

No. 220148

IN THE
Supreme Court of the United States

STATE OF MISSOURI, ET AL.,
Plaintiffs,

v.

STATE OF CALIFORNIA,
Defendant.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

**BRIEF FOR ASSOCIATION
OF CALIFORNIA EGG FARMERS AS
AMICUS CURIAE IN SUPPORT OF DEFENDANT**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF AMICUS CURIAE	1
INTRODUCTION	2
SUMMARY OF ARGUMENT.....	3
ARGUMENT.....	5
I. PLAINTIFFS ARE UNABLE TO DEMONSTRATE THAT THEY HAVE SUFFERED ANY INJURY ATTRIBUTABLE TO THE CALIFORNIA REGULATIONS	5
A. Plaintiffs Allege Harm From A Purported Nationwide Increase In The Price Of Eggs Due To The California Regulations	5
B. Plaintiffs’ Assertion That The California Regulations Have Caused Nationwide Egg Prices To Rise Is Based On The Haslag Report.....	7
C. The Haslag Report Is Fundamentally Flawed And Does Not Establish Any Harm To Plaintiffs Or Their Citizens Attributable To The California Regulations	10
II. THE COURT SHOULD DENY PLAINTIFFS’ MOTION FOR LEAVE TO FILE THEIR COMPLAINT BECAUSE PLAINTIFFS ARE UNABLE TO SHOW ANY INJURY ATTRIBUTABLE TO THE CALIFORNIA REGULATIONS.....	15

TABLE OF CONTENTS—Continued

	Page
A. Plaintiffs’ Lack Of Standing Precludes This Court From Exercising Jurisdiction.....	16
B. Plaintiffs’ Claims Lack The Seriousness And Dignity That Would Justify The Exercise Of This Court’s Jurisdiction.....	19
CONCLUSION	21

TABLE OF AUTHORITIES

CASES

	Page(s)
<i>Arizona v. New Mexico</i> , 425 U.S. 794 (1976)	19
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	17
<i>Clapper v. Amnesty International USA</i> , 568 U.S. 398 (2013)	19
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992)	16, 17
<i>Maryland v. Louisiana</i> , 451 U.S. 725 (1981)	21
<i>Massachusetts v. Missouri</i> , 308 U.S. 1 (1939)	16, 17
<i>Mississippi v. Louisiana</i> , 506 U.S. 73 (1992)	19
<i>Missouri ex rel. Koster v. Harris</i> , 847 F.3d 646 (9th Cir. 2017).....	3, 5, 6
<i>Missouri ex rel. Koster v. Harris</i> , 58 F. Supp. 3d 1059 (E.D. Cal. 2014).....	3
<i>New York v. New Jersey</i> , 256 U.S. 296 (1921)	19
<i>Pennsylvania v. New Jersey</i> , 426 U.S. 660 (1976)	16, 18, 19
<i>Wyoming v. Oklahoma</i> , 502 U.S. 437 (1992)	16, 19, 20

TABLE OF AUTHORITIES—Continued

	Page(s)
DOCKETED CASES	
<i>Indiana v. Massachusetts</i> , No. 220149 (U.S.)	14
STATUTES AND REGULATIONS	
Cal. Health & Safety Code	
§§ 25990 to 25996	2
§ 25990	14
§ 25996	10
Cal. Code Regs. tit. 3, § 1350	2
OTHER AUTHORITIES	
Costco, <i>Animal Welfare</i> (Dec. 2017), https://www.costco.com/sustainability-animal-welfare.html	12
Mullally, Conner & Jayson L. Lusk, <i>The Impact of Farm Animal Housing Restrictions on Egg Prices, Consumer Welfare, and Production in California</i> , Am. J. Agric. Econ. (2017)	13, 14
Sumner, Daniel, et al., <i>The Economics of Regulations on Hen Housing in California</i> , 42 J. Agric. & Applied Econ. 429 (2010)	8

TABLE OF AUTHORITIES—Continued

	Page(s)
Walmart, <i>Walmart U.S. Announces Transition to Cage-Free Egg Supply Chain by 2025</i> (Apr. 5, 2016), https://news.walmart.com/news-archive/2016/04/05/walmart-us-announces-transition-to-cage-free-egg-supply-chain-by-2025	12
Wright, Brian D., <i>The Economic Impacts of the California Cage-System Regulations: A Critical Analysis</i> (Mar. 5, 2018), http://pacificegg.org/documents/Wright%20Report%20(Mar.%205,%202018).pdf	<i>passim</i>

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INTEREST OF AMICUS CURIAE

Amicus curiae Association of California Egg Farmers (ACEF) is a California nonprofit trade organization whose members are family-owned and operated egg farms.¹ ACEF's members constitute a significant portion of the California egg industry; it is estimated that they are responsible for more than 70% of the commercial egg-laying hens in California. A number of ACEF's

¹ No counsel for a party authored this brief in whole or in part, and no entity or person, other than amicus curiae or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties received notice of ACEF's intent to file this brief at least 10 days prior to its due date. The parties have provided written consent to the filing of this brief.

members also produce eggs outside of California and import eggs into the State. ACEF’s members therefore are subject to the requirements for sales and production of eggs in California challenged by Plaintiffs in this action—Sections 25990 to 25996 of the California Health and Safety Code and Section 1350(d)(1) of title three of the California Code of Regulations, which Plaintiffs call collectively the “California Regulations.” *See* Compl. ¶ 4.

ACEF’s principal purposes are to engage in advocacy regarding policies affecting the egg farming industry and to ensure the continued production of fresh and affordable eggs that meet the food-safety and animal-care standards that consumers expect. ACEF participated as a defendant-intervenor in the previous challenge to the California Regulations by five of the current Plaintiffs. ACEF is able to contribute a unique perspective in this case because of its knowledge of the markets for eggs and the effects of the California Regulations.

INTRODUCTION

Since January 1, 2015, the California Regulations that Plaintiffs seek to challenge in this action have required that all whole eggs sold or produced in California come from chickens housed in enclosures that afford a specified amount of space per bird. In 2014, a subset of the current Plaintiffs—Missouri, Alabama, Iowa, Nebraska, and Oklahoma (along with non-plaintiff Kentucky)—filed a lawsuit in district court to try to block the California Regulations from taking effect. Those States asserted the same preemption and Commerce Clause challenges that they and their co-plaintiffs seek to raise here. That challenge was dismissed because the States lacked *parens patriae* standing to pursue

relief for just a small segment of their population—the egg producers they claimed would be injured by the regulations. The United States Court of Appeals for the Ninth Circuit affirmed that conclusion, and this Court declined review. *See Missouri ex rel. Koster v. Harris*, 58 F. Supp. 3d 1059 (E.D. Cal. 2014), *aff'd*, 847 F.3d 646 (9th Cir. 2017), *cert. denied*, 137 S. Ct. 2188 (2017).

Plaintiffs now seek to invoke this Court’s original jurisdiction, having elected to bring suit against the State of California instead of the defendants in the prior action (the California Attorney General and the Secretary of the California Department of Food and Agriculture). The substance of Plaintiffs’ challenge is the same, but their theory of standing has changed. Plaintiffs now claim that the States themselves, and their entire citizenry, have been harmed due to allegedly higher nationwide egg prices caused by the California Regulations. But this refashioned standing theory is not just unsupported—it is economically nonsensical. This Court should deny Plaintiffs’ motion for leave to file a bill of complaint.

SUMMARY OF ARGUMENT

Plaintiffs are unable to demonstrate that they have suffered any injury as a result of the California Regulations. Plaintiffs’ claim to standing rests on the contention that the California Regulations have caused the price of eggs to rise not just in California, but nationwide, thereby allegedly injuring the Plaintiff States and their citizens as purchasers of eggs. Plaintiffs’ contention that nationwide egg prices have increased because of the California Regulations is based on an economic analysis by Joseph H. Haslag appended to their complaint. That analysis, however, finds no support in

either economic theory or empirical data. Indeed, the analysis rests entirely on an unexplained, unsupported, and obviously incorrect assumption—that the costs to non-California producers of complying with the California Regulations for egg sales to California will be passed on equally to all egg consumers nationwide, whether or not the eggs sold are California-compliant.

As explained below and in a report by a leading agricultural economist retained to evaluate Dr. Haslag's study,² it is not possible—as a matter of basic economics—for producers to pass along the costs of complying with the California Regulations to consumers outside of California who purchase non-California-compliant eggs. Any producer who attempted to increase egg prices outside of California to recoup California-compliance costs would be undercut by producers who elected not to adhere to the California requirements, as they are perfectly free to do for eggs sold outside of California. Economic theory, and actual price data that Dr. Haslag never considers, indicate that there has been market segmentation following implementation of the California Regulations: There is now a distinct market for eggs produced in compliance with the California requirements. The price of eggs in that market has in fact risen due to the California Regulations. But that price increase does not—and cannot—carry over to eggs sold outside of the California market. As a result, Plaintiffs are unable to demonstrate any injury to themselves or their citizens caused by the California Regulations.

² See Wright, *The Economic Impacts of the California Cage-System Regulations: A Critical Analysis* (Mar. 5, 2018) (“Wright Report”), [http://pacificegg.org/documents/Wright%20Report%20\(Mar.%205,%202018\).pdf](http://pacificegg.org/documents/Wright%20Report%20(Mar.%205,%202018).pdf).

The inability to demonstrate injury caused by the California Regulations is fatal to Plaintiffs' motion for leave to file their proposed complaint. This Court has made clear that a threshold question in deciding whether to grant leave to file an original action is whether the plaintiff has demonstrated standing, and here Plaintiffs plainly have not. For the same reason, Plaintiffs also have not shown that their claims rise to the level of "seriousness and dignity" that this Court has required before exercising its discretion to hear an original action. This Court should deny Plaintiffs' motion.

ARGUMENT

I. PLAINTIFFS ARE UNABLE TO DEMONSTRATE THAT THEY HAVE SUFFERED ANY INJURY ATTRIBUTABLE TO THE CALIFORNIA REGULATIONS

A. Plaintiffs Allege Harm From A Purported Nationwide Increase In The Price Of Eggs Due To The California Regulations

In their prior challenge, Missouri, Alabama, Iowa, Nebraska, and Oklahoma primarily asserted that they had *parens patriae* standing to seek redress for alleged harm to egg producers in their States, who would be compelled either "to forgo California's markets altogether or accept significantly increased production costs just to comply." *Koster*, 847 F.3d at 651 (internal quotation marks omitted). The court of appeals rejected that alleged harm as a basis for invoking *parens patriae* standing, reasoning that the narrow segment of the States' populations affected by the California Regulations could bring suit on their own. *Id.* at 653. The States also argued that they had standing because the California Regulations could affect egg prices, but the

States’ allegations were speculative—the lawsuit had been filed *before* the California Regulations took effect, and the States asserted that prices outside of California could *either* rise or fall. *See id.*

In response to the court of appeals’ decision in the prior case, the Plaintiff States have taken a new approach in this action. Plaintiffs now allege that they and their citizens have been injured by a purported increase in the price of eggs nationwide attributable to the California Regulations—a harm that allegedly affects the States’ citizens and the States themselves in their capacity as consumers, regardless of whether they are purchasing California-compliant or non-California-compliant eggs. Compl. ¶¶ 9-12, 22-26, 71-75.

Based on an economic analysis submitted with their complaint (and discussed below), Plaintiffs thus contend that “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.” Compl. ¶ 9. They also allege that “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.” *Id.* ¶ 12. The other Plaintiff States are alleged to have suffered similar harms. *See id.* ¶¶ 22-23. The complaint alleges that, as a result, “[t]he Plaintiff States have standing to bring this action”: (1) “to defend the rights of a very substantial segment of their populations to prevent the significant price increase for eggs caused by the California egg regulations,” and (2) “to prevent injury to their public fiscs through increased prices they must pay as direct purchasers of eggs caused by the California Regulations.” *Id.* ¶¶ 25-26.

Plaintiffs' claim to standing therefore turns on their allegation that the California Regulations have caused egg prices *outside of California* to increase. As explained below, however, Plaintiffs offer no empirical or theoretical basis to conclude that this has occurred. In fact, Plaintiffs' conclusory allegation that consumers outside of California are paying more for eggs due to the California Regulations defies basic economic theory and common sense.

B. Plaintiffs' Assertion That The California Regulations Have Caused Nationwide Egg Prices To Rise Is Based On The Haslag Report

Plaintiffs' assertion of harm to non-California consumers rests solely on a report by Dr. Haslag that accompanies their complaint. *See* Compl. ¶ 9; *id.* Ex. A. That report, however, simply assumes—in a wholly conclusory fashion—that the cost to non-California producers of complying with the California Regulations has been passed on to consumers outside of California in the form of higher nationwide prices for all eggs. Dr. Haslag's estimates of the harm to the Plaintiff States and their citizens all depend on that assumption.

Dr. Haslag begins by calculating what he believes to be the costs of complying with the California Regulations imposed on non-California producers who wish to sell into California. *See* Compl. A-23–A-24. He projects that about 6.5 billion eggs a year will be imported into California to meet California demand and that it will take about 22.8 million hens to produce those eggs. *See id.* A-23. He then assumes that it costs from \$10 to \$40 per hen to comply with the California enclosure

standards.³ Multiplying that range by the 22.8 million hens, he concludes that non-California farmers will incur additional cost of \$228 million to \$912 million to comply with the California Regulations for their sales of eggs into California. *See id.* A-24.⁴

The critical part of the report comes next, when Dr. Haslag attempts to translate this estimated cost increase for non-California producers into nationwide egg price increases. Rather than assess whether the California Regulations have caused a segmentation in the market, Dr. Haslag simply “treat[s]” the egg market “as a national market.” Compl. A-2. He thus assumes that the cost of complying with the California Regulations for non-California producers is passed on evenly to egg consumers across the country through an increase in price for *all* eggs, whether or not the eggs are California-compliant.⁵ Specifically, to determine the increase in the average cost of production per egg, Dr. Haslag “divide[s] the increase in expenditures by the total number of eggs produced in the United States.”

³ Although Dr. Haslag’s report treats the \$10 to \$40 per hen figure as an annual cost, it is actually an estimate of the one-time capital cost of converting hen enclosures. *See* Sumner et al., *The Economics of Regulations on Hen Housing in California*, 42 J. Agric. & Applied Econ. 429, 434 (2010).

⁴ A sentence later, Dr. Haslag’s report notes a slightly different range of \$225 million to \$925 million. No explanation is provided for the difference, but it is immaterial in any event.

⁵ In calculating the increased production costs attributable to the California Regulations—and the supposed nationwide price increase to consumers that results—Dr. Haslag accounts only for the compliance cost to *non-California* producers. *See* Compl. A-23 (calculating increased cost to produce eggs imported to California). Although California farmers also face increased production costs, Dr. Haslag does not include those costs in his calculation.

Id. A-24. This yields an increase in the average cost of production of between 0.23 cents and 0.9 cents per egg. *See id.* Dr. Haslag then assumes that “[i]n a competitive market, the increase in the price of eggs will increase by the same amount.” *Id.* Dr. Haslag’s report consequently concludes that consumers nationwide are paying between 0.23 cents and 0.9 cents more per egg—or between 2.8 and 11.3 cents more per dozen eggs—to cover the costs incurred by non-California egg farmers producing eggs for sale in California. *Id.* A-24–A-25.

Dr. Haslag does not address whether egg prices would be expected to rise only for sales *in California*, which are governed by the California Regulations. Notably, moreover, Dr. Haslag’s conclusion does not rest on empirical price data. (Indeed, Dr. Haslag concedes that the price of eggs nationwide has *decreased* since the California Regulations took effect on January 1, 2015: “[E]gg prices in July 2017 are nearly \$0.50 lower than November 2008 egg prices.” Compl. A-8.) Rather, Dr. Haslag’s conclusion that egg prices have increased nationwide as a result of the California Regulations is based entirely on his *assumption* that the costs of producing California-compliant eggs would be passed on to consumers of all eggs nationwide.

Having assumed that the price of all eggs nationwide has increased 0.23 cents to 0.9 cents per egg, Dr. Haslag then goes on to compute certain alleged harms to a subset of the Plaintiff States and their citizens:

First, Dr. Haslag considers expenditures by state-owned prisons. *See* Compl. A-26–A-32. Here as well, Dr. Haslag’s report does not rest on empirical data. He has not obtained information from the States he considers regarding their purchases of eggs for inmates. Rather, he simply “assume[s] that prisoners consume, on

average, the same number of eggs per year as non-incarcerated people.” *Id.* A-26.⁶ Based on this assumption, Dr. Haslag calculates, for example, that Missouri will spend between \$18,894.62 and \$76,856.82 more per year due to the California Regulations. *See id.* A-27–A-30; *see also id.* ¶ 12.

Second, Dr. Haslag analyzes “how much additional income [households would] need to be indifferent between an economy without the cage-system regulations and an economy with the regulations.” Compl. A-32–A-33. Although precisely how Dr. Haslag conducts this “welfare” analysis is unclear, it is apparent that his approach depends on his calculation of a supposed nationwide egg price increase. *See id.* A-34 (using estimated 1.73 percent and 5.12 percent egg price increases, *see id.* A-25). Dr. Haslag concludes that a representative household would have to be compensated between \$0.75 cents and \$3.00 per year to be indifferent to the asserted price increases. *See id.* A-35, A-37.

C. The Haslag Report Is Fundamentally Flawed And Does Not Establish Any Harm To Plaintiffs Or Their Citizens Attributable To The California Regulations

The shortcomings of Dr. Haslag’s analysis (and thus Plaintiffs’ claimed injury) are apparent from the face of his report. They are also described in an analysis by one

⁶ Dr. Haslag also appears to assume that prisons are purchasing whole eggs (“shell eggs”) rather than eggs in liquid form (“breakers”), which are not subject to the requirements for eggs sold in California. *See* Cal. Health & Safety Code § 25996 (“Commencing January 1, 2015, a *shelled* egg shall not” (emphasis added)). As noted in the Wright Report, however, there is reason to question whether all of the eggs purchased by the States for consumption by prisoners are shell eggs. *See* Wright Report 10.

of the country's leading agricultural economists, Dr. Brian Wright, who reviewed and commented on Dr. Haslag's report.⁷

As noted above, Dr. Haslag's analysis assumes that the price of eggs *nationwide* has increased by the amount of the cost to non-California producers of complying with the California Regulations, whether or not the particular eggs at issue are sold in California, and whether or not the eggs were produced in compliance with California's housing standards. This assumption is unsupported and, indeed, contrary to basic principles of economics and common sense.

As Dr. Wright explains, economic theory dictates that any increased cost of producing California-compliant eggs can be passed on only to the consumers of those eggs. *See* Wright Report 4-5. They cannot be passed on to consumers of non-California-compliant eggs. *See id.* By imposing requirements not applicable to eggs sold in other markets, the California Regulations have caused "market segmentation," creating a distinct market for eggs sold in California. *See id.* Prices in that market reflect the cost of producing eggs to California's standards. *See id.* Prices in other markets continue to reflect the cost of producing eggs according to conventional production methods. *See id.*⁸

⁷ Dr. Wright is a Professor in the Department of Agricultural and Resource Economics at the University of California, Berkeley, and a Fellow of the American Agricultural Economics Association.

⁸ Some non-California consumers may choose to purchase eggs produced in compliance with California's hen-housing standards or other standards, for safety or other reasons. If they do, they may pay more for those eggs than they would for conventional eggs. Indeed, it is well known that cage-free, free-range, and organic eggs sell for higher prices than conventional eggs.

There is no dispute that many non-California egg farmers continue to use conventional production methods and therefore do not face the increased costs of complying with the California Regulations. *See* Compl. A-16 (stating that “*some* producers would increase their costs in order to satisfy” California’s standards (emphasis added)); *id.* A-23 (calculating increased production costs based on how many birds must be housed in California-compliant cages to meet *California’s* demand); Wright Report 3. Those farmers sell eggs to non-California consumers at prices that are not affected by the California Regulations. *See* Wright Report at 3-4. If a producer electing to comply with the California standard for some of its eggs were to attempt to raise its price outside of California, it would be undercut by producers who have not incurred the increased cost of complying with the California Regulations. *See id.* at 4. Put differently, to compete for sales outside of California, egg producers cannot pass on the costs of complying with California’s standards, and thus the non-California markets simply cannot sustain the increased price that Dr. Haslag assumes. California consumers pay prices that reflect the cost of California-compliant

But non-California consumers’ choice to pay more for eggs produced in a certain way because they value those egg more than conventional eggs does not constitute any injury to the consumers or Plaintiffs. In fact, consumer demand for cage-free, free-range, and organic eggs is growing nationally. Walmart and Sam’s Club have announced their goal to sell only cage-free eggs by 2025. Walmart, *Walmart U.S. Announces Transition to Cage-Free Egg Supply Chain by 2025* (Apr. 5, 2016), <https://news.walmart.com/news-archive/2016/04/05/walmart-us-announces-transition-to-cage-free-egg-supply-chain-by-2025>. The percentage of cage-free eggs sold at Costco has substantially increased in recent years, from only 2 percent in 2006 to over 84 percent as of October 2017. Costco, *Animal Welfare* (Dec. 2017), <https://www.costco.com/sustainability-animal-welfare.html>.

production methods, and Missouri consumers continue to pay prices that reflect the cost of conventional production methods. *See id.* at 4-5.

These basic economic principles are reflected in the available egg price data. If Dr. Haslag were correct in assuming that the cost of complying with the California Regulations is passed on to consumers nationwide, we would have expected to see the price of eggs in California and the price of eggs outside of California move together following implementation of the California Regulations. But in fact, the data show that, following the implementation of the California Regulations, the price of eggs in California increased relative to the price of eggs elsewhere, demonstrating that a distinct California market has emerged. *See* Wright Report 5-7. Before the California Regulations became effective, California prices were somewhat higher than prices in most other markets. *See id.* at 6-7. After the regulations took effect, that price differential increased. *See id.* This suggests that the higher cost of producing California-compliant eggs is being passed on only to California consumers. *See id.* at 7.

Dr. Wright's observations are consistent with a 2017 analysis of the effect of the California Regulations on the price of eggs in California, which also showed that prices in California increased relative to prices outside of California following implementation of the regulations. *See* Mullally & Lusk, *The Impact of Farm Animal Housing Restrictions on Egg Prices, Consumer Welfare, and Production in California*, *Am. J. Agric. Econ.* 1, 11-15 (2017) (published online). That analysis determined the impact of the California Regulations by comparing the change in California egg prices to the changes in prices in "control" markets outside of California. *See id.* at 9-11. A "key assumption[]" of the

analysis was that “there are no spillovers from California to control markets as a result of the policy change.” *Id.* at 11. In fact, the authors concluded that even in the short run, “price spillovers were most likely negligible.” *Id.*⁹

Indeed, if it were true that the cost of complying with the California Regulations is distributed evenly across nationwide egg prices, the egg markets could not function. Producers outside of California would have little incentive to sell eggs in California in that situation: By selling only outside of California, the producer could forego compliance with the California standards but reap the increased nationwide prices. *See* Wright Report 4. Egg production in California would also be affected. California producers cannot opt out of complying with the California standards by selling eggs only outside of California; they must comply regardless of where their eggs are sold. *See* Cal. Health & Safety Code § 25990. But if Dr. Haslag’s assumption were

⁹ One of the authors of this analysis, Jayson L. Lusk, prepared a declaration that was submitted by the plaintiffs in *Indiana v. Massachusetts*, No. 220149 (U.S.), a similar challenge to a Massachusetts law. Notably, Dr. Lusk’s declaration does not indicate that the Massachusetts law will increase the price of *all* eggs *nationwide*. Rather, Dr. Lusk states only that consumers “will be charged higher prices for meat and eggs *produced according to the Massachusetts standards*.” Decl. of Jayson L. Lusk, Ph.D. ¶ 24 (Compl. A-24) (Dec. 11, 2017) (emphasis added). He further states that “the Massachusetts Animal Law will result in retail price increases for eggs similar to those experienced in California.” *Id.* ¶ 26 (Compl. A-25). As noted in the text, Dr. Lusk’s analysis of the impact of the California Regulations revealed price increases only *in California*. Plaintiffs’ complaint in the Massachusetts case thus incorrectly cites the Lusk Declaration as support for its conclusory assertion that the Massachusetts law will increase the price of eggs “in Massachusetts as well as Plaintiff States.” Mass. Compl. ¶¶ 40-41 (Dec. 11, 2017).

correct, California producers could not capture the full amount of their compliance costs, because the cost of compliance would be spread across the price of *all* eggs, including eggs that are not California compliant. *See* Wright Report 4.

Dr. Haslag does not even attempt to address these basic economic principles or the comparative pricing data. Instead, as noted, he merely “assume[s]” that the market price for eggs nationwide has increased by the amount of the increase in the average production cost attributable to compliance with the California Regulations, Compl. A-22, and that eggs continue to be sold in a single “national market,” *id.* A-25. Neither Dr. Haslag nor Plaintiffs have alleged any facts that support these conclusory assertions or that would give rise to an inference that Plaintiffs or their residents have been injured by an increase in egg prices. Dr. Haslag’s failure to account for the segmented market caused by the California Regulations fatally undercuts his analysis.

II. THE COURT SHOULD DENY PLAINTIFFS’ MOTION FOR LEAVE TO FILE THEIR COMPLAINT BECAUSE PLAINTIFFS ARE UNABLE TO SHOW ANY INJURY ATTRIBUTABLE TO THE CALIFORNIA REGULATIONS

Because Plaintiffs have failed to adequately plead injury caused by the California Regulations, their motion for leave to file a bill of complaint should be denied. First, Plaintiffs lack standing—a threshold inquiry on a motion for leave to file a complaint. Second, Plaintiffs have not asserted a sufficient interest warranting this Court’s exercise of its original jurisdiction.¹⁰

¹⁰ Although this brief addresses only Plaintiffs’ failure to adequately allege injury due to the California Regulations, ACEF agrees with California that Plaintiffs’ motion should be denied for

A. Plaintiffs’ Lack Of Standing Precludes This Court From Exercising Jurisdiction

In considering a motion for leave to file a bill of complaint, the Court considers whether the plaintiff has demonstrated its standing under Article III. “It has long been the rule that in order to engage this Court’s original jurisdiction, a plaintiff State must first demonstrate that the injury for which it seeks redress was directly caused by the actions of another State.” *Pennsylvania v. New Jersey*, 426 U.S. 660, 663 (1976) (denying motion for leave to file a bill of complaint); *see also Massachusetts v. Missouri*, 308 U.S. 1, 15 (1939) (denying motion for leave to file a bill of complaint because the proposed complaint “d[id] not present a justiciable controversy between the States”: “Missouri ... is not injuring Massachusetts”); *cf. Wyoming v. Oklahoma*, 502 U.S. 437, 446 (1992) (finding that the Court’s decision to grant leave to file the complaint impliedly rejected defendant’s objection on standing grounds). Specifically, to invoke this Court’s jurisdiction under Article III, Plaintiffs bear the burden of establishing (1) that they “have suffered an ‘injury in fact’”; (2) “a causal connection between the injury and the conduct complained of”; and (3) that it is “‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

1. Plaintiffs have not alleged an “injury in fact” that is “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan*, 504 U.S. at 560. Plaintiffs assert that they and their residents purportedly pay more for eggs

other reasons as well, including that there would be an alternative forum for a well-pled complaint challenging the California Regulations.

because of the California Regulations. Compl. ¶¶ 9-12, 22-26, 71-75. But those allegations of injury rest solely on the flawed report of Dr. Haslag. As explained above, Dr. Haslag’s conclusion that consumers nationwide will pay higher prices for eggs because of the California Regulations contradicts basic economic principles and the available data, which indicate that two distinct markets have developed: California consumers pay higher prices for California-compliant eggs, and non-California consumers continue to pay a price for conventional eggs that is unaffected by the California Regulations.

Because Plaintiffs’ and Dr. Haslag’s assertion that non-California consumers pay more due to the California Regulations is conclusory and not supported by any factual allegations, it is not entitled to an “assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Plaintiffs’ allegations of injury, which do not rely on any empirical data or sound economic principles, are at best “conjectural’ or ‘hypothetical.’” *Lujan*, 504 U.S. at 560. Plaintiffs thus have no standing to bring this action, and their motion must be denied. *See Massachusetts*, 308 U.S. at 15.¹¹

¹¹ Without explanation, Plaintiffs also allege that they “have standing to bring this action to prevent injury to their public fises through the decreased tax revenues they have suffered ... as a direct result of the California Regulations.” Compl. ¶ 27. But the complaint contains no factual allegations suggesting that the California Regulations have caused Plaintiffs to lose tax revenue. In fact, Dr. Haslag’s study indicates that there are now “more non-California egg producers with each one earning normal economic profits,” *id.* A-17, which suggests that Plaintiffs should actually see *increased* tax revenue as egg production shifts from California to the Plaintiff States. Plaintiffs’ conclusory allegations cannot support a claim of standing. *Iqbal*, 556 U.S. at 678-679.

2. Plaintiffs also cannot show that any purported injury they suffer is fairly traceable to the California Regulations. To the extent that the Plaintiff States or their residents are paying more for eggs than they were prior to the enactment of those laws, it is due to their own choice to purchase eggs from producers that—in order to sell to the California market—comply with California’s cage standards.

Not all egg farmers have switched production methods to comply with California’s standards. *See* Wright Report 3; Compl. A-23 (assuming that only enough hens to supply the California market will be housed in California-compliant cages). The cost of producing conventional eggs obviously is not affected by the California Regulations. And, as explained, Plaintiffs have provided no basis to believe the price at which farmers sell those eggs is higher than it would be in the absence of the California Regulations. Accordingly, Plaintiffs and their residents are able to buy conventional eggs at the same price they would be able to without California’s laws.

This case is thus analogous to *Pennsylvania v. New Jersey*, in which Pennsylvania sought to bring an original action in this Court challenging a New Jersey law that taxed the New Jersey-derived income of nonresidents. 426 U.S. at 662-663. Pennsylvania gave a tax credit to any of its residents for income taxes paid to other States. *Id.* at 663. Pennsylvania alleged that New Jersey’s allegedly unconstitutional tax diverted revenue from Pennsylvania’s treasury to New Jersey’s. *Id.* This Court explained that “[i]t has long been the rule that in order to engage this Court’s original jurisdiction, a plaintiff State must first demonstrate that the injury for which it seeks redress was directly caused by the actions of another State.” *Id.* But Pennsylvania’s

complaint did not demonstrate that New Jersey had “inflicted any injury upon” Pennsylvania. *Id.* at 664. “The injuries to [Pennsylvania’s] fisc[] were self-inflicted, resulting from decisions by [its] state legislature[] to extend a credit for taxes paid to New Jersey, and “nothing prevents Pennsylvania from withdrawing that credit.” *Id.* “No State can be heard to complain about damage inflicted by its own hand.” *Id.* Because Pennsylvania’s alleged injury was self-inflicted, and not directly caused by New Jersey, the Court denied Pennsylvania’s motion for leave to file a complaint.

Here, too, any injury to Plaintiffs is not caused by California. If Plaintiffs and their residents pay more for eggs because they choose to buy California-compliant eggs, that injury is “inflicted by [their] own hand.” *Pennsylvania*, 426 U.S. at 664. Plaintiffs cannot establish standing based on a self-inflicted injury. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 418 (2013).

B. Plaintiffs’ Claims Lack The Seriousness And Dignity That Would Justify The Exercise Of This Court’s Jurisdiction

This Court has long held that it has discretion regarding whether to exercise its exclusive jurisdiction over cases between States. *See Wyoming*, 502 U.S. at 450; *Arizona v. New Mexico*, 425 U.S. 794, 796-798 (1976). In considering whether a case is “appropriate” for the Court’s original jurisdiction, the Court considers, *inter alia*, “the nature of the interest of the complaining State, focusing on the seriousness and dignity of the claim.” *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992) (internal quotation marks and citations omitted); *cf. New York v. New Jersey*, 256 U.S. 296, 309 (1921) (“Before this court can be moved to exercise its

extraordinary power under the Constitution to control the conduct of one state at the suit of another, the threatened invasion of rights must be of serious magnitude and it must be established by clear and convincing evidence.”).

Plaintiffs’ claims lack the “seriousness and dignity” that would warrant review by this Court because Plaintiffs have not alleged plausible injury attributable to the California Regulations. In this respect, Plaintiffs’ claims are a far cry from those over which this Court has exercised its original jurisdiction. Plaintiffs compare their allegations to those in *Wyoming v. Oklahoma*, a case in which Wyoming challenged an Oklahoma statute requiring coal-fired power plants in Oklahoma to burn a mixture of coal containing at least 10% Oklahoma-mined coal. Mot. 15-16. But in *Wyoming*, it was “undisputed that ... since ... the effective date of the Act, purchases by Oklahoma electric utilities of Wyoming-mined coal ... have declined.” 502 U.S. at 447. The Court explained that “[t]he coal that, in the absence of the Act, would have been sold to Oklahoma utilities by a Wyoming producer would have been subject to [a Wyoming] tax when extracted.” *Id.* The Court concluded that because “Wyoming’s loss of severance tax revenues ‘fairly c[ould] be traced’ to the Act,” Wyoming had suffered “a direct injury in the form of a loss of specific tax revenues—an undisputed fact.” *Id.* at 447, 448.

In contrast to *Wyoming*—where the alleged injury was undisputed—Plaintiffs in this case have been unable to allege any non-hypothetical injury to their own proprietary interests or the interests of their citizens. Their allegations of injury defy empirical data and basic economic theory. The unfounded allegations of injury contained in the complaint are insufficient to justify the

exercise of this Court's original jurisdiction, which is to be invoked sparingly. *Maryland v. Louisiana*, 451 U.S. 725, 739 (1981).

CONCLUSION

The motion for leave to file a bill of complaint should be denied.

Respectfully submitted.

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