf of the residents of
15 their states in general because they do not have a “voice in the law,” Hr’g Tr. at 44, this argument
16 also fails. Plaintiffs’ arguments focus on the potential harm each state’s egg farmers face. The
17 alleged imminent injury, however, does not involve an injury the citizens of each state face but
18 rather a potential injury each state’s egg farmers face when deciding whether or not to comply
19 with AB 1437. Nothing before the court supports the conclusion this action is brought by
20 plaintiffs because their residents face imminent injury as a result of California’s shell egg laws, or
21 that their residents in general intend to or are even capable of violating California’s shell egg
22 laws. Plaintiffs also point to nothing to show the threat of prosecution of their egg farmers is
23 imminent.

24 Plaintiffs’ claims are not justiciable.

25 C. Leave to Amend

26 In light of the arguments presented by plaintiffs during oral argument, the
27 undersigned has carefully considered whether plaintiffs can amend their complaint to state a
28 claim over which this court would have subject matter jurisdiction. “Valid reasons for denying

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1 leave to amend include undue delay, bad faith, prejudice, and futility.” *Cal. Architectural Bldg.*
2 *Prod. v. Franciscan Ceramics*, 818 F.2d 1466, 1472 (9th Cir. 1988); *see also Klamath-Lake*
3 *Pharm. Ass’n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that,
4 while leave to amend shall be freely given, the court does not have to allow futile amendments).
5 For the reasons discussed below, leave to amend would be futile and will therefore not be
6 granted.

7 To the extent plaintiffs argue their claims are brought on behalf of the general
8 populace of their states because California’s law “effectively remove[s] from the people of
9 Missouri the ability to set public policy themselves regarding agricultural regulations,” Hr’g Tr. at
10 4, this argument is unavailing. As noted above, plaintiffs’ first amended complaint, their
11 opposition papers and their arguments during the court’s hearing all focus on how California’s
12 legislation affects or may affect each state’s egg farmers. During oral argument, plaintiffs made
13 arguments to strengthen this conclusion. They argued, “we are talking about a statute that
14 effectively blocks . . . eggs from out of state,” *id.* at 7, and the issue here is “the right of the
15 people to participate in the laws that govern them,” *id.* at 8. Plaintiffs further argued California’s
16 regulations are “an attempt by California to say in Missouri you have to follow this set of
17 procedures so that when your eggs show up at the border, we will let them in.” *Id.* at 37.
18 Plaintiffs noted “the other issue here with having no voice in the law is if our folks spend 120
19 million dollars to come into compliance . . . we have no political way of blocking that law from
20 being changed.” *Id.* at 44. These arguments all clearly rest on the plaintiff states’ egg farmers
21 purportedly not having a voice during the process leading to passage of a California law that
22 governs their egg farming procedures, and potentially having to expend resources to comply with
23 it; these concerns are not those of each state’s residents in general.

24 As discussed above, AB 1437 does not regulate the general populace of plaintiffs’
25 states. *See, e.g., FAC ¶¶ 5, 61.* The residents of each state are not participating in the egg market
26 such that their eggs must comply with AB 1437 when they “show up at [California’s] border.”
27 Hr’g Tr. at 37. Plaintiffs’ arguments characterize the issue before the court as the right of citizens
28 to “participate in the laws that govern them,” Hr’g Tr. at 8, arguing these citizens will have to

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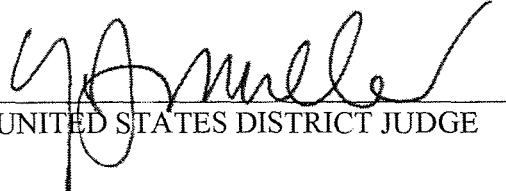
1 spend 120 million dollars to comply with a law whose passage they could not affect, *id.* at 44.
 2 The only citizens who may have to spend 120 million dollars to comply with California's
 3 legislation are the egg farmers who intend to participate in California's egg market. Likewise, the
 4 only citizens who may be "govern[ed]" by California's legislation are egg producers and handlers
 5 who intend to sell eggs in California.

6 Plaintiffs' own grape legislation analogy squarely supports this conclusion.
 7 Plaintiffs hypothesize that if Missouri passed legislation requiring "all grapes to be harvested by
 8 people with Bachelor's degrees or greater in horticulture or viticulture . . .," Hr'g Tr. at 9, a
 9 California "*vinmer* has no way of challenging Missouri law in a political process," *id.* at 10
 10 (emphasis added). It is patently clear plaintiffs are bringing this action on behalf of a subset of
 11 each state's egg farmers and their purported right to participate in the laws that govern them, not
 12 on behalf of each state's population generally. In light of the nature of the allegations in
 13 plaintiffs' first amended complaint and the arguments made at hearing, leave to amend would be
 14 futile, as plaintiffs lack standing to bring this action on behalf of each state's egg farmers.
 15 *Oregon*, 552 F.3d at 974.

16 VI. CONCLUSION

17 For the foregoing reasons, defendants and defendant-intervenors' motions to
 18 dismiss for lack of standing are GRANTED without leave to amend. Plaintiffs' first amended
 19 complaint is dismissed with prejudice. The Clerk of the Court is directed to close this action.

20 DATED: October 1, 2014.

21
 22 
 23 UNITED STATES DISTRICT JUDGE
 24
 25
 26
 27
 28

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8 UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT CALIFORNIA
 10 FRESNO DIVISION

11 THE STATE OF MISSOURI, ex rel.,
 12 Chris Koster, Attorney General; THE
 13 STATE OF NEBRASKA, ex rel. Jon
 14 Bruning, Attorney General; THE STATE
 15 OF OKLAHOMA, ex rel. E. Scott Pruitt,
 16 Attorney General; THE STATE OF
 17 ALABAMA, ex rel. Luther Strange,
 18 Attorney General; THE
 19 COMMONWEALTH OF KENTUCKY, ex
 20 rel. Jack Conway, Attorney General; and
 TERRY E. BRANSTAD, Governor of the
 State of Iowa,

21 Plaintiffs,

22 v.

23
 24 KAMALA D. HARRIS, solely in her official
 25 capacity as Attorney General of California;
 26 KAREN ROSS, solely in her official
 27 capacity as Secretary of the California
 Department of Food and Agriculture,

28 Defendants.

Case No. 2:14-cv-00341-KJM-KJN

**FIRST AMENDED COMPLAINT
 TO DECLARE INVALID AND
 ENJOIN ENFORCEMENT OF
 AB1437 AND 3 CA ADC §
 1350(d)(1) FOR VIOLATING THE
 COMMERCE AND SUPREMACY
 CLAUSES OF THE UNITED
 STATES CONSTITUTION**

1 The States of Missouri, Nebraska, Oklahoma, and Alabama, and the
 2 Commonwealth of Kentucky, through their relators, and Iowa Governor
 3 Terry Branstad state the following for their First Amended Complaint to
 4 Declare Invalid and Enjoin Enforcement of AB1437 (California Health and
 5 Safety Code §§25995-97) and 3 CA ADC § 1350(d)(1) for Violating the
 6 Commerce and Supremacy Clauses of the United States Constitution:

7
 8 **JURISDICTION AND VENUE**

9 1. This case presents a federal question arising under the
 10 Commerce and Supremacy Clauses of the Constitution of the United States,
 11 42 U.S.C. §1983, and 42 U.S.C. §1988. The Court has subject-matter
 12 jurisdiction under 28 U.S.C. §§1331 and 1343(a)(3).

13 2. Venue is proper in this Court under 28 U.S.C. §1391(b)(1)
 14 because both Defendants maintain an office within the Eastern District of
 15 California.

16
 17 **NATURE OF THE CASE**

18 3. In 2008, California voters approved Proposition 2 (“Prop 2”),
 19 attached as Ex. A, a ballot initiative that will prohibit California farmers
 20 from employing a number of agricultural production methods in widespread
 21 use throughout the United States. Starting in 2015, for example, California
 22 egg producers will no longer be allowed to house that state’s 20 million egg-
 23 laying hens in any enclosure it provides sufficient room for each hen to stand
 24 up, lie down, turn around freely, and fully extend their limbs. Almost all hens
 25 on commercial egg farms in California are currently kept in conventional
 26 cage-systems that house between 4 and 7 birds per cage and provide about 67
 27 square inches of space per bird. Prop 2 effectively bans the use of these
 28 industry-standard cage-systems.

1 4. Although Prop 2 does not specify what size enclosures will satisfy
2 its new behavior-based standards, animal behavior experts have estimated
3 anywhere from 87.3 square inches to 403 square inches per hen, depending
4 on how the statutory language is interpreted. JOY MENCH ET AL., FINAL
5 REPORT - CDFA AGREEMENT 09-0854, DETERMINATION OF SPACE USE BY
6 LAYING HENS at 5, 7 (2012), attached as Ex. B.

7 5. Even before the initiative passed, California farmers, economists,
8 and legislators became concerned that Prop 2 would put their state's egg
9 producers at a competitive disadvantage by increasing the cost of egg
10 production *within* California. DANIEL A. SUMNER, ET AL., UNIVERSITY OF
11 CALIFORNIA AGRICULTURAL ISSUES CENTER, ECONOMIC EFFECTS OF
12 PROPOSED RESTRICTIONS ON EGG-LAYING HEN HOUSING IN CALIFORNIA at iii
13 (2008), attached as Ex. C. To "level the playing field" and protect their own
14 farmers from Prop 2's economic consequences, in 2010 the California
15 Legislature passed AB1437 (attached as Ex. D), which requires egg farmers
16 *in other states* to comply with behavior-based enclosure standards identical
17 to those in Prop 2 if they want to continue selling their eggs in California.

18 6. Egg producers in Missouri, Nebraska, Oklahoma, Alabama,
19 Kentucky, and Iowa face a difficult choice regarding AB1437. Either they can
20 incur massive capital improvement costs to build larger habitats for some or
21 all of their egg-laying hens, or they can walk away from the largest egg
22 market in the country. For example, Missouri farmers—who export one third
23 of their eggs to California each year—must now decide whether to invest over
24 \$120 million in new hen houses or stop selling in California. The first option
25 will raise the cost of eggs *in Missouri* and make them too expensive to export
26 to any state other than California. The second option will flood Missouri's
27 own markets with a half-billion surplus eggs that would otherwise have been
28

1 | exported to California, causing Missouri prices to fall and potentially forcing
2 | some Missouri farmers out of business.

3 | 7. By conditioning the flow of goods across its state lines on the
4 | method of their production, California is attempting to regulate agricultural
5 | practices beyond its own borders. Worse, the people most directly affected by
6 | California’s extraterritorial regulation—farmers in our states who must
7 | either comply with AB1437 or lose access to the largest market in the United
8 | States—have no representatives in California’s Legislature and no voice in
9 | determining California’s agricultural policy.

10 | 8. AB1437’s extraterritorial reach, its undue burden on interstate
11 | commerce, and its clear purpose to protect California farmers from out-of-
12 | state competition violate the Commerce Clause of the United States
13 | Constitution.

14 |
15 | **THE PARTIES**

16 |
17 | ***Plaintiff State of Missouri***

18 | 9. Missouri is a sovereign state, whose citizens enjoy all the rights,
19 | privileges, and immunities inherent in our federal system of government as
20 | guaranteed in the United States Constitution.

21 | 10. Missouri has standing to bring this case as *parens patriae*
22 | because its has quasi-sovereign interests in protecting its citizens’ economic
23 | health and constitutional rights as well as preserving its own rightful status
24 | within the federal system.

25 | 11. Missouri farmers produced nearly two billion eggs in 2012 and
26 | generated approximately \$171 million in revenue for the state. See USDA
27 | NATIONAL AGRICULTURAL STATISTICS SERVICE, POULTRY - PRODUCTION AND
28 | VALUE 2012 SUMMARY at 12 (April 2013), attached as Ex. O.

1 12. Almost one third of those eggs are sold in California. DON BELL
2 ET AL., UNIVERSITY OF CALIFORNIA, EGG ECONOMICS UPDATE #338 APPENDIX
3 at 5, attached as Ex. E.

4 13. Missouri's economy and status within the federal system will be
5 irreparably injured if the California Legislature—who were not elected by,
6 and are not answerable to, the people of Missouri—is allowed to regulate and
7 increase the cost of egg production in Missouri.

8 14. As the duly elected, qualified, and acting Attorney General of
9 Missouri, relator Chris Koster is authorized under Mo. Rev. Stat. § 27.060 to
10 institute, in the name and on behalf of the State, all civil proceedings at law
11 or in equity necessary to protect the rights and interests of the State of
12 Missouri.

13 15. This court can redress that injury by declaring AB1437 invalid
14 and permanently enjoining its enforcement.

15
16 ***Plaintiff State of Nebraska***

17 16. Nebraska is a sovereign state, whose citizens enjoy all the rights,
18 privileges, and immunities inherent in our federal system of government as
19 guaranteed in the United States Constitution.

20 17. Nebraska has standing to bring this case as *parens patriae*
21 because it has quasi-sovereign interests in protecting its citizens' economic
22 health and constitutional rights as well as preserving its own rightful status
23 within the federal system.

24 18. The State of Nebraska is one of the top ten largest egg producers
25 in the United States, with production totaling 2.723 million eggs in 2012. See
26 Ex. O at 12.

27 19. Nebraska's economy and status within the federal system will be
28 irreparably injured if the California Legislature—who were not elected by,

1 and are not answerable to, the people of Nebraska—is allowed to regulate
2 and increase the cost of egg production in Nebraska.

3 20. This court can redress that injury by declaring AB1437 invalid
4 and permanently enjoining its enforcement.

5
6 ***Plaintiff State of Alabama***

7 21. Alabama is a sovereign state, whose citizens enjoy all the rights,
8 privileges, and immunities inherent in our federal system of government as
9 guaranteed in the United States Constitution.

10 22. Alabama has standing to bring this case as *parens patriae*
11 because it has quasi-sovereign interests in protecting its citizens' economic
12 health and constitutional rights as well as preserving its own rightful status
13 within the federal system.

14 23. The State of Alabama is one of the top fifteen largest egg
15 producers in the United States, with production totaling 2.139 million eggs in
16 2012. See Ex. O at 12.

17 24. Alabama's economy and status within the federal system will be
18 irreparably injured if the California Legislature—who were not elected by,
19 and are not answerable to, the people of Alabama—is allowed to regulate and
20 increase the cost of egg production in Alabama.

21 25. This court can redress that injury by declaring AB1437 invalid
22 and permanently enjoining its enforcement.

23
24 ***Plaintiff Commonwealth of Kentucky***

25 26. Kentucky is a sovereign commonwealth, whose citizens enjoy all
26 the rights, privileges, and immunities inherent in our federal system of
27 government as guaranteed in the United States Constitution.

1 27. Kentucky has standing to bring this case as *parens patriae*
2 because it has quasi-sovereign interests in protecting its citizens' economic
3 health and constitutional rights as well as preserving its own rightful status
4 within the federal system.

5 28. Kentucky farmers produced approximately 1.037 billion eggs in
6 2012 and generated approximately \$116 million in revenue for the state. See
7 Ex. O at 12.

8 29. Kentucky's economy and status within the federal system will be
9 irreparably injured if the California Legislature—who were not elected by,
10 and are not answerable to, the people of Kentucky—is allowed to regulate
11 and increase the cost of egg production in Kentucky.

12 30. This court can redress that injury by declaring AB1437 invalid
13 and permanently enjoining its enforcement.

14
15 ***Plaintiff State of Oklahoma***

16 31. Oklahoma is a sovereign state, whose citizens enjoy all the rights,
17 privileges, and immunities inherent in our federal system of government as
18 guaranteed in the United States Constitution.

19 32. Oklahoma has standing to bring this case as *parens patriae*
20 because it has quasi-sovereign interests in protecting its citizens' economic
21 health and constitutional rights as well as preserving its own rightful status
22 within the federal system.

23 33. Oklahoma farmers produced more than 700 million eggs in 2012
24 and generated approximately \$90 million in revenue for the state. Ex. O at
25 12.

26 34. Oklahoma's economy and status within the federal system will be
27 irreparably injured if the California Legislature—who were not elected by,
28

1 and are not answerable to, the people of Oklahoma—is allowed to regulate
2 and increase the cost of egg production in Oklahoma.

3 35. This court can redress that injury by declaring AB1437 invalid
4 and permanently enjoining its enforcement.

5
6 *Plaintiff Terry E. Branstad, Governor of Iowa*

7 36. Plaintiff Terry E. Branstad is the Governor of the State of Iowa.
8 Governor Branstad has standing to join in this action as *parens patriae*,
9 because Iowa has quasi-sovereign interests in regulating agricultural activity
10 within its own borders and preserving Iowa's rightful status within the
11 federal system, as the United States Constitution guarantees.

12 37. Iowa is the number one state in egg production. Iowa farmers
13 produce over 14.4 billion eggs per year. See Ex. O at 12.

14 38. Approximately 9.1% of those eggs—1.07 billion eggs per year—
15 are sold in California. See Ex. E at 5.

16 39. Iowa farmers export more eggs to California than any other state.
17 *Id.*

18 40. Thirty percent of the eggs imported into California are produced
19 in Iowa. *Id.*

20 41. Iowa famers have more than 51 million egg-laying hens. Ninety
21 percent of those hens are housed in the same conventional cage-systems
22 currently in use in California and throughout the United States, and 10% are
23 in enhanceable cages. The cost to Iowa farmers to retrofit existing housing or
24 build new housing that complies with AB1437 would be substantial.

25 42. As the number one egg producing state, Governor Branstad
26 believes the California's AB1437, which seeks to regulate Iowa agricultural
27 activity and has the effect of increasing the costs of egg production in Iowa,
28

1 43. will have a detrimental impact upon and cause irreparable harm
2 to Iowa's economy.

3 44. This court can redress that injury by declaring AB1437 invalid
4 and permanently enjoining its enforcement.

5
6 ***Defendant Kamala D. Harris***

7 45. Defendant Kamala D. Harris is the Attorney General of the State
8 of California and the chief law officer for the state. She has all the powers of
9 a district attorney and has a duty to prosecute violations of law of which the
10 superior courts of California shall have jurisdiction. Cal. Const. Art. V, § 13.
11 She also has direct supervision over all district attorneys and sheriffs in
12 California. *Id.*

13 46. It will be the duty of Attorney General Harris and the district
14 attorneys she supervises to enforce the provisions of AB1437 when they
15 become effective on January 1, 2015.

16 47. Attorney General Harris is sued solely in her official capacity and
17 is subject to the jurisdiction of this court under *Ex parte Young*, 209 U.S. 123
18 (1908).

19
20 ***Defendant Karen Ross***

21 48. Defendant Karen Ross is the Secretary of the California
22 Department of Food and Agriculture.

23 49. It will be the duty of Secretary Ross to enforce the provisions of 3
24 CA ADC § 1350 when they become effective on January 1, 2015. See Cal
25 Food. & Agric. Code § 407 ("The director may adopt such regulations as are
26 reasonably necessary to carry out the provisions of this code which [she] is
27 directed or authorized to administer or enforce.").

1 such animal from: (a) Lying down, standing up, and fully extending his or her
2 limbs; and (b) Turning around freely.” Ex. A, § 3. Section 25993 provides that
3 a violation of §25990 shall constitute a misdemeanor punishable by up to a
4 \$1,000 fine and 180 days in county jail. Ex. A, § 1.

5 58. Researchers at the University of California–Davis have estimated
6 that California egg producers will have to invest upwards of \$385 million in
7 capital improvements to bring their operations into compliance with Prop 2.
8 HOY CARMAN, UC–DAVIS DEPARTMENT OF AGRICULTURAL AND RESOURCE
9 ECONOMICS, ECONOMIC ASPECTS OF ALTERNATIVE CALIFORNIA EGG
10 PRODUCTION SYSTEMS (“CARMAN PAPER”) at 22 (2012), attached as Ex. F.

11 59. In addition to increased capital costs, researchers estimate that
12 the larger enclosures required by Prop 2 will increase the ongoing cost of
13 producing eggs in California by at least 20%. Ex. C at 2.

14 60. Recognizing that it would take several years to implement, Prop
15 2 gave California egg farmers a total of 2,249 days—from November 4, 2008
16 until January 1, 2015—to figure out how to comply with the law and to
17 replace their existing cage systems with acceptable alternatives. Ex. A, § 5.

18 61. The new capital costs and increased production costs associated
19 with complying with Prop 2 would have placed California egg producers at a
20 significant competitive disadvantage when compared to egg producers in
21 Missouri and other states, and would likely have eliminated virtually all
22 large scale egg-production in California within six years of Prop 2’s effective
23 date. Ex. C at 3-4.

24 62. Article II, section 10, subdivision (c) of the California
25 Constitution prohibits the Legislature from amending or repealing Prop 2
26 without voter approval.
27
28

1 **The California Legislature passes AB1437 to protect California’s egg**
2 **producers from interstate competition.**

3 63. Faced with the negative impact Prop 2 would have on California’s
4 egg industry starting in 2015, the California Legislature in 2010 passed—and
5 Governor Schwarzenegger signed—AB1437, which added three additional
6 sections (§§25995 through 25997) to the California Health and Safety Code.

7 64. Section 25996 provides that, “Commencing January 1, 2015, a
8 shelled egg may not be sold or contracted to sell for human consumption in
9 California if it is the product of an egg-laying hen that was confined on a
10 farm or place that is not in compliance with animal care standards set forth
11 in [§ 25990].” Ex. D. Section 25997 provides that a violation of §25996 shall
12 constitute a misdemeanor punishable by up to a \$1,000 fine and 180 days in
13 county jail. Section 25996 was amended in 2013 to add “the seller knows or
14 should have known” after the word “if.” S.B. No. 667 (2013), attached as Ex.
15 G.

16 65. In addition to the minimum dimensions for hen enclosures based
17 on bird behavior under §§ 25990(a)-(b), the California Department of Food
18 and Agriculture (“CDFA”) has promulgated the following regulations
19 establishing minimum dimensions based on floor space per bird—which may
20 or may not be co-extensive with §§ 25990(a)-(b):

21 Commencing January 1, 2015, no egg handler or producer
22 may sell or contract to sell a shelled egg for human
23 consumption in California if it is the product of an egg-
24 laying hen that was confined in an enclosure that fails to
25 comply with the following standards. . . . An enclosure
26 containing nine (9) or more egg-laying hens shall provide a
27 minimum of 116 square inches of floor space per bird.

28 3 CA ADC § 1350(d)(1), attached as Ex. H.

1 66. If egg farmers may satisfy the behavioral requirements of
2 AB1437 with the spatial requirements of 3 CA ADC § 1350(d)(1), the cost of
3 producing eggs will increase by at least 12%. Ex. F at 15. If they must switch
4 to entirely cage-free production to satisfy AB1437, however, production costs
5 will increase by more than 34. %. *Id.*

6 67. Whereas Prop 2 provided California egg farmers 2,249 days to
7 come into compliance with its mandate, AB1437 gives Plaintiffs' egg farmers
8 only 1,640 days—from July 6, 2010 until January 1, 2015—to do so. Put
9 another way, California granted its own farmers an extra 609 days—*one and*
10 *two-thirds years*—to bring their egg-production facilities into compliance with
11 California law. Compare Ex. A, § 1 with Ex. D, § 5.

12
13 **The purported public health purpose of AB1437 is pretextual.**

14 68. The stated purpose of AB 1437 is “to protect California
15 consumers from the deleterious, health, safety, and welfare effects of the sale
16 and consumption of eggs derived from egg-laying hens that are exposed to
17 significant stress that may result in increased exposure to disease pathogens
18 including salmonella.” Ex. D, §25995(e).

19 69. However, no scientific study conducted to date has found any
20 correlation between cage size or stocking density and the incidence of
21 Salmonella in egg-laying hens. VAN IMMERSEEL ET AL, IMPROVING THE
22 SAFETY AND QUALITY OF EGGS AND EGG PRODUCTS, at 112 (2011), excerpt
23 attached as Ex. I. Additionally, the most recent studies establish that there
24 is no correlation between cage size or stocking density and stress levels in
25 egg-laying hens. J.A. DOWNING AND W.L. BRYDEN, THE EFFECTS OF HOUSING
26 LAYING HENS AS GROUPS IN CONVENTIONAL CAGES ON PLASMA AND EGG
27 ALBUMEN CORTICOSTERONE CONCENTRATIONS, AUST. POULT. SCI. SYMP., at
28 158-60 (2009), excerpt attached as Ex. J.

1 70. The legislative history of AB 1437 suggests that bill's true
2 purpose was not to protect public health but rather to protect California
3 farmers from the market effects of Prop 2 by "leveling the playing field" for
4 out-of-state egg producers. An analysis by the California Assembly
5 Committee on Appropriations following its May 13, 2009 committee hearings
6 on AB 1437 stated as follows:

7 "Rationale. With the passage of Proposition 2 in November
8 2008, 63% of California's voters determined that it was a
9 priority for the state to ensure the humane treatment of
10 farm animals. However, the proposition only applies to in-
11 state producers. *The intent of this legislation is to level the*
12 *playing field so that in-state producers are not*
13 *disadvantaged.* This bill would require that all eggs sold in
14 California must be produced in a way that is compliant
15 with the requirements of Proposition 2."

16 Bill Analysis of the California Assembly Committee on Appropriations, May
17 13, 2009 at 1 (emphasis added), attached as Ex. M.

18 71. After AB 1437 passed both the California Assembly and the
19 California Senate, the California Health & Human Services Agency (CHHS),
20 prepared an Enrolled Bill Report for the Governor. That report stated in
21 pertinent part, "Supporters of Proposition 2 claimed that giving egg-laying
22 hens more space may reduce this type of salmonellosis by reducing the
23 intestinal infection with *Salmonella Enteritidis* via reducing the stress of
24 intensive confinement. *Scientific evidence does not definitively support this*
25 *conclusion.*" CHHS Enrolled Bill Report at 2 (emphasis added), attached as
26 Ex. K. Summarizing the arguments pro and con concerning AB 1437 later in
27 its report, CHHS further stated that one of the arguments against enactment
28

1 of the legislation is that there is “[n]o scientific evidence to support assertion
2 of salmonella prevention.” *Id.* at 5.

3 72. Indeed, the California Department of Food and Agriculture
4 (“CDFA”) concedes in the Legal Impact section of its own Enrolled Bill Report
5 for AB 1437 that the bill’s purported public health rationale is likely
6 untenable. If AB 1437 were to be challenged on Commerce Clause grounds,
7 the CDFAs warned, California

8 will have to establish that there is a public health
9 justification for limiting the confinement of egg-laying hens
10 as set forth in section 25990. This will prove difficult
11 because, given the lack of specificity as to the confinement
12 limitations, it will invariably be hard to ascribe any
13 particular public health risk for failure to comply. . . . [W]e
14 doubt that the federal judiciary will allow the state to rely
15 exclusively upon the findings of the Legislature, such as
16 they are, to establish a public health justification for
17 section 25990.

18 CDFAs Enrolled Bill Report at 5, attached as Ex. L.

19 73. Despite the absence of any scientific evidence to support the bill’s
20 purported public health rationale, CDFAs urged the governor to sign AB1437
21 into law for purely economic reasons:

22 RECOMMENDATION AND SUPPORTING ARGUMENTS:
23 SIGN. In November 2008, voters passed Proposition 2,
24 requiring California farm animals, including egg-laying
25 hens, have room to move freely. Approximately 35% of shell
26 eggs consumed in California are imported from out of state.
27 California is the fifth largest producer behind Iowa, Ohio,
28 Indiana and Pennsylvania, in that order. *This will ensure*

1 *a level playing field for California's shell egg producers by*
2 *requiring out of state producers to comply with the state's*
3 *animal care standards.*

4 Ex. L at 1 (emphasis added).

5 74. Later in the same report, CDFA warned the governor that the
6 danger in not signing the bill was competition, not contamination:

7 When Proposition 2 requirements are implemented in 2015,
8 these producers will no longer be economically competitive
9 with out-of-state producers. *Without a level playing field*
10 *with out-of-state producers, companies in California will no*
11 *longer be able to operate in this state and will either go out*
12 *of business or be forced to relocate to another state.* This
13 will result in a significant loss of jobs and reduction of tax
14 revenue in California.

15 *Id.* at 3 (emphasis added).

16 75. In his signing statement, Governor Schwarzenegger makes no
17 mention of AB1437's purported public health rationale at all. The only
18 purposes he cites for enacting the law is protecting California farmers from
19 the market effects of Prop 2: "The voters' overwhelming approval of
20 Proposition 2 demonstrated their strong support for the humane treatment of
21 egg producing hens in California. By ensuring that all eggs sold in California
22 meet the requirements of Proposition 2, this bill is good for both California
23 egg producers and animal welfare." *Schwarzenegger signs bill requiring*
24 *'humane' out-of-state eggs*, SACRAMENTO BEE CAPITOL ALERT (July 7, 2010)
25 attached as Ex. N.
26
27
28

1 The purported public health purpose of AB1437 is preempted by federal
2 law in any event.

3 76. Even assuming that AB1437 served a legitimate public health
4 purpose *within* California by limiting the methods of egg production *outside*
5 California, the statute would be expressly and implicitly preempted by the
6 Federal Egg Products Inspection Act (“EPIA”), 21 U.S.C. § 1031 et seq.

7 77. Section 1031 of the EPIA, which is entitled “Congressional
8 Statement of Findings,” makes clear that one of the express purposes of the
9 EPIA is to protect human health in connection with the consumption of shell
10 eggs:

11 It is essential, in the public interest, that the health
12 and welfare of consumers be protected by the
13 adoption of measures prescribed herein for assuring
14 that eggs and egg products distributed to them and
15 used in products consumed by them are wholesome,
16 otherwise not adulterated, and properly labeled and
17 packaged. . . . It is hereby found that ... regulation by
18 the Secretary of Agriculture and the Secretary of
19 Health and Human Services, ... as contemplated by
20 this chapter, are appropriate ... to protect the health
21 and welfare of consumers.

22 78. Section 1032 of EPIA, which is entitled “Congressional
23 Declaration of Policy,” contains a Congressional mandate for national
24 uniformity of standards for eggs:

25 It is hereby declared to be the policy of the Congress to
26 provide for the inspection of certain egg products,
27 restrictions upon the disposition of certain qualities of eggs,
28 and uniformity of standards for eggs, and otherwise

1 regulate the processing and distribution of eggs and egg
2 products as hereinafter prescribed *to prevent the*
3 *movement or sale for human food, of eggs and egg products*
4 *which are adulterated* or misbranded or otherwise in
5 violation of this chapter.

6 (Emphasis added).

7 79. Under EPIA, Congress expressly preempted state laws intended
8 to regulate the quality and condition of eggs: “For eggs which have moved or
9 are moving in interstate or foreign commerce, no State or local jurisdiction
10 may require the use of standards of quality, condition, weight, quantity, or
11 grade which are in addition to or different from the official Federal
12 standards....” 21 U.S.C. § 1052(b).

13 80. The terms “condition” and “quality” are not defined within the
14 EPIA itself. Rather in Section 1043 of the EPIA, Congress delegated to the
15 Secretary of Agriculture broad authority to promulgate “such rules and
16 regulations as he deems necessary to carry out the purposes or provisions of
17 this chapter.” USDA carried out those obligations in part by enacting a
18 series of definitions for the purpose of the EPIA which are set forth in 7 CFR
19 § 57.1. Those definitions provide in pertinent part that:

20 *Condition means any characteristic affecting a product’s*
21 *merchantability including, but not being limited to, . . .*
22 *cleanliness, soundness, wholesomeness, or fitness for*
23 *human food of any product; or the processing, handling, or*
24 *packaging which affects such product.*

25 . . .

26 *Quality means the inherent properties of any product*
27 *which determine its relative degree of excellence.*

28 (Emphasis added.)

1 81. If AB1437's behavior-based standards for determining
2 appropriate cage size were actually intended to reduce the risk of
3 contamination from salmonella or other food-borne pathogens, such
4 standards would be "in addition to or different from the official Federal
5 standards" enumerated in EPIA, and would therefore be preempted by
6 federal law.

7
8 **AB1437 regulates conduct wholly and exclusively outside California**
9 **and substantially burdens interstate commerce.**

10 82. The inescapable conclusion to be drawn from AB1437's legislative
11 history is that California's *legislature* enacted AB1437 as a protectionist
12 response to the competitive advantage California *voters* gave out-of-state egg
13 producers when they passed Prop 2.

14 83. As Prop 2 would already have required larger hen enclosures
15 *within* the State of California starting on January 1, 2015, the sole effect of
16 AB1437 will be the extraterritorial regulation of egg production *outside* the
17 State of California in places like Missouri, Nebraska, Alabama, Oklahoma,
18 Kentucky, and Iowa.

19 84. AB1437 also imposes a substantial burden on interstate
20 commerce by forcing Plaintiffs' farmers either to forgo California's markets
21 altogether or accept significantly increased production costs just to comply
22 with California law.

23 85. Those higher production costs will increase the price of eggs
24 outside California as well as in. Because demand for eggs varies greatly
25 throughout the year, egg producers in other states cannot simply maintain
26 separate facilities for their California-bound eggs. In high-demand months,
27 Plaintiffs' farmers may not have enough eggs to meet California demand if
28 only a fraction of their eggs are produced in compliance with AB1437. In low-

1 demand months, there may be insufficient California demand to export all
2 compliant eggs, forcing Plaintiffs' farmers to sell those eggs in their own
3 states at higher prices than their competitors. Given those inefficiencies,
4 Plaintiffs' egg farmers must choose either to bring their entire operations into
5 compliance with AB1437 so that they always have enough supply to meet
6 California demand, or else simply leave the California marketplace.

7 86. Assuming they may comply with AB1437 by building new colony
8 housing with 116 square inches per bird—as required by 3 CA ADC §
9 1350(d)(1)—the necessary capital improvements will cost Plaintiffs' farmers
10 hundreds of millions of dollars. The cost to bring all henhouses into
11 compliance in Missouri alone is estimated at approximately \$120 million.

12 87. Yet, because those costs would have been imposed on California
13 producers under Prop 2 already, the sole purpose and economic effect of
14 AB1437 is to increase capital improvement and production costs *outside*
15 California—i.e., to “level the playing field.”

16 88. Even if farmers in Missouri would choose to forgo the California
17 market instead of incurring increased production costs, AB1437 would still
18 impose a substantial burden on interstate commerce. Without California
19 consumers, Missouri farmers would produce a surplus of 540 million eggs per
20 year. If one third of Missouri's eggs suddenly had no buyer, supply would
21 outpace demand by half a billion eggs, causing the price of eggs—as well as
22 egg farmers' margins—to fall throughout the Midwest and potentially forcing
23 some Missouri producers out of business. The same goes for egg producers in
24 Nebraska, Alabama, Oklahoma, Kentucky, and Iowa.

1 Plaintiffs bring this suit to declare AB1437 and 3 CA ADC § 1350(d)(1)
 2 unconstitutional and enjoin their enforcement presents a case or
 3 controversy ripe for review.

4 89. Although AB1437 and 3 CA ADC § 1350(d)(1) do not become
 5 effective until 2015, the injury to Plaintiffs’ farmers is “certainly impending.”
 6 *See Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923). Absent some
 7 additional action by Congress, the California Legislature, or this Court, any
 8 of our farmers who continue to export their eggs to California will face
 9 criminal sanctions beginning January 1, 2015 unless they take action now to
 10 come into compliance by the law’s effective date.

11 90. Constructing new, compliant housing for tens of millions of hens
 12 in Nebraska, Alabama, Oklahoma, Kentucky, and Iowa cannot be
 13 accomplished overnight. If our farmers want to continue selling eggs in the
 14 California market on January 1, 2015, those eggs must be laid, inspected,
 15 packaged, and shipped before the end of 2014. In fact, those farmers need to
 16 begin making the necessary capital improvements to their farms *now* if they
 17 are to reach compliance with California law by January 2015. If AB1437 and
 18 3 CA ADC § 1350(d)(1) are eventually held to be unconstitutional, those
 19 capital improvements will turn out to have been a tremendous and
 20 unnecessary expense.

21 91. The uncertainty surrounding the constitutionality of AB1437 and
 22 3 CA ADC § 1350(d)(1) and their impending effective date less than one year
 23 away forces Plaintiffs’ egg producers to literally bet the farm on the outcome
 24 of this law suit. They can proceed without making capital improvements in
 25 hopes that the law will be struck down, or they can begin the costly and
 26 labor-intensive process of changing their operations in case AB1437 and 3 CA
 27 ADC § 1350(d)(1) are upheld.
 28

1 92. Whichever path they follow, an incorrect choice spells doom for
 2 their businesses. Coming into compliance will necessarily increase
 3 productions costs; if the law is eventually struck down, the farmer will not be
 4 able to compete with egg producers still using cage-systems. And although
 5 maintaining the status quo costs nothing now, if the law is eventually upheld,
 6 the farmer who has not preemptively complied will face an interruption of
 7 business during the months it will take her to retool after the law is already
 8 in effect.

9 93. A genuine case or controversy has arisen between the parties as
 10 to the constitutionality of AB1437 and 3 CA ADC § 1350(d)(1). Until that
 11 controversy is resolved, Plaintiffs' farmers do not know whether they need to
 12 renovate their henhouses in order to remain competitive after January 1,
 13 2015. If they choose to comply, and AB1437 and 3 CA ADC § 1350(d)(1) are
 14 struck down, our farmers will have priced themselves out of business. But if
 15 they wait and see, and the law is upheld, they will lose months of business
 16 trying to catch up after the law comes into effect.

17 94. Article III of the U.S. Constitution does not require Plaintiffs to
 18 wait until AB1437 and 3 CA ADC § 1350(d)(1) become effective to seek a
 19 declaratory judgment as to their constitutionality because the damage to our
 20 economies will be irreparable at that point. This is precisely the kind of case
 21 for which declaratory relief is appropriate under 28 U.S.C. §2201.

COUNT I

VIOLATION OF THE COMMERCE CLAUSE

95. Plaintiffs incorporate all allegations in Paragraphs 1 through 93 into Count I of this Complaint.

96. The Commerce Clause of the United States Constitution prohibits states from enacting legislation that protects its own citizens from competition from citizens of other states, that regulates conduct wholly outside of the state’s borders, or that places an undue burden on interstate commerce.

97. AB1437 and 3 CA ADC § 1350(d)(1) violate the Commerce Clause because they are protectionist measures intended to benefit California egg producers at the expense of Plaintiffs’ egg producers by eliminating the competitive advantage our farmers would enjoy once Prop 2 becomes effective.

98. AB1437 and 3 CA ADC § 1350(d)(1) also violate the Commerce Clause because they have the purpose and effect of regulating conduct in our states and wholly outside the State of California.

99. AB1437 and 3 CA ADC § 1350(d)(1) further violate the Commerce Clause because they impose a substantial burden on interstate commerce by forcing Plaintiffs’ egg producers either to increase their production costs—raising the price of eggs not just in California but in our own states as well—or forgo the largest market in the United States and see the prices and profits plunge.

100. AB1437 and 3 CA ADC § 1350(d)(1) serve no legitimate state purpose because they do not protect the welfare of any animals within the State of California, and their stated purpose—to prevent salmonella contamination—is pretextual.

1 101. Plaintiffs therefore seek declaratory and injunctive relief under
2 28 U.S.C. § 2201.

3
4 **COUNT II**
5 **(IN THE ALTERNATIVE)**
6 **FEDERAL PREEMPTION**

7 102. Plaintiffs incorporate all allegations in Paragraphs 1 through 100
8 into Count II of this Complaint.

9 103. If this Court were to rule that AB1437 and 3 CA ADC §
10 1350(d)(1) served a legitimate, non-discriminatory purpose to lower the risk
11 of salmonella contamination by imposing new cage-size and flock-density
12 standards for housing egg-laying hens, the statute and regulations would be
13 in conflict with the express terms of 21 U.S.C. § 1052(b).

14 104. Moreover, because Congress evidenced its intention to occupy the
15 entire field of regulations governing the quality and condition of eggs by
16 imposing uniform national standards, the Federal Egg Products Inspection
17 Act, 21 U.S.C. § 1032, implicitly preempts AB1437 and 3 CA ADC §
18 1350(d)(1) as well.

19 105. Plaintiffs therefore seek declaratory and injunctive relief under
20 28 U.S.C. § 2201 that AB1437 and 3 CA ADC § 1350(d)(1) are null and void
21 under the Supremacy Clause of the United States Constitution.

22
23 WHEREFORE, the States of Missouri, Nebraska, Alabama, and
24 Oklahoma; the Commonwealth of Kentucky, and the Governor of Iowa
25 respectfully request that this Court issue the following relief:

- 26 A. declare that AB1437 is invalid because it violates the
27 Commerce Clause of the United States Constitution or, in
28

1 the alternative, because it is expressly and implicitly
2 preempted by the Federal Egg Products Inspection Act;

3 B. declare that 3 CA ADC § 1350(d)(1) is invalid because it
4 violates the Commerce Clause of the United States

5 Constitution or, in the alternative, because it is expressly
6 and implicitly preempted by the Federal Egg Products

7 Inspection Act;

8 C. permanently enjoin Defendant from enforcing the
9 provisions of both AB1437 and 3 CA ADC § 1350(d)(1);

10 D. award costs and fees; and

11 E. grant such other relief as the Court deems just and proper.

12
13 March 5, 2014

Respectfully submitted,

14
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16 Attorney General of Missouri

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INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear).

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

We, the undersigned, registered, qualified voters of California, residents of _____ County (or City and County), hereby propose amendments to the Health and Safety Code, relating to farm animals, and petition the Secretary of State to submit the same to voters of California for their adoption or rejection at the next succeeding primary or general election, or at any special statewide election held prior to that primary or general election, or as otherwise provided by law. The proposed statutory amendments (full title and text of measure) read as follows.

SECTION 1. SHORT TITLE

This Act shall be known and may be cited as the Prevention of Farm Animal Cruelty Act.

SECTION 2. PURPOSE

The purpose of this Act is to prohibit the cruel confinement of farm animals in a manner that does not allow them to turn around freely, lie down, stand up, and fully extend their limbs.

SECTION 3. FARM ANIMAL CRUELTY PROVISIONS

Chapter 13.8 (commencing with Section 25990) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 13.8: FARM ANIMAL CRUELTY

25990. PROHIBITIONS.— In addition to other applicable provisions of law, a person shall not tether or confine any covered animal, on a farm, for all or the majority of any day, in a manner that prevents such animal from:

- (a) Lying down, standing up, and fully extending his or her limbs; and
- (b) Turning around freely.

25991. DEFINITIONS.— For the purposes of this chapter, the following terms have the following meanings:

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- (a) "Calf raised for veal" means any calf of the bovine species kept for the purpose of producing the food product described as veal.
- (b) "Covered animal" means any pig during pregnancy, calf raised for veal, or egg-laying hen who is kept on a farm.
- (c) "Egg-laying hen" means any female domesticated chicken, turkey, duck, goose, or guinea fowl kept for the purpose of egg production.
- (d) "Enclosure" means any cage, crate, or other structure (including what is commonly described as a "gestation crate" for pigs; a "veal crate" for calves; or a "battery cage" for egg-laying hens) used to confine a covered animal.
- (e) "Farm" means the land, building, support facilities, and other equipment that are wholly or partially used for the commercial production of animals or animal products used for food or fiber; and does not include live animal markets.
- (b) "Fully extending his or her limbs" means fully extending all limbs without touching the side of an enclosure, including, in the case of egg-laying hens, fully spreading both wings without touching the side of an enclosure or other egg-laying hens.
- (f) "Person" means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate.
- (g) "Pig during pregnancy" means any pregnant pig of the porcine species kept for the primary purpose of breeding.
- (h) "Turning around freely" means turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure.

25992. EXCEPTIONS.— This chapter shall not apply:

- (a) During scientific or agricultural research.
- (b) During examination, testing, individual treatment or operation for veterinary purposes.
- (c) During transportation.
- (d) During rodeo exhibitions, state or county fair exhibitions, 4-H programs, and similar exhibitions.
- (e) During the slaughter of a covered animal in accordance with the provisions of chapter 6 (commencing with Section 19501) of Division 9 of the Food and Agricultural Code, relating to humane methods of slaughter, and other applicable law and regulations.
- (f) To a pig during the seven-day period prior to the pig's expected date of giving birth.

25993. ENFORCEMENT.— Any person who violates any of the provisions of this chapter is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed 180 days or by both such fine and imprisonment.

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hens use space (Keeling, 1995). In addition, individual hen movements can be constrained by social factors such as the hen's position in the dominance hierarchy.

Another approach to determining space requirements is to measure the amount of space required for free expression of different behaviors. Dawkins and Hardie (1989) conducted video analysis of singly housed hens given 1042 in² of space, and evaluated, by measuring the video images, the amount of space required for the hens to stand, ground scratch, turn, wing stretch, wing flap, feather ruffle, and preen; they did not measure the space required for lying. They used Ross Brown hens, which are larger birds than the white birds that make up the majority of U.S. egg production; however, the general approach that they used is appropriate for determining free movement to address the language of Proposition 2.

A new technology, 3-D kinematics, is a more accurate method for determining the amount of space used by animals to perform behaviors than the method used by Dawkins and Hardie (1989), and has the additional advantage of measuring variables in three dimensions. Kinematic research has been used to analyze gaits in many sports animals, such as Greyhound dogs (Hottinger et al., 1996) and thoroughbred horses (Deguerce et al., 1996; Clayton et al., 1998). More recently, this method has been used to assess the amount of space dairy cows use when lying down (Ceballos et al., 2004). The researchers concluded that this method provided an accurate measure of the movements of lying behavior, and also used that information to assess the design of stalls and how that may impede those movements.

The goal of the current study was to use kinematic analysis to evaluate the space required for Hy-Line W36 hens, the strain most commonly used in U.S. egg production, to stand up, lie down fully extend their limbs (i.e. extend both wings, a behavior called "wing flapping"¹), and turn around freely.

Methods

Ten mature (approximately 1.5 yr of age), well-feathered Hy-Line W-36 hens from the flock housed at the Hopkins Avian Research Facility at the UC Davis were selected to be observed for this study. One hen began molting and had to be removed from the study. Another was euthanized for flock management reasons prior to the recording of lying down behavior (see below); all other hens were returned to the flock after being filmed.

Each hen was marked with black livestock marker on the top of her head, tip of her tail, top of her toes, and tips of her wings. The hens were placed individually in a 3ft x 3ft floor pen (total area: 1296 in²) for up to 1 hour and video recorded for kinematic analysis. They were recorded: 1) standing in a relaxed posture; 2) turning 180 degrees; and 3) wing flapping. A perch was placed in the pen to stimulate the hens to jump up and down and thus to wing flap. Because none of the hens laid down during the test period, space required for lying was determined by

¹ Hens can perform two kinds of movements when extending both wings (Albentosa and Cooper, 2004). Full extension, which involves raising the wings out to the side/over the head, is called a wing flap. Less-than-full extension is called a wing raise. Previous papers often combine these types of behaviors but refer to them generically as "wing flaps". In this study we recorded the type of bilateral wing movement that is the most space-consuming, the full extension wing flap.

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- positions where their heads were held erect and standing positions where their heads were extended. This may have contributed to the somewhat larger means and wider ranges found.
2. The mean value for turning is very similar to that found for brown birds (197.1 in²), although the range is larger (152-252 in²). Animals can, of course, make turns that vary widely in the area covered, depending upon why they are turning around. In the current study turning was defined as a 180 degree turn; the Dawkins and Hardie (1989) study does not state what definition was used.
 3. The mean for wing-flapping was smaller than for brown birds (290.0), and the range was narrower (168.2 – 403.9). Brown birds typically have a larger body size than white birds (the hens in the Dawkins and Hardie study ranged from 4.2 to 5.6 lbs, with a mean of 4.8 lbs) and thus some strains may also have a bigger wing span, although Dawkins and Hardie did not provide information about the wing spans of the hens in their study.

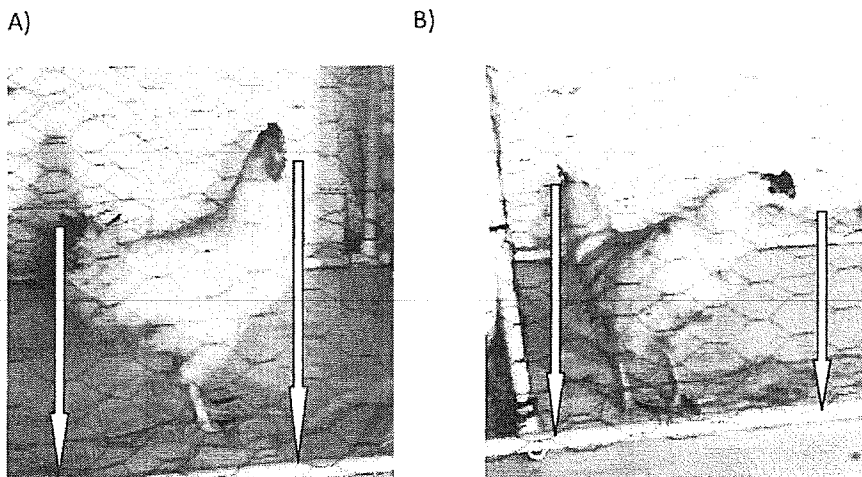


Figure 1. Two standing postures: A) an erect head and tail, using less floor space, and B) an elongated head and tail, increasing the length of the hen and using more floor space. The arrow show the “drop” used in the calculation of the floor area required for free movement.

In terms of Proposition 2, the implications of these data are that enclosures that provide less than 322 square inches in total floor area (the maximum area recorded for wing flapping plus one inch in each dimension), or that do not have either a length or a depth of at least 20.3 inches (the maximum recorded wingspan plus one inch added to each wing so that the hen does not touch the sides of the enclosure), do not meet the requirements of the Proposition². An enclosure that meets (but does not exceed, as per the information discussed below) these standards can house only one hen.

It is also possible that enclosures that do not have a height of at least 22.5 inches (the maximum height recorded for wing flapping) over the minimum 322 square inch floor area might prevent wing flapping because of insufficient height, but this would have to be studied in more detail. Nicol (1987) observed hens kept in cages of varying heights (11.8, 16.7 and 21.7 in; 30.0, 42.5

² Note that this area would also accommodate turning, using the average turning area found

and 55.0 cm, respectively). Wing flapping was observed only at the 21.7 cage height. Albentosa and Cooper (2004) compared 15 in (38 cm) tall cages to 17.7 in (45 cm) tall cages, and observed wing flapping only in the latter. In both studies, however, wing flapping was extremely rare and there were no statistically significant differences between treatments, so these data are only suggestive.

Extrapolating beyond these implications to derive a minimum cage space recommendation is very difficult because of the lack of clarity of the Proposition with respect to how many hens need to be able to simultaneously perform the particular behavior(s) listed. One interpretation would be that, in addition to providing sufficient room for one of the hens to have 322 square inches of space to flap her wings without touching other hens or the side of the enclosure, there has to be sufficient room for all other hens to stand. Hens in all housing systems spend a significant proportion of their day standing (e.g. Keeling, 1994; Channing et al., 2001; Savory et al., 2006), and since hens tend to synchronize their activities (e.g. Mench et al., 1986; Webster and Hurnik, 1994; Collins et al., 2011) many hens in the enclosure are likely to be standing at the same time.

With these assumptions, and using the maximum value for wing flapping and the average value for standing found in this experiment, we can estimate the amount of floor space required per hen given different group sizes (n) as follows: $322 + [(n-1) \times 87.3]/n$. This equation was used to generate Figure 2, which shows the amount of space needed per hen for different group sizes. As the figure shows, less space per hen is required as group size increases, although obviously the overall size of the enclosure would also increase (e.g., an enclosure for 5 hens would need to provide at least 671 square inches of usable floor space, one with 10 hens would need to provide at least 1,108 square inches, and one with 60 hens at least 5,472 square inches, with usable floor space defined as space that has sufficient height for hens to stand comfortably; the maximum standing height value found in the kinematic analysis was 16.2 in). The floor space required per hen essentially levels off at approximately 90-91 square inches when the group size reaches 60, although very large groups (1000 or more) require slightly less space per hen (87-88 square inches).

These results accord with theoretical predictions about the relationships between enclosure/group size and freedom of movement. For example, Appleby (2004) modeled the space required for free movement of hens in furnished cages, and demonstrated that larger enclosures were associated with more free movement even if hens were each provided with only slightly more space than their body size. In larger enclosures free space opens up because hens do not use all of the space available to them. Instead, they tend to cluster rather than space evenly (Keeling and Duncan, 1989), mainly because multiple hens are trying to access particular resources in the enclosure at the same time (Collins et al., 2010). Appleby (2004) noted that this additional space allows local freedom of movement important for basic behavior patterns such as feeding, scratching, stretching, preening and sitting. Based on his calculations he recommended that hens be provided with a minimum space of 600 cm^2 (93 in^2) per hen in the main area of their enclosure (meaning, the area not occupied by the nest or the litter area for foraging) in order to allow sufficient free space for local movement.

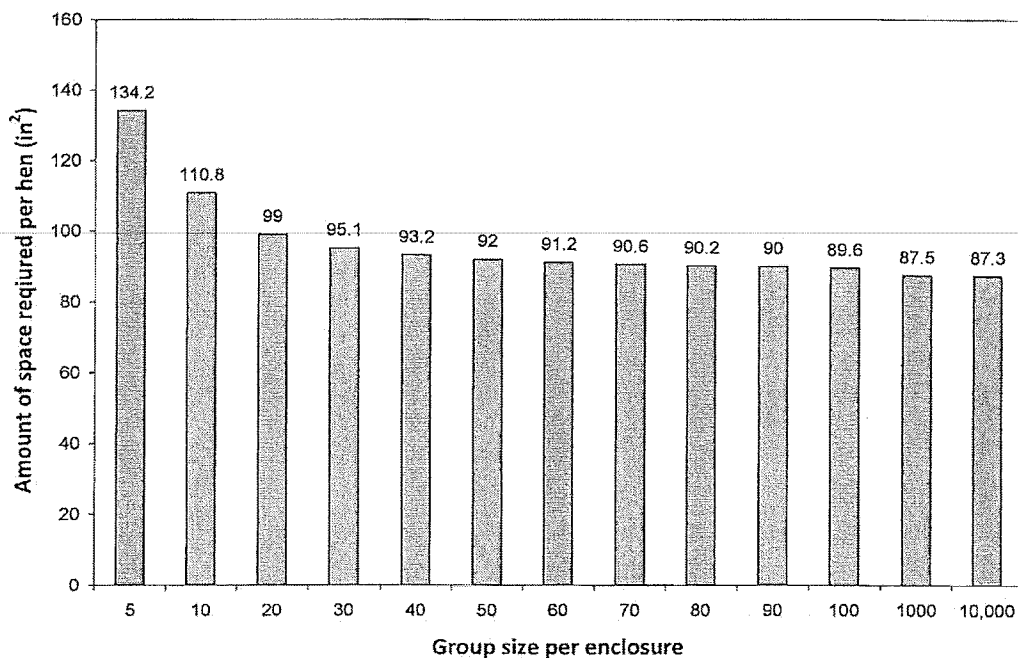


Figure 2. Change in the amount of floor space needed per hen as group size increases. The numbers are based on the assumptions and calculation provided above.

It should be stated that a variety of different factors can affect how much space hens need and how they use that space (Keeling, 1995). These include genetics, group size, environmental factors (e.g. ambient temperature), hen age, social effects (e.g. group size), and most particularly the resources that are provided in the housing system. For example, space needs will be greater in systems where resources are more widely distributed. The space value calculated above (Figure 2) for 60-hen groups is virtually identical to the minimum EU usable floor space requirement for furnished cages (Table 1), which would typically contain from 5-60 hens. However, the value calculated for very large groups (such groups would be housed in non-cage systems in groups of thousands to tens of thousands of hens), is below both the EU and UEP standards. Housing hens at this high of a stocking density in a typical non-cage system would have negative effects on their welfare. Hens in non-cage systems require additional free movement space in order to ensure that they can access feed, water and other resources, since these resources are separated by greater distances than in cage systems. If resources are distributed in such a way that vertical movement is required (for example in aviary systems – see Mench et al., 2011), that can not only impose different space needs but also affect the space that hens use in performing particular behaviors (for example, a hen will need more space to flap her wings during vertical flight than when she is balancing on a perch).

Modern cage systems may use an offset or stair-step arrangement so that cages can be stacked and manure can drop below the cage without landing in the lower cages. When more than two tiers are used in this arrangement, cages are partially off-set and include a board to shield manure from the lower tiers. Other modern systems use manure belts to allow cages to be stacked without off-sets so that more tiers are feasible and space is utilized more efficiently (Bell 2002c).

The primary advantages of a cage system compared to a non-cage system are: better hygiene; easier to manage; cleaner eggs; generally lower mortality; a low risk of disease and parasitism; fewer problems with aggression and injurious behaviors like feather pecking and cannibalism because of the small group size in the cage; better foot health; and fewer problems with air quality (dust and ammonia). The primary disadvantages of conventional cages are that they restrict the hens' movement (which leads to poor bone strength due to disuse osteoporosis), and also restrict the hens' behavior because they do not contain a nesting area, litter material used by hens to clean their plumage (dust bathing), or a perch. The behavioral restrictions in conventional cages are inherent features of the system.

Furnished cages (also called enriched or modified cages), were developed in Europe to try to address some of the welfare concerns associated with both conventional cages and non-cage systems. They are similar to conventional cages but provide more space for each hen. Furnished cages are equipped with perches, nesting areas, and sometimes litter material. However, some behaviors (e.g. flying, foraging) are still restricted as compared to non-cage systems, due to space limitations. Furnished cages are most common in the EU, where they are required to provide 750 cm² (116 in²) of space per hen and have a height of 45 cm (18 in) or more (EU directive 1999/74/EC). To our knowledge, no commercial producer in the U.S. uses furnished cages. In general, furnished cages are intermediate between conventional cages and non-cage systems in terms of their advantages and disadvantages, although this depends greatly on the design features of the particular furnished cage system (LayWel 2007). In terms of the cost of egg production, furnished cages are not at a significant disadvantage compared to conventional cages (Agra CEAS 2004, p.vi).

Non-cage systems are also of two general types: floor systems (referred to in Europe as barn systems or single-tier systems) and aviaries (multi-tier systems), each typically housing

thousands or tens of thousands together. In floor systems, the hens are housed on the floor of a building instead of in cages; the building contains nest boxes, which are typically configured to allow automatic egg collection. In the EU, hens in floor systems must be provided with litter and perches, although the floor cannot be completely covered with litter because this contributes to certain air quality and health problems. In the U.S., however, there are no regulations regarding the configuration of these systems, and there is consequently wide variation – hens may be housed in all-litter systems; or completely on wire, slatted or perforated floors with no litter provided; or in a combination litter-wire/slat/perforated flooring system. Perches may or may not be provided to the hens. Floor systems have higher production costs than conventional or furnished cages, but significantly lower production costs than free-range systems (Appleby et al. 2004; Bell 2005).

Aviaries are similar to floor systems, but have multi-tiered platforms that allow the hens to make use of the height of the building. The ground level is usually covered with litter material, and the perforated upper level platforms are arranged so that manure does not fall on the hens below. Aviary systems have perching surfaces and nest boxes, and food and water are typically provided on each level. The group size is similar to that of floor systems, although each hen is given less space than in a floor system. These systems have been widely adopted in the EU, but are less common in the United States. Aviaries have lower production costs than free-range systems, but higher costs than cage systems (Appleby et. al. 2004).

Aviary and floor systems have similar advantages and disadvantages as compared to conventional cages (LayWel 2007). The advantages include providing more freedom of movement for the hens, as well as the opportunity to nest, perch and dust bathe (at least if the system is appropriately configured). Disadvantages include: more difficult to manage; generally higher mortality; more problems due to feather pecking and cannibalism, particularly if the hens are not beak-trimmed; high rates of bone fractures during the laying period; higher incidence of infection with internal and external parasites; higher risk of the hens piling on top of and smothering one another (hysteria); health problems related to higher levels of ammonia and dust if litter is present; and increased difficulty in inspecting and catching hens. Some of the health problems associated with non-cage systems can probably be decreased (although not necessarily eliminated) by system design, improved management, selection of appropriate genotypes of

shipping costs are relatively high, shipments into California from out of state have been increasing gradually in competition with California production. The data show that most of the California industry has maintained its competitive position relative to in-shipments in the fresh shell egg market. Although feed costs and other factors provide cost disadvantages, high shipping costs for fresh eggs allow most of the California industry to remain competitive.

This competitive balance, however, makes California production vulnerable to any factors that raise California costs relative to costs in other states. Data presented in Section IV show that regulations that would eliminate the option of producing eggs in conventional cage housing systems would raise production costs substantially. The increase in costs would take two forms, both of which are important.

First, variable costs of production would rise by at least 20 percent and perhaps substantially more. Underlying these higher costs per dozen eggs are higher feed use per bird, higher cost per pullet, lower average productive life of a hen, higher mortality rates, fewer eggs of premium size or acceptable marketability, fewer birds per facility and higher labor costs. There is a variety of evidence on all these points.

The second major cost impact of the initiative is that compliance with new laying hen housing regulations would require substantial investment in new or retrofitted housing facilities. Based on information provided by farm accountants, a new or converted non-cage housing facility costs in the range of \$10 to \$40 per bird. With some 18 million hens in cage housing in California, about 600 new or retrofitted buildings at about 30,000 birds each would be needed to be constructed within six years. The capital investment required to provide approved housing for those hens is between \$200 million and \$800 million dollars. Producers would also need access to more land. Further, they would face zoning and other regulations that have limited relocating or expanding facilities for animal agriculture in California.

Case 1:14-at-00067 Document 2-3 Filed 02/03/14 Page 92 of 116
Economic Effects of Proposed Restrictions on Egg-laying Hen Housing in California**Table III.2. Annual average number of laying hens and table egg production, by state^{1,2}**

State	Average number of table-egg laying hens		Table-egg production		2007 Share of U.S. table-egg production (percent)
	Thousands		Millions		
	2006	2007	2006	2007	
Alabama	1,634	1,245	449	341	0.4
Arkansas	4,294	4,292	1,170	1,181	1.5
California	18,827	18,879			
Colorado	3,267	3,237			
Connecticut	2,763	2,830			
Florida	10,569	10,270	2,848	2,773	3.6
Georgia	9,734	9,671	2,614	2,576	3.3
Hawaii	433	365	98.3	81.8	0.1
Illinois	4,583	4,768	1,261	1,314	1.7
Indiana	24,417	24,195	6,596	6,526	8.4
Iowa	50,788	51,487	13,655	13,690	17.7
Maine	3,956	3,837			
Maryland	2,565	2,501	712	680	0.9
Michigan	8,321	8,695			
Minnesota	10,605	10,176	2,843	2,781	3.6
Mississippi	1,637	1,583	461	452	0.6
Missouri	6,082	5,819			
Nebraska	11,643	10,870	3,129	2,984	3.9
New York	3,683	3,687			
North Carolina	3,390	4,343	993	1,269	1.6
Ohio	27,853	26,032			
Oregon	2,532	2,334	748	702	0.9
Pennsylvania	21,856	20,850	6,444	6,161	8.0
South Carolina	3,819	3,495	1,042	929	1.2
South Dakota	3,147	3,068	865	843	1.1
Texas	14,397	14,319			
Virginia	1,415	1,365	402	382	0.5
Washington	5,370	5,550			
Wisconsin	4,180	4,370			
Other States ³	15,803	15,514	1,459	1,423	1.8
U.S. Total	283,563	279,645	78,276	77,266	100.0

Source: NASS, Agricultural Statistics Board, *Chicken and Eggs 2007 Summary*, February 2008 p.3, 10-13

¹ Annual estimates based on monthly averages covering the period December 1 previous year through November 30

² Totals may not add due to rounding

³ Data not available from some States to avoid disclosing individual operations, data included in US totals.

Note: Table eggs include all eggs produced for human consumption, excluding hatching eggs used to produce replacement chickens for the egg and broiler industries.

Assembly Bill No. 1437

CHAPTER 51

An act to add Chapter 14 (commencing with Section 25995) to Division 20 of the Health and Safety Code, relating to public health.

[Approved by Governor July 6, 2010. Filed with Secretary of State July 6, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1437, Huffman. Shelled eggs: sale for human consumption: compliance with animal care standards.

Existing law, the Sherman Food, Drug, and Cosmetic Law, requires the State Department of Public Health to regulate manufacturing, sales, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the federal Food, Drug, and Cosmetic Act, including, but not limited to, prohibition against the receipt in commerce of any adulterated food, as defined. A violation of these provisions is a crime.

Existing law, enacted as Proposition 2, an initiative measure approved by the voters at the November 4, 2008, statewide general election, establishes, commencing January 1, 2015, specified farm animal treatment standards.

This bill would, commencing January 1, 2015, prohibit the sale of a shelled egg for human consumption if it is the product of an egg-laying hen that was confined on a farm or place that is not in compliance with those animal care standards and would make violations of these provisions a crime. This bill would declare that its provisions are severable. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Chapter 14 (commencing with Section 25995) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 14. SHELLED EGGS

25995. The Legislature finds and declares all of the following:

(a) According to the Pew Commission on Industrial Farm Production, food animals that are treated well and provided with at least minimum accommodation of their natural behaviors and physical needs are healthier and safer for human consumption.

(b) A key finding from the World Health Organization and Food and Agricultural Organization of the United Nations Salmonella Risk Assessment was that reducing flock prevalence results in a directly proportional reduction in human health risk.

(c) Egg-laying hens subjected to stress are more likely to have higher levels of pathogens in their intestines and the conditions increase the likelihood that consumers will be exposed to higher levels of food-borne pathogens.

(d) Salmonella is the most commonly diagnosed food-borne illness in the United States.

(e) It is the intent of the Legislature to protect California consumers from the deleterious, health, safety, and welfare effects of the sale and consumption of eggs derived from egg-laying hens that are exposed to significant stress and may result in increased exposure to disease pathogens including salmonella.

25996. Commencing January 1, 2015, a shelled egg may not be sold or contracted for sale for human consumption in California if it is the product of an egg-laying hen that was confined on a farm or place that is not in compliance with animal care standards set forth in Chapter 13.8 (commencing with Section 25990).

25997. Any person who violates this chapter is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed 180 days or by both that fine and imprisonment.

25997.1. The provisions of this chapter are in addition to, and not in lieu of, any other laws protecting animal welfare, including the Penal Code. This chapter shall not be construed to limit any state law or regulation protecting the welfare of animals, nor shall anything in this chapter prevent a local governing body from adopting and enforcing its own animal welfare laws and regulations.

SEC. 2. If any provision of this act, or the application thereof to any person or circumstances, is held invalid or unconstitutional, that invalidity or unconstitutionality shall not affect other provisions or applications of this act or other existing state law or regulation that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are severable.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime

EGG ECONOMICS UPDATE #338

Prepared by Don Bell, Poultry Specialist (emeritus), University of California, 10/06/2013

California's Egg Requirements – 2015

During the last completed 12 months (through June, 2013):

- California flocks produced an estimated 15.0 million cases of eggs.
- At an average flock size of 19.1 million hens, this would represent 282 eggs per hen per year.
- California imported 9.2 million cases of shell eggs – the equivalent of 11.7 million hens.
Another 3.0 million cases were imported in the liquid and dry forms.

California's Proposition 2 is scheduled to be in full operation on January 1, 2015.

The current interpretation of the law uses **numeric values** for the **descriptive values** written into the law itself. The law describes these "conditions" in rather vague terms. The California agency which has the responsibility of enforcing these laws is the Department of Food and Agriculture. The numeric values will be used to evaluate each farm's compliance.

"More detailed guidance will be released by the CDFA closer to the effective date of 1/1/15."

As of September 13, 2013, **stocking density** is the only **welfare** consideration listed in the "California Shell Egg Food Safety Regulation Guidance publication.

Space per hen is listed for 9 different cage sizes with higher space requirements for smaller cage. Table 1 lists the space requirement for cages with different capacities.

Table 1: Minimum space requirements per hen – CDFA – Jan. 2015

#hens	1	2	3	4	5	6	7	8	>9
In ² /hen	322	205	166	146	135	127	121	117	116

These regulations apply to all eggs sold in CA regardless of flock size or source.

Where are California's eggs going to come from?

California will need to import or produce eggs from approximately 38 million hens by 2015 under the standards listed above. Today's U.S. total production of "specialty" eggs is estimated to be less than 10% of the total or the production from 28.5 million hens. This places our total deficiency of this type of production at about 10 million hens for CA alone with none available for the rest of the country. The U.S. is going to have to play a fast game of "catch-up" if the current trends continue.

OPTIONS FOR THE INDUSTRY

- **California**
 - ✓ Reduce cage density by one-half
 - ✓ Combine houses
 - ✓ Remodel existing houses – expensive for small-cage housing.
 - ✓ Build brand new houses – use vertical height for more cages.
 - ✓ Wait as long as possible and then close
- **Major exporting states to California (IA, MN,MO, OH)**
 - ✓ These four states represent 70% of CA imports
 - ✓ In order for them to continue to ship to CA they must abide by CA regulations.
 - ✓ Set aside specific farms or houses to conform to CA requirements (auditing will come).
 - ✓ Build new farms closer to CA or inside its borders.
- **All other states**
 - ✓ All cold-weather states will have problems meeting CA regulations due to reduced heat production at the lower densities.
 - ✓ Look for other markets where such restriction do not exist
 - ✓ Develop your own local outlet for specialty eggs

SUMMARY

Webster defines a quandary as:

"A state of perplexity or doubt". No better definition is required.

This certainly applies to the current set of circumstances facing our industry today and for

The foreseeable future

Appendix: California Egg Imports by State

On August 16th 2013, the California Department of Food and Agriculture provided a summary of how many eggs were shipped to California from the other U.S. States between July 1st 2012 and June 30th 2013 (table 3). This data is very important not only for CA and their suppliers, but for the entire U.S. because it will serve as a baseline to identify how eggs are traded and will change when the Proposition 2 rule starts on January 1st 2015.

On table 3 we can appreciate that IA was the State that exported 3.633 million into CA or 30.0% of all CA imports. MN was the second largest source of out-of-state eggs with 1.683 million cases. MO was the third largest source of out-of-state eggs with 1.582 million cases. OH was the fourth largest source of out-of-state eggs with 1.098 million cases. AR, AZ, CO, IL, MI, IN, OR, SD, TX, UT and WI complete the top 15 list.

Table 3: Out of State Eggs Shipments to California between 7/1/2012 and 6/30/2013

State	Shell Egg (1,000 cases)	Liquid Egg (1,000 cases)	Dry Egg (1,000 cases)	TOTAL (1,000 cases)	% of Total CA Imports	Eggs Produced (1,000 cases)	% of Production Exported to CA
IA	2,964	674	5	3,643	30.0%	40,208	9.1%
MN	490	1,203	8	1,702	14.0%	7,608	22.4%
MO	1,153	435	1	1,588	13.1%	4,802	33.1%
OH	1,094	3	1	1,098	9.0%	21,634	5.1%
UT	385	148	0	533	4.4%	2,881	18.5%
OR	427	24	2	454	3.7%	1,883	24.1%
IL	331	60	0	391	3.2%	3,061	12.8%
MI	358	2	0	361	3.0%	9,445	3.8%
IN	328	3	2	333	2.7%	19,267	1.7%
CO	307	3	0	310	2.6%	2,958	10.5%
AR	87	209	0	296	2.4%	2,986	9.9%
WI	158	108	4	270	2.2%	3,571	7.6%
TX	180	6	0	186	1.5%	11,699	1.6%
SD	176	1	0	177	1.5%	2,017	8.8%
WA	90	37	0	127	1.0%	5,230	2.4%
Other	635	45	6	687	5.6%		
Total	9,164	2,962	31	12,157	100.0%		

Conversion rate used is: 42.25 lbs. of liquid = one case of eggs, 10.56 lbs. of dry = one case of eggs

Other States include: AZ, KS, GA, NH, AL, NJ, PA, KY, MD, MS, TN, NY, NC, NE, MA and NV

Note: the liquid egg conversion rate (42.25 lbs/case) is equal to the 10-year average breaking yield estimated from the USDA NASS Egg Products monthly reports (the dry egg yield is 25% of this number)

Another way of looking at this data is to estimate how much CA imports represent of the other States total production. We therefore compared the egg exports with the total number of eggs produced in the same period as reported by USDA NASS in their Chicken and Eggs reports. Unfortunately there is no production data available for some States (MO, OH, MI, CO, WI, TX, and WA). We approximated it for these States by assuming that their egg production per layer was similar to the U.S. average (282.2 eggs/layer/year) using the "Table Egg Layers in Flocks 30,000 and Above" because the total number of table egg layers wasn't reported neither. For some States such as AZ there is no data available on the number of table egg layers either, therefore it was impossible to estimate a number.

In table 3 we can identify that the exports to CA take a large proportion of the eggs produced in MO (33%), OR (24%), MN (22%), UT (19%), IL (13%), CO (10%), AR (10%), IA (9%), SD (9%) and WI (8%).

Economic Aspects of Alternative California Egg Production Systems

Introduction

California egg producers have faced considerable uncertainty about acceptable production methods since passage of Proposition 2 in November 2008. Scheduled to take effect on January 1, 2015, Proposition 2 adds provisions to the California Health and Safety Code Sections 25990 – 25994 that prohibits confining egg-laying hens on a farm, for all or the majority of any day, in a manner that prevents the hen from (a) lying down, standing up and fully spreading both wings without touching the sides of the enclosure or other egg-laying hens, and (b) turning around freely. While Proposition 2 is silent with regard to space requirements for an acceptable egg-laying hen enclosure, it is clear that the conventional “battery cage” system, used for almost all egg production in California and the rest of the U.S., is unacceptable.

Analysis of the probable impacts of Proposition 2 on California egg production and state economic activity published prior to the November 2008 vote assumed that no cage-type enclosure would satisfy the Proposition’s requirements. Sumner, et al. (2008), Promar International (2008), and Newman, et al. (2008) examined the probable economic impacts of switching from existing egg production practices to a cage free system. These studies found that the significant increase in costs of production incurred when changing from the conventional “battery cage” system to a cage free system would place California producers at such a competitive disadvantage that most egg production in California would no longer be economically feasible. The outlook for the future of egg production in California was dire as many California producers considering quitting egg production or moving their operations to other states. Economic impacts from the loss of a primary producer with annual sales averaging \$380 million and direct employment of some 3,000 workers would be substantial. Impacts on California consumers were expected to be relatively small since other states could rapidly increase egg shipments to California with little increase in marginal costs or average prices per dozen.

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allows one to attribute most of the variation in Table 3 costs to the production system used. Comparing costs for each system to the conventional battery cage with 68 square inches per hen reveals the nature of the increase expected as space allocated to each hen increases. Estimated costs per dozen for the colony system with 93 square inches per hen increases 6.58 percent over

Table 3. Estimated Costs of Production by Major Cost Components for Alternative California Egg Production Systems.

Production System	Conventional	Colony	Colony	Cage Free
Space per Hen	68 sq. in	93 sq. in	116 sq. in	
Cost Component	-----\$/dozen eggs-----			
Feed	0.489	0.495	0.507	0.593
Pullets	0.119	0.119	0.119	0.158
Housing & Equip	0.070	0.105	0.135	0.119
Labor	0.029	0.040	0.045	0.113
Other	0.086	0.086	0.086	0.086
Total Costs	0.793	0.845	0.892	1.069
% Total Cost Increase	--	6.58	12.48	34.80

the conventional cage system while the colony system with 116 square inches per hen increases estimated costs by 12.48 percent. Increased feed consumption, increased hen mortality, and increased labor requirements for the cage free system result in an estimated cost increase of 34.80 percent over conventional battery cages.

Economic Effects of Converting to Colony Cage Systems

The effects of new hen housing space requirements on egg prices and consumption can be estimated using the cost estimates developed above. In addition information from other sources on the responsiveness of egg production and consumption, as provided by estimates of the price elasticity of demand and supply, are required. Estimates will be made using the economic model of egg supply and demand developed by Sumner, et al. (2010) included as Appendix I.

Price Elasticity of Demand

Price elasticity of demand (η) describes the inverse response of per capita consumption to a change in retail prices. In simple terms price elasticity of demand is defined as the percentage change in the quantity demanded divided by the percentage change in price. Values in the range

Because of the increase in space requirements from the present 68 square inches per hen, housing the number of hens needed to maintain California producers' share of the California market will require new space for 7.62 million hens. Replacing half of existing buildings with new construction will accommodate 5.745 million hens, for a total of 13.3648 million hens at \$22.55 per hen for a total investment of just over \$301 million. Remodeling costs for buildings with new cages and equipment for 2.8725 million hens is estimated at almost \$51 million while remodeling costs for buildings, cages and equipment for 2.8725 million hens is estimated at over \$32 million. Given the above specifications, providing 116 square inches per hen will require new investment by California egg producers of about \$385 million. Less space per hen will reduce, while more space will increase, total investment requirements. Note that environmental enrichments included in EU cages (and phased in to US cages under HR 3798 and S3239) are not included in these estimates.⁸ The difference in cost for EU Colony cage systems with and without enrichments is reported to be \$1.50 per bird, hard cost, plus \$.50 per bird labor to install. Given the study assumptions, adding enrichments increase the budgeted costs of California egg production about \$0.014 per dozen.

Egg producers in other states who want to continue supplying the California market will face California production requirements with similar per hen investments in facilities and equipment. Sumner, et al. (2008) estimated that out-of-state producers supplied about 35 percent of the total shell eggs consumed in California in 2007 (pg. 89). To maintain that share after January 1, 2015, out of state producers would have conversion investment costs for cages and equipment equal to about 54 percent of estimated California costs, or an additional \$208 million for colony cages with 116 square inches per hen.

The large investments required to continue or enter egg production for the California market have several implications. Some producers may have problems obtaining needed capital; other producers may decide not to continue egg production for any of a number of reasons (age, retirement, access to capital, financial situation, changing interests, other opportunities, etc.); some producers may take a "wait-and-see" attitude with a phasing of conversion based on

⁸ Environmentally enriched cages that contain nest boxes, perches, litter mats and scratch pads are also referred to as "furnished" or "enriched" cages or colony cages.

corticosterone concentrations. Following the relocation the corticosterone concentrations were elevated during the first 5 days but had declined by 2 to 3 weeks. In the present study, as the group size increased, and the space allowance decreased, no significant effects on plasma corticosterone concentrations were observed. The large variation in plasma corticosterone concentrations is a major issue associated with using single point samples in measuring stress hormones concentrations.

On individual sampling days the number of hens in the cage had no effect on the egg albumen corticosterone concentrations. The egg albumen concentrations were higher on days 2 and 4 after the hens were moved to the group cages. These gradually decreased by day 16 and then remained at a similar level for the remainder of the study. The increase in albumen concentrations observed during the first 16 days are most probably a result of stress associated with the moving of hens to a new novel environment and housing them in groups. After this period the combination of group size and space allocation had no effect on egg albumen corticosterone concentration. Subtle changes in plasma corticosterone concentrations could be amplified in albumen because of the period over which the albumen accumulates and could provide a better indication of corticosterone concentrations than single point blood samples.

ACKNOWLEDGEMENTS

The work was funded by the Australian Egg Corporation Limited for which we are grateful.

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K

Enrolled Bill Report Case 1:14-a-0067 Document 2-11 Filed 02/04/15 Page 10 of 137
 Number AD 1437
 Author: Huffman

102 Individuals

Opposition:

Association of California Egg Farmers
 Sonoma County Farm Bureau

ARGUMENTS

Pro:

- All shell eggs sold in California for human consumption would be laid from hens that are in compliance with animal care standards.

Con:

- The price of eggs may rise as a result of increased costs on egg producers.
- Exceeds requirements of Prop 2 by applying standards to other states.
- No scientific evidence to support assertion of salmonella prevention.
- Unclear ability of staff to effectively regulate the sale of eggs outside of the state.

VOTES

	DATE	RESULT	TALLY
Assembly Concurrence	6/21/10	Pass	65-9
Senate Floor	6/17/10	Pass	23-7
Senate Policy (Food & Agriculture)	6/16/09	Pass	4-1
Assembly Floor	5/26/09	Pass	65-12
Assembly Fiscal	5/13/09	Pass	10-3
Assembly Policy (Agriculture)	04/29/09	Pass	8-0

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LEGISLATIVE INTENT SERVICE



CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

Case 1:14-at-00067 Document 2-12 Filed 02/03/14 Page 2 of 11

ENROLLED BILL REPORT

CONFIDENTIAL-Government Code §6254(1)		
Department/Board Food and Agriculture	Author: Huffman	Bill Number/Version Date: AB 1437 / 5-28-2010
Sponsor: HSUS	Related Bills	Chaptering Order (if known)
<input type="checkbox"/> Admin Sponsored	Proposal No.	<input type="checkbox"/> Attachment
Subject: Shelled eggs: sale for human consumption: compliance with animal care standards		

SUMMARY

Commencing January 1, 2015, this bill would prohibit the sale of shell eggs for human consumption if it is the product of an egg-laying hen that was caged or confined on a farm or place that is not in compliance with animal care standards as mandated in Proposition 2. Furthermore, violation of this provision would be a crime.

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN. In November 2008, voters passed Proposition 2, requiring California farm animals, including egg-laying hens, have room to move freely. Approximately 35% of shell eggs consumed in California are imported from out of state. California is the fifth largest producer behind Iowa, Ohio, Indiana and Pennsylvania, in that order. This will ensure a level playing field for California's shell egg producers by requiring out of state producers to comply with the state's animal care standards.

This bill would not affect the operations of the Department's Egg Quality Control Program. The purpose of the Egg Quality Control Program is to monitor shell egg quality at production, wholesale and retail levels. The goal is to provide California consumers with eggs that are wholesome, properly labeled, refrigerated, and of established quality and grade, while maintaining fair and equitable marketing standards in the California egg industry. This bill would allow the program to continue its purpose and goals.

Departments That May Be Affected CDFA, DPH	
<input type="checkbox"/> New / Increased Fee	<input type="checkbox"/> Governor's Appointment
<input type="checkbox"/> Legislative Appointment	<input type="checkbox"/> State Mandate
<input type="checkbox"/> Urgency Clause	
Dept/Board Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:	Agency Secretary Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:
Greg Applegate, Deputy Secretary Date: 6/28/10	A.G. Karamura, Agency Secretary Date: 6/29/10

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FISCAL IMPACT

The Department is not aware of the potential fiscal implications associated with this bill. However, this bill will ensure a level playing field for California's shell egg producers by requiring out of state producers to comply with the state's animal care standards.

ECONOMIC IMPACT

This bill may have a positive effect on the regulated shell egg industry in California. It may provide the industry with fair and equitable marketing standards with shell eggs that are imported into California by prohibiting the sale of shell eggs from confined egg-laying hens. Currently, greater than 90% of California produced eggs are from conventional caged systems. When Proposition 2 requirements are implemented in 2015, these producers will no longer be economically competitive with out-of-state producers. Without a level playing field with out-of-state producers, companies in California will no longer be able to operate in this state and will either go out of business or be forced to relocate to another state. This will result in a significant loss of jobs and reduction of tax revenue in California.

OUTSTANDING ISSUES

Enforcement

Without the development of regulations, there is no way to know of eggs being imported into California that meet Proposition 2 requirements. Currently, the department's enforcement authority is specific to out-of-state audits to verify compliance with assessment reports submitted by the out-of-state egg handlers (Food and Agricultural Code (FAC) Sections (27863- 27885). CDFA investigators audit paper records to ensure that out of state registrants selling eggs into California pay the appropriate fees. The department does not have current authority to conduct on-sight inspections of physical condition of out-of-state facilities.

Precedential Implications

Passing legislation that appears to exclude imports that do not meet California animal husbandry standards may mislead the public into thinking that imposing standards that put California farmers and ranchers at a cost disadvantage related to how they house, feed and care for their animals will not negatively impact their ability to survive economically. If the public is lead to believe that laws that restrict interstate trade can be imposed and enforced by California, they may be more inclined to support future laws that make it very difficult for California farmers to offer products that can price compete with products from farmers in other states and nations.

Trade Implications

At this point in time it is difficult to assess the potential trade implications resulting from passage of this bill. However, there are currently situations where California has different standards than other states which pose no negative implications. For example the Department's Egg Quality Control Program requires a 30 day sell by date from the date on which the eggs were packaged (FAC Sections 27510), other states have a 45 day sell by

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←

Accordingly, in this instance, the State will have to satisfy two requirements in order to preserve AB 1437 if enacted. First, it will have to establish that there is a public health justification for limiting the confinement of egg-laying hens as set forth in section 25990. This will prove difficult because, given the lack of specificity as to the confinement limitations, it will invariably be hard to ascribe any particular public health risk for failure to comply. To date, no regulations have been adopted to clarify section 25990. Even if such regulations existed, the State would have to draw upon extensive scientific evidence to support the conclusory findings of the Legislature in regard to the spread of pathogens, specifically salmonella. While we have not researched the question, we doubt that the federal judiciary will allow the State to rely exclusively upon the findings of the Legislature, such as they are, to establish a public health justification for section 25990.

Second, the State will have to assert that the imposition of a criminal penalty for selling shell eggs produced by egg producers who have failed to comply with section 25990 is the least restrictive means to address the public health issues established by the evidence. To the extent the evidence is stronger, it will be in a more persuasive position, to the extent that it is weaker, less so. Given that a criminal prosecution is the most harsh form of a deterrent, it is possible that, even under a best case scenario, that a court would rule negatively. A court might well find that the overall adverse impact upon interstate commerce as a consequence of such intimidation would invalidate it, despite its lack of discrimination against out of state commerce. Pertinent evidence might include the overall percentage of eggs consumed in California, and the possible decline in the production and sales from other states that might result.

In regard to the second issue associated with criminal prosecutions, Terrance W. Flanagan of the The Flanagan Law Firm has highlighted them in a letter to the Governor on behalf of The Egg Farmers Association. He asserts that it is impossible for egg producers to establish that they are in compliance with section 25990, and, hence, also renders it impossible for anyone to sell eggs with the assurance that they are section 25990 compliant as required by AB 1437. In the absence of clarifying regulations, his argument has merit. Even though the California criminal courts permit a simplified form of pleading when it comes to alleging criminal offenses, it is doubtful whether it is possible to plead a violation of AB 1437 that fulfills the constitutional due process requirement of placing defendants on notice of the charges against them and thus enabling them to prepare a defense. (*In re Hess* (1955) 45 Cal.2d 171,175.) Pleading in the language of the statute is not sufficient when the statute does not define the offense. (*In re Jamill H.* (1984) 158 Cal.App.3d 558, 560-561.)

A brief inquiry into the factual circumstances of *Jamill H.* provide some insight into this situation. In *Jamill H.*, a juvenile was charged with entering a school "without lawful business", but the juvenile petition did not identify the statutory prohibition that he intended to violate. Accordingly, the Court of Appeal ruled that the petition was too vague to enable him to prepare a defense against it. Here, any criminal prosecution would allege in the indictment or information that the seller had sold shell eggs produced in violation of section 25990, but there are no recognized standards, no safe harbor, in effect, so any such defendant would likewise be unable to prepare a defense. Such a defendant would be unable to understand the essential elements of the prosecution's case as constitutionally required. (*People v.*

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Date of Hearing: May 13, 2009

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Kevin De Leon, Chair

AB 1437 (Huffman) – As Introduced: February 27, 2009

Policy Committee: Agriculture

Vote: 8 – 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

SUMMARY

This bill prohibits the selling of eggs still in the shell for human consumption after January 1, 2015, if those eggs are produced by egg-laying hens that are not in compliance with California animal care standards. In addition, the bill makes it a misdemeanor to violate this prohibition, punishable by a fine of up to \$1,000, up to 180 days in a county jail or both.

FISCAL EFFECT

Negligible, non-reimbursable costs for prosecution, offset by fine revenue, for misdemeanor violations associated with not complying with California animal care standards.

COMMENTS

- 1) Rationale. With the passage of Proposition 2 in November 2008, 63% of California's voters determined that it was a priority for the state to ensure the humane treatment of farm animals. However, the proposition only applies to in-state producers. The intent of this legislation is to level the playing field so that in-state producers are not disadvantaged. This bill would require that all eggs sold in California must be produced in a way that is compliant with the requirements of Proposition 2.

Californians have a history of establishing basic animal welfare standards for the products they consume. In 1996, California voters banned the consumption, sale and transport of horse meat. In 2004, the California Legislature banned the sale of foie gras by prohibiting the sale of a product that is the result of force feeding a bird.

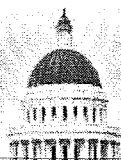
- 2) Standards for Confining Farm Animals Initiative (Proposition 2). This proposition adds a chapter to Division 20 of the California Health and Safety Code to prohibit the confinement of certain farm animals in a manner that does not allow them to turn around freely, lie down, stand up, and fully extend their limbs. The measure deals with three types of confinement: veal crates, battery cages, and sow gestation crates.

The key portion of the statute will become operative on January 1, 2015. Farming operations have until that date to implement the new space requirements for their animals, and the statute will prohibit animals in California from being confined in a proscribed manner thereafter.

Analysis Prepared by: Julie Salley-Gray / APPR. / (916) 319-2081

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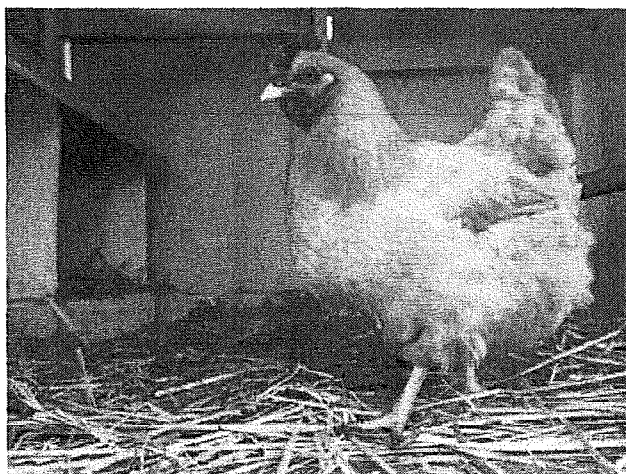
July 7, 2010

Schwarzenegger signs bill requiring "humane" out-of-state eggs

Out-of-state companies that sell eggs to California consumers will have to abide by the same "humane treatment" rules as California businesses under a bill that Gov. **Arnold Schwarzenegger** signed Tuesday.

Assembly Bill 1437 by Assemblyman **Jared Huffman**, D-San Rafael, requires that eggs produced in other states but sold in California meet standards set by Proposition 2, which voters approved in November 2008.

The standards, which go into effect in 2015, limit how much certain farm animals, including hens, can be confined and requires that animals have room to move around.



In a signing message, Schwarzenegger said: "The voters' overwhelming approval of Proposition 2 demonstrated their strong support for the humane treatment of egg-producing hens in California. By ensuring that all eggs sold in California meet the requirements of Proposition 2, this bill is good for both California egg producers and animal welfare."

Huffman said that research shows that confined hens can suffer increased exposure to Salmonella, a danger to human health.

PHOTO CREDIT: Randy Pench/Sacramento Bee file photo

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3:11 PM | Comments



1 F.3d at 1254; *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (requiring “enough facts
2 to state a claim to relief that is plausible on its face”); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

3 I. PLAINTIFFS LACK ARTICLE III STANDING TO BRING THIS ACTION

4 Plaintiffs do not even attempt to allege a *direct* injury from AB 1437 or § 1350. Instead, they
5 stake their claim to standing on the narrow doctrine of *parens patriae*. But Plaintiffs have failed to
6 make allegations sufficient to satisfy the basic requirements for *parens patriae* standing: an injury
7 affecting a “substantial segment” of their population and a sovereign or quasi-sovereign interest
8 distinct from the private interests of their residents. Nor have Plaintiffs alleged the concrete and
9 particularized injury that Article III requires in all cases.

10 “Article III of the Constitution confines the judicial power of federal courts to deciding
11 actual ‘Cases’ or ‘Controversies.’” *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013). “One
12 essential aspect of this requirement is that any person invoking the power of a federal court must
13 demonstrate standing to do so.” *Id.* Plaintiffs “ha[ve] the burden of establishing standing.” *Table*
14 *Bluff Reservation (Wiyot Tribe) v. Philip Morris, Inc.*, 256 F.3d 879, 882 (9th Cir. 2001). “To
15 establish Article III standing, an injury must be ‘concrete, particularized, and actual or imminent;
16 fairly traceable to the challenged action; and redressable by a favorable ruling.’” *Clapper v.*
17 *Amnesty Int’l USA*, 133 S. Ct. 1138, 1147 (2013). “[A]llegations of *possible* future injury’ are not
18 sufficient”; “‘threatened injury must be *certainly impending* to constitute injury in fact.’” *Id.*
19 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)) (emphasis in original).

20 Where, as here, a State seeks to bring an action “on behalf of its citizens” as *parens patriae*,
21 several additional requirements apply. *Table Bluff*, 256 F.3d at 885. The State must (1) “‘allege[]
22 injury to a sufficiently substantial segment of its population,’” (2) “‘articulate[] an interest apart
23 from the interests of particular private parties,’” and (3) “‘express[] a quasi-sovereign interest.’” *Id.*
24 at 885 (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico* (“*Snapp*”), 458 U.S. 592, 607 (1982));
25 *accord Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 847 (9th Cir. 2011). Thus, where
26 private residents could “obtain complete relief through a private suit,” there can be no *parens patriae*
27 standing. *Connecticut v. Physicians Health Servs. of Conn., Inc.*, 103 F. Supp. 2d 495, 504 (D.
28

1 Conn. 2000), *aff'd*, 287 F.3d 110 (2d Cir. 2002); *see also Table Bluff*, 256 F.3d at 885 (approvingly
2 citing *Connecticut's* “full discussion of the doctrine”). Plaintiffs meet none of these requirements.

3 *First*, each Plaintiff fails to allege injury to a “sufficiently substantial segment of its
4 population”—which, under controlling precedent, must be more than “an identifiable group of
5 individual residents.” *Snapp*, 458 U.S. at 607. To the extent the complaint alleges any injury at all,
6 *see infra* p. 8, it is limited to the economic harm that would allegedly befall some unspecified egg
7 farmers residing within their borders who may intend to sell eggs in California after January 1, 2015
8 but would be subject to AB 1437 and § 1350. *E.g.*, FAC ¶¶ 6-7 (describing “[egg] farmers in our
9 states” as “the people most directly affected” by AB 1437 and § 1350); *id.* ¶¶ 89-94. But, for all
10 their emphasis on the egg producers within their territories, Plaintiffs never disclose how many
11 companies belong in this limited group. Indeed, as California notes, for four of the six Plaintiff
12 States (Alabama, Nebraska, Oklahoma, and Kentucky), the complaint does not even allege that *any*
13 shell eggs produced in those States are currently sold in California. Cal. Defs’ Mot. To Dismiss at 5,
14 Dkt. No. 36; *see also* FAC Ex. E, at 6 tbl. 3, Dkt. No. 13-5 (Alabama, Nebraska, Oklahoma, and
15 Kentucky not among the top fifteen States producing shell, liquid, and dry eggs imported into
16 California). The only inference that can be reasonably drawn from these allegations is that—even
17 on Plaintiffs’ theory—their alleged injury affects, at most, an “[*in*]substantial segment” of Plaintiffs’
18 respective populations. *Snapp*, 458 U.S. at 607.

19 *Second*, Plaintiffs articulate no “quasi-sovereign interest” distinct from the interests of the
20 egg farmers they purport to represent. A State’s quasi-sovereign interests are implicated where the
21 conduct at issue amounts to a “public nuisance[,]” *Snapp*, 458 U.S. at 604-605 (citing cases
22 involving air and water pollution), or poses a broad-based threat to the State’s “economic well-
23 being,” *id.* at 605-606 (citing cases involving restrictions on a State’s access to natural gas and a
24 conspiracy to fix freight rates that damaged a State’s entire economy). To invoke *parens patriae*
25 standing, a State must be more than a “nominal party without a real interest of its own”; it must have
26 a quasi-sovereign interest that is “sufficiently concrete to create an actual controversy between the
27 State and the defendant.” *Id.* at 600, 602. Here, Plaintiffs vaguely assert that their suit “protect[s]
28 [their] citizens’ economic health and constitutional rights.” FAC ¶¶ 10, 17, 22, 27, 32. But the

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1 separate state interest beyond the alleged violations of federal law that could be prosecuted by
2 private egg producers or associations that represent private egg producers. The Supreme Court
3 has not specified “any definitive limits” on the segment of the population that must be adversely
4 affected, but “more must be alleged than injury to an identifiable group of individual residents.”
5 *Alfred L. Snapp & Son, Inc.*, 458 U.S. at 607. For example, as described in *Pennsylvania v. New*
6 *Jersey*, a parens patriae suit against a state may not be brought to collect “taxes withheld from
7 private parties” when those private parties could bring the suits themselves. 426 U.S. at 666
8 (noting that the “critical distinction, articulated in Art. III, § 2, of the Constitution, between suits
9 brought by ‘Citizens’ and those brought by ‘States’ would evaporate” if states were allowed to
10 bring suits to redress private grievances). Similarly, here, if egg producers selling eggs in
11 California deem the Shell Egg Laws violative of their constitutional rights, the egg producers or a
12 collection of producers could assert these claims. The states have no separate interest in asserting
13 what is essentially a private grievance.

14 Second, plaintiffs have not stated a “quasi-sovereign” interest. Although the Supreme
15 Court did not give a definition of “quasi-sovereign” interest, it noted that the characteristics of
16 such a claim fall into two categories: “First, a State has a quasi-sovereign interest in the health
17 and well-being—both physical and economic—of its residents in general. Second, a State has a
18 quasi-sovereign interest in not being discriminatorily denied its rightful status within the federal
19 system.” *Alfred L. Snapp & Son, Inc.*, 458 U.S. at 607.

20 Far from alleging an “injury to a sufficiently substantial segment of its population” (*Table*
21 *Bluff Reservation*, 256 F.3d at 885), plaintiffs have not articulated anything beyond a miniscule
22 general economic complaint limited to a small subset of their population. While there is no set
23 minimum for the population that has to be impacted, plaintiffs’ allegations of impact on a tiny
24 subset (or no subset in the case of Oklahoma) is clearly not enough—even at the pleading stage.
25 Nor have plaintiffs made the kind of allegations showing that the private egg producers are being
26 discriminated against in such a manner as would create state standing. See *Alfred L. Snapp & Son,*
27 *Inc.*, 458 U.S. at 609 (finding parens patriae standing where the Commonwealth of Puerto Rico
28 alleged employment discrimination against its citizens in violation of federal law). In *Alfred L.*

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1 *Snapp & Son, Inc.*, Puerto Rico alleged that the named defendants discriminated against Puerto
2 Ricans in favor of foreign laborers, in violation of federal law, and that Puerto Ricans were
3 denied the benefits of access to domestic work opportunities that federal laws were designed to
4 secure for United States workers. *Id.* at 608. The Supreme Court held that Puerto Rico had a
5 separate state interest in “securing residents from the harmful effects of discrimination” beyond
6 the workers’ interests. *Id.* at 609; *see also* at 605-606 (listing cases where states alleged
7 discriminatory action in *parens patriae* suits or stated an interest in abatement of public nuisances).
8 As described more fully below, there is no discriminatory impact or effect of the challenged
9 legislation.

10 The burden is on plaintiffs to demonstrate standing, but they have failed to allege an injury
11 to a “sufficiently substantial segment of [their] population.” The general allegation of damage to
12 a states’ economy, without more detailed allegations of harm to a substantial segment of their
13 population, is not enough for *parens patriae* standing. This complaint should be dismissed at the
14 outset for lack of subject matter jurisdiction.

15 **III. THE COMPLAINT MUST BE DISMISSED BECAUSE PLAINTIFFS’ CLAIMS ARE NOT**
16 **JUSTICIABLE**

17 A court’s role is to adjudicate live “cases and controversies” consistent with the powers
18 granted to the judiciary in Article III of the Constitution. Here, plaintiffs seek a declaratory
19 judgment pursuant to the Declaratory Judgment Act, which provides that in “a case of actual
20 controversy within its jurisdiction, . . . any court of the United States, upon the filing of any
21 appropriate pleading, may declare the rights and other legal relations of any interested party
22 seeking such declaration.” 28 U.S.C. § 2201(a). The “actual controversy” requirement of section
23 2201 refers to the type of cases and controversies that are justiciable under Article III.
24 *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126-127 (2007).

25 In a declaratory judgment action, “[t]he mere existence of a statute, which may or may not
26 ever be applied to plaintiffs, is not sufficient to create a ‘case or controversy’ within the meaning
27 of Article III, and is thus insufficient to satisfy the ‘actual controversy’ requirement of the
28 Declaratory Judgment Act.” *Western Mining Council v. Watt*, 643 F.2d 618, 627 (9th Cir.1981)

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1 (citations omitted). Although plaintiffs make conclusory allegations that their states' egg
2 producers will have to "incur massive capital improvement costs to build larger habitats for some
3 or all of their egg-laying hens, or they can walk away from the largest egg market in the country"
4 (Compl. ¶ 6), they cannot challenge the validity of the Shell Egg Laws because they have not
5 alleged imminent or even a likely prosecution for violating the statute. *See generally* Compl.

6 The court can thus make no reasonable inference that any of the states or their producers
7 would suffer prosecution. "[W]hile it is well-established that an individual need not await
8 prosecution under a law or regulation before challenging it, we require a genuine threat of
9 imminent prosecution and not merely an imaginary or speculative fear of prosecution." *Sacks v.*
10 *Office of Foreign Assets Control*, 466 F.3d 764, 772-73 (9th Cir. 2006) (citations and quotations
11 omitted). Here, the speculation is twice-removed because the plaintiff states are assuming that
12 their egg producers will want to sell eggs in California but will not want to comply with the
13 California law. There are no allegations supporting this speculation, and the claims are thus not
14 justiciable.

15 **IV. PLAINTIFFS FAIL TO STATE A VALID CLAIM UNDER THE COMMERCE OR**
16 **SUPREMACY CLAUSES**

17 Plaintiffs bring a facial challenge to the Shell Egg Laws on the grounds that the laws
18 purportedly violate the Commerce and Supremacy Clauses of the United States Constitution. In
19 order to succeed on a facial challenge, Plaintiffs "must establish that no set of circumstances
20 exists under which the [regulation or statute] would be valid." *United States v. Salerno*, 481 U.S.
21 739, 745 (1987); *see also Chemical Specialties Mfrs. Ass'n, Inc. v. Allenby*, 958 F.2d 941, 943
22 (9th Cir. 1992). Plaintiffs cannot prevail by suggesting that in some future hypothetical situation
23 constitutional problems may possibly arise as to the particular *application* of the statute. Rather,
24 they must show that the statute is unconstitutional in *all* of its applications. *See Washington State*
25 *Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008). Where, as here, a
26 statute has a "plainly legitimate sweep," a facial challenge must fail. *Id.* at 449 (citation and
27 internal quotations omitted). Indeed, plaintiffs have failed to state any cause of action under these
28 clauses, let alone facts demonstrating a total and fatal conflict with their prohibitions. *See id.*

1 **III. LEGAL STANDARD**

2 When considering a Rule 12(b)(6) motion the court accepts the non-conclusory allegations
3 of the complaint as true and considers legal issues *de novo*. Challenges to subject-matter
4 jurisdiction under Rule 12(b)(1) may be either facial or factual. *See White v. Lee*, 227 F.3d 1214,
5 1242 (9th Cir. 2000). When considering a facial challenge, the court determines whether the
6 allegations are insufficient on their face to invoke federal jurisdiction. *Safe Air for Everyone v.*
7 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). When the movant disputes the truth of the factual
8 allegations that purport to establish jurisdiction, the court need not presume the truthfulness of the
9 plaintiff's allegations and "may review evidence beyond the complaint." *Id.* The plaintiff has
10 "the burden of proof that jurisdiction does in fact exist." *Thornhill Pub. Co., Inc. v. Gen. Tel. &*
11 *Electronics Corp.*, 594 F.2d 730, 733 (9th Cir. 1979) (internal citations omitted).

12 **IV. ARGUMENT**

13 **A. Plaintiffs Lack Standing.**

14 Plaintiffs lack standing to bring this case on behalf of an unspecified number of unnamed
15 egg producers from their states. "[S]tanding is an essential and unchanging part of the case-or-
16 controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560
17 (1992). Plaintiffs' allegations are insufficient on their face to establish *parens patriae* standing,
18 and they could not supplement or amend their allegations to establish standing on that or any
19 other basis.⁹

20 Plaintiffs cannot meet the requirements for *parens patriae* standing because they allege
21 only speculative harm to a handful of private egg producers who could sue on their own. While
22 *parens patriae* standing allows a state in certain circumstances "to bring suit on behalf of its
23 citizens," *Table Bluff Reservation (Wiyot Tribe) v. Philip Morris, Inc.*, 256 F.3d 879, 885 (9th

24
25 cruelty. HSUS thus does not seek to defend these regulations in this action.

26 ⁹ Plaintiffs do not allege direct injury standing, and could not amend their complaint to state a
27 direct injury. As Plaintiffs do not themselves produce eggs, the only direct injury they could
28 claim would be lost state tax revenues. But "impairment of state tax revenues should not, in
general, be recognized as sufficient injury-in-fact to support state standing." *Commonwealth of*
Pennsylvania v. Kleppe, 533 F.2d 668, 672 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 977 (1976).

1 Cir. 2001), the state must “allege[] injury to a sufficiently substantial segment of its population,
 2 articulate[] an interest apart from the interests of particular private parties, and express[] a quasi-
 3 sovereign interest.” *Id.* at 885 (quoting *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 607
 4 (1982)). The alleged injury to the populace must be “(a) concrete and particularized, and (b)
 5 actual and imminent, not ‘conjectural’ or ‘hypothetical.’” *Id.* at 882, 885 (quoting *Defenders of*
 6 *Wildlife*, 504 U.S. at 560). And it must be one for which the citizens themselves “could not
 7 obtain complete relief through a private suit.” *Connecticut v. Physicians Health Services of*
 8 *Connecticut, Inc.*, 103 F. Supp. 2d 495, 504 (D. Conn. 2000); *see Table Bluff Reservation*, 256
 9 F.3d at 885 (citing *Physicians Health Services of Connecticut’s* “full discussion of the doctrine”).
 10 Plaintiffs fail every requirement.

11 First, Plaintiffs have not alleged an injury to a “sufficiently substantial segment” of their
 12 populations. *Id.* Although the Supreme Court has not placed “any definitive limits” on the
 13 percentage of the population that must be adversely affected, “more must be alleged than injury to
 14 an identifiable group of individual residents.” *Snapp*, 458 U.S. at 607; *see Oregon v. Legal*
 15 *Services Corp.*, 552 F.3d 965, 972 (9th Cir. 2009) (dismissing suit where “Oregon’s only alleged
 16 injury [was] on behalf of its legal services providers”). Plaintiffs only allege injuries to egg
 17 producers who supposedly intend to export eggs to California after January 1, 2015. FAC. ¶¶ 6, 7,
 18 85-93. Plaintiffs never allege how many companies that includes, but it is necessarily a small and
 19 discrete group. Indeed, Plaintiffs’ own exhibits show that *no Oklahoma producers* export eggs to
 20 California. *See* FAC, Exh. E, at 5. Plaintiffs thus allege injury to a handful of companies, not a
 21 “substantial segment” of their populations.

22 Plaintiffs also fail to sufficiently allege a quasi-sovereign interest of their own, distinct
 23 from the interests of particular private parties. To survive a motion to dismiss, allegations of
 24 quasi-sovereign interests “must be sufficiently concrete to create an actual controversy between
 25 the State and the defendant.” *Snapp*, 458 U.S. at 602. Plaintiffs’ vague allegations do not meet
 26 this standard. First, they claim an interest “in protecting [their] citizens’ economic health and
 27 constitutional rights.” *E.g.*, FAC ¶¶ 10, 17. But Plaintiffs never explain how AB 1437 injures
 28 their citizens’ economic health—only how it might injure a few egg producers’ profits. Plaintiffs

CIVIL, APPEAL, CLOSED

**U.S. District Court
Eastern District of California - Live System (Sacramento)
CIVIL DOCKET FOR CASE #: 2:14-cv-00341-KJM-KJN**

State of Missouri, et al v. Harris
Assigned to: Judge Kimberly J. Mueller
Referred to: Magistrate Judge Kendall J. Newman
Case in other court: U.S. Court of Appeals for the Ninth
Circuit, 14-17111
Cause: 28:1983 Civil Rights

Date Filed: 02/03/2014
Date Terminated: 10/02/2014
Jury Demand: None
Nature of Suit: 950 Constitutional -
State Statute
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
02/03/2014	<u>1</u>	CIVIL COVER SHEET by State of Missouri, ex rel., Chris Koster, Attorney General of Missouri (Flynn, Sherrie) (Entered: 02/03/2014)
02/03/2014	<u>2</u>	COMPLAINT against Kamala D. Harris by State of Missouri, ex rel., Chris Koster, Attorney General of Missouri. (Filing fee \$ 400, receipt number 0972-5161997) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N)(Flynn, Sherrie) (Entered: 02/03/2014)
02/04/2014	<u>3</u>	SUMMONS ISSUED as to *Kamala D. Harris* with answer to complaint due within *21* days. Attorney *Sherrie Marie Flynn* *Coleman & Horowitz,

		LLP* *499 W. Shaw Ave., Suite 116* *Fresno, CA 93704*. (Kaminski, H) (Entered: 02/04/2014)
02/04/2014	<u>4</u>	(DISREGARD; REFER TO AMENDED DOCUMENTS <u>6</u>) CIVIL NEW CASE DOCUMENTS ISSUED; Initial Scheduling Conference set for 7/16/2014 at 10:00 AM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. (Attachments: # <u>1</u> Standing Order, # <u>2</u> Consent Form, # <u>3</u> VDRP) (Kaminski, H) Modified on 2/12/2014 (Schultz, C). (Entered: 02/04/2014)
02/04/2014	<u>5</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Chris Koster, State of Missouri for attorney John Andrew Hirth to appear Pro Hac Vice. (Filing fee \$ 200, receipt number 0972-5163877) (Attachments: # <u>1</u> Certificate of Good Standing)(Flynn, Sherrie) (Entered: 02/04/2014)
02/04/2014	<u>6</u>	AMENDED CIVIL NEW CASE DOCUMENTS ISSUED; Initial Scheduling Conference set for 6/12/2014 at 02:30 PM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. (Attachments: # <u>1</u> Standing Order, # <u>2</u> Consent Form, # <u>3</u> VDRP) (Kaminski, H) (Entered: 02/04/2014)
02/06/2014	<u>7</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 2/6/14. Added attorney John Andrew Hirth PHV for plaintiff State of Missouri, ex rel. Chris Koster, Attorney General. (Mena-Sanchez, L) Modified on 3/6/2014 (Schultz, C). (Entered: 02/06/2014)
02/07/2014	<u>8</u>	SUMMONS RETURNED EXECUTED: Kamala D. Harris served on 2/5/2014, answer due 2/26/2014. (Flynn, Sherrie) (Entered: 02/07/2014)
02/19/2014	<u>9</u>	DECLINE to PROCEED BEFORE US MAGISTRATE JUDGE by Kamala D. Harris. Attorney Smith, Susan K. added. (Smith, Susan) (Entered: 02/19/2014)
02/19/2014	<u>10</u>	DECLINE to PROCEED BEFORE US MAGISTRATE JUDGE by Chris Koster, State of Missouri. (Attachments: # <u>1</u> Proof of Service Certificate of Service)(Hirth, John) (Entered: 02/19/2014)
02/21/2014	<u>11</u>	STIPULATION and PROPOSED ORDER to amend <u>1</u> Complaint and extend time to answer and/or respond to Amended Complaint by Kamala D. Harris. (Smith, Susan) Modified on 2/25/2014 (Marciel, M) (Entered: 02/21/2014)
03/03/2014	<u>12</u>	MINUTE ORDER issued by Courtroom Deputy C. Schultz for Judge Kimberly J. Mueller on 3/3/2014: Good cause appearing, the parties' stipulated request for extension of time at ECF No. <u>11</u> is GRANTED. Accordingly, the deadline for plaintiff to amend its complaint is SET for 3/5/2014 and the deadline for defendants to answer and/or respond to the amended complaint is SET for 4/2/2014. (Text Only Entry) (Schultz, C) Modified on 3/3/2014 (Schultz, C). (Entered: 03/03/2014)
03/05/2014	<u>13</u>	FIRST AMENDED COMPLAINT against Kamala D. Harris, Karen Ross by Chris Koster, State of Missouri, State of Nebraska, Commonwealth of Kentucky, Terry E. Branstad, State of Oklahoma, State of Alabama. Attorney Flynn, Sherrie Marie added. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O)(Flynn, Sherrie) Modified on

		3/6/2014 (Reader, L). (Main Document 13 replaced on 4/7/2014) (Donati, J). (Entered: 03/05/2014)
03/06/2014	<u>14</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by State of Nebraska, for attorney Blake E. Johnson to appear Pro Hac Vice. (Filing fee \$ 200, receipt number 0972-5214050) (Attachments: # <u>1</u> Certificate of Good Standing)(Flynn, Sherrie) Modified on 3/7/2014 (Reader, L). (Entered: 03/06/2014)
03/06/2014	<u>15</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by State of Alabama, for attorney Robert D. Tambling to appear Pro Hac Vice. (Filing fee \$ 200, receipt number 0972-5214206) (Attachments: # <u>1</u> Certificate of Good Standing)(Flynn, Sherrie) Modified on 3/7/2014 (Reader, L). (Entered: 03/06/2014)
03/07/2014	<u>16</u>	SUMMONS ISSUED as to *Karen Ross* with answer to complaint due within *21* days. Attorney *Sherrie M. Flynn* *Coleman & Horowitz, LLP* *499 West Shaw, Suite 116* *Fresno, California 93704*. (Reader, L) (Entered: 03/07/2014)
03/07/2014	<u>17</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Terry E. Branstad for attorney Jacob J. Larson to appear Pro Hac Vice. (Filing fee \$ 200, receipt number 0972-5216842) (Attachments: # <u>1</u> Certificate of Good Standing)(Flynn, Sherrie) (Entered: 03/07/2014)
03/11/2014	<u>18</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 3/10/14. Added attorney Jacob J. Larson, PHV for Terry E. Branstad. (Manzer, C) (Entered: 03/11/2014)
03/11/2014	<u>19</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 3/10/14. Added attorney Robert D. Tambling, PHV for State of Alabama. (Manzer, C) (Entered: 03/11/2014)
03/11/2014	<u>20</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 3/10/14. Added attorney Blake E. Johnson, PHV for State of Nebraska. (Manzer, C) (Entered: 03/11/2014)
03/21/2014	<u>21</u>	STIPULATION and PROPOSED ORDER for Extension of Time to answer and/or respond to the <u>13</u> First Amended Complaint by Kamala D. Harris. (Smith, Susan) Modified on 3/24/2014 (Michel, G). (Entered: 03/21/2014)
03/21/2014	<u>22</u>	MINUTE ORDER issued by Courtroom Deputy C. Schultz for Judge Kimberly J. Mueller on 3/21/2014: Good cause appearing, the parties' stipulated request for extension of time at ECF No. 21 is GRANTED. Accordingly, the deadline for defendant to answer and/or respond to the amended complaint is SET for 4/9/2014. (Text Only Entry) (Schultz, C) (Entered: 03/21/2014)
03/25/2014	<u>23</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by State of Oklahoma for Attorney P. Clayton Eubanks to appear Pro Hac Vice. (Filing fee \$200.00, receipt number 0972-5245519) (Attachments: # <u>1</u> Certificate of Good Standing) (Flynn, Sherrie) Modified on 3/26/2014 (Michel, G). (Entered: 03/25/2014)
03/25/2014	<u>24</u>	

ER103

		PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by State of Oklahoma for Attorney Thomas Bates to appear Pro Hac Vice. (Filing fee \$200.00, receipt number 0972-5245534) (Attachments: # <u>1</u> [DISREGARD - See <u>25</u> Certificate of Good Standing] Certificate of Good Standing) (Flynn, Sherrie) Modified on 3/26/2014 (Michel, G). (Entered: 03/25/2014)
03/25/2014	<u>25</u>	NOTICE OF ERRATA re <u>24</u> Pro Hac Vice Application and Proposed Order; CERTIFICATE OF GOOD STANDING for Attorney Thomas Bates by State of Oklahoma. (Flynn, Sherrie) Modified on 3/26/2014 (Michel, G). (Entered: 03/25/2014)
03/26/2014	<u>26</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Commonwealth of Kentucky for Attorney Sean J. Riley to appear Pro Hac Vice. (Attachments: # <u>1</u> Certificate of Good Standing) (Flynn, Sherrie) Modified on 3/27/2014 (Michel, G). (Entered: 03/26/2014)
03/26/2014		PAYMENT for <u>26</u> Pro Hac Vice Application in the amount of \$200.00, receipt number 0972-5247495. (Flynn, Sherrie) Modified on 3/27/2014 (Michel, G). (Entered: 03/26/2014)
03/26/2014	<u>27</u>	MOTION TO INTERVENE by The Humane Society of the United States. Motion Hearing SET for 4/25/2014 at 10:00 AM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. (Attachments: # <u>1</u> Proposed Answer and Affirmative Defenses, # <u>2</u> Proposed Motion to Dismiss, # <u>3</u> Declaration of Jennifer Fearing, # <u>4</u> Declaration of Peter A. Brandt) (Wagman, Bruce) Modified on 3/27/2014 (Michel, G). (Entered: 03/26/2014)
03/26/2014	<u>28</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by The Humane Society of the United States for Attorney J. Scott Ballenger to appear Pro Hac Vice. (Attachments: # <u>1</u> Certificate of Good Standing) (Wagman, Bruce) Modified on 3/27/2014 (Michel, G). (Entered: 03/26/2014)
03/27/2014		RECEIPT number CAE200059003 for \$200.00 for J. Scott Ballenger from Latham & Watkins LLP. (Zignago, K.) (Entered: 03/27/2014)
03/31/2014	<u>29</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 3/27/2014 ADDING Attorney P. Clayton Eubanks, PHV for State of Oklahoma. (Michel, G) (Entered: 03/31/2014)
03/31/2014	<u>30</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 3/27/2014 ADDING Attorney Sean J. Riley, PHV for Commonwealth of Kentucky. (Michel, G) (Entered: 03/31/2014)
04/02/2014	<u>31</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 4/1/14: Added attorney Thomas Bates, PHV for State of Oklahoma. (Kaminski, H) (Entered: 04/02/2014)
04/02/2014	<u>32</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 4/1/14: Added attorney J Scott Ballenger, PHV for The Humane Society of the United States. (Kaminski, H) (Entered: 04/02/2014)
04/08/2014	<u>33</u>	MOTION to INTERVENE by Association of California Egg Farmers. Attorney Boynton, Brian Matthew added. Motion Hearing set for 5/9/2014 at 10:00 AM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller.

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		(Attachments: # <u>1</u> Memorandum of Law in Support of Motion To Intervene, # <u>2</u> Declaration of Debra Murdock, # <u>3</u> Proposed Order, # <u>4</u> Exhibit (Proposed Answer))(Boynton, Brian) (Entered: 04/08/2014)
04/08/2014	<u>34</u>	STATEMENT of Corporate Disclosure Pursuant to FRCP 7.1 by Intervenor Defendant Association of California Egg Farmers. (Boynton, Brian) (Entered: 04/08/2014)
04/09/2014	<u>35</u>	STATEMENT of CORPORATE DISCLOSURE STATEMENT OF PROPOSED DEFENDANT-INTERVENOR THE HUMANE SOCIETY OF THE UNITED STATES by Intervenor Defendant The Humane Society of the United States re <u>27</u> Motion To Intervene. (Wagman, Bruce) (Entered: 04/09/2014)
04/09/2014	<u>36</u>	MOTION to DISMISS by Kamala D. Harris, Karen Ross. Attorney Smith, Susan K. added. Motion Hearing set for 6/6/2014 at 10:00 AM in Courtroom 3 before Judge Kimberly J. Mueller. (Attachments: # <u>1</u> Declaration of Susan K. Smith, # <u>2</u> Declaration of Anthony S. Herrera, # <u>3</u> Proposed Order)(Smith, Susan) (Entered: 04/09/2014)
04/09/2014	<u>37</u>	REQUEST for JUDICIAL NOTICE by Kamala D. Harris, Karen Ross in re <u>36</u> Motion to Dismiss,. (Attachments: # <u>1</u> Request for Judicial Notice Part 2, # <u>2</u> Request for Judicial Noice Part 3)(Smith, Susan) (Entered: 04/09/2014)
04/11/2014	<u>38</u>	STIPULATION and PROPOSED ORDER to Consolidate Briefing Schedules and Hearing Dates for <u>27</u> , <u>33</u> Motions to Intervene and <u>36</u> Motion to Dismiss by State of Missouri. (Hirth, John) Modified on 4/15/2014 (Zignago, K.). (Entered: 04/11/2014)
04/16/2014	<u>39</u>	SUMMONS RETURNED EXECUTED: Karen Ross served on 3/19/2014, answer due 4/9/2014. (Flynn, Sherrie) (Entered: 04/16/2014)
04/16/2014	<u>40</u>	MINUTE ORDER issued by Courtroom Deputy A. Shaddox-Waldrop for Judge Kimberly J. Mueller on 4/16/2014 GRANTING parties' Stipulation and Proposed Order <u>38</u> . The Motion to Intervene <u>27</u> filed by Humane Society of the United States (HSUS) set for hearing on 4/25/2014 is RESET for hearing with Association of California Egg Farmers (ACEF) Motion to Intervene <u>33</u> on 5/9/2014 at 10:00 AM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. On or before April 25, 2014 proposed defendant-intervenor ACEF will file a Motion for Judgment to be noticed for hearing the same day as the defendants' Motion to Dismiss <u>33</u> on 6/6/2014. The parties' briefing schedule is ADOPTED as follows, plaintiffs' oppositions to the Motions to Intervene filed by 4/25/2014; proposed intervenors replies due 5/2/2014; plaintiffs' oppositions to the California's Motion to Dismiss filed by 5/12/2014. Plaintiffs' oppositions to HSUS' Motion to Dismiss filed by 5/12/2014 if HSUS is granted leave to intervene. Plaintiffs' oppositions to ACEF's anticipated Motion for Judgment filed by 5/16/2013; California, HSUS, and ACEF replies due by 5/30/2014. (Text Only Entry) (Shaddox-Waldrop, A) (Entered: 04/16/2014)
04/17/2014	<u>41</u>	APPLICATION for <i>Leave to File Amicus Brief in Support of Defendants' <u>36</u> Motion to Dismiss</i> by Animal Legal Defense Fund, Compassion Over Killing, Inc., Farm Sanctuary, Inc.. Attorney Johnson, Edward E. added. (Attachments:

		# <u>1</u> Proposed Amicus Curiae Brief)(Johnson, Edward) Modified on 4/18/2014 (Zignago, K.). (Entered: 04/17/2014)
04/17/2014	<u>42</u>	REQUEST for JUDICIAL NOTICE by Animal Legal Defense Fund, Compassion Over Killing, Inc., Farm Sanctuary, Inc. in re <u>41</u> Application. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Johnson, Edward) Modified on 4/18/2014 (Zignago, K.). (Entered: 04/17/2014)
04/17/2014	<u>43</u>	STATEMENT of Corporate Disclosure Statement by Amicus Parties Animal Legal Defense Fund, Compassion Over Killing, Inc., Farm Sanctuary, Inc.. (Johnson, Edward) (Entered: 04/17/2014)
04/22/2014	<u>44</u>	MOTION Leave to File AMICUS CURIAE Brief by Animal Legal Defense Fund, Compassion Over Killing, Inc., Farm Sanctuary, Inc.. Attorney McGimsey, Diane added. Motion Hearing set for 6/6/2014 at 10:00 AM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Proposed Order)(McGimsey, Diane) (Entered: 04/22/2014)
04/25/2014	<u>45</u>	MOTION to DISMISS or MOTION for JUDGMENT on the PLEADINGS by Association of California Egg Farmers. Motion Hearing set for 6/6/2014 at 10:00 AM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. (Attachments: # <u>1</u> Memorandum, # <u>2</u> Proposed Order) (Boynton, Brian) Modified on 10/3/2014 (Marciel, M) (Entered: 04/25/2014)
04/25/2014	<u>46</u>	OPPOSITION by Terry E. Branstad, Commonwealth of Kentucky, State of Alabama, State of Missouri, State of Nebraska, State of Oklahoma to <u>33</u> MOTION to INTERVENE , <u>27</u> Motion To Intervene. Attorney Hirth, John Andrew added. (Hirth, John) (Entered: 04/25/2014)
05/02/2014	<u>47</u>	REPLY in support of <u>33</u> Motion to Intervene by Association of California Egg Farmers. (Boynton, Brian) Modified on 5/5/2014 (Michel, G). (Entered: 05/02/2014)
05/02/2014	<u>48</u>	REPLY in support of <u>27</u> Motion to Intervene by The Humane Society of the United States. (Wagman, Bruce) Modified on 5/5/2014 (Michel, G). (Entered: 05/02/2014)
05/05/2014	<u>49</u>	MINUTE ORDER issued by Courtroom Deputy A. Shaddox-Waldrop for District Judge Kimberly J. Mueller on 5/5/2014: This matter is currently set for a hearing on 5/9/2014 on the Motions to Intervene <u>27</u> and <u>33</u> . The court values the importance of training young attorneys, and encourages the parties to consider assigning the argument to an attorney with less than four years of experience out of law school. If any party files a notice stating such an attorney from at least one side will argue the motion, the court will go forward with the hearing on that motion. If a notice is not filed, the court may find it appropriate to submit the motion without oral argument because it would be of limited assistance. See L.R. 230(g). If you intend to file such a notice, please do so by 12 PM on 5/7/2014. (Text Only Entry) (Shaddox-Waldrop, A) (Entered: 05/05/2014)
05/06/2014	<u>50</u>	STIPULATION re 49 Minute Order re <u>27</u> , <u>33</u> Motions to Intervene by The Humane Society of the United States. (Wagman, Bruce) Modified on 5/7/2014 (Michel, G). (Entered: 05/06/2014)

05/07/2014	<u>51</u>	MINUTE ORDER issued by Courtroom Deputy C. Schultz for District Judge Kimberly J. Mueller: On the court's own motion and pursuant to Local Rule 230(g), the pending Motions to Intervene <u>27</u> and <u>33</u> filed by The Humane Society of the United States and Association of California Egg Farmers are SUBMITTED without oral argument. Accordingly, the hearing date of 5/9/2014 is VACATED. If the court determines that oral argument is needed, it will be scheduled at a later date. (Text Only Entry) (Schultz, C) (Entered: 05/07/2014)
05/12/2014	<u>52</u>	OPPOSITION by Terry E. Branstad, Commonwealth of Kentucky, State of Alabama, State of Missouri, State of Nebraska, State of Oklahoma to <u>36</u> MOTION to DISMISS, <u>27</u> Motion To Intervene. (Attachments: # <u>1</u> Exhibit) (Hirth, John) (Entered: 05/12/2014)
05/16/2014	<u>53</u>	MOTION for four-DAY EXTENSION OF TIME to amend Plaintiffs' Opposition to Defendants' and Proposed Intervenors' Motions to Dismiss; and to file Defendants' and Proposed Intervenors' replies in further support of their Motions to Dismiss. re 40 Minute Order,,,,, Set/Reset Deadlines and Hearings,,,,, Set/Reset Motion Hearing,,,,, by Terry E. Branstad, Commonwealth of Kentucky, State of Alabama, State of Missouri, State of Nebraska, State of Oklahoma. (Hirth, John) (Entered: 05/16/2014)
05/16/2014	<u>54</u>	OPPOSITION by Terry E. Branstad, Commonwealth of Kentucky, State of Alabama, State of Missouri, State of Nebraska, State of Oklahoma to <u>45</u> MOTION to DISMISS MOTION for JUDGMENT <i>on the Pleadings [Proposed]</i> , <u>36</u> MOTION to DISMISS, <u>27</u> Motion To Intervene. (Attachments: # <u>1</u> Exhibit Ex. 1)(Hirth, John) (Entered: 05/16/2014)
05/22/2014	<u>55</u>	MINUTE ORDER issued by Courtroom Deputy A. Shaddox-Waldrop for Judge Kimberly J. Mueller on 5/22/2014 GRANTING the Motion for Extension of Time <u>53</u> . The Amended Opposition was filed on 5/16/2014 <u>54</u> . Defendants and Proposed Intervenors will file proposed replies by June 5, 2014. The 6/6/2014 motion hearing is RESET for 8/22/2014 at 10:00 AM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. (Text Only Entry) (Shaddox-Waldrop, A) (Entered: 05/22/2014)
05/30/2014	<u>56</u>	NOTICE to RESCHEDULE HEARING on <u>44</u> MOTION Leave to File AMICUS CURIAE Brief : Motion Hearing set for 8/22/2014 at 10:00 AM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. (Johnson, Edward) (Entered: 05/30/2014)
06/03/2014	<u>57</u>	ORDER signed by Judge Kimberly J. Mueller on 6/2/2014 GRANTING <u>27</u> , <u>33</u> Motions to Intervene. (Michel, G) (Entered: 06/03/2014)
06/04/2014		MINUTE ORDER issued by Courtroom Deputy C. Schultz for Judge Kimberly J. Mueller on 6/4/2014: In light of the court's 6/3/2014 order <u>57</u> , the parties' deadline for filing a joint status report is extended to close of business on 6/9/2014. (Text Only Entry) (Schultz, C) (Entered: 06/04/2014)
06/05/2014	<u>58</u>	REPLY by Kamala D. Harris, Karen Ross in SUPPORT of <u>36</u> MOTION to DISMISS. (Smith, Susan) Modified on 6/11/2014 (Mena-Sanchez, L). (Entered: 06/05/2014)

06/05/2014	<u>59</u>	REPLY by The Humane Society of the United States re <u>36</u> MOTION to DISMISS. (Wagman, Bruce) (Entered: 06/05/2014)
06/05/2014	<u>60</u>	REPLY by Association of California Egg Farmers in SUPPORT of <u>45</u> MOTION to DISMISS MOTION for JUDGMENT. (Boynton, Brian) Modified on 6/11/2014 (Mena-Sanchez, L). (Entered: 06/05/2014)
06/09/2014	<u>61</u>	JOINT STATUS REPORT by Terry E. Branstad, Commonwealth of Kentucky, State of Alabama, State of Missouri, State of Nebraska, State of Oklahoma. (Hirth, John) (Entered: 06/09/2014)
06/10/2014	<u>62</u>	MINUTE ORDER issued by Courtroom Deputy C. Schultz for Judge Kimberly J. Mueller on 6/10/2014: On the court's own motion and pursuant to Local Rule 230(g), the motion for leave to file an amicus curiae brief filed by Animal Legal Defense Fund, Compassion Over Killing, Inc., and Farm Sanctuary, Inc. <u>44</u> is SUBMITTED without oral argument. Accordingly, the hearing date of 8/22/2014 is VACATED as to this motion. No later than 6/24/2014 each party shall file an opposition or statement of non-opposition. Any reply shall be due by 7/1/2014. If after reviewing any oppositions, the court determines that oral argument is needed, a hearing will be rescheduled at a later date. (Text Only Entry) (Schultz, C) (Entered: 06/10/2014)
06/10/2014	<u>63</u>	MOTION by Center for Food Safety, Consumers Union of US Inc, Food & Water Watch, Food Animal Concerns Trust, Healthy Food Action, Institute for Agriculture and Trade Policy, Public Justice. Attorney Tomaselli, Paige M added. Motion Hearing set for 8/22/2014 at 10:00 AM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. (Attachments: # <u>1</u> Exhibit A - Proposed Brief of Amici Curiae, # <u>2</u> Proposed Order)(Tomaselli, Paige) (Entered: 06/10/2014)
06/11/2014	<u>64</u>	MINUTE ORDER issued by Relief Courtroom Deputy J. Streeter for District Judge Kimberly J. Mueller on 6/11/2014 ORDERING the Status (Pretrial Scheduling) Conference set for 6/12/2014 has been RESET on the same date from 2:30 PM to 4:00 PM in Courtroom #3 before District Judge Kimberly J. Mueller. (Text Only Entry) (Streeter, J) (Entered: 06/11/2014)
06/11/2014	<u>65</u>	STATEMENT of NON-OPPOSITION by Association of California Egg Farmers to <u>44</u> MOTION Leave to File AMICUS CURIAE Brief. (Boynton, Brian) (Entered: 06/11/2014)
06/11/2014	<u>66</u>	NOTICE of <i>Supplemental Information</i> by Association of California Egg Farmers. (Boynton, Brian) (Entered: 06/11/2014)
06/12/2014	<u>67</u>	MINUTES for STATUS CONFERENCE held before Judge Kimberly J. Mueller on 6/12/2014. Plaintiffs' Counsel, John Hirth, present. Defense Counsel, Susan Smith, Bruce Wagman, and Brian Boynton, present. The court and counsel discussed case scheduling; formal written order to issue. Court Reporter: Kimberly Bennett. (Text Only Entry) (Schultz, C) (Entered: 06/12/2014)
06/24/2014	<u>68</u>	STATEMENT of NON-OPPOSITION by Kamala D. Harris, Karen Ross to <u>63</u> MOTION, <u>44</u> MOTION Leave to File AMICUS CURIAE Brief. (Smith, Susan) (Entered: 06/24/2014)

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06/26/2014	<u>69</u>	STATUS (PRETRIAL SCHEDULING) ORDER signed by Judge Kimberly J. Mueller on 6/25/14: Discovery due by 4/1/2015. Designation of Expert Witnesses due by 10/20/2014. Dispositive Motions heard by 5/8/2015, Final Pretrial Conference set for 8/13/2015 at 03:30 PM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. Bench Trial set for 9/21/2015 at 09:00 AM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. (Meuleman, A) Modified on 6/26/2014 (Meuleman, A). (Entered: 06/26/2014)
07/01/2014	<u>70</u>	ORDER signed by Judge Kimberly J. Mueller on 6/30/2014 GRANTING Amici I's <u>44</u> Motion for leave to file an Amicus Brief; ORDERING Amici I to file their brief in the form attached to their motion within two days; GRANTING Amici II's <u>63</u> Motion for leave to file an Amicus Brief; ORDERING Amici II to file their brief in the form attached to their motion within two days. (Michel, G) (Entered: 07/01/2014)
07/02/2014	<u>71</u>	BRIEF of <i>Amici Curiae</i> by Center for Food Safety, Consumers Union of US Inc, Food & Water Watch, Food Animal Concerns Trust, Healthy Food Action, Institute for Agriculture and Trade Policy, Public Justice. (Tomaselli, Paige) (Entered: 07/02/2014)
07/02/2014	<u>72</u>	MEMORANDUM by Animal Legal Defense Fund, Compassion Over Killing, Inc., Farm Sanctuary, Inc. in SUPPORT of <u>36</u> MOTION to DISMISS. (McGimsey, Diane) (Entered: 07/02/2014)
07/08/2014	<u>73</u>	MINUTE ORDER issued by Courtroom Deputy C. Schultz for Judge Kimberly J. Mueller: On July 2, 2014 both amici filed briefs in support of the outstanding motions to dismiss. Good cause showing, the parties shall have seven days to file additional briefing, if any, with regard to the July 2, 2014 amici briefs. Any reply shall be due seven days thereafter. On the court's own motion, the 8/22/2014 hearing on the motions to dismiss is reset for 8/11/2014 at 2:00 PM in Courtroom 3 before Judge Kimberly J. Mueller. (Text Only Entry) (Schultz, C) (Entered: 07/08/2014)
07/14/2014	<u>74</u>	MINUTE ORDER issued by Courtroom Deputy C. Schultz for Judge Kimberly J. Mueller on 7/14/2014: In accordance with Local Rule 133(f), plaintiffs are directed to provide the court a courtesy paper copy of the following documents: <u>13</u> First Amended Complaint and <u>54</u> Opposition. The courtesy paper copies must be mailed or otherwise sent to the court's courtroom deputy clerk, Casey Schultz, no later than July 15, 2014. (Text Only Entry)(Schultz, C) (Entered: 07/14/2014)
07/15/2014	<u>75</u>	RESPONSE by Terry E. Branstad, Commonwealth of Kentucky, State of Alabama, State of Missouri, State of Nebraska, State of Oklahoma to <u>72</u> Memorandum in Support of Motion, <u>71</u> Brief. (Hirth, John) (Entered: 07/15/2014)
07/22/2014	<u>76</u>	REPLY by Association of California Egg Farmers re <u>75</u> Response. (Boynton, Brian) (Entered: 07/22/2014)
07/22/2014	<u>77</u>	REPLY by Animal Legal Defense Fund, Compassion Over Killing, Inc., Farm Sanctuary, Inc. re <u>72</u> Memorandum in Support of Motion, <u>71</u> Brief, <u>36</u> MOTION to DISMISS. (McGimsey, Diane) (Entered: 07/22/2014)

07/25/2014	<u>78</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Missouri Liberty Project for attorney Erin Morrow Hawley to appear Pro Hac Vice. Attorney De Vries, Michael Woodrow added. (Filing fee \$ 200, receipt number 0972-5436807) (Attachments: # <u>1</u> Certificate of Good Standing)(De Vries, Michael) (Entered: 07/25/2014)
07/25/2014	<u>79</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Missouri Liberty Project for attorney Joshua David Hawley to appear Pro Hac Vice. (Filing fee \$ 200, receipt number 0972-5436869) (Attachments: # <u>1</u> Certificate of Good Standing)(De Vries, Michael) (Entered: 07/25/2014)
07/25/2014	<u>80</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Missouri Liberty Project for attorney John C. O'Quinn to appear Pro Hac Vice. (Filing fee \$ 200, receipt number 0972-5436898) (Attachments: # <u>1</u> Certificate of Good Standing)(De Vries, Michael) (Entered: 07/25/2014)
07/25/2014	<u>81</u>	STATEMENT of Corporate Disclosure by Amicus Missouri Liberty Project. (De Vries, Michael) (Entered: 07/25/2014)
07/25/2014	<u>82</u>	MOTION Leave to File Amicus Brief in Opposition to Defendants' Motion to Dismiss by Missouri Liberty Project. Motion Hearing set for 8/11/2014 at 10:00 AM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. (Attachments: # <u>1</u> Amicus Brief, # <u>2</u> Proposed Order)(De Vries, Michael) (Entered: 07/25/2014)
07/25/2014	<u>83</u>	STIPULATION and PROPOSED ORDER for Missouri Liberty Project Motion for Leave to File Amicus Curiae Brief by Missouri Liberty Project. (De Vries, Michael) (Entered: 07/25/2014)
07/28/2014	<u>84</u>	MINUTE ORDER issued by Courtroom Deputy C. Schultz for District Judge Kimberly J. Mueller on 7/28/2014: The court is in receipt of Missouri Liberty Project's Motion for Leave to File Amicus Curiae Brief [ECF No. <u>82</u>]. The motion is noticed for hearing on 8/11/2014 which fails to comply with Local Rule 230(b). However, in light of Missouri Liberty Project's representations and the corresponding Stipulation [ECF No. <u>83</u>], which indicate the parties do not object to the filing of the amicus brief and no hearing on this motion is necessary, Missouri Liberty Project's Motion for Leave to File Amicus Curiae Brief [ECF No. <u>82</u>] is GRANTED and the 8/11/2014 hearing is VACATED as moot. Amicus Missouri Liberty Project is directed to file its brief in the form attached to its motion within two days. The parties should be prepared to discuss any responses to the amicus brief at the 8/11/2014 hearing. No further motions to file an amicus brief in support of or in opposition to the motions to dismiss will be accepted by the court. (Text Only Entry) (Schultz, C) (Entered: 07/28/2014)
07/29/2014	<u>85</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 7/28/14 adding Attorney Erin Morrow Hawley, PHV for Missouri Liberty Project. (Kastilahn, A) (Entered: 07/29/2014)
07/29/2014	<u>86</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 7/28/14 adding Attorney Joshua David Hawley, PHV for Missouri Liberty Project. (Kastilahn, A) (Entered: 07/29/2014)

07/29/2014	<u>87</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 7/28/14 adding Attorney John C. O'Quinn, PHV for Missouri Liberty Project. (Kastilahn, A) (Entered: 07/29/2014)
07/29/2014	<u>88</u>	BRIEF <i>Amicus Curiae Brief in Opposition to Defendants' Motion to Dismiss</i> by Missouri Liberty Project. (De Vries, Michael) (Entered: 07/29/2014)
08/11/2014	<u>89</u>	MINUTES for MOTION HEARING held before Judge Kimberly J. Mueller on 8/11/2014: Attorney, J. Andrew Hirth and Peggy Whipple, present for plaintiffs. Attorney, Susan Smith, present for defendants. Attorney, Bruce Wagman and Rebecca Cary present for defendant-intervenor The Humane Society of the United States. Attorney, Brian Boynton, present for defendant-intervenor Association of California Egg Farmers. Attorney, Edward Johnson and Jonathon Townsend, observed the proceedings on behalf of Amici I. Attorney, Paige Tomaselli and Cristina Stella, observed on behalf of Amici II. The court heard oral argument as to the pending Motion to Dismiss <u>36</u> and Motion to Dismiss or for Judgment on the Pleadings <u>45</u> ; matters submitted; formal written order to issue. Court Reporter: Kathy Swinhart. (Text Only Entry) (Schultz, C) (Entered: 08/11/2014)
08/19/2014	<u>90</u>	TRANSCRIPT REQUEST for 89 Motion Hearing held on 8/11/2014 before Judge Kimberly J. Mueller (Marciel, M) (Entered: 08/20/2014)
08/20/2014	<u>91</u>	TRANSCRIPT of Motion Hearing held on August 11, 2014, before Judge Kimberly J. Mueller, filed by Court Reporter Kathy Swinhart, Phone number 916-446-1347 E-mail kswinhartcsr@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may also be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 9/11/2014. Redacted Transcript Deadline set for 9/22/2014. Release of Transcript Restriction set for 11/20/2014. (Swinhart, K) (Main Document 91 replaced on 8/26/2014) (Donati, J). (Entered: 08/20/2014)
08/22/2014	<u>92</u>	TRANSCRIPT REQUEST by State of Missouri for proceedings held on 08/11/2014 before Judge Mueller, (Hirth, John) (Entered: 08/22/2014)
08/22/2014	<u>93</u>	TRANSCRIPT REQUEST by Association of California Egg Farmers for proceedings held on 8/11/2014 before Judge Kimberly J. Mueller, (Valentini, Francesco) (Entered: 08/22/2014)
09/16/2014	<u>94</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Association of California Egg Farmers for attorney Carl J. Nichols to appear Pro Hac Vice. Attorney Valentini, Francesco added. (Filing fee \$ 200, receipt number 0972-5519100) (Attachments: # <u>1</u> Certificate of Good Standing) (Valentini, Francesco) (Entered: 09/16/2014)
09/18/2014	<u>95</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 9/17/14 re <u>94</u> . Added attorney Carl J. Nichols, PHV for Association of California Egg Farmers. (Meuleman, A) (Entered: 09/18/2014)
09/29/2014	<u>96</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER for attorney Peggy Whipple submitted by State of Missouri. (Filing fee \$ 200, receipt

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		number 0972-5540348) (Attachments: # <u>1</u> Affidavit of Good Standing) (Flynn, Sherrie) Modified on 9/30/2014 (Marciel, M) (Entered: 09/29/2014)
09/29/2014	<u>97</u>	PRO HAC VICE APPLICATION and PROPOSED ORDER for attorney H. Anthony Relys submitted by State of Missouri. (Filing fee \$ 200, receipt number 0972-5540413) (Attachments: # <u>1</u> Affidavit of Good Standing) (Flynn, Sherrie) Modified on 9/30/2014 (Marciel, M) (Entered: 09/29/2014)
10/01/2014	<u>98</u>	PRO HAC VICE ORDER signed by Judge Kimberly J. Mueller on 10/1/14: Added attorney H Anthony Relys, PHV for State of Missouri. (Kaminski, H) (Entered: 10/01/2014)
10/02/2014	<u>99</u>	DESIGNATION of COUNSEL for SERVICE. Attorney Carl J. Nichols remains counsel of record, attorney Brian Matthew Boynton terminated. (Nichols, Carl) Modified on 10/3/2014 (Marciel, M) (Entered: 10/02/2014)
10/02/2014	<u>100</u>	NOTICE of Supplemental Authority in support of Motion to Dismiss by The Humane Society of the United States. (Wagman, Bruce) (Entered: 10/02/2014)
10/02/2014	<u>101</u>	NOTICE of Supplemental Authority by Association of California Egg Farmers in support of <u>45</u> Motion to Dismiss. (Attachments: # <u>1</u> Exhibit A -- Supplemental Authority) (Nichols, Carl) Modified on 10/3/2014 (Marciel, M) (Entered: 10/02/2014)
10/02/2014	<u>102</u>	ORDER signed by Judge Kimberly J. Mueller on 10/1/14 ORDERING that defendants and defendant-intervenors' motions to dismiss for lack of standing are GRANTED without leave to amend. Plaintiffs' first amended complaint is dismissed with prejudice. The Clerk is directed to close this action. CASE CLOSED (Kastilahn, A) (Entered: 10/02/2014)
10/02/2014	<u>103</u>	JUDGMENT dated *10/2/14* entered pursuant to order signed by Judge Kimberly J. Mueller on 10/1/14. (Kastilahn, A) (Entered: 10/02/2014)
10/24/2014	<u>104</u>	NOTICE of APPEAL by Terry E. Branstad, Commonwealth of Kentucky, State of Alabama, State of Missouri, State of Nebraska, State of Oklahoma as to <u>102</u> Order, <u>103</u> Judgment. Attorney Hirth, John Andrew added. (Filing fee \$ 505, receipt number 0972-5580046) (Hirth, John) Modified on 10/28/2014 (Kastilahn, A). (Entered: 10/24/2014)
10/24/2014		PAYMENT for <u>104</u> Appeal to USCA in the amount of \$ 505, receipt number 0972-5580077. (Hirth, John) (Entered: 10/24/2014)
10/24/2014	<u>105</u>	TRANSCRIPT REQUEST by State of Missouri re <u>104</u> Notice of Appeal, (Hirth, John) (Entered: 10/24/2014)
10/28/2014	<u>106</u>	APPEAL PROCESSED to Ninth Circuit re <u>104</u> Notice of Appeal, filed by State of Oklahoma, State of Alabama, Terry E. Branstad, State of Nebraska, Commonwealth of Kentucky, State of Missouri. Notice of Appeal filed *10/24/2014*, Complaint filed *2/3/2014* and Appealed Order / Judgment filed *10/2/2014*. Court Reporter: *Kathy Swinhart*. *Fee Status: Paid on 10/24/2014 in the amount of \$505.00* (Attachments: # <u>1</u> Appeal Information) (Kastilahn, A) (Entered: 10/28/2014)
10/28/2014	<u>107</u>	

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USCA CASE NUMBER 14-17111 for 104 Notice of Appeal filed by State of Oklahoma, State of Alabama, Terry E. Branstad, State of Nebraska, Commonwealth of Kentucky, State of Missouri. (Michel, G) (Entered: 10/28/2014)

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