No. 148, 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.

REPLY BRIEF OF PLAINTIFF STATES

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SUMMARY OF ARGUMENT

This case raises a claim of "seriousness and dignity" between sovereign States over which this Court has exclusive jurisdiction. Just as in *National Meat Association* v. *Harris*, California is disregarding federal law by imposing novel standards on agricultural production in other States, inflating prices for consumers nationwide. California compounds this injury by sending its officials into Plaintiff States to enforce its policy, thus interfering with Plaintiff States' sovereign interest in ensuring compliance with federal law within their borders.

California offers no response to much of Plaintiff States' complaint. California does not seriously dispute the merits of their claims. It does not deny that sending inspectors into other States offends their sovereign interests. And it does not even cite the statute that vests "exclusive" jurisdiction over these disputes in this Court, 28 U.S.C. § 1251.

California's principal response is to suggest that it raised prices *only* for Californians, BIO 11, but basic economics show that California is not a trade silo cordoned off from the rest of the country. California's regulations mandate massive capital investments in new cage systems and significant increases in daily production costs by egg producers nationwide. These supply-side limitations inevitably affect egg prices for all American consumers, not just Californians. When egg prices in California increased, those inflated prices inevitably spilled over California's borders and caused the rest of the nation to pay higher prices. California's in-state

producers scaled back, decreasing the national egg supply and drawing production resources of out-of-state producers away from other sectors of the national market. The reallocation of production resources decreased supply capacity in other States and drove up prices. At the same time, California consumers (especially large-scale food processors) increased demand by ordering cheaper eggs from outside California.

ARGUMENT

I. The seriousness and dignity of Plaintiff States' claims warrant the exercise of jurisdiction.

Plaintiff States have raised claims of "seriousness and dignity" against California that this Court should resolve. Unless this Court acts, California will continue to impose new agricultural regulations on other States in violation of federal law and those States' sovereign, quasi-sovereign, and economic interests—and other States will follow California's lead.

A. California persistently ignores federal law in its regulation of extraterritorial agricultural production.

1. In *National Meat Association* v. *Harris*, California imposed agricultural-production regulations on other States in violation of federal law. The Federal Meat Inspection Act preempts state laws imposing conditions on slaughterhouses "in addition to or different from" those Congress set. 565 U.S. 452, 468 (2012). California's regulation of animal slaughterhouses flouted this law. As this

Court held, California's law "runs smack into the [Act's] regulations" and "at every turn imposes additional or different requirements" than what federal law requires. *Id*. at 460, 467.

Despite this Court's unanimous rebuke, California has done the same thing here, violating the federal Egg Products Inspection Act (EPIA) by imposing "standards of quality" and "condition" on eggs that are "in addition to or different from the official Federal standards." 21 U.S.C. § 1052(b).

In fact, this case reflects one of several attempts by California to dictate the manner of agricultural production in other States in violation of federal law. *Amici Br. of Association des Éleveurs de Canards et d'Oies du Québec* 1–9 (collecting cases).

California's history of ignoring federal statutes almost identical to the statute here weighs in favor of exercising original jurisdiction. When determining whether a case is serious enough, this Court considers the possibility that many states will engage in similar practices. *Wyoming* v. *Oklahoma*, 502 U.S. 437, 453–54 (1992). Not exercising jurisdiction would embolden States like California to continue to contravene federal law. Not only is California a repeat offender in this area, but other States follow California's lead. *Indiana* v. *Massachusetts*, No. 22O149; *Energy & Envt'l Legal Inst.* v. *Epel*, 793 F.3d 1169 (10th Cir. 2015).

2. California tries to dispute that federal law preempts AB 1437, but the EPIA prohibits any state or local authority from imposing standards that are "in addition to or different from" federal "standards

of quality, condition, weight, quantity, or grade." 21 U.S.C. § 1052(b). Under the plain meaning of that statute, California imposes a standard for "quality" and "condition" of eggs: Eggs cannot be sold unless they were produced a certain way. And the Commerce Clause forbids any law that discriminates against out-of-state producers and imposes burdens that outweigh putative local benefits. States' Br. 1.

In trying to defend itself against these claims, California contradicts itself. California contends that it does not violate the Commerce Clause because it does not purport to regulate how eggs are "produced" in other States, but merely addresses concerns of salmonella contamination. BIO 22–24. But if that is true, then California has imposed standards of "quality" or "condition" on eggs that are "in addition to" and "different from" federal product standards. 21 U.S.C. § 1052(b). Then, California adopts the opposite position in trying to defend itself against the EPIA-preemption claim. It suggests that it does not provide standards of quality or condition but imposes "'production' standards for shell eggs" and for "the way egg-laying hens are housed." BIO 26–27. But if that is true, California's regulation has the sole purpose and effect of regulating extraterritorial activity—because California regulates its own in-state hens separately—and thus the regulation violates the Commerce Clause.

California asserts that it can impose these conditions because it interprets the EPIA narrowly to preempt only certain limited types of state-based classification standards. BIO 26. But California ignores the same statutory language that it ignored

in *National Meat Association*. The EPIA prohibits California from imposing *any* standards "in addition to or different from" those already in place, including new standards over "quality" or "condition." 21 U.S.C. § 1052(b). A regulation that seeks to ensure quality by dictating a putatively safer manner of production is a regulation of "quality" and "condition."

In any event, California's purported salmonella defense lacks merit. Even California officials have said so. Compl. ¶¶ 77–82. Studies also show that no causal link exists between salmonella contamination and conventional cage sizes. *E.g.*, Gast, R.K., et al., *Contamination of Eggs by Salmonella Enteritidis in Experimentally Infected Laying Hens Housed in Conventional or Enriched Cages*, Poultry Science, 93:728–733 (2014) ("No significant differences between the two housing systems were observed in the frequency of S. Enteritidis isolation from eggs."). Indeed, the evidence suggests the opposite relationship: cage-free eggs have *worse* salmonella incidence. *E.g.,* Lay, et al., *Hen Welfare in Different Housing Systems*, Poultry Sciences 90:278–294 (2011) (reviewing the literature to conclude that diseases increase with elevated use of cage-free hens).

B. California offends State sovereignty by sending its inspectors into other States to enforce an unlawful policy.

Irrespective of economic injuries, California affronts the sovereignty of Plaintiff States by sending its inspectors within their borders to enforce a policy

that contradicts federal law. California's brief does not even address this point.

1. California interferes with the prerogative of other States to ensure compliance with federal law in their borders by sending its "inspectors" to inspect facilities in the Plaintiff States. Compl. ¶¶ 13, 28, States' Br. 9. California admits it conducts "compliance inspections" in other States and collects labeling fees in all "states that supply eggs to California." Ca. Dep't of Food & Agriculture, *Egg Safety Rule Questions & Answers*, http://goo.gl/3YhZu6 (last visited March 17, 2018). California's brief in opposition does not even address this intrusion onto the sovereignty of other States.

The Framers designed original jurisdiction to redress injuries like these. *North Dakota* v. *Minnesota*, 263 U.S. 365, 373 (1923). Before the States adopted the Constitution, States—like other sovereigns—had two options to settle disputes: war or diplomatic negotiation. *South Carolina* v. *Regan*, 465 U.S. 367, 397 (1984) (O'Connor, J., concurring). The Framers created original jurisdiction over disputes between States "as a substitute for the diplomatic settlement of controversies between sovereigns and a possible resort to force." *Texas* v. *New Mexico*, 2018 WL 1143821, at *3 (U.S. Mar. 5, 2018) (citation omitted).

2. Contrary to California's argument, trade barriers among States and intrusions on other States' territorial sovereignty generate the very interstate friction that the U.S. Constitution was tailor-made to avoid. "[T]he exercise of sovereign power" encompasses irreducible elements, including

"the power to create and enforce a legal code" and "the maintenance and recognition of borders." *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982). Other sovereigns "have no force to control the sovereignty or rights of any other nation." *The Apollon*, 22 U.S. 362, 370 (1824). For this reason, one "state's law enforcement officers may exercise their functions in the territory of another state only with the consent of the other state." Restatement (Third) of Foreign Relations Law § 432 (1987). Sovereignty includes "a state's lawful control over its territory generally to the exclusion of other states." *Id.* § 206 cmt. B.

California's regulation violates federal law, which "is as much the law of the several States as are the laws passed by their legislatures." *Haywood* v. *Drown*, 556 U.S. 729, 734 (2009). And so, when California sends officials into Plaintiff States to "inspect" their egg producers for compliance with California policy, California interferes with the sovereign interest of those States in ensuring compliance with federal law and in controlling state-level enforcement authority within their borders. Compl. ¶¶ 13, 28; 3 CCR §§ 1350–1358.7.

This sovereign injury is a basis for standing and for the exercise of this Court's jurisdiction even if AB 1437 had no economic effects on the States. "[A] State has standing to sue only when its sovereign or quasi-sovereign interests are implicated." *Pennsylvania* v. *New Jersey*, 426 U.S. 660, 665 (1976). "It is beyond peradventure that [a State] has raised a claim of sufficient 'seriousness and dignity'" when one State, "acting in its sovereign

capacity," interferes with another State acting "in its sovereign capacity." *Wyoming* v. *Oklahoma*, 502 U.S. 437, 451 (1992).

C. California forces other States and their consumers to pay more for eggs.

California's regulation injures all consumers of eggs in America, including the Plaintiff States and their citizens. Plaintiff States exercise their sovereign powers when they purchase eggs for use in their prisons, schools, and other institutions. *See Allied Structural Steel Co.* v. *Spannaus*, 438 U.S. 234, 241 (1978). Under California's policy, Missouri alone loses tens of thousands of dollars each year. Compl. ¶¶ 12, 73. California has also interfered with Plaintiff States' quasi-sovereign, *parens patriae* interest to vindicate "the well-being of its populace." *Alfred L.*, 458 U.S. at 602. California has raised egg prices by up to $912 million annually for American consumers, including citizens of the Plaintiff States. A6. Those costs fall hardest on marginalized families.

California's argument that its regulations do not affect egg prices outside California disregards economic reality. California does not dispute that "[t]he price of eggs in [California] has in fact risen due to California Regulations." Amicus Br. *Assoc. Calif. Egg Farmers* ("ACEF") 4; BIO 11 (admitting that "after AB 1437 took effect egg prices in California went up"). But California asserts that its market is completely segmented from the rest of the nation, so that increased egg prices in California have *no* spillover effect in other States. BIO 11.

That assertion is unconvincing. First, higher egg prices in California raise demand for eggs in other States. Higher California prices inevitably drive large egg consumers (such as food processing plants) to purchase cheaper eggs outside California. And because AB 1437 applies to "shelled egg[s]," not breaker eggs (those that have already been de-shelled), Cal. Health & Safety Code § 25996, higher prices in California raise demand for out-of-state derivative egg products. In both contexts, the increased demand in other States increases egg prices there, causing consumers in those States to seek cheaper eggs in still other States. Even if, as ACEF suggests, California prices changed at a rate different from other States, Amicus Br. ACEF 13, this rate variation is expected because California prices had to change first to *cause* other prices to change.

In addition, California's regulations significantly increased capital investment and ongoing production costs for out-state egg producers who ship to California. It is inevitable that such producers will pass along those costs to consumers, both inside and outside California. And because in-state producers have substantially scaled back production, California's regulation has caused a major shift in market share for California eggs to out-of-state producers, which causes a diversion of production resources away from non-California egg markets, thus reducing supply outside California and driving up prices. A-10. For all these reasons, California is

not isolated from the interstate egg market—it is an integral part of that market.*

California next contends that Plaintiff States lack standing because other market forces require Plaintiffs to speculate about the degree of the price increase. BIO 11. But the Plaintiff States' analysis shows that, holding other factors constant, California's regulations have imposed a significant injury on non-California consumers. California also misunderstands Plaintiff States' burden. Standing exists "if the injury alleged 'fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court.'" *Maryland* v. *Louisiana*, 451 U.S. 725, 736 (1981) (citation omitted). Plaintiffs seek injunctive relief, not damages. All they must show is that California's unlawful policy caused egg prices to increase for consumers in the Plaintiff States. There is no dispute that California's policies raised egg prices in California. BIO 11; Am. Br. ACEF 4. And basic

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* ACEF asserts that "if California consumers were only covering a *portion* of the total cost increase," then "all [California] producers would eventually cease production." Wright Report, at 4. ACEF ignores that some egg producers produce at below-average marginal cost and that, as soon as one producer scales back, the decrease in supply makes staying in the market easier for other producers. So California producers should instead decrease relatively proportional to how much other States bear the cost of California's policy. That happened. According to ACEF, if Californians bore all the cost of the price increase caused by California's policies, the number of in-state producers would have remained constant. *Id.* Instead, California experienced a significant decrease of in-state egg production since AB 1437. A-10.

economic principles dictate that those increases drove up prices in the national market as well.

This Court has already rejected California's argument that a State lacks standing where market actors channel price increases. When West Virginia imposed limits on shipping natural gas, this Court allowed Pennsylvania to sue because it recognized that "withdrawal of the gas from the interstate stream" could "involve very large public expenditures." *Pennsylvania* v. *West Virginia*, 262 U.S. 553, 592 (1923). When a State alters supply or demand, the natural and probable effect is for market actors to alter prices. Egg sellers who increased prices have done so in response to, not "independent" of, California's policy. *Maryland*, 451 U.S. at 736.

II. This Court should hear this case because only this Court can hear this dispute between States.

A. California asserts that Plaintiff States should sue in a federal district court, but it fails to discuss or even cite the jurisdictional statute that governs disputes between States. The U.S. Constitution gives this Court original jurisdiction over suits between States, and Congress vested this Court with "exclusive" jurisdiction over these disputes. 28 U.S.C. § 1251. After a previous case involving some Plaintiff States was dismissed in federal district court, the Tenth Circuit reaffirmed that States cannot sue other States in federal district court. *Safe Streets Alliance* v. *Hickenlooper*, 859 F.3d 869, 913 (10th Cir. 2017).

B. California alternatively argues that the States could obtain relief indirectly if private parties sue California in the future, BIO 20, but that argument suffers from two flaws.

First, an alternative forum is only "available," *Mississippi* v. *Louisiana*, 506 U.S. 73, 77 (1992), when another *pending* action might resolve the same issues. States' Br. 19–21. Here, no viable challenge has been filed by any private party in the three years since this law took effect. Nor is anyone else likely to sue: the litigation costs outweigh the financial benefits for individual consumers, and the non-California egg producers have *gained* market share over in-state producers as those producers have scaled back. A-10–A-14.

Second, no suit by a private party could substitute here because no private party can represent the full interests of a State. Am. Br. *Center for Consumer Freedom* 14, 17. The States have their own sovereign, quasi-sovereign, and economic interests apart from any private interests. Private producers do not represent public interests. And the interests of *producers* in the national egg market conflict with the interests of *consumers*. It would be inappropriate to force egg consumers to wait for egg producers to file a lawsuit to vindicate their conflicting interests.

C. This Court may also reconsider whether its jurisdiction over disputes between States is discretionary. States' Br. 13 n.1; Am. Br. *Center for Consumer Freedom* 4–14.

In contending that this Court's original jurisdiction has long been discretionary, California misreads this Court's precedents. BIO 9 n.1. This Court's practice of exercising discretion over its original jurisdiction arose "[i]n recent years." *Texas* v. *New Mexico*, 462 U.S. 554, 570 (1983). California's cases are not to the contrary. In *Alabama* v. *Arizona*, this Court merely required a State to plead a justiciable controversy in which one State was enforcing an unconstitutional law against another. 291 U.S. 286, 291–92 (1934). In the other cases cited by California, this Court simply held that it lacks jurisdiction where a State is not the real party in interest. *North Dakota* v. *Minnesota*, 263 U.S. 365, 375–76 (1923); *Louisiana* v. *Texas*, 176 U.S. 1, 15 (1900). The Court's practice of declining to exercise its original and exclusive jurisdiction is of recent vintage and ripe for reconsideration.

CONCLUSION

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

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