

No.____, Original

In the Supreme Court of the United States

STATE OF MISSOURI, STATE OF ALABAMA,
STATE OF ARKANSAS, STATE OF INDIANA,
STATE OF IOWA, STATE OF LOUISIANA,
STATE OF NEBRASKA, STATE OF NEVADA,
STATE OF NORTH DAKOTA,
STATE OF OKLAHOMA, STATE OF TEXAS,
STATE OF UTAH, AND STATE OF WISCONSIN,
Plaintiffs,

v.

STATE OF CALIFORNIA,
Defendant.

**MOTION FOR LEAVE TO FILE BILL OF
COMPLAINT, BILL OF COMPLAINT,
AND BRIEF IN SUPPORT**

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The State of Missouri, State of Alabama, State of Arkansas, State of Indiana, State of Iowa, State of Louisiana, State of Nebraska, State of Nevada, State of North Dakota, State of Oklahoma, State of Texas, State of Utah, and State of Wisconsin respectfully move this Court for leave to file the attached Bill of Complaint. The grounds for this Motion are set forth in an accompanying Brief.

Respectfully submitted,

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BILL OF COMPLAINT

The State of Missouri, State of Alabama, State of Arkansas, State of Indiana, State of Iowa, State of Louisiana, State of Nebraska, State of Nevada, State of North Dakota, State of Oklahoma, State of Texas, State of Utah, and State of Wisconsin (collectively, the “Plaintiff States”) bring this action against Defendant the State of California, and for their cause of action assert as follows:

NATURE OF THE ACTION

1. This case involves a single State’s attempt to dictate the manner of agricultural production in every other State. By its extraterritorial regulation of egg producers, California has single-handedly increased the costs of egg production nationwide by hundreds of millions of dollars each year. California’s regulations have no legitimate purpose—their sole purpose was to “level the playing field” by increasing the regulatory burdens on out-of-state producers to protect California’s egg producers from the natural competitive effects of California’s stifling regulatory environment.

2. California’s regulations have inflated egg prices for every egg consumer in the Nation. The effects of increased egg prices are felt most painfully by families with limited incomes, those who barely make ends meet each month, and those who can ill afford to eliminate a critical staple from their diets. The regulations burden States and state budgets across the country by imposing increased egg-consumption costs on state agencies. The regulations

also directly impact those States that own and operate egg-producing facilities.

3. California’s regulations violate an unambiguous federal law that prohibits any State from purporting to impose on eggs shipped in interstate commerce any standards of quality or condition that are “in addition to or different from” federal standards. The regulations are facially discriminatory against non-California egg producers, they apply only extraterritorially to non-California producers, and they impose burdens on interstate commerce that are clearly excessive in relation to any putative local benefits.

4. Twelve States have joined together in this action to challenge California Health & Safety Code §§ 25990–25996 and Cal. Code Regs. tit. 3, § 1350(d)(1) et seq., as applied to eggs shipped in interstate or foreign commerce (collectively, the “California Regulations”). The Plaintiff States seek declaratory and injunctive relief against California’s attempt to disregard federal law and impose onerous regulations on the entire interstate egg market.

JURISDICTION

5. This Court has original and exclusive jurisdiction over this action under Article III, § 2, cl. 2 of the U.S. Constitution and 28 U.S.C. § 1251(a), because the dispute is both a “Case[] . . . in which a State shall be Party” and a “controvers[y] between two or more States.”

PARTIES

6. The State of Missouri is a sovereign State, whose citizens enjoy all the rights, privileges, and immunities of our federal system of government as guaranteed under the U.S. Constitution and federal law.

7. Joshua D. Hawley is the duly elected Attorney General of Missouri.

8. Pursuant to § 27.060 of the Missouri Revised Statutes, Attorney General Hawley has authority to “institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary.”

9. Based on reasonable assumptions, egg consumers in Missouri are currently paying an increased price of approximately 2.8 cents to 11.3 cents per dozen of eggs in Missouri as a direct result of the California Regulations. *See* Joseph H. Haslag, Ph.D., *California Cage-System Regulations: The Economic Impacts on Prices, State Government Expenses and Welfare Losses* (2017), at A–3 (attached as Exhibit A and incorporated as if set forth fully herein).

10. Because eggs are a basic food staple and demand for eggs is inelastic, these price increases are difficult for consumers to avoid. The price increases impose the greatest burden on individuals

and families, in Missouri and elsewhere, who struggle to make ends meet each month.

11. Based on reasonable assumptions, Missouri households are suffering an aggregate welfare loss of approximately \$1.75 million to \$7.1 million per year as a direct result of the California Regulations. *Id.* at A-4. The lowest-income quintile of Missouri households is suffering an aggregate welfare loss of \$500,000 to \$1.96 million per year as a direct result of the California Regulations. *Id.*

12. The State of Missouri is also a significant consumer of eggs. Increases in egg prices directly affect the State's budget. Numerous state agencies in the State of Missouri purchase eggs for human consumption. For example, the Missouri Department of Corrections, which purchases eggs for inmate consumption, has incurred and will incur an estimated \$18,000 to \$76,000 in increased costs annually as a direct result of the California Regulations, based on reasonable assumptions. *Id.* at A-6.

13. Since the effective date of the California Regulations, the California Department of Food and Agriculture has sent its inspectors directly into Missouri to inspect Missouri egg producers to ensure compliance with the California Regulations.

14. Missouri farmers produced about 1.968 billion eggs in 2012 and generated approximately \$170 million in revenue for producers in the State. U.S. Dep't of Agric., Nat'l Agric. Statistics Serv., Poultry-Production & Value 2012 Summary, at 12 (April 2013), *available at* <http://usda.mannlib.cornell>.

edu/usda/nass/PoulProdVa//2010s/2013/PoulProdVa-04-29-2013.pdf (“NASS Report”).

15. In 2012, Missouri exported approximately 600 million eggs to California, comprising about 33.1 percent of all eggs produced in Missouri and 13.1 percent of total California egg imports. NASS Report at 12; Don Bell, et al., University of California, Egg Economics Update #338 at 5 (Oct. 2013) (“Bell Update”).

16. The State of Missouri, State of Alabama, State of Arkansas, State of Indiana, State of Iowa, State of Louisiana, State of Nebraska, State of Nevada, State of North Dakota, State of Oklahoma, State of Texas, State of Utah, and State of Wisconsin are referred to collectively herein as the “Plaintiff States.”

17. Each Plaintiff State is also a sovereign State.

18. Each Plaintiff State sues by and through its attorney general, who is empowered to sue in the name of the State to protect State interests.

19. The other State Plaintiffs and their residents are similarly situated in all material respects to the State of Missouri and its residents, with respect to this action.

20. For example, in 2012, Alabama produced about 2.139 billion eggs; Arkansas produced about 3.011 billion eggs; Indiana produced about 6.804 billion eggs; Iowa produced about 14.499 billion eggs; Louisiana produced about 533 million eggs; Nebraska produced about 2.139 billion eggs;

Oklahoma produced about 741 million eggs; Texas produced about 5.098 billion eggs; Utah produced about 1.005 billion eggs; and Wisconsin produced about 1.372 billion eggs. NASS Report at 12.

21. Likewise, in 2012, the other Plaintiff States exported large amounts of eggs to California. For example, Arkansas exported to California approximately 9.99 percent of all eggs produced in its state and accounted for about 2.4 percent of all California egg imports; Indiana exported to California approximately 1.7 percent of all eggs produced in its state and accounted for 2.7 percent of all California egg imports; Iowa exported to California approximately 9.1 percent of all eggs in its state and accounted for about 30.0 percent of all California egg imports; Texas exported to California approximately 1.6 percent of all eggs produced in its state and accounted for 1.5 percent of all California egg imports; Utah exported to California approximately 18.5 percent of all eggs produced in its state and accounted for 4.4 percent of all California egg imports; and Wisconsin exported to California approximately 7.6 percent of all eggs produced in its state and accounted for 2.2 percent of all California egg imports. NASS Report at 12; Bell Update at 5.

22. Each Plaintiff State also operates prisons, schools, and other institutional facilities that are purchasers of eggs in large quantities. A-40.

23. Each Plaintiff State includes large numbers of consumers of eggs, including low-income families, who comprise a substantial segment of each Plaintiff State's population. As in Missouri, egg consumers throughout each Plaintiff State are paying increased

costs for eggs as a direct result of the California Regulations.

24. The Plaintiff States have standing to bring this action to ensure the health and well-being of their citizens, both physical and economic.

25. The Plaintiff States have standing to bring this action to defend the rights of a very substantial segment of their populations to prevent the significant price increases for eggs caused by the California Regulations.

26. The Plaintiff States have standing to bring this action to prevent injury to their public fisci through the increased prices they must pay as direct purchasers of eggs and egg products because of the California Regulations.

27. The Plaintiff States have standing to bring this action to prevent injury to their public fisci through the decreased tax revenues they have suffered and will continue to suffer as a direct result of the California Regulations.

28. The Plaintiff States have standing to bring this action to assert their sovereign interest in exercising sovereign authority over individuals and entities within their borders, and in excluding from their borders California officials traveling to their States to directly inspect and regulate their domestic agricultural sectors.

29. The Plaintiff States have standing to bring this action to ensure that both they and their residents are not excluded from the benefits that

flow from participation in the federal system, and that they and their residents may participate fully in those benefits on a non-discriminatory basis.

30. The Plaintiff States have standing to bring this action to vindicate the freedom of interstate commerce within and among their States and the Defendant State.

31. The Plaintiff States bring this action to vindicate their sovereign interests, their quasi-sovereign interests, their parens patriae interests, and their proprietary interests.

32. Defendant the State of California is a sovereign State.

33. Service on Defendant the State of California is made in this action on the Governor and Attorney General of the State of California. *See* Sup. Ct. R. 17, 29.

GENERAL ALLEGATIONS

A. Eggs are a critical food staple.

34. Eggs are a basic food staple that forms a crucial part of a healthy diet for virtually all Americans.

35. Eggs are a critical source of protein. Their low-calorie, high-protein combination creates feelings of satiety and promotes a healthy diet. Consumption of eggs in reasonable quantities promotes health and combats obesity. Studies have shown that eating a high-protein breakfast of eggs helps to reduce body

mass index and reduce calorie intake later in the day.

36. Egg consumption is inelastic, which means that price increases for eggs typically do not significantly reduce the demand for eggs. Because eggs are a fundamental food staple, consumers continue to consume eggs in similar quantities even when the cost of eggs increases. As a result, consumers—including poor people and those with limited incomes—directly absorb increased costs for eggs.

37. Increases in egg prices cause the greatest hardship for individuals and families with the smallest incomes, especially those who struggle to make ends meet each month.

38. The economic impact of the California Regulations does not “fall on a small group of citizens who are likely to challenge the [California Regulations] directly. Rather, a great many citizens in each of the plaintiff States are themselves consumers of [eggs] and are faced with increased costs aggregating millions of dollars per year.” *Maryland v. Louisiana*, 451 U.S. 725, 739 (1981). “[I]ndividual consumers cannot be expected to litigate the validity of the [California Regulations] given that the amounts paid by each consumer are likely to be relatively small.” *Id.*

B. Federal law mandates national uniform standards for eggs shipped in interstate or foreign commerce.

39. Since at least 1946, the U.S. Congress has asserted a policy in favor of national uniform standards for agricultural products. Congress has explicitly mandated such a policy in favor of national uniform standards for the interstate market in eggs in particular. *E.g.*, 7 U.S.C. § 1622(a).

40. In 1970, at the urging of the Department of Agriculture, Congress enacted the Egg Products Inspection Act (“EPIA”), 21 U.S.C. § 1031 *et seq.*

41. In the EPIA, Congress sought to “insure uniformity of labeling, standards, and other provisions and enhance the free movement of eggs and egg products in interstate commerce.” H.R. Rep. No. 91-1670 (Dec. 3, 1970), 1970 WL 5922 at *5246.

42. The EPIA contains an express preemption provision that displaces any purported state or local regulation of standards for eggs shipped in interstate or foreign commerce. 21 U.S.C. § 1052(b).

43. Section 1052(b) of the EPIA provides that, “[f]or eggs which have moved or are moving in interstate or foreign commerce, no State or local jurisdiction may require the use of standards of quality, condition, weight, quantity, or grade which are in addition to or different from the official Federal standards” 21 U.S.C. § 1052(b).

44. The U.S. Department of Agriculture’s regulations likewise provide that “[f]or eggs that moved or are moving in interstate or foreign

commerce, no State or local jurisdiction . . . [m]ay require the use of standards of quality, condition, grade, or weight classes which are in addition to or different than the official standards” 7 C.F.R. § 57.35(a)(1)(i).

45. In *National Meat Association v. Harris*, 565 U.S. 452, 459 (2012), this Court unanimously held that the identical preemption provision in the Federal Meat Inspection Act (FMIA) “prevents a State from imposing any additional or different—even if non-conflicting—requirements” on the agricultural products covered by the Act. *Id.* at 459–60. This Court held that the FMIA’s preemption clause, which prohibits standards “in addition to, or different than” federal standards, “covers not just conflicting, but also different or additional state requirements,” and it “precludes California’s effort . . . to impose new rules, beyond any the [federal government] has chosen to adopt.” *Id.* at 460–61.

46. The EPIA’s preemption clause constitutes a valid exercise of Congress’s powers under the Commerce Clause.

47. The EPIA preempts any contrary state or local laws under the Supremacy Clause, both expressly and impliedly.

48. Under the EPIA, it is unlawful for any State or local authority to purport to impose on eggs shipped in interstate commerce any requirements of quality, condition, weight, quantity, or grade that differ from the national, uniform federal standards.

C. California purports to impose unique standards on eggs shipped to California.

49. In November 2008, California voters enacted Proposition 2, a ballot initiative that prohibited California farmers from employing methods of agricultural production that are common throughout the United States. *See* Cal. Health & Safety Code §§ 25990–25994.

50. Proposition 2 directed that “a person shall not tether or confine any covered animal,” including any egg-laying hen, “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.” Cal. Health & Safety Code § 25990(a)–(b).

51. Violations of Proposition 2 are misdemeanors punishable by a \$1,000 fine and 180 days in county jail. *Id.* § 25993.

52. The effective date of Proposition 2 was January 1, 2015.

53. The standards for egg-laying hens imposed by Proposition 2 contradicted ordinary agricultural practices both in California and elsewhere in the United States. More than 92 percent of egg-laying hens in the United States during 2011, for example, would not have satisfied the requirements of Proposition 2. *See, e.g.,* Daniel Sumner, et al., University of California Agricultural Issues Center, Economic Effects of Proposed Restrictions on Egg-Laying Hen Housing in California, at ii (2008), available at <http://aic.ucdavis.edu/publications/eggs/>

egginitiative.pdf (noting that “the share of non-cage production” of eggs in the United States “is quite small, about 5 percent of the total, including the non-cage eggs that also qualify as organic”).

54. California farmers and economists immediately raised concerns that Proposition 2’s restrictions would place California farmers at a competitive disadvantage with respect to non-California farmers in the California egg market. These researchers forecast that California egg producers would have to invest approximately \$385 million in capital improvements for their facilities to comply with Proposition 2. *See, e.g.,* Hoy Carman, *Economic Aspects of Alternative California Egg Production Systems*, at 22 (2012), *available at* https://www.cdfa.ca.gov/ahfss/pdfs/regulations/Dr_Hoy_Carman.pdf. One such analysis reported that “[t]he best evidence . . . suggests that (non-organic) non-cage systems incur costs of production that are at least 20 percent higher than the common cage housing systems.” Sumner, *supra* at ii. The same study stated that “[r]etail prices for non-organic non-cage eggs are at least 25 percent higher than those for eggs produced in cage systems.” *Id.* The analysis noted that “there is now a national market for eggs in the United States,” and “the California egg industry competes vigorously with egg production in other States.” *Id.* at iii. The study concluded that, if passed, Proposition 2 “would raise costs of California producers by at least 20 percent relative to its out-of-state competitors.” *Id.*

55. The standards for egg production imposed by Proposition 2 were and are “in addition to and

different from” federal standards for egg production. No federal standard imposes any comparable requirements.

56. Prior to the effective date of Proposition 2, California researchers forecast that California egg producers would have to invest approximately \$385 million in capital improvements to comply with Proposition 2.

57. In addition to the fixed costs for capital improvements, California-based economists estimated that Proposition 2 would cause the ongoing costs of production for California egg producers to be at least 20 percent higher than the costs of production for non-California producers.

58. At the time of Proposition 2’s adoption and now, California was and is a major net importer of eggs for human consumption. For example, in 2012, California produced approximately 5 billion eggs and imported another 4 billion eggs from other States. NASS Report at 12; Bell Update at 1, 5.

59. In 2012, Missouri exported approximately 600 million eggs to California, comprising about one third of all eggs produced in Missouri. NASS Report at 12; Bell Update at 1, 5.

60. In 2012, Iowa exported approximately 1.07 billion eggs to California, comprising about 30 percent of California’s egg imports that year. NASS Report at 12; Bell Update at 1, 5.

61. In reaction to concerns about the ability of California egg producers to compete with out-of-state

producers after Proposition 2, California politicians sought to “level the playing field” by imposing the same onerous standards of Proposition 2 on out-of-state egg producers who ship eggs into California.

62. In 2010, the California legislature enacted Assembly Bill 1437 (“AB 1437”), which imposed the requirements of Proposition 2 on non-California producers who ship eggs into California.

63. AB 1437 added Section 25996 to the California Health and Safety Code, which provides: “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).”

64. Violations of AB 1437 are also misdemeanors punishable by 180 days in county jail or a \$1,000 fine.

65. Because Proposition 2 had already imposed these restrictions on California producers, the sole purpose and effect of AB 1437 was to regulate the conduct of non-California egg producers.

66. In a formal report, the California Assembly’s Appropriations Committee explained that “the intent of this legislation is to level the playing field so that in-state producers are not disadvantaged” by Proposition 2 with respect to their non-California counterparts. California Assembly Committee on

Appropriations, Bill Analysis of AB 1437, at 1 (May 13, 2009), *available at* http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_14011450/ab_1437_cfa_20090512_182647_asm_comm.html.

67. The California Department of Food and Agriculture’s implementing regulations for AB 1437 provide: “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,” including “a minimum of 116 square inches of floor space per bird” for enclosures of nine or more hens. Cal. Code Regs. tit. 3, § 1350(d)(1).

68. California regulations also provide that, “commencing January 1, 2015, the principal display panel for containers for all eggs sold in California shall have the following statement: ‘California Shell Egg Food Safety Compliant’.” *Id.* § 1354(f).

69. AB 1437 had the same effective date as Proposition 2, *i.e.*, January 1, 2015.

70. The standards for egg production imposed by AB 1437, like those imposed by Proposition 2, were and are in “addition to and different from” federal standards for egg production. No federal standard imposes any comparable requirements.

D. AB 1437 has imposed significant negative effects on the Plaintiff States and their residents, with no corresponding benefits.

71. As a direct result of AB 1437, egg farmers in other States have incurred and will incur costs that are between \$228 million and \$912 million to comply with AB 1437, based on conservative assumptions. A-3. These costs have been and will be passed on to consumers.

72. As a direct result of AB 1437, egg prices have increased nationwide by as much as 1.73 percent to 5.12 percent. A-6.

73. The California Regulations impose significant welfare losses on consumers across the United States, where a welfare loss is understood as the dollar amount of income that a household would have to receive in order to be just as well off as without the Regulations. Based on reasonable assumptions, the California Regulations impose a welfare loss on consumers nationwide up to \$350.7 million per year, including a welfare loss of \$96.5 million imposed on households in the lowest-income quintile of Americans. A-4.

74. The welfare loss that the California Regulations impose on Missouri consumers is likewise significant. For Missouri households, the welfare loss is between \$1.75 million and \$7.4 million per year, including a welfare loss between \$500,000 and \$1.96 million imposed on the lowest-income quintile of Missouri households. *Id.*

75. Many state institutions are direct consumers of eggs, and the price increases for eggs have damaged state budgets. For example, the cost of feeding people in Missouri's state prisons has increased by an estimated \$18,000 and \$76,000 per year. A-3. An analysis of six state's prison budgets found that their food prices have likely increased by \$75,000 to \$300,000 per year as a direct result of the California Regulations. *Id.* These numbers do not include the significant increased costs of direct egg consumption incurred by many other state agencies and institutions, such as educational institutions.

76. AB 1437 has not provided any significant health-and-safety benefits to Californians, residents of the Plaintiff States, or other persons.

77. In enacting AB 1437, the California legislature recited that its purposes included "protect[ing] 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." AB 1437, Cal. Health & Safety Code 25995(e).

78. This recited purpose was pretextual. There was and is no convincing scientific evidence of correlation between cage size or stocking density and the incidence of salmonella in egg-laying hens.

79. Most recent studies establish that there is no correlation between cage size or stocking density and stress levels in egg-laying hens.

80. At the time of the passage of AB 1437, the California Health & Human Services Agency reported on the bill to Governor Schwarzenegger that there was “[n]o scientific evidence to support [the] assertion of salmonella prevention” by the bill’s proponents.

81. The California Department of Food and Agriculture, in its Enrolled Bill Report on AB 1437, concluded that it would be “difficult” to “establish that there is a public health justification for limiting the confinement of egg-laying hens as set forth in section 25990,” and thus “it will invariably be hard to ascribe any particular public health risk for failure to comply.” The Report expressed “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.”

82. Rather than promoting public health, the actual purpose of AB 1437 was to protect California egg producers from the natural economic consequences of the burdens of Proposition 2. AB 1437 was designed to impose onerous restrictions on out-of-state egg producers to make their egg production more costly and to eliminate any competitive disadvantage to California producers arising from California’s stifling regulatory environment.

83. An analysis by the California Assembly Committee on Appropriations, following its May 13, 2009 committee hearings on AB 1437, stated: “The intent of this legislation is to level the playing field so that in-state producers are not disadvantaged [by

Proposition 2]. 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.” California Assembly Committee on Appropriations, Bill Analysis of AB 1437, at 1 (May 13, 2009), *available at* ftp://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1401-1450/ab_1437_cfa_20090512_182647_asm_comm.html.

84. Likewise, the California Department of Food and Agriculture urged the Governor to sign AB 1437 for purely protectionist reasons: “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. . . . 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.”

85. AB 1437 did not affect the welfare of any animal in California. The sole purpose and effect of AB 1437 was to discriminate against non-California egg producers by increasing the regulatory burden on non-California egg producers to protect California egg producers from the natural economic consequences of California’s stifling regulatory environment.

86. AB 1437 does not regulate any economic activity within California. It applies only to egg production occurring outside California, and its direct impact is exclusively extraterritorial to California.

87. Because AB 1437 served no valid purpose and imposes significant costs on egg producers and consumers nationwide, the burdens on interstate commerce imposed by AB 1437 were and are clearly excessive in relation to the putative local benefits.

Count I – EPIA Preemption.

88. Paragraphs 1 to 77 above are incorporated by reference as if set forth fully herein.

89. The EPIA provides, for “eggs which have moved or are moving in interstate or foreign commerce,” that “no State or local jurisdiction may require the use of standards of quality, condition, weight, quantity, or grade which are in addition to or different from the official Federal standards” 21 U.S.C. § 1052(b).

90. The EPIA is a valid exercise of Congress’s power under the Commerce Clause, and it preempts any state law to the contrary under the Supremacy Clause.

91. For eggs shipped in interstate or foreign commerce to California, the California Regulations purport to require the use of standards of quality, condition, weight, quantity, or grade which are in addition to and different from the official Federal standards.

92. The EPIA preempts the California Regulations under the Supremacy Clause.

93. The Plaintiff States therefore seek declaratory and injunctive relief holding that the

California Regulations are invalid under the Supremacy Clause.

Count II – Violation of the Commerce Clause.

94. Paragraphs 1 to 85 above are incorporated by reference as if set forth fully herein.

95. The Commerce Clause of the U.S. Constitution prohibits States from enacting legislation that intentionally discriminates against citizens of other States, that regulates conduct wholly outside their borders, or that places an undue burden on interstate commerce.

96. The California Regulations violate the Commerce Clause because they intentionally discriminate against citizens of other States. They constitute a protectionist measure that has the sole purpose and effect of increasing the regulatory burden on non-California egg producers to make them less competitive with California egg producers.

97. The California Regulations violate the Commerce Clause because they purport to regulate conduct wholly outside the State of California.

98. The California Regulations violate the Commerce Clause because they impose substantial burdens on interstate commerce by increasing the costs of egg production nationwide with no legitimate, non-protectionist benefits to Californians.

99. The California Regulations have no legitimate local purpose. They serve no legitimate

state interest, and they do not protect the welfare of any animal in California.

100.The burdens on interstate commerce imposed by the California Regulations are clearly excessive in relation to the putative local benefits.

101.The State Plaintiffs therefore seek declaratory and injunctive relief holding that the California Regulations are invalid under the Commerce Clause.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff States respectfully request that this Court issue the following relief:

- A. Declare that the California Regulations are invalid under the Supremacy Clause because they are preempted by the federal Egg Products Inspection Act;
- B. Declare that the California Regulations are invalid because they violate the Commerce Clause;
- C. Preliminarily and permanently enjoin Defendant from enforcing the California Regulations as applied to any eggs shipped in interstate or foreign commerce;
- D. Award costs and reasonable attorneys' fees to the Plaintiff States; and
- E. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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Exhibit A

**California Cage-System Regulations:
The Economic Impacts on Prices,
State Government Expenses and Welfare
Losses**

A Report by

Joseph H. Haslag, PhD

Professor and Kenneth Lay Chair of Economics
Executive Director, Economic Policy Analysis and
Research Center

University of Missouri-Columbia

Executive Summary

California voters passed Proposition 2 by a 63 percent to 37 percent margin in November 2008. By 2015, California's egg producers were required to provide at least 116 in² of floor space for each egg-laying chicken. Before the law took effect on January 1, 2015, California's egg farmers argued that Proposition 2 would increase their costs, leaving egg farmers in the rest of the country with a competitive advantage. In part, California's Assembly leveled the economic playing field by passing AB 1437, which required all farmers selling eggs in California to abide by the floor-space minimum. Compared with existing cage-systems used by egg farmers, the new floor-space requirements would raise the cost of producing eggs for California consumers. So, not only did California egg farmers face higher costs, but so did every egg farmer wishing to sell eggs in the California market.

The purpose of this report is to examine the economic consequences associated with the new cage-system requirements. In order to compute the impact on egg prices, I use data on the costs of the cage systems. The egg market is treated as a national market. So, the increased cost data are used to compute how much additional capital would be needed to produce the eggs imported into California. The result is interpreted as the increase in the long-run average cost of producing eggs. Because there is a range of cost estimates for implementing the new California imposed floor-space minimums, I present a range of price increases that, *ceteris paribus*, are caused by the California cage-system regulations.

The main findings indicate that California cage-system regulations have the following economic impacts:

- It is estimated that costs will be between \$10 and \$40 per bird to change from the battery cage system to cage systems that satisfy the California laws. Based on California's 2015 egg production and projected egg consumption, 22.8 million birds in other states will require new cage systems. Thus, the additional costs for egg farmers to sell to California are between \$228 million and \$912 million.
- The increase costs raised egg prices between 0.23 cents and 0.94 cents per egg. This means that the price of a dozen eggs will increase between 2.8 cents and 11.3 cents.
- Taking the effect on the quantity of eggs demanded, U.S. expenditures on eggs will have increased between \$227 million and \$911 million a year.
- State government expenses will increase. It will cost the State of Missouri between \$18,000 and \$76,000 extra each year just to purchase eggs for people in state prisons.
- For inmates in six states, the additional aggregate annual egg expenditures will increase between \$75,000 and \$300,000 to feed people in state prisons. If the prison populations remain constant over the next twenty-five years, the discounted sum of the additional egg purchases will total between \$1.2 million and \$4.9 million.

- I can compute the welfare loss associated with the California cage-system regulations. For Missouri households, the welfare loss is at least \$1.75 million per year with the maximum being \$7.1 million per year.
- People in low-income households spend relatively more on eggs than households with higher incomes. The lowest-income quintile households in Missouri suffer losses between \$500 thousand and \$1.96 million per year.
- Across the nation, households facing an 11.3 cent price increase suffer a welfare loss equal to \$350.7 million per year. The households in the lowest-income quintile suffer a welfare loss equal to \$96.5 million.

1. Introduction

In November 2008, California voters passed Proposition 2 by a 63 percent to 37 percent margin. The ballot initiative prohibited California's egg producers from using nationally accepted, industry-standard cage systems. As guidelines were specified, this meant that California egg producers were required to switch from the battery cage system that allowed egg-laying hens 67 in² of floor space to at least 116 in² of floor space. The law was to take effect on January 1, 2015. In particular, every egg produced within the boundaries of the state of California would have to meet the new requirements for the egg-laying hens or face a penalty.

After passage of Proposition 2, farmers, economists, and commentators raised concerns that

the initiative's restrictions would place California egg producers at a competitive disadvantage. One study estimated that the cost of building and equipment would be \$22.55 per hen. If, for example, each California egg farmer were to apply just the estimated building and equipment costs needed to meet Proposition 2's requirements, then 19.1 million egg-laying hens in California times \$22.55 would imply a capital investment equal to \$430.7 million.¹ Producers compete against egg farmers across the country. With Proposition 2, the costs of production would be higher for California egg farmers, potentially ending egg production in California. To level the playing field, the California Assembly passed AB 1437, which says that any egg sold in California must comply with Proposition 2's requirements. Hereafter, I refer to Proposition 2 and AB 1437 as California's cage-system regulations.

The purpose of this report is to quantify the impact that the California cage-system regulations would have on the price of eggs. Eggs markets are subjected to lots of different shocks over time. In order to identify how much the cage-system regulations affected the price, I focus on the increase in long-run average costs. Specifically, how much will egg farmers need to spend on new cages and more feed in order to produce eggs they can import into California. With cost projections ranging from \$10 to \$40 per bird, I estimate that out-of-state egg

¹ See Carmen, Hoy, "Economic Aspects of Alternative California Egg Production Systems," August 30, 2012 for the estimate of the capital investment per hen to house the cages with at least 116 in². The number of egg-laying hens in 2015 is presented in Bell, Don, "Egg Economics Update #338," 2013.

farmers will need to spend between \$228 million and \$912 million to produce eggs for California consumption.² The increase in the long-run average cost amounts to a price increase ranging from 2.8 cents per dozen to 11.3 cents per dozen. In other words, the California cage-system regulations are responsible for egg prices increasing between 1.73 percent and 5.12 percent in 2015.

States governments purchase eggs to feed their prisoners. Based on the average egg consumption per person, the California cage-system regulations will increase state government's expenditures. For the State of Missouri, I estimate that feeding people housed in state prisons will increase between \$18,000 and \$76,000 per year. For Alabama, Iowa, Kentucky, Missouri, Nebraska, and Oklahoma combined, state governments will be spending at least an additional \$75,000 a year on eggs for state prisons. The additional egg expenditures in these six states could be as high as \$300,000 a year on eggs. If prison population is constant over the next twenty-five years, the discounted sum of additional egg expenditures would be between \$1.2 million and \$4.9 million by the six states.

Finally, I can compute the welfare loss associated with California's cage-system regulations. Welfare loss measures the harm done by changing laws. More

² The estimated costs per bird includes cage space investments and differences in food consumption, energy and other costs associated, both one-time and repeated expenses. In this analysis, there are not additional fixed costs, every expense is treated as a variable expense, hence the reference to long-run average costs.

specifically, welfare loss in this scenario measured as the dollar amount of income a household would have to receive in order to be just as well off with the California cage-system regulations enacted as the household was without the cage-system regulation. The income compensation is needed to offset the impact of the price increase that occurred because the cage-system regulation was implemented. For Missouri households, the welfare loss is between \$1.75 million and \$7.4 million per year. Because low-income households spend relatively more on eggs, I compute the welfare loss for Missouri households in the lowest income quintile. Low-income households suffer welfare loss between \$500,000 and \$1.96 million a year. For households in the six states, the aggregate welfare loss is between \$7.4 million and \$29 million a year. For the low-income households in these six states, the welfare loss is between \$2 million and \$8.2 million a year. If the price of eggs increases 11.3 cents per dozen, the welfare loss is \$350.7 million a year for all households in the United States. For just the United States' households in the lowest income quintile, the welfare loss is \$96.5 million.

Overall, the California cage-system regulations raised the costs of producing eggs. The price increase that occurred because of the cage-system regulations seems small. However, when you compute the additional costs to state governments and the welfare losses to people across the country, especially low-income households, the economic impact is substantial.

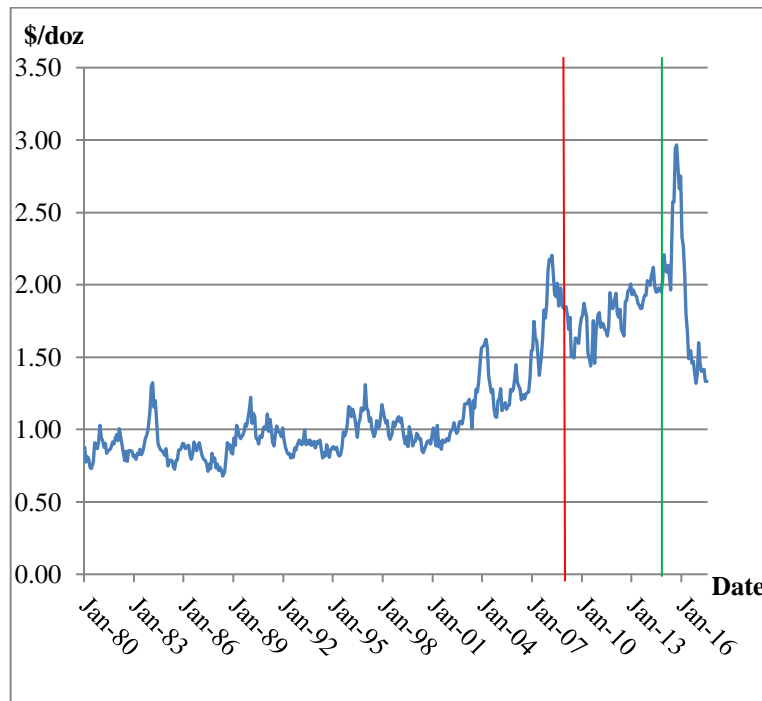
2. Egg production facts

In this section, the egg market is characterized by presenting price and production data over time. With all the movements in prices and quantities over time, it is important to interpret the evidence.

2.1 *The Data*

Figure 1 plots the Bureau of Labor Statistics (BLS) consumer prices for a dozen eggs. The monthly price series spans the period from January 1980 through July 2017. Egg prices fluctuated around \$1 per dozen until the early 2000s. Beginning in 2003, there is a marked increase in egg prices. I have included two reference lines in Figure 1; one marks November 2008, the date on which Proposition 2 was passed in California and the other is April 2014, marking the date when the avian influenza hit the Midwest egg producers. Between November 2008 and April 2014, there is an upward trend in egg prices. You can also see the sharp price increase that occurred after April 2014 when flocks of egg-laying hens fell. Consider an observer looking at the November 2008 egg prices and the July 2017 egg prices. Based on this pairwise comparison, it is clear: neither Proposition 2 nor AB 1437 had any discernible impact on egg prices. Indeed, egg prices in July 2017 are nearly \$0.50 lower than November 2008 egg prices. The more general insight is that one cannot look at price changes alone to identify the impact of a regulatory change. There are simply too many demand and supply forces operating over time to apply ocular econometric techniques. More succinctly, it is too easy to misinterpret the price movements.

Figure 1
Consumer Egg Prices, 1980-2017



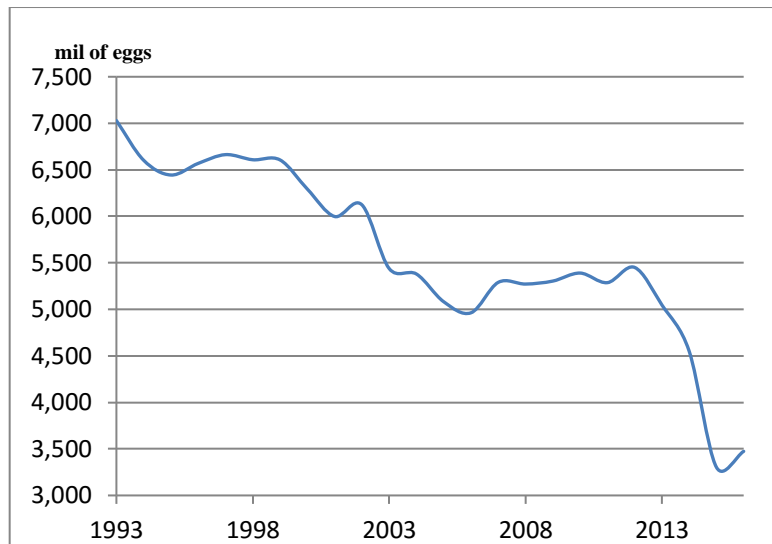
Source: Bureau of Labor Statistics

To get a sense of impact that California's regulatory change had, it will be useful to examine how quantities moved through time. Figure 2 plots the quantity of eggs produced in California during the period 1993 through 2016. The data indicate that California egg farmers produced roughly 7 billion in 1993. By 2016, the number of eggs produced in California had fallen to approximately 3.5 billion. California reported egg production declining from 7 billion to 4.5 billion. In other words, California egg production decreased at 2.1 average annual rate during this 21 year period. There was a more dramatic decline in 2015 as egg production declined

further to 3.3 billion, which is a 27.5 percent decline in this one year period.

The decline in California egg production is directly related to the number of egg-laying hens. Figure 3 plots the number of egg-laying in California between 1993 and 2016. The number of egg-laying hens was just below 28 million in 1993, decreasing at an average annual rate of 2.7 percent a year between 1993 and 2014. Between 2014 and 2015, California reported a 27.7 percent decline in the number of egg-laying hens, falling from 16.1 million to 11.8 million in one year.

Figure 2
Eggs produced in California, 1993-2016

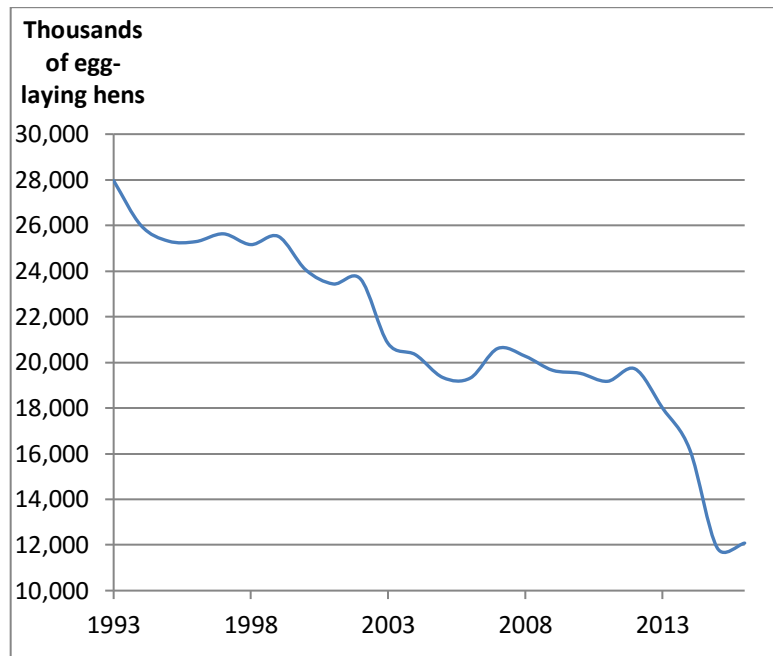


Source: USDA *Chicken and Eggs* report, NASS, various issues

The evidence indicates that California eggs production has been steadily declining. In 2015, however, the rate of decline increased sharply. Thus,

the evidence is consistent with the idea that California egg farmers responded to the increased costs associated with Proposition 2 by decreasing egg production.

Figure 3
Number of Egg-laying hens in California,
1993-2016



Source: USDA *Chicken and Eggs* report, NASS, various issues

What was the response in other egg-producing states? I consider the aggregate quantity of eggs produced and the aggregate number of egg-laying hens in six states: Alabama, Iowa, Kentucky, Missouri, Nebraska, and Oklahoma.³ Figures 4 and 5

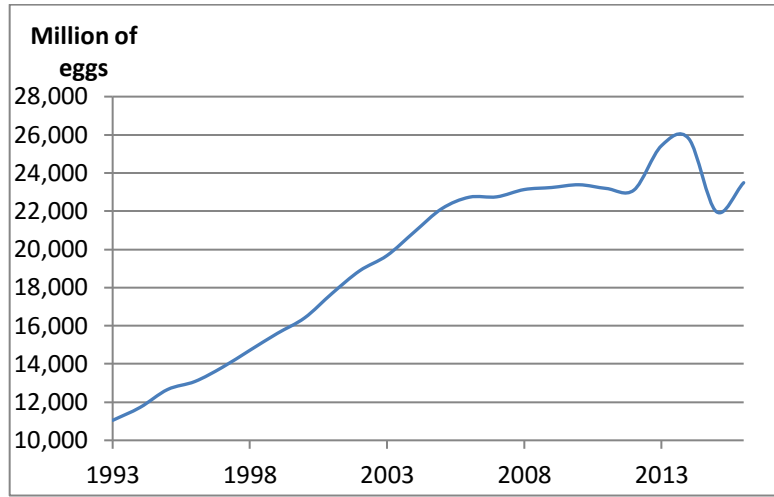
³ The six selected are not chosen randomly. These states were petitioners in a previous case filed against the State of California. The general upward trend observed in the aggregate

plot the eggs produced and the egg-laying hens, respectively.

When we look at the aggregate numbers of eggs produced and the number of egg-laying hens, there is a clear upward trend in the aggregate data for these six states. Number of eggs produced increased at a 3.3 percent average annual rate while the number of egg-laying hens increased at a 2.8 percent average annual rate for the period 1993-2016. Both production measures show increases in 2014 followed by a matching decline in 2015. We know that sharp decline owed chiefly to avian influenza. Of these six states, Iowa—the largest producer—reported a decline of 13.6 million egg-laying hens between 2014 and 2015. Note that egg production increased between 2013 and 2014 and the increase is consistent with egg farmers increasing their flocks in response to the decline in California flocks.

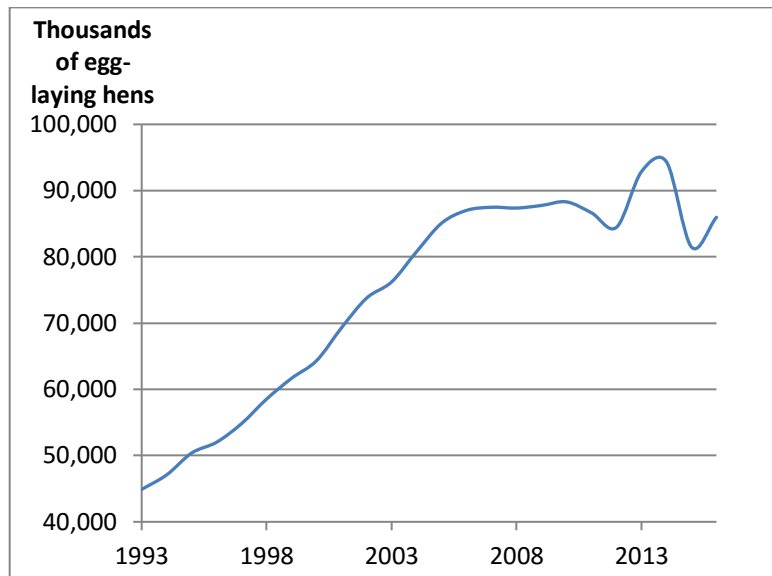
production of these six states is observed in the United States as a whole. Aggregate egg production in the United States increased a 1.5 percent average annual rate between 1993 and 2016.

Figure 4
Eggs produced in Six States, 1993-2016



Source: USDA *Chicken and Eggs* report, NASS, various issues

Figure 5
Number of Egg-laying hens in Six States,
1993-2016



Source: USDA *Chicken and Eggs* report, NASS, various issues

There is one, unambiguous takeaway from the production side of the egg market. The evidence clearly indicates that there has been a spatial shift in egg production over time as California egg farmers have been producing fewer eggs and producers in our six focal states have been increasing egg production.

2.2 *Economic Interpretation*

How did the California cage-system regulations affect the market for eggs? Note that my description is of a dynamic process starting with the effects of the California cage-system regulations and ending with the new spatial distribution of producers. I will describe the process as if there is a definite sequence

of steps. The steps most likely will not be in this exact order, but the gist of the description is the economic intuition that applies to the market facts presented in the preceding subsection.

In order to abide by the new regulations, California egg farmers were directly affected. The new cage-systems unambiguously increased the costs of producing eggs in California.⁴ Because California is a large state, the national supply curve shifted to the left as California faced the higher long-run marginal cost of production. It appears that the national price increase was not sufficient to meet the increase in average costs facing California egg farmers. Consequently, you observe a reduction in California egg production with an accompanying decline in the number of egg-laying hens. So, the easy part is to explain why egg production in California is decreased.

With an increase in national egg prices, there are other economic changes set in motion. In particular, as egg prices increase, for example, an opportunity is created for egg farmers to either expand their current production or for new egg farmers to enter the market. Some combination of the two can account for the increase in egg production observed in the six states I presented. The inducement to

⁴ The impact on California egg farmers helps to explain why AB 1437 was passed. Eggs are priced in a national market. With higher costs, California egg farmers would not be able to compete with producers in other states; that is, producers not subject to the same cage-system regulations as California egg farmers. At least in part, AB 1437 aimed at eliminating this competitive discrepancy across states by imposing higher costs on any farmer seeking to sell eggs to California consumers.

increase production is put simply as: with price above average cost, non-California egg producers saw opportunities to earn above-normal economic profits. If Proposition 2 were the only change in the regulatory environment and this process were permitted to run its course, there would be virtually no California egg production. Only the existence of transportation costs would be able to account for any California egg farmers continuing to operate. Eventually, egg farmers would move up the long-run marginal cost curve as production increased, continuing until egg price equals long-run marginal cost equals long-run average cost. All above-normal economic profit opportunities would vanish.

With the passage of AB 1437, cage-system regulations were extended to any egg farmer wishing to sell in California. Some of the expanded production would be directed to meeting the demands by California consumers and some producers would increase their costs in order to satisfy the cage-system regulations. In other words, new or expanded egg operations wanting to sell in California would be willing to bear the extra cost up to the point where the additional marginal cost is equal to the price of eggs.

If we stop there, one might want to conclude that egg producers outside of California benefitted from California cage-system regulations. At the end of the dynamic process, however, some California egg farmers would be exiting and some combination of non-California egg farmers would be entering or expanding production. The upshot is that there are no sustained, above-normal economic profits for the

producers. On average, egg farmers increase the quantity of production up to the point where egg price, which is taken as given by the market demand and supply, equals the long-run marginal cost of producing eggs and is equal to the long-run average cost of producing eggs. In economics, note that the average cost and marginal costs contain the opportunity costs of other activities. In other words, there is a notion of normal accounting profits already built into the notion of costs used in this analysis. As new entrants and expanded production occur in states outside of California, these egg farmers will face a cost increase.⁵ Thus, it is possible to account for why egg production shifted away from California to other parts of the United States. The other conclusion to draw from this interpretation is that egg farmers are not benefitting from this spatial production. The result of the dynamic process is that there are more non-California egg producers with each one earning normal economic profits.⁶

To summarize, the California cage-system regulations distorted the national egg market, causing costs to increase. Within the national economy, resources shifted outside of California as non-California production expanded to meet the national demand for eggs. Producers inside

⁵ The underlying economic analysis is based on the assumption that marginal costs are, for example, increasing in response to increases in quantity produced.

⁶ To be completely thorough, normal economic profits mean that the egg producers are indifferent between returns from egg farming and the counterfactual case in which egg farmer receives returns on monies invested in an indexed stock fund instead of the egg farm.

California are worse off and producers outside California are no better off in terms of earning larger profits. The market response is distorted in terms of where egg production occurs. Overall, national economy is subject to a negative regulatory productivity shock; the price increase will, *ceteris paribus*, result in a decline in the national quantity of eggs demanded. What are left are producers who are no better off and consumers are unambiguously worse off because there is a welfare loss associated with the egg price increase.

3. Egg consumption data

In this section, we use data on the number of eggs consumed by people. With this value, it is possible to describe how the spatial shift observed in production would affect the quantity of eggs imported by California.

I start with a description of the number of eggs consumed per person. Table 1 reports the numbers of eggs consumed per person for each year from 2007 through 2016. Note that egg consumption includes eggs included in final products such as doughs and other recipes as well as direct egg consumption. There are year-to-year fluctuations in egg consumption per person with both 2014 and 2016 being close to outliers. The ten-year sample mean is 254.1 eggs per person per year.

With egg consumption per person, the next step is to compute the expected number of eggs consumed by people living in California. The 2015 estimated population of California was 38,910,062. The aggregate projected consumption by Californians,

therefore, is 9,887,046,754 eggs. In 2015, California egg farmers produced 3,302,800,000 eggs. With imports equal to consumption less production, it follows that projected numbers of eggs imported into California would be 6,584,246,754. In other words, 2015 projections indicate that California would have needed to import roughly 66.7 percent of the egg consumption.

Table 1
Egg consumption per person, 2007-16

Year	Egg/person
2007	251.7
2008	248.3
2009	248.4
2010	249.3
2011	250.0
2012	254.2
2013	255.1
2014	263.0
2015	252.9
2016	268.4

Source: Egg Industry Fact Sheet, May 2016

The consumption and import figures are critical for calculating the impact that Proposition 2 and AB 1437 would have on egg prices. I will develop the economic model used to identify the impact of the regulatory changes in the following section.

4. The economics of California's cage-system regulations

The purpose of this section is to conduct an economic analysis of the regulatory changes implemented by Proposition 2 and AB 1437.

Because of Proposition 2 and AB 1437, it is unambiguous that cage-floor space will increase for egg-laying hens. More specifically, the battery cage systems the most frequently used system used by American egg farmers. In the battery cage system, the egg-laying chicken has 67 in² of floor space. The new laws require that egg farmers have at least 116 in² per egg-laying chicken for all California farmers and for all other egg farmers who want to import eggs into California.⁷ It follows that any farmers meeting the new regulatory standards set by California will have three options: (i) either reduce the number of egg-laying chickens, thereby passively meeting the regulatory standards; (ii) maintain the existing number of egg-laying hens by investing in new cage systems and buildings; (iii) apply some convex combination of the passive flock-reduction and the active investment strategies. The bottom line is that new regulation will result in higher costs per bird.

In a 2015 deposition, Dr. Dermot Hayes presents an economic analysis of the costs of satisfying the cage-systems dictated by Proposition 2 and AB 1437. His analysis is easily summarized. Dr. Hayes

⁷ See Bell (2013) for thorough discussion of the current structure of 4-bird and 7-bird cages that meet the pre-2015 statutory requirements.

presents a table characterizing the production costs in Iowa and in California. The idea is that Iowa costs serve as a counterfactual measure; in other words, if California had not passed Proposition 2, then California's cost structure would be the same as Iowa's. Therefore, he interprets the difference between the Iowa and the California cost structures as a measure of the additional costs associated with California's altered regulatory settings. Interestingly, additional feed costs and the costs of the egg-laying hens are included. Feed costs would rise because the greater mobility afforded by the increased floor space stipulated by Proposition 2 means that the hens would use more energy to move around and thus would eat more. Overall, Dr. Hayes concludes that the regulatory changes in Proposition 2 and AB 1437 would result in production costs increasing by 8.51 cents per dozen eggs.

Dr. Hayes then conducts the following economic experiment. Suppose that California allows its stock of egg-laying hens to decline over time to meet the new cage-system regulations. In other words, the quantity of eggs supplied adapts completely to the new regulations. Because the demand curve stays in place, he then shifts the supply by the full amount of the reduction in hens and determines what the increase in the price would have to be in order for the quantity demanded and the new quantity supplied to be equal. To carry out this analysis, Dr. Hayes estimates that California needs 13 million birds to produce the quantity of eggs imported into the state. The regulatory change means that cages capable of holding 13 million would now hold only 7.5 million birds. With 5.5 million fewer egg-laying hens in other

states Dr. Hayes projects that egg prices would increase 9.15 percent.⁸ In addition, egg farmers in California would see spaces for 16.3 million birds be occupied by 9.45 million egg-laying hens. The projected decrease in California flocks would result in a 2.28 percent decline in the number of egg-laying hens. Thus, the national supply of egg-laying hens would fall accounting for an 11.4 percent increase in egg prices. If we combine the impact on other states and on California, the number of egg-laying hens would decline by 12.35 million birds and the new equilibrium price would rise by 20.55 percent. At a price of \$1.50 per dozen, this represents a \$0.30 per dozen increase in the price of eggs.

Here, I take a different approach to computing the impact that a change in regulation would have on the average cost of producing eggs. Thus, the supply curve will shift up by the amount of the increase in production costs. Put another way, my central question is: What is the necessary capital investment by egg farmers in other states that would meets the import needs of Californians? The answer will provide me with an estimate of the increase in the long-run average cost of producing eggs. I then assume that the market price increases by the amount of the increase in the long-run average cost. Because the average cost already has a normal rate of return embedded in it, the new-price-equals-new-average-cost approach will already take into account

⁸ The number of birds in other states would decline by 1.83 percent and with the elasticity of demand equal to -0.2, the percentage change in egg prices is $-1.83 * \frac{-1}{0.2} = 9.15$.

what the price increase would have to be in order for producers to be willing to continue operating. The new equilibrium quantity demanded in the egg market is straightforward to compute; given the elasticity of demand and percentage change in the price of eggs, then one can compute the percentage change in the quantity demanded. Formally, $\% \Delta Q^D = \varepsilon \times \% \Delta P$, where $\% \Delta Q^D$ is the percentage change in the quantity of eggs demanded, ε is the elasticity of the demand for eggs, and $\% \Delta P$ is the percentage change in the price of eggs. Thus, one can multiply the percentage change in the quantity of eggs demanded by the quantity of eggs to obtain the new equilibrium quantity of eggs.

To start, recall that I projected California would be projected to import 6,584,246,754 eggs from other states. Suppose that egg farmers in other states convert to the new cage systems that satisfy California law. Sumner, Matthews, Mench, and Rosen-Molina (2010) estimate it would cost between \$10 and \$40 per bird.⁹

Next, I need to compute the expected number of chickens needed to produce imported eggs to California. To do this calculation, I divide the number of imported eggs to California per year by the average annual production per egg-laying hen. On average, a typical chicken in 2016 produced 288.7 eggs per year; thus, $\frac{6,584,246,754}{288.7} = 22,804,955.5$

⁹ See Sumner, Daniel A., William A. Matthews, Joy A. Mench, and J. Thomas Rosen-Molina, 2010, "The Economics of Regulations on Hen Housing in California," *Journal of Agricultural and Applied Economics*, 42(3), August, 429-38.

would be needed to produce enough eggs to meet the needs of California's people. At \$10 per bird, the additional cost would be \$228.05 million. At \$40 per bird, the additional cost would be \$912.2 million. Overall, the range of additional costs necessary to meet the current needs of California consumers, other states would need to increase expenditures roughly between \$225 million and \$925 million.

In order to measure the increase in cost, I divide the increase in expenditures by the total number of eggs produced in the United States. The result is interpreted as the increase in the average cost per egg. With 97,208,200,000 eggs produced in the United States in 2015, the increase cost per egg is 0.23 cents per egg at the lower bound value of \$10 per bird. With the cost per bird at \$40, increase in the average cost per egg is 0.9 cents. In terms of the increase cost per dozen, the calculations translate into \$0.028 and \$0.113. Note that Dr. Hayes estimated increase in annual costs is solidly within the range of estimates produced by the methods employed in this report.

The impact on price can be computed as follows. Recall that average costs already take into account opportunity costs of operating the egg farm. In other words, a normal rate of return is already embedded in the average cost curve. By my calculations, the long-run average cost curve will shift up between 0.23 cent per egg and 0.9 cents per egg at every quantity. In a competitive market, the increase in the price of eggs will increase by the same amount. In this approach, Proposition 2 and AB 1437 can account for between a \$0.028 increase per dozen eggs

and a \$0.113 increase in the price of eggs. With the December 2014 consumer price of eggs equal to \$2.21, the effect of California's regulation would be between 1.73 percent and 5.12 percent increase in the price of one dozen eggs.

To put another perspective on the impact of California egg regulations, we can estimate how much more United States citizens spent on eggs in 2015 compared with what they would have spent without the regulation. Americans consumed 97,208,200,000 eggs in 2015. With a 1.73 percent price increase, the quantity demanded would have declined by 0.346 percent. With a 5.12 percent price increase, quantity demand would have declined by 1.024 percent.¹⁰ Taking the change in quantity demand, the range of additional national expenditures is at least \$227.26 million and not greater than \$911.26 million.

Based on my analysis, the aggregate economic impact on U.S. consumers is large. With the implementation of California's Proposition 2 and AB 1437, egg farmers will unambiguously see production costs increase. In a national market, I estimate that national total expenditures on eggs *will have increased by at least \$227 million and possibly by as much as \$911 million* because of the additional production costs imposed by these California laws.

¹⁰ Here, I assume the elasticity of demand is -0.2. According to Sumner, et al. (2010), the literature on the elasticity of egg demand, the values range from -0.15 to -0.3. The implication is that for a given percentage change in the price of eggs, the percentage change in the quantity of eggs demanded is smaller; indeed, only about one-fifth the percentage change in egg prices.

4.1 *Impacts on states*

How would an increase in egg prices affect state spending? There are several obvious ways in which expenditures by state and local governments will be affected by changes in egg prices. For example, governments purchase eggs in their role as providing meals for schools and prisons while the federal governments purchase eggs for prisons and for military.

In this section, I illustrate the effects that the cage-system regulations would have on state spending on eggs for inmates in state correctional facilities. The calculation is straightforward. Prisons provide all the meals for prisoners. I assume that prisoners consume, on average, the same number of eggs per year as non-incarcerated people. Therefore, I need the product of the prison population by state, average egg consumption per person, and the increase in egg price. The result of this calculation is the expected annual cost increase of purchasing eggs resulting from the California cage-system regulations. In the current regulatory environment, the price increase caused by cage-system regulation is permanent. Accordingly, it seems appropriate to compute the discounted sum of additional state expenditures for a period of twenty-five years—a generation—to quantify the impact of the increase in egg prices. In other words, what is the projected present value of the stream of future additional egg cost expenditures facing state governments over the next generation? I consider inmate populations in six states: Alabama, Iowa, Kentucky, Missouri, Nebraska, and Oklahoma.

To compute the additional costs of eggs for inmates in each of these six states, I assume that egg consumption per inmate is the same as the national average. In other words, let each inmate consume 254.1 eggs per year. I obtain 2015 data on prison population for each state from the National Institute of Corrections.¹¹ Table 2 presents the increase in total egg expenditures for each state for 2015. The aggregate number of eggs consumed is the product of the number of inmates (column 2) and the eggs per person (column 3). Next, compute the product of the aggregate number of eggs consumed (column 5) by the increase in price per egg (column 4) to obtain the additional aggregate expenditures on eggs in each state (column 6).

To get the range, Table 2 has two panels. Panel A computes the additional aggregate egg expenditures in state correctional centers when the price increase is \$0.0023 per egg while Panel B computes the additional aggregate expenditures when the price increase is \$0.0094 per egg. Panel A shows that with 32,330 inmates, Missouri would nearly spend an additional \$18,000 in 2015 on eggs for prisoners because of the implementation of California's Proposition 2 and AB 1437. Panel B reports that if the price increase were nearly 1 cent per egg, the expenditures on eggs for inmates would increase nearly \$77,000 in 2015. According to my estimates, the six states combined would spend at least an additional \$75,000 in 2015 on eggs and the additional expenditures on eggs could be more than \$300,000 a year.

¹¹ The data were obtained from the following website: <https://nicic.gov/statestats/>.

Table 2
Aggregate Increase in Egg Expenditures
For Prisoners in Six States, 2015

(See Tables on Following Pages)

Panel A: Egg price increase equals \$0.0023 per egg

State	Inmates in state prison	Egg consumption per person	Egg price increase	Aggregate no. of eggs consumed by inmates	Additional expenditures on eggs
AL	30,810	254.1	\$0.0023	7,828,821	\$18,006.29
IA	8,849	254.1	\$0.0023	2,248,531	\$5,171.62
KY	21,701	254.1	\$0.0023	5,514,224	\$12,682.72
MO	32,330	254.1	\$0.0023	8,215,053	\$18,894.62
NE	5,372	254.1	\$0.0023	1,365,025	\$3,139.56
OK	28,547	254.1	\$0.0023	7,253,793	\$16,683.72
					\$74,578.53

Panel B: Egg price increase equals \$0.0094 per egg

State	Inmates in state prison	Egg consumption per person	Egg price increase	Aggregate no. of eggs consumed by inmates	Additional expenditures on eggs
AL	30,810	252.9	\$0.0094	7,791,849	\$73,243.38
IA	8,849	252.9	\$0.0094	2,237,912	\$21,036.37
KY	21,701	252.9	\$0.0094	5,488,183	\$51,588.92
MO	32,330	252.9	\$0.0094	8,176,257	\$76,856.82
NE	5,372	252.9	\$0.0094	1,358,579	\$12,770.64
OK	28,547	252.9	\$0.0094	7,219,536	\$67,863.64
					\$303,359.77

I consider one more experiment with respect to the impact that California's cage-system regulations have on egg expenditures for people housed in state prisons. Suppose both Proposition 2 and AB 1437 are the law for a generation. In other words, suppose the price increase that occurred because of California's regulations last for the next twenty-five years. I consider the discounted sum of additional egg expenditures for prisoners in the same six states. I assume the prison population is constant. I also assume that the egg price increase is constant over time. I use a discount factor of 4 percent and compute the discounted sum of additional egg expenditures for prisoners for twenty-five years for each state. Table 3 presents the findings of the additional state expenditures on eggs over a generation.

Table 3
Projected Discounted sum of Additional
Egg Expenditures by State, 2015-2040

State	Discounted sum of additional egg expenditures (low price increase)	Discounted sum of additional egg expenditures (high price increase)
AL	\$287,922	\$1,171,168
IA	\$82,694	\$336,373
KY	\$202,798	\$824,911
MO	\$302,127	\$1,228,947
NE	\$50,202	\$204,204
OK	\$266,774	\$1,085,145

State	\$1,192,517	\$4,850,748
Totals		

Based on these calculations, states will spend substantially more on purchasing eggs for prisoners owing to the California cage-system regulations. Over twenty-five years, the present value of the additional egg expenditures could be as low as \$50,000 by Nebraska, ranging up to as much as \$1.2 million by Missouri. Combined, these six states would spend at least an additional \$1.2 million up to as much as \$4.8 million on egg purchases over a generation.

Overall, I find that the California cage regulations have a sizeable dollar impact on state spending. For prison populations, the impact of the regulations on total egg expenditures could be nearly \$5 million over the next twenty-five years for just six of the states. If we were to aggregate the impact on the other 43 states, we would find a substantial dollar value associated with the impact that California cage-system regulations would have on total egg expenditures for prisoners. It is important to remember that the additional egg expenditures that states spend for prisoners' consumption is just one part of the additional costs. With more data, one could compute the additional expenditures associated with school purchases and the military.

4.2 *Welfare impacts*

In this section, I use the notion of compensating variation to examine how much people would have to be compensated in order to be just as well as off

under the California cage-system regulations as they are without the regulations. The analysis focuses on the impact that price increases associated with implementing the cage-system regulations; specifically, how much additional income would households need to be indifferent between an economy without the cage-system regulations and an economy with the regulations.

In this analysis, people derive utility from consuming eggs and all other goods and services. The ability of chickens to stand up and stretch in the larger cage systems does not enter directly into people's welfare. Without scientific evidence, eggs from egg-laying hens in larger cages have the nutritional value and taste as eggs from hens in the battery cage systems. In conducting this analysis, it is possible to quantify differential welfare impacts for households with different income levels. Insofar as eggs are relatively inexpensive, I present evidence that low-income households spend a larger fraction of their income on eggs. Therefore, low-income households may suffer a relatively greater welfare loss—read need to be compensated more—when the California care-system regulations went into effect.

The Bureau of Labor Statistics keeps expenditure data on various products in order to construct the cost of the market basket of consumer goods. The Consumer Expenditure Survey (CES) provides detailed expenditure data at different income levels. For instance, The 2015 CES reports annual expenditures by the sample 128,437 households. On average, these households spend \$55,978 a year with egg purchases totaling \$63 a

year. The average household, therefore, spends roughly 0.11 percent of their total consumer purchases on eggs. For households in the lowest income quintile—that is, the lowest twenty percent of households by income—egg purchases total \$48 out of total consumer purchases equal to \$24,475. Thus, the lowest income quintile households spend approximately 0.19 percent of their consumer spending on eggs. Nutritionally, eggs are a low-price source of protein. Based on the 2015 evidence, low-income households tend to spend a larger fraction of their monies on eggs than do higher income households.

In order to quantify the impact that California cage-system regulations have on welfare, I start with a log utility that is additively separable in eggs and all other goods. Based on the investment necessary to import eggs to the California market, we know that the price of eggs increased between 1.73 percent and 5.12 percent because of the regulations requiring larger cage systems for egg-laying hens. I calibrate a representative person's utility function and set the price of eggs so that my hypothetical person spends 0.11 percent of their income on eggs. I call this case my control setting. I then consider two treatment scenarios: in one setting the price of eggs increases 1.73 percent and in the other setting the price of eggs increases 5.12 percent. The purpose of the welfare analysis is to find out the percentage increase in income that would be necessary to make this representative household just as well off in one of the two treatment settings as the household is in the control setting. The compensation the household would need to be indifferent between the control and

the particular treatment settings being analyzed is a measure of the welfare cost of the California cage-system regulations.

First, consider the treatment for the representative household facing a 1.73 percent increase in the price of eggs. The representative household would be indifferent between the California cage-system regulations and the control setting if income is increased by \$0.75 per household.¹² This means that the representative household would have to be compensated \$0.75 per year to be indifferent between an economy with the California cage-system regulations and an economy without. In Table 4, I present the aggregate welfare costs for consumers in the six states: Alabama, Iowa, Kentucky, Missouri, Nebraska, and Oklahoma. In these six states, the aggregate welfare costs are nearly \$7.5 million. Due to the California cage-system regulations, the range of welfare losses in individual states are sizeable with Missouri households suffering welfare losses equal to \$1.783 million and Nebraska households suffering welfare losses equal to more than one-half million dollars.

¹² Note that the calculations indicate that in the model economy amount to a 1.18 percent in income. After converting the calibrated model economy to what that is equal to in terms of the actual economy. In other words, this is what the representative household would require to be indifferent between the economy with California cage-system regulations and the economy without.

Table 4
Aggregate Welfare Costs of the California
Cage-system Regulations in the Six States
given an Egg Price Increase Equal to \$0.0023
per Egg

State	No. of households	Aggregate Welfare Costs	Aggregate Welfare Costs for Lowest Quintile
AL	1,883,791	\$1,414,000	\$388,885
IA	1,721,576	\$1,292,239	\$355,398
KY	1,719,965	\$1,291,030	\$355,065
MO	2,375,611	\$1,783,167	\$490,415
NE	721,130	\$541,290	\$148,868
OK	1,460,450	\$1,096,234	\$301,492
Sum of all six states	9,882,523	\$7,417,961.02	\$2,040,123.47

In addition, I compute the aggregate welfare costs for the lowest income quintile in each of the six states. I follow the same procedure, calibrating the control setting so that the lowest income groups spend \$48 per year on eggs. To match the higher percentage of expenditures on eggs by those households in the lowest income quintile, I take into account that the price for eggs is lower for low-income households owing to means-tested subsidies such as food stamps. Because the price of eggs is

lower, the percentage increase in egg prices associated with the California cage-system regulations is higher. In the calibrated model economy, low-income quintiles face a 2.13 percent increase in the price of eggs. The representative household in the bottom quintile would be indifferent between the California cage-system regulations and the control setting if income was increased \$1.03 per year. In these six states, I compute the welfare impact is equal to slightly more than \$2 million a year. In the aggregate, I find that the Missouri households in the lowest income quintile suffer welfare loss equal to \$490 thousand per year because of the California cage-system regulations.

Next, I compute the welfare losses for the case in which egg prices increase 0.94 cents per egg. For the representative household, this would be a 5.12 percent increase in the price of eggs. To be indifferent between an economy with the California cage-system regulations and an economy without the regulations, each household would have to be compensated \$3 per year. The aggregate welfare losses for each of the six states are reported in Table 5. For a typical Missouri household, the aggregate welfare loss of the California cage-system regulations equal \$7.125 million a year. For the six states considered, the aggregate welfare loss is more than \$29 million per year.

I calculate the income compensation necessary to make the households in the lowest income quintile indifferent between the economy with the California cage-system regulations and the economy without any additional cage regulations. I find that the

lowest income quintile household would need \$4.13 in additional income to be indifferent between the two economies. This means that for the lowest income quintile, the welfare losses range from more than \$1.95 million a year (Missouri) to slightly less than \$600 thousand a year (Nebraska). The aggregate welfare loss for the lowest income quintile is \$8.157 million a year across all six states.

Table 5

State	No. of households	Aggregate Welfare Costs	Aggregate Welfare Costs for Lowest Quintile
AL	1,883,791	\$5,650,177	\$1,555,061
IA	1,721,576	\$5,163,635	\$1,421,153
KY	1,719,965	\$5,158,803	\$1,419,823
MO	2,375,611	\$7,125,324	\$1,961,056
NE	721,130	\$2,162,939	\$595,290
OK	1,460,450	\$4,380,422	\$1,205,595
Sum of all six states	9,882,523	\$29,641,292	\$8,157,978

**Aggregate Welfare Costs of the California
Cage-system Regulations in the Six States
given an Egg Price Increase Equal to \$0.0094
per Egg**

Suppose I extend the analysis to compute the aggregate welfare loss in the United States. At 0.94 cents price increase per egg, the welfare loss due to the California cage-system regulations is more than \$350.7 million a year for all U.S. households. For the lowest income quintile in the U.S., the aggregate welfare loss is more than \$96.5 million a year.¹³

5. Summary

There are large economic impacts associated with the laws passed by California voters and the California Assembly. These two laws impose new cage-system regulations on all egg producers located within California and all egg producers seeking to sell eggs in California. In this report, I first compute the effect that Proposition 2 and AB 1437—the California cage-system regulations—would have on the national price of eggs because of the higher costs imposed on egg farmers. In order to satisfy the number of eggs imported into California, the average cost of producing eggs would need to increase between 0.23 cents and 0.94 cents per egg. I assume that in a competitive market, the price of eggs increased by the increase in the average costs of producing eggs. The upshot is that the national price of a dozen eggs would increase between 1.763

¹³ The values for aggregate U.S. welfare loss are computed as follows. There are 135,697,926 households in the U.S. according to the 2015 Census Bureau estimates. So, compute the number of households by \$3 welfare loss per household to get \$407,007,590. There are 27,139,585 households in the lowest income quintile. At a welfare loss of \$4.13 per household, the aggregate welfare loss is \$112,018,029 for all households in the lowest income quintile. See <https://www.census.gov/quickfacts/fact/table/US/PST045216>.

percent and 5.12 percent relative to the January 2015 price because of the California cage-system regulations.

Given the increase in egg prices, it is possible to see the impact on other states. I report the outcomes of two specific impacts. First, prisoners in other states will continue to eat eggs at the same rate as the typical person. Because of the egg price increase that is caused by the California cage-system regulations, states will pay a higher price to feed their prisoners. I consider six states: Alabama, Iowa, Kentucky, Missouri, Nebraska, and Oklahoma. Given the 2015 prison populations the California cage-system regulations would add between \$3,000 and \$12,000 to Nebraska's prison egg purchases. For Missouri and Alabama, which are states with larger prison populations, the annual additional prison egg expenditures are between \$18,000 and \$75,000 per year. When you look at the impact on prison egg expenditures over a generation, the discounted sum over the six states is between \$1.2 million and \$5 million over the next twenty-five years. Thus, there is a sizeable expenditure increase imposed on states that exists because of the California cage-system regulations

Next, I compute the welfare losses associated with the California cage-system regulations. Welfare loss tells you how much extra income a person would have to receive to be indifferent between the economy with the California cage-system regulations—with the price increase—and the economy with no such regulations. In the small-price increase setting (price increase equal 0.23 cents per

egg), Missouri households, for example would need nearly \$1.7 million to be indifferent. Because low-income households spend relatively more on eggs, those Missouri households in the lowest income quintile would need more than \$500 thousand a year to be as well off with the California cage-system regulations as they were without. In the large-price increase scenario (price increase equal 0.94 cents per egg), households in all six states considered would need more than \$29 million a year to be as well off. For those households in the lowest income quintile, aggregate welfare losses equal more than \$8 million a year in the six states. Extending the welfare losses nationwide, I find that welfare is more than \$407 million with the low-income quintile households suffering more than \$112 million in aggregate welfare losses.

No.____, Original

In the Supreme Court of the United States

STATE OF MISSOURI, STATE OF ALABAMA,
STATE OF ARKANSAS, STATE OF INDIANA,
STATE OF IOWA, STATE OF LOUISIANA,
STATE OF NEBRASKA, STATE OF NEVADA,
STATE OF NORTH DAKOTA,
STATE OF OKLAHOMA, STATE OF TEXAS,
STATE OF UTAH, AND STATE OF WISCONSIN,
Plaintiffs,

v.

STATE OF CALIFORNIA,
Defendant.

**BRIEF IN SUPPORT OF MOTION FOR
LEAVE TO FILE BILL OF COMPLAINT**

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INTRODUCTION

Since 2015, the State of California has imposed onerous production standards on eggs shipped to California from other States. California's policy inflates egg prices for consumers across the nation and imposes hundreds of millions of dollars in costs on the agricultural sector. California's requirements violate a federal statute that prohibits any state or local authority from imposing, on eggs shipped in interstate commerce, standards that are "in addition to or different from" federal standards. 21 U.S.C.

§ 1052(b). California's requirements also violate the Commerce Clause because they discriminate against out-of-state producers, they are solely extraterritorial in effect, and the burdens they impose on interstate commerce decisively outweigh any putative local benefits. Thirteen States have joined this action challenging the validity of these regulations under the U.S. Constitution and federal statutes.

STATEMENT

I. Federal law requires national uniform standards for eggs shipped in interstate or foreign commerce.

Since 1946, Congress has adopted and repeatedly reaffirmed a strong federal policy in favor of national uniform standards for agricultural products. In the Agricultural Marketing Act of 1946, Congress directed the Secretary of Agriculture to "conduct, assist, and foster research, investigation, and experimentation to determine the best methods of processing, preparation for market, packaging, handling, transporting, storing, distributing, and marketing agricultural products." 7 U.S.C. § 1622(a). Congress

further directed that the Secretary should issue regulations that “develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices” for agricultural products. 7 U.S.C. § 1622(c) (emphasis added).

In the ensuing years, Congress determined that uniform standards in the interstate market for eggs, in particular, were critical both for public-health and economic reasons. Congress desired both to address public-health concerns and to promote interstate trade of eggs by eliminating artificial barriers in the interstate egg market. In 1970, responding to such concerns, Congress enacted the Egg Products Inspection Act (“EPIA”), 21 U.S.C. § 1031 *et seq.*, at the urging of the Department of Agriculture.

In the EPIA, Congress sought to promote free and unhindered commerce in the interstate market for eggs and egg products. Congress saw the need to “insure uniformity of labeling, standards, and other provisions and enhance the free movement of eggs and egg products in interstate commerce.” H.R. Rep. No. 91-1670 (Dec. 3, 1970), 1970 WL 5922, at *5246. To this end, the EPIA “provide[d] that no state or local jurisdiction could impose labeling, packaging, or ingredient requirements for officially inspected egg products which are in addition to or different from those imposed under the [EPIA] or the federal Food, Drug, and Cosmetic Act or the Fair Packaging and Labeling Act.” *Id.* Further, under the EPIA, “no state or local jurisdiction could restrict the entry of shell eggs to only those meeting certain of the federal grade

standards or weight classes or otherwise require the use of shell egg standards of quality, condition, quantity, or grade in addition to or different from the federal standards.” *Id.*

To achieve these Congressional goals, the EPIA imposed national uniform standards of quality and production for egg products, and it expressly preempted any state or local standards for eggs that differ from the federal standards. The EPIA declares “the policy of the Congress to provide for . . . uniformity of standards for eggs.” 21 U.S.C. § 1032.

Most critically, section 1052(b) of the EPIA provides: “For eggs which have moved or are moving in interstate or foreign commerce, no State or local jurisdiction may require the use of standards of quality, condition, weight, quantity, or grade which are *in addition to or different from* the official Federal standards . . .” 21 U.S.C. § 1052(b) (emphasis added). Federal standards are the sole standards that govern eggs shipped in interstate commerce.

The U.S. Department of Agriculture’s regulations implement this statutory directive by providing that “[f]or eggs that moved or are moving in interstate or foreign commerce, no State or local jurisdiction . . . [m]ay require the use of standards of quality, condition, grade, or weight classes which are in addition to or different than the official standards” 7 C.F.R. § 57.35(a)(1)(i).

This Court’s cases leave no doubt about the import of the EPIA’s preemption clause. An identical preemption provision in the Federal Meat Inspection Act prohibits the States from imposing standards for

slaughterhouses that are “in addition to, or different than” federal standards. *See* 21 U.S.C. § 678 (providing that “[r]equirements” for animal slaughterhouses “which are in addition to, or different than those made under this [Act] may not be imposed by any State”).

In *National Meat Association v. Harris*, this Court unanimously held that the FMIA’s preemption clause preempted a California statute that prohibited the slaughter of nonambulatory animals for human consumption. 565 U.S. 452, 459 (2012). The Court held that the FMIA’s preemption clause “prevents a State from imposing any additional or different—even if non-conflicting—requirements” on the agricultural products covered by the Act. *Id.* at 459–60. Likewise, the EPIA’s preemption clause “covers not just conflicting, but also different or additional state requirements,” and it “precludes California’s effort . . . to impose new rules, beyond any the [federal government] has chosen to adopt,” for eggs shipped from other States. *Id.* at 460–61.

The EPIA’s preemption clause thus prohibits States such as California from imposing non-federal standards on eggs shipped in interstate commerce. *See also, e.g., Campbell v. Hussey*, 368 U.S. 297, 300–02 (1962) (holding that Congress’s adoption of national uniform standards for an agricultural product “left no room for any supplementary state regulation concerning those same types”); *United Egg Producers v. Davilla*, 878 F. Supp. 106, 108–09 (D.P.R. 1994), *aff’d*, *United Egg Producers v. Dep’t of Agric. of Com. of Puerto Rico*, 77 F.3d 567 (1st Cir. 1996)

(holding that Puerto Rico’s regulations of eggs were preempted by the EPIA’s preemption clause).

II. California purports to impose unique, onerous standards on egg producers in other States.

In November 2008, California voters enacted Proposition 2, a ballot initiative that prohibited California farmers from employing methods of agricultural production that are common throughout the United States. *See* Cal. Health & Safety Code §§ 25990-25994. As relevant here, Proposition 2 directed that “a person shall not tether or confine any covered animal,” including any egg-laying hen, “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.” Cal. Health & Safety Code § 25990(a)–(b). In other words, Proposition 2 prevents California farmers from housing egg-laying hens in cages that prevent hens from “fully extending” their wings or “[t]urning around freely.” *Id.* Violations are misdemeanors punishable by a \$1,000 fine and 180 days in county jail. *Id.* § 25993. The effective date of Proposition 2 was January 1, 2015.

These requirements are contrary to common agricultural practices elsewhere in the United States, and they are not required by any federal standards for egg production. *See* Daniel Sumner, et al., University of California Agricultural Issues Center, *Economic Effects of Proposed Restrictions on Egg-Laying Hen Housing in California*, at ii (2008), available at <http://aic.ucdavis.edu/publications/eggs/egginitiative.pdf> (noting that “the share of non-cage production” of

eggs in the United States “is quite small, about 5 percent of the total, including the non-cage eggs that also qualify as organic”).

California farmers and economists immediately raised concerns that Proposition 2’s restrictions would place California farmers at a competitive disadvantage with respect to non-California farmers in the California egg market. These researchers forecast that California egg producers would have to invest approximately \$385 million in capital improvements to comply with Proposition 2. *See, e.g.,* Hoy Carman, *Economic Aspects of Alternative California Egg Production Systems*, at 22 (2012), available at https://www.cdffa.ca.gov/ahfss/pdfs/regulations/Dr_Hoy_Carman.pdf. One such analysis reported that “[t]he best evidence . . . suggests that (non-organic) non-cage systems incur costs of production that are at least 20 percent higher than the common cage housing systems.” Sumner, *supra* at ii. The same study stated that “[r]etail prices for non-organic non-cage eggs are at least 25 percent higher than those for eggs produced in cage systems.” *Id.* The analysis noted that “there is now a national market for eggs in the United States,” and “the California egg industry competes vigorously with egg production in other States.” *Id.* at iii. The study concluded that, if passed, Proposition 2 “would raise costs of California producers by at least 20 percent relative to its out-of-state competitors.” *Id.*

Reacting to such forecasts, the California legislature sought to “level the playing field” by making egg production equally onerous for all out-of-state producers that ship eggs to California. In 2010,

the California legislature enacted Assembly Bill 1437 (“AB 1437”), which imposed on non-California producers the same standards that Proposition 2 had imposed on California producers, with the same effective date. AB 1437 added Section 25996 to the California Health and Safety Code, which provides that “[c]ommencing 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).” Calif. Health & Safety Code § 25996. Violations of the new Section 25996 are also misdemeanors punishable by 180 days in county jail or a \$1,000 fine. *Id.* § 25996.1.

Because Proposition 2 had already imposed these restrictions on California producers, the sole purpose and effect of AB 1437 was to regulate the conduct of egg producers outside California. The California Assembly’s Appropriations Committee explained that “the intent of this legislation is to level the playing field so that in-state producers are not disadvantaged” by Proposition 2. California Assembly Committee on Appropriations, Bill Analysis of AB 1437, at 1 (May 13, 2009), *available at* http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1401-1450/ab_1437_cfa_20090512_182647_asm_comm.html. “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.” *Id.*

The California Department of Food and Agriculture’s implementing regulations reinforced the

impact of AB 1437 on non-California producers. These regulations provide that “[c]ommencing 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,” including “a minimum of 116 square inches of floor space per bird” for enclosures of nine or more hens. Cal. Code Regs. tit. 3, § 1350(d)(1). California regulations also provide that, “commencing January 1, 2015, the principal display panel for containers for all eggs sold in California shall have the following statement: ‘California Shell Egg Food Safety Compliant’.” *Id.* § 1354(f).

The passage of AB 1437 imposed significant burdens on non-California egg producers because California is a major net importer of shell eggs. For example, Missouri farmers produced nearly 2 billion eggs in 2012 and generated approximately \$170 million in revenue for producers in the State. See USDA National Agricultural Statistics Service, Poultry – Production and Value 2012 Summary, at 12 (April 2013), *available at* <http://usda.mannlib.cornell.edu/usda/nass/PoulProdVa//2010s/2013/PoulProdVa-04-29-2013.pdf> (“NASS Report”). In 2012, almost one third of Missouri’s eggs—about 600 million eggs—were sold in California, comprising 13 percent of California’s imports. Don Bell, et al., University of California, Egg Economics Update #338 at 5 (Oct. 2013) (“Bell Update”). Similarly, as of 2012, Iowa farmers produced nearly 15 billion eggs and sold 1.3 billion of these eggs per year to California, comprising 30 percent of California’s imports. NASS Report at 12; Bell Update at 5. Overall, as of 2012, California

produced approximately 5 billion eggs each year and imported another 4 billion from other States. NASS Report at 12; Bell Update at 1, 5. Thus, California is both the largest egg market in the United States, and the largest net importer of eggs.

Further, California offends the sovereignty of other egg-producing States by projecting its enforcement authority into their borders. California enforces its regulations by sending its agricultural inspectors into other States to inspect egg-producing facilities and certify their compliance with AB 1437. In the words of one media report, AB 1437 “has farmers rushing to modify their coops while California agricultural agents crisscross the country certifying operations.” Derek Wallbank & Alan Bjerga, *California’s Humane-Chicken Act Complicates U.S. Farm Law*, BLOOMBERG (Dec. 23, 2014), at <https://www.bloomberg.com/news/articles/2014-12-23/california-s-humane-chicken-act-complicates-u-s-farm-law>.

III. The California Regulations have had a far-reaching and negative economic impact on the Plaintiff States and their citizens.

Since the effective date of Proposition 2 and AB 1437 on January 1, 2015, California’s requirements for egg producers outside California have been felt across the country. Sections 25990–25996 of the California Health and Safety Code and their implementing regulations, including Cal. Code Regs. tit. 3, § 1350 et seq., as applied to eggs shipped in interstate or foreign commerce (collectively, the “California Regulations”), have inflated egg prices for all American consumers, imposed hundreds of

millions of dollars in costs on the agricultural sector, and inflicted hundreds of millions of dollars of welfare losses on American households.

As a direct result of the California Regulations, egg farmers in other States have incurred and will incur costs that are between \$228 million and \$912 million to comply with AB 1437, based on conservative assumptions. *See* Joseph H. Haslag, Ph.D., *California Cage-System Regulations: The Economic Impacts on Prices, State Government Expenses and Welfare Losses* (2017), at A–3 (attached to proposed Bill of Complaint as Exhibit A). These costs have been and will be passed on to consumers. Further, as a direct result of AB 1437, egg prices have increased nationwide by as much as 1.73 percent to 5.12 percent. *Id.* at A–6.

The California Regulations impose significant welfare losses on consumers across the United States. Based on reasonable assumptions, the California Regulations impose a welfare loss on consumers nationwide up to \$350.7 million per year, including a welfare loss of \$96.5 million on households in the lowest-income quintile of Americans. *Id.* at A–4.

The welfare loss that the California Regulations impose on Missouri consumers is likewise significant. For Missouri households, the welfare loss is between \$1.75 million and \$7.4 million per year, including a welfare loss between \$500,000 and \$1.96 million imposed on the lowest-income quintile of Missouri households. *Id.*

The California Regulations adversely impact state budgets. Many state institutions are direct consumers of eggs, and States are suffering increased costs

because of the California Regulations. For example, the cost of feeding people in Missouri’s state prisons alone has increased by an estimated \$18,000 and \$76,000 per year. *Id.* at A–3. An analysis of six state’s prison budgets found that their food prices have likely increased by \$75,000 to \$300,000 a year as a direct result of the California Regulations. *Id.* These numbers do not include the significant increased costs of direct egg consumption incurred by many other state agencies and institutions, such as educational institutions.

IV. A pre-enforcement challenge to the California Regulations was dismissed without prejudice for lack of standing.

In 2014, Missouri and five other States brought a pre-enforcement challenge to the California Regulations, but the Ninth Circuit ruled that those States failed to establish standing and ordered the case dismissed without prejudice. *See Missouri ex rel. Koster v. Harris*, 847 F.3d 646 (9th Cir. 2017), *cert. denied sub nom. Missouri ex rel. Hawley v. Becerra*, 137 S. Ct. 2188 (2017). The Ninth Circuit held that the complaint in that case had alleged only an impact on “egg farmers” and not on a “sufficiently substantial segment” of the population: “In short, the complaint alleges the importance of the California market to *egg farmers* in the Plaintiff States and the difficult choice that *egg farmers* face in deciding whether to comply with the Shell Egg Laws. The complaint contains no specific allegations about the statewide magnitude of these difficulties or the extent to which they affect more than just an ‘identifiable group of individual’ egg farmers.” *Id.* at 652 (emphases in original).

The Ninth Circuit also held that the complaint had failed to allege a substantial impact on the plaintiffs’ *consumers* because its allegations about the then-anticipated fluctuations in egg prices were both “speculative” and “inconsistent,” and thus too “remote, speculative, and contingent upon the decisions of many independent actors in the causal chain” to support Article III standing. *Id.* at 654. Because the plaintiffs “could allege post-effective-date facts that might support standing,” the Ninth Circuit held that the case should be dismissed without prejudice, to permit the plaintiffs to file a post-enactment challenge. *Id.*

ARGUMENT

Article III of the U.S. Constitution provides that “[i]n all Cases . . . in which a State shall be Party, the supreme Court shall have original Jurisdiction.” U.S. CONST. art. III, § 2, cl. 2. Further, 28 U.S.C. § 1251(a) provides: “The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.” 28 U.S.C. § 1251(a). “[C]ontroversies between two or more States” are the only cases of which this Court has exclusive jurisdiction. The Court has “original but not exclusive jurisdiction” of all other cases that fall within its original jurisdiction under Article III. 28 U.S.C. § 1251(b).

For many decades, this Court has exercised its discretion to decline to consider cases that fall within its original but non-exclusive jurisdiction. *See, e.g., Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 498–99 (1971); *Massachusetts v. Missouri*, 308 U.S. 1, 19–20 (1939). As late as 1972, however, the Court presumed that its *exclusive* original jurisdiction over

disputes between States was “mandatory.” *Illinois v. City of Milwaukee*, 406 U.S. 91, 98 (1972).

In 1976, this Court held for the first time that it would decline to exercise jurisdiction over a controversy between States that fell within its original and exclusive jurisdiction. *Arizona v. New Mexico*, 425 U.S. 794, 797–98 (1976).¹ The Court has reaffirmed this practice, stating that “[i]n recent

¹ Two months earlier, in *Colorado River Water Conservation District v. United States*, this Court had reaffirmed the “virtually unflagging obligation of the federal courts to exercise the jurisdiction given them.” 424 U.S. 800, 817 (1976); *see also* *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) (Marshall, C.J.); *Sprint Communications, Inc. v. Jacobs*, 134 S. Ct. 584, 591 (2013). Because of the tension between these two holdings, this Court’s practice of declining to exercise its original and exclusive jurisdiction has engendered controversy from its outset. *See, e.g., Arizona v. New Mexico*, 425 U.S. 794, 798–99 (1976) (Stevens, J., concurring); *California v. West Virginia*, 454 U.S. 1027, 1027–28 (1981) (Stevens, J., dissenting); *Louisiana v. Mississippi*, 488 U.S. 990, 990 (1988) (White, J., joined by Stevens, J., and Scalia, J., dissenting from denial of leave to file bill of complaint); *Nebraska v. Colorado*, 136 S. Ct. 1034, 1034–35 (2016) (Thomas, J., joined by Alito, J., dissenting from denial of leave to file bill of complaint); *New Mexico v. Colorado*, 137 S. Ct. 2319, 2319 (2017) (Thomas, J., joined by Alito, J., dissenting from denial of leave to file bill of complaint). If the Court wishes to reconsider its practice of declining to exercise its original and exclusive jurisdiction over controversies between States, this motion presents an appropriate vehicle to do so, and the reasons for doing so stated in the above-cited opinions are persuasive. “It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.” *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) (Marshall, C.J.).

years, we have consistently interpreted 28 U.S.C. § 1251(a) as providing us with substantial discretion to make case-by-case judgments as to the practical necessity of an original forum in this Court for particular disputes within our constitutional original jurisdiction.” *Texas v. New Mexico*, 462 U.S. 554, 570 (1983).

The Court considers two principal factors in deciding whether to exercise its original jurisdiction over disputes between States. “Determining whether a case is ‘appropriate’ for [this Court’s] original jurisdiction involves an examination of two factors.” *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992). “First, we look to the nature and the interest of the complaining State, focusing on the seriousness and dignity of the claim.” *Id.* (citations and quotation marks omitted). “Second, we explore the availability of an alternative forum in which the issue tendered can be resolved.” *Id.* Both of these factors support exercising jurisdiction in this case.

I. The interest of the Plaintiff States and the “seriousness and dignity” of their claims warrant the exercise of jurisdiction in this case.

Here, “the nature of the interest of the complaining State[s],” and “the seriousness and dignity of the claim[s]” raised by the Plaintiff States, *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992), support granting leave to file the bill of complaint. First, the issues at stake are “serious” because they have grave consequences for the national agricultural economy, food prices for poor and marginal persons, and state budgets nationwide. The California

Regulations have imposed hundreds of millions of dollars in costs on the agricultural sector of the national economy, and are imposing hundreds of millions of dollars of welfare losses spread across virtually every household in America, including low-income households that can ill afford them. Further, the dispute concerns whether the State of California, exercising its outsize market power in interstate markets for agricultural products, should be permitted to disregard federal law and dictate the agricultural policy of all other States.

This Court has held that it was “beyond peradventure” that a dispute between two States involving a single Commerce Clause claim—on an issue that was of interest solely to those two States—satisfied the “seriousness and dignity” requirement of the Court’s discretionary jurisdiction. *Wyoming v. Oklahoma*, 502 U.S. 437, 440, 451 (1992). In *Wyoming v. Oklahoma*, this Court addressed Wyoming’s motion for leave to file a bill of complaint to raise a challenge to an Oklahoma statute under the Commerce Clause. 502 U.S. at 440; *see also Wyoming v. Oklahoma*, 487 U.S. 1231 (1988) (granting this motion for leave to file a bill of complaint). Wyoming challenged an Oklahoma statute requiring a certain proportion of coal used in coal-fired power plants to originate from Oklahoma. This Court held that “[i]t is beyond peradventure that Wyoming has raised a claim of sufficient ‘seriousness and dignity’” to justify this Court’s exercise of jurisdiction. 502 U.S. at 451 (quoting *Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1972)).

The fact that Oklahoma's statute directly impacted Wyoming's public fisc contributed to this Court's conclusion. "Oklahoma, acting in its sovereign capacity, passed the Act, which directly affects Wyoming's ability to collect severance tax revenues, an action undertaken in its sovereign capacity. As such, Wyoming's challenge under the Commerce Clause precisely 'implicates serious and important concerns of federalism fully in accord with the purposes and reach of our original jurisdiction.'" *Id.* at 451 (quoting *Maryland v. Louisiana*, 451 U.S. 725, 744 (1981)).

Principles of federalism counsel in favor of exercising jurisdiction in such cases, including claims of federal preemption of rival State's statutes. When asserting its citizens' interests under federal statutes, such as the EPIA, "the State need not wait for the Federal Government to vindicate the State's interest in the removal of barriers to the participation by its residents in the free flow of interstate commerce." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 608 (1982). "[F]ederal statutes creating benefits or alleviating hardships," such as the EPIA, "create interests that a State will obviously wish to have accrue to its residents." *Id.* "[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," including those that arise from federal statutes, "are not denied to its general population." *Id.*

Protecting citizens from increased costs for basic food staples "is surely a legitimate object of [state] 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.” *Id.* at 609–10.

For at least two reasons, this case presents a significantly stronger candidate for this Court’s jurisdiction than did *Wyoming v. Oklahoma* and similar cases. The case involves a dispute involving not just two States, but thirteen States. And the case raises not just a claim under the dormant Commerce Clause, but a federal preemption claim under the Supremacy Clause that advances a critical congressional policy. *See, e.g., Connecticut v. New Hampshire*, No. 119, 1992 WL 12620398, at *1–*2 (U.S. Dec. 30, 1992) (leave granted to three States to file a bill of complaint raising preemption and Commerce Clause challenges to New Hampshire’s *ad valorem* tax on nuclear station property).

Indeed, the “central concern” of the Commerce Clause—especially its dormant or negative component—was to prevent the friction between States arising from interstate trade barriers that plagued the Articles of Confederation. *Hughes v. Oklahoma*, 441 U.S. 322, 325–26 (1979). “The few simple words of the Commerce Clause . . . reflected a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation.” *Id.* As James Madison commented, if the individual States “[w]ere . . . at liberty to regulate the trade between State and State,”

interstate trade barriers “would nourish unceasing animosities, and not improbably terminate in serious interruptions of the public tranquility.” THE FEDERALIST No. 42 (Madison), at 214 (Garry Wills, ed. 1982).

For these reasons, “[t]rade barriers may cause a blight no less serious than the spread of noxious gas over the land or the deposit of sewage in the streams. They may affect the prosperity and welfare of a State as profoundly as any diversion of waters from the rivers.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 606 (1982) (square brackets omitted) (quoting *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 450–51 (1945)). Where the “economy of [each Plaintiff State] and the welfare of her citizens have seriously suffered as the result” of the challenged trade barrier, the State has a core sovereign interest in seeking relief against “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.” *Georgia v. Pennsylvania R. Co.*, 324 U.S. at 450–51.

II. No alternative forum is clearly available in which the issues raised in the bill of complaint can be resolved.

In deciding whether to exercise its original jurisdiction, this Court also “explore[s] the availability of an alternative forum in which the issue tendered can be resolved.” *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992). Here, no alternative forum is available to the Plaintiff States because this case falls within this Court’s exclusive jurisdiction under 28 U.S.C. § 1251(a) and there exists no alternative

proceeding involving other parties in which the validity of California’s regulations may be resolved.

First, no alternative forum is clearly available in which the Plaintiff States themselves could bring this lawsuit. *Mississippi*, 506 U.S. at 77. In reviewing the lower courts’ jurisdiction to hear disputes between States, this Court has applied a strict interpretation to 28 U.S.C. § 1251(a) to foreclose lower-court jurisdiction. *Id.* The argument that a district court may exercise jurisdiction over a dispute between States, this Court held, “founders on the uncompromising language of 28 U.S.C. § 1251(a), which gives to this Court ‘original and *exclusive* jurisdiction of all controversies between two or more States.’” *Id.* (quoting 28 U.S.C. § 1251(a)) (emphasis added by the *Mississippi* Court).

“Though phrased in terms of a grant of jurisdiction to this Court, the description of our jurisdiction as ‘exclusive’ necessarily denies jurisdiction of such cases to any other federal court.” *Id.* at 77–78. “This follows from the plain meaning of ‘exclusive’ and has been remarked upon by opinions in our original jurisdiction cases.” *Id.* at 78 (citations omitted) (citing *California v. Arizona*, 440 U.S. 59, 63 (1979) (“[A] district court could not hear [California’s] claims against Arizona, because this Court has exclusive jurisdiction over such claims”)).

Second, when considering whether the issue might be addressed in a proceeding involving *other* parties, the “availability of an alternative forum,” *id.* at 77, turns on whether there is an *already pending* action that might resolve the same issues—not on speculation that such an action might be filed by other

parties in the future. *See, e.g., Arizona v. New Mexico*, 425 U.S. 794, 797–99 (1976) (declining to exercise original jurisdiction because “the *pending* state-court action provides an appropriate forum in which the Issues tendered here may be litigated”) (emphasis added).

In fact, this Court has expressly held that an already-pending action is required before the Court will conclude that a proceeding involving other parties presents an “alternative forum in which the issue tendered can be resolved.” *Mississippi v. Louisiana*, 506 U.S. at 77. In *Wyoming v. Oklahoma*, this Court held that no alternative forum existed for Wyoming’s challenge to an Oklahoma statute under the dormant Commerce Clause. Even though well-heeled private parties had standing and certainly *could* have brought their own legal challenge, they had not done so. 502 U.S. at 451–52. As this Court stated, “Oklahoma makes much of the fact that the mining companies affected in Wyoming could bring suit raising the Commerce Clause challenge, as private parties aggrieved by state action often do.” *Id.* at 451. “For reasons unknown, however, they have chosen neither to intervene in this action nor to file their own, whether in state or federal court.” *Id.* at 451–52.

Because “no pending action exist[ed]” that raised the same issue, *Wyoming v. Oklahoma* held that no alternative forum to address the issue was available and that its exercise of original jurisdiction was proper. *Id.* at 452. “As such, *no pending action exists* to which we could defer adjudication on this issue.” *Id.* (emphasis added) (citing *Illinois v. City of Milwaukee*, 406 U.S. 91, 98 (1972)); *Washington v. General*

Motors, 406 U.S. 109 (1972)). The Court concluded that “[i]t was proper to entertain this case without assurances, notably absent here, that a State’s interests under the Constitution will find a forum for appropriate hearing and full relief.” *Id.*

The same is equally true in this case. To the knowledge of the Plaintiff States, “[n]o pending action exists,” *id.*, that would address the validity of the California Regulations. The only prior challenge of which the Plaintiff States are aware—their own pre-enforcement challenge—was dismissed without prejudice, with leave to re-file the challenge after the Regulations’ effective date. *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 654 (9th Cir. 2017).

Moreover, even if speculative future legal challenges could be considered, there is no clear prospect of any such future challenge, other than the efforts of the Plaintiff States in this case. Proposition 2 and AB 1437 have been in effect since January 1, 2015—for almost two years—and no challenge to their validity other than that of the Plaintiff States has materialized. Egg consumers are too diffuse a group, and each individual injury too small, to raise any reasonable expectation of a legal challenge other than this case. Egg consumers nationwide are left injured with no clear redress, absent intervention by this Court.

For these reasons, the Court should conclude that no alternative forum is available to address the issues presented in the Bill of Complaint.

CONCLUSION

For the foregoing reasons, the Plaintiff States respectfully request that this Court grant their Motion for Leave to File Bill of Complaint.

Respectfully submitted,

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