Orig. No. 149

In the Supreme Court of the United States

STATES OF INDIANA, ALABAMA, ARKANSAS, LOUISIANA, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, TEXAS, UTAH, WEST VIRGINIA, AND WISCONSIN,

Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS,

Defendant.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

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INTRODUCTION

This Court should deny the motion of Indiana, Alabama, Arkansas, Louisiana, Missouri, Nebraska, North Dakota, Oklahoma, South Carolina, Texas, Utah, West Virginia, and Wisconsin for leave to file a bill of complaint. These Plaintiff States seek to challenge on dormant Commerce Clause grounds a state law that applies only within the Commonwealth of Massachusetts: a bar on the sale of certain agricultural products. The Plaintiff States openly acknowledge that their principal objection to the law is its effect on farmers within their States, who may, unless their products meet Massachusetts' standards, lose access to the Massachusetts market for eggs and whole veal and pork meat.

This Court should exercise its discretion to decline to take jurisdiction of the Plaintiff States' complaint. The case falls within a category this Court has repeatedly stated it will not accept: cases in which a State attempts to sue not on behalf of its residents generally as *parens patriae*, but instead on behalf of a particular subset of residents. Such cases are not properly actions between the States themselves. Moreover, accepting such cases would threaten to overwhelm the Court's docket—particularly if the only predicate to such a suit were the attenuated out-of-state economic impact of a State's regulation of in-state sales.

This Court should deny the motion for leave to file a complaint for the further reason that, even accepting the truth of their allegations, the Plaintiff States lack standing to sue Massachusetts. Indiana, which claims

standing on the basis of a Purdue University agricultural program, admits that Purdue does not sell its animal products in Massachusetts. Indiana therefore is not subject to Massachusetts' law. And the Plaintiff States' other claims of standing all are predicated on unadorned speculation about the potential effect of Massachusetts' law on the prices of eggs and meat in the Plaintiff States once the law goes into effect in 2022. Such speculation is plainly insufficient under Article III, as the Ninth Circuit has already concluded in rejecting a lawsuit by a group of States against California's similar law.

Even if this Court were inclined to exercise its jurisdiction and accept as adequate the Plaintiff States' standing allegations, their dormant Commerce Clause claim is foreclosed by centuries of precedent. Massachusetts' nondiscriminatory law applies alike no matter the origin of the agricultural products; it regulates sales only within Massachusetts; and it serves legitimate state interests that readily outweigh any supposed burden on interstate commerce.

STATEMENT

1. On November 8, 2016, Massachusetts voters overwhelmingly passed a law proposed by an initiative petition titled An Act to Prevent Cruelty to Farm Animals (codified at Mass. Gen. Laws Ann. ch. 129 App. §§ 1 *et seq*. (2017) and appended to the complaint at Compl. App. 2-7; hereinafter, "Act"). *See* Compl. ¶ 12; *see generally* Mass. Const. amend. art. 48 (prescribing initiative petition process).

The Act's stated purpose is "to prevent animal cruelty by phasing out extreme methods of farm

animal confinement, which also threaten the health and safety of Massachusetts consumers, increase the risk of foodborne illness, and have negative fiscal impacts on the Commonwealth of Massachusetts." Act § 1.

The Act prohibits "the sale within the Commonwealth of Massachusetts" of certain eggs, veal, and pork and applies only "where the buyer takes physical possession of" the food item in Massachusetts. *Id.* §§ 3, 5(M). First, it bars the sale within Massachusetts of a "shell egg"—that is, "a whole egg of an egg-laying hen in its shell form, intended for use as human food"—if the "business owner or operator knows or should know" the egg was laid by a hen that was "confined in a cruel manner." *Id.* §§ 3(A), 5(N). The law defines "confined in a cruel manner" as "confined so as to prevent a covered animal from lying down, standing up, fully extending the animal's limbs, or turning around freely." *Id.* § 5(E).

Second, the law bars the sale within Massachusetts of "[w]hole veal meat that the business owner or operator knows or should know" is from a calf that was "kept for the purpose of commercial production of veal meat" and was "confined in a cruel manner." *Id.* §§ 3(B), 5(C)-(D). "Whole veal meat" is defined to include "any uncooked cut of veal (including chop ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin or cutlet) that is comprised entirely of veal meat, except for seasoning, curing agents, coloring, flavoring, preservatives and similar meat additives." *Id.* § 5(T). The definition excludes "combination food products" such as "soups, sandwiches, pizzas, hot

dogs, or similar processed or prepared food products." *Id.*

Third, the law bars the sale within Massachusetts of "[w]hole pork meat that the business owner or operator knows or should know" is either (a) from a breeding pig that was "confined in a cruel manner," or (b) "is the meat of the immediate offspring" of such an animal. Act §§ 3(C), 5(D). The law defines "[w]hole pork meat" in the same manner as "[w]hole veal meat," *i.e.*, including any uncooked cut of pork and excluding "combination food products." *Id.* § 5(S).

The law provides that an animal "shall not be deemed to be 'confined in a cruel manner'" in various circumstances, including during transportation, exhibitions, and veterinary care. *Id.* § 4.

A violation of these standards is punishable by a civil fine of up to $1000. *Id.* § 6. The Act creates a defense for a business owner or operator who "relied in good faith upon a written certification or guarantee by the supplier" that the standards were met. *Id.* § 7.

The law's requirements go into effect on January 1, 2022. *Id.* § 11. The Attorney General of Massachusetts is charged with promulgating rules and regulations by January 1, 2020 and with enforcing the Act. *Id.* §§ 6, 10.

2. In 2008, California voters first enacted the standards at issue in *Missouri v. California*, Original No. 148. *See Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 650 (9th Cir. 2017) (as amended). Similar to Massachusetts' law, the measure known as Proposition 2 precludes confining hens "'in a manner

that prevents [them] from: (a) Lying down, standing up, and fully extending [their] limbs; and (b) Turning around freely.'" *Id.* at 650 (quoting Cal. Health & Safety Code § 25990). In 2010, California's legislature extended the Proposition 2 requirements to all eggs sold in California. *Id.*

In 2014, Missouri—later joined by Nebraska, Oklahoma, Alabama, and Kentucky, as well as the Governor of Iowa—sued California's Attorney General and Secretary of Food and Agriculture in the U.S. District Court for the Eastern District of California, seeking a declaration that the California law violated the Commerce Clause and was preempted by federal law. *Id.* The Humane Society of the United States and the Association of California Egg Farmers successfully moved to intervene as defendants. *Id.*

The district court granted the defendants' motions to dismiss. *Missouri v. Harris*, 58 F. Supp. 3d 1059, 1063 (2014). The court concluded that the States lacked standing to bring the suit as *parens patriae*, and that they had failed to allege a genuine threat of imminent prosecution or specific future harm. *Id.* at 1068-77. The court denied the States leave to amend on futility grounds, finding it "patently clear" that they were "bringing this action on behalf of a subset of each state's egg farmers and their purported right to participate in the laws that govern them, not on behalf of each state's population generally." *Id.* at 1078.

The Ninth Circuit affirmed the district court's holding on standing. 847 F.3d at 650. The court of appeals found that the States had failed to "articulate an interest apart from the interests of particular

private parties." *Id.* at 651 (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982)). That is, the complaint "allege[d] 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." *Id.* at 652 (emphasis in original). But "[t]he complaint contain[ed] no specific allegations about the statewide magnitude of these difficulties or the extent to which they affect[ed] more than just an 'identifiable group of individual' egg farmers." *Id.* (footnote omitted; quoting *Snapp*, 458 U.S. at 607). The court contrasted the case with others in which this Court has recognized *parens patriae* standing, where "private relief was held to be unlikely or unrealistic," or where the harm was "alleged to threaten the health of the entire population." *Id.* at 652-53 (discussing *Missouri v. Illinois*, 180 U.S. 208 (1901), and *Maryland v. Louisiana*, 451 U.S. 725 (1981)).

In so holding, the Ninth Circuit rejected as speculative the States' arguments that anticipated "fluctuations in the price of eggs" caused by California's exiting the market for eggs not meeting the new standards would "harm consumers, thereby affecting a substantial segment of their populations and establishing *parens patriae* standing." *Id.* at 653. The court found that "the unavoidable uncertainty of the alleged future changes in price ma[de] the alleged injury insufficient for Article III standing." *Id.* at 653-54 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992), for the proposition that "it is 'substantially more difficult' for a plaintiff to establish standing when the plaintiff 'is not himself the object of the

government action or inaction he challenges'"). And the court noted that, "[i]n one of the proposed scenarios Plaintiffs suggest could occur" following implementation of the California law, egg prices in the plaintiff States would actually decrease due to excess supply, thus benefiting consumers in those States. *Id.* at 654.

The court also rejected the States' contention that the California law implicated an anti-discrimination interest on the part of the States, because the law did "not distinguish among eggs based on their state of origin." *Id*. at 655. Moreover, the States had not alleged "trade barriers erected against their broader economies." *Id.* (distinguishing *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439 (1945)).

The Ninth Circuit remanded for dismissal without prejudice. *Id.* at 656 (citing "the general rule" that dismissals for lack of jurisdiction are without prejudice because "the merits have not been considered" (quotation omitted)).

This Court denied the States' petition for certiorari. *Missouri ex rel. Hawley v. Becerra*, No. 16-1015, 137 S. Ct. 2188 (May 30, 2017).

3. On December 11, 2017, Indiana and the twelve other Plaintiff States filed the instant motion for leave to file a bill of complaint. A week earlier, a group of States led by Missouri had sought leave to file an original action in this Court against California in connection with the same law challenged in the *Missouri v. Harris* Ninth Circuit litigation. *See* Motion for Leave to File Bill of Complaint, *Missouri v. California*, Orig. No. 148 (Dec. 4, 2017).

Indiana and its fellow Plaintiff States have alleged a single claim against Massachusetts: that its Act violates the dormant Commerce Clause. Compl. ¶ 52. The Plaintiff States assert that Massachusetts' law "constitutes economic protectionism and extraterritorial regulation" because "farmers in Plaintiff States must now submit to Massachusetts's laws, as well as those of any state that adopts similar regulations, in order to have access to those states' markets." *Id.* They seek declaratory and injunctive relief. Compl. ¶ 57.

ARGUMENT

I. This dispute does not require exercise of the Court's original jurisdiction.

The Plaintiff States here object to Massachusetts' choice to prohibit the sale in Massachusetts of eggs and whole veal and pork meat that was produced under conditions not meeting standards intended to protect public health and prevent animal cruelty. Act §§ 1, 3. For reasons described further below in Part II, the Plaintiff States lack standing to challenge the law, as they are not among the business owners and operators subject to it. Moreover, as set forth in Part III, the States' dormant Commerce Clause claim is wholly without merit. But this Court need not reach these standing or merits questions, because, in any event, this case does not warrant exercise of the Court's original jurisdiction.

This Court's "original jurisdiction should be exercised 'sparingly.'" *Wyoming v. Oklahoma*, 502 U.S. 437, 450 (1992) (quoting *Maryland v. Louisiana*,

451 U.S. 725, 739 (1981)); *see also Louisiana v. Texas*, 176 U.S. 1, 15 (1900) ("[T]he jurisdiction is of so delicate and grave a character that it was not contemplated that it would be exercised save when the necessity was absolute and the matter itself properly justiciable."). The Court has "consistently interpreted 28 U.S.C. § 1251(a) as providing [it] with substantial discretion to make case-by-case judgments as to the practical necessity of an original forum in this Court," including in cases involving the Court's exclusive jurisdiction. *Texas v. New Mexico*, 462 U.S. 554, 570 (1983) (citing *Maryland v. Louisiana*, 451 U.S. at 743; *Ohio v. Wyandotte Chems. Corp.*, 401 U.S. 493, 499 (1971)).

This case falls outside the category of "appropriate cases" for exercise of this Court's original jurisdiction, because it satisfies neither of the two main criteria this Court has considered in exercising its discretion. *Wyoming v. Oklahoma*, 502 U.S. at 451 (quoting *Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1971)). First and most importantly, the case lacks a "claim of sufficient 'seriousness and dignity.'" *Id.* (quoting *Milwaukee*, 406 U.S. at 93). The Plaintiff States' claim amounts to a policy disagreement about regulations applicable only to sales of eggs and meat in Massachusetts, not a "threatened invasion of rights" of the States themselves that is "of serious magnitude and . . . established by clear and convincing evidence." *Maryland v. Louisiana*, 451 U.S. at 736 n.11 (quoting *New York v. New Jersey*, 256 U.S. 296, 309 (1921)). Second, there is another forum "where the issues tendered may be litigated, and where appropriate relief may be had." *Milwaukee*, 406 U.S. at 93. The question presented here can—and would more

appropriately be—litigated in the lower courts, subject to this Court's usual appellate review, provided the plaintiffs satisfy the applicable standing and other threshold requirements.

A. Massachusetts has not invaded the sovereign or quasi-sovereign interests of the Plaintiff States.

The complaint presents a miscellany of purported proprietary and *parens patriae* interests that the Plaintiff States claim establish their standing and warrant exercise of this Court's jurisdiction. *See* Compl. ¶¶ 20-46. But both the complaint and brief in support are remarkably frank in identifying on whose behalf they have brought suit, objecting that "*farmers* in Plaintiff States would have to either decrease flock and herd sizes or spend millions of dollars on new infrastructure and undergo contentious zoning approval processes" in order to sell their eggs or meat in Massachusetts. Br. 1 (emphasis added); *see also* Compl. ¶ 1 ("This case challenges the Commonwealth of Massachusetts's attempt to impose regulatory standards *on farmers* from every other state by dictating conditions of housing for poultry, hogs, and calves when their products will be offered for sale in Massachusetts." (emphasis added)).

This is precisely the sort of case—on behalf of a select group of residents—that this Court declines to accept as part of its original jurisdiction. *See Kansas v. Colorado*, 533 U.S. 1, 8 (2001) ("The 'governing principle' is that in order to invoke our original jurisdiction, 'the State must show a direct interest of its own and not merely seek recovery for the benefit of

individuals who are the real parties in interest.'" (quoting *Oklahoma ex rel. Johnson v. Cook*, 304 U.S. 387, 396 (1938))). The Court has long held, in numerous cases and contexts, that a State may not call upon this Court's original jurisdiction when the State is "merely litigating as a volunteer the personal claims of its citizens." *Pennsylvania v. New Jersey*, 426 U.S. 660, 665-66 (1976) (per curiam) (declining to take jurisdiction of challenges to New Jersey and New Hampshire commuter taxes because cases were "nothing more than a collectivity of private suits . . . for taxes withheld from private parties"). Although States' "'quasi-sovereign' interests which are 'independent of and behind the titles of its citizens, in all the earth and air within its domain,'" may support exercise of original jurisdiction, "this principle does not go so far as to permit resort to [the Court's] jurisdiction in the name of a State but in reality for the benefit of particular individuals." *Oklahoma ex rel. Johnson*, 304 U.S. at 393-94 (quoting *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907)).

Thus, in *Oklahoma v. Atchison, Topeka, & Santa Fe Railway Co.*, 220 U.S. 277 (1911), for example, the Court disclaimed jurisdiction over a suit in which Oklahoma sought to challenge the rates a railroad company charged on shipments within Oklahoma. Although the Court granted that "a controversy, in the constitutional sense," might exist on the alleged facts "between each shipper and the company," "plainly, the *state*, in its corporate capacity, would have no such interest in a controversy of that kind as would entitle it to vindicate and enforce the rights of a particular shipper or shippers, and incidentally, of all shippers,

by an original suit brought in its own name, in this court[.]" *Id*. at 286 (emphasis in original).

The same analysis applies here: the Plaintiff States may not sue Massachusetts in this Court simply "as volunteers" to vindicate the rights of certain farmers who object to the requirements for sales of agricultural products in Massachusetts. The Plaintiff States acknowledge as much, granting that, in a *parens patriae* original action, the injury must "affect[] the general population of a State in a substantial way." Br. 20 (quoting *Maryland v. Louisiana*, 451 U.S. at 737). Otherwise, "if, by the simple expedient of bringing an action in the name of a State, this Court's original jurisdiction could be invoked to resolve what are, after all, suits to redress private grievances, [the Court's] docket would be inundated." *Pennsylvania v. New Jersey*, 426 U.S. at 665; *see also id.* at 665-66 (noting, further, that "the critical distinction, articulated in Art. III, S. 2, of the Constitution, between suits brought by 'Citizens' and those brought by 'States' would evaporate").

In place of the interests plainly motivating the suit, the Plaintiff States have stitched together other thinly alleged interests in challenging Massachusetts' law: that the law will allegedly harm Indiana in its proprietary capacity as a farmer; or harm the Plaintiff States as purchasers of eggs and meat; or harm consumers in the Plaintiff States by raising prices. Br. 20-21. None of these claimed injuries is "of serious magnitude" and "established by clear and convincing evidence." *Maryland v. Louisiana*, 451 U.S. at 736

n.11 (quoting *New York v. New Jersey*, 256 U.S. at 309).[1]

Indiana's claimed harm as a farmer, through a Purdue University agricultural program, is the sort of slim proprietary claim this Court has repeatedly dismissed as "makeweight," even when accepting a case on other grounds. *See, e.g.*, *Tennessee Copper*, 206 U.S. at 237 (accepting pollution case affecting broad area of Georgia, but declining to consider "makeweight" proprietary claim because Georgia owned little of the affected land and "the damage to it capable of estimate in money, possibly, at least, is small"); *Georgia v. Pennsylvania R. Co.*, 324 U.S at 447, 450-51 (finding "matters of grave public concern" where Georgia economy and citizens were alleged to have "seriously suffered" from discriminatory and arbitrarily high rates intended to disadvantage Georgia ports in favor of others, but dismissing as "makeweight" Georgia's claim as proprietor of "a railroad and as the owner and operator of various public institutions"). Moreover, as discussed further below, Indiana does not even plausibly allege that it is actually affected as a farmer by Massachusetts' law: the law applies only to sales in Massachusetts, and Indiana expressly concedes that Purdue engages in no such sales. *See infra* at 21-23.

The Plaintiff States' claimed proprietary harms as purchasers of eggs and meat are likewise

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[1] The Plaintiff States do not possess or attempt to claim a sovereign interest in enforcing the dormant Commerce Clause as a basis for standing. *See Louisiana v. Texas*, 176 U.S. at 19 (recognizing that "the vindication of the freedom of interstate commerce is not committed to the state of Louisiana").

"makeweights" not meriting this Court's exercise of jurisdiction. As discussed further below, it is far from clear—indeed, wholly speculative—that a law limiting sales in Massachusetts of certain egg and meat products will increase the prices paid by an Indiana prison or Wisconsin university for those products. *See infra* at 24-25. Such allegations are thus far from a "threatened invasion of rights" that is "of serious magnitude and . . . established by clear and convincing evidence." *Maryland v. Louisiana*, 451 U.S. at 736 n.11 (quoting *New York v. New Jersey*, 256 U.S. at 309).

The alleged price increases that the Plaintiff States speculate will harm consumers in their States are likewise not of "serious magnitude" and certainly have not been "established by clear and convincing evidence" more than three years prior to the law's effective date. Indeed, as discussed further below, despite the fact that California's similar law has been in effect since January 1, 2015, *see* Cal. Health & Safety Code § 25996, the Plaintiff States do not point to evidence of actual price increases in the Plaintiff States caused by that law. *See infra* at 24-25.

Moreover, the slight and speculative nature of this alleged harm contrasts sharply with the *parens patriae* cases on which the Plaintiff States rely. *See* Br. 20. In *Missouri v. Illinois*, 180 U.S. at 241, pollution of the Mississippi River by Chicago sewage was claimed to affect the entire state, because "contagious and typhoidal diseases introduced in the river communities may spread themselves throughout

the territory of the state."[2] In *Kansas v. Colorado*, 185 U.S. 125, 136-45 (1902), the Court accepted jurisdiction to determine whether Colorado could "wholly deprive" Kansas of water from the Arkansas River, where "the fertility of all the valley lands in Kansas . . . ha[d] been greatly diminished, and the crops, trees, and vegetation ha[d] languished and declined, and in many places perished, and wells . . . ha[d] become dry," and all of these "damages ha[d] increased year by year for the past ten years[.]" In *Tennessee Copper*, 206 U.S. at 237-39, where Georgia sought to enjoin the discharge of gases "carried by the wind great distances" over the State, the Court was "satisfied, by a preponderance of the evidence," that the gases had "cause[d] and threaten[ed] damage" on a "considerable . . . scale to the forests and vegetable life, if not to health, within the plaintiff state[.]" And in *Maryland v. Louisiana*, 451 U.S. at 731-34 & n.7, the challenged gas tax exacted between $150 and $275 million dollars annually and was structured in a discriminatory fashion so that its burden fell almost entirely on out-of-state companies and their

[2] Notably, five years later, the Court dismissed Missouri's complaint, finding that, whereas "[t]he nuisance set forth in the bill was one which would be of international importance, a visible change of a great river from a pure stream into a polluted and poisoned ditch," "the case proved [fell] so far below the allegations of the bill that it [wa]s not brought within the principles heretofore established in the cause." *Missouri v. Illinois*, 200 U.S. 496, 518, 526 (1906); *see also id.* at 521 ("[I]t does not follow that every matter which would warrant a resort to equity by one citizen against another in the same jurisdiction equally would warrant an interference by this court with the action of a state.").

customers.[3] Here, by contrast, as discussed further below, the Act does not discriminate against interstate commerce; the complained-of price increases will fall on Massachusetts consumers; and it is sheer speculation to suggest that out-of-state consumers will suffer any price increase at all. *See infra* at 24-28.

In sum, this is not a matter of "grave public concern" warranting this Court's exercise of original jurisdiction. *Pennsylvania v. West Virginia*, 262 U.S. 553, 592 (1923) (accepting case where state law threatened to cut off gas service completely to more than 1 million people caring for households totaling more than 5 million people in Pennsylvania and Ohio). Rather, the harms claimed here hearken back to this Court's warning decades ago that, "[a]s our social system has grown more complex, the States have increasingly become enmeshed in a multitude of disputes with persons living outside their borders," including regarding "the application of state laws concerning taxes, motor vehicles, decedents' estates, business torts, government contracts, and so forth."

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[3] Chief Justice Rehnquist dissented from the Court's decision to accept jurisdiction in *Maryland v. Louisiana* for reasons that resonate here. *See* 451 U.S. at 760-71 (warning that "[i]f all that is required to invoke our original jurisdiction is an injury to the State as consumer caused by the regulatory activity of another State, the list of cases which could be pressed as original-jurisdiction cases must be endless"; objecting that "[a]dvancing the economic interests of a limited group of citizens . . . is not sufficient to support *parens patriae* original jurisdiction"; and rejecting the existence of a sufficiently "direct link to health and welfare" based on a mere "increase in the cost of a commodity passed on to consumers"). His reasoning carries all the more force where, unlike in *Maryland v. Louisiana*, it is far from clear that there will be any price increase in the Plaintiff States.

Wyandotte Chems., 401 U.S. at 497. As the Court stated then, and as remains true today, "[i]t would, indeed, be anomalous were this Court to be held out as a potential principal forum for settling such controversies." *Id.*

B. The legal and factual issues presented by this case are better suited for resolution in the lower courts and through the normal appellate process.

The Court should deny the motion for leave to file a complaint for the further reason that this is not a case where "an adequate remedy can only be found in this court" in an original action. *Missouri v. Illinois*, 180 U.S. at 241. Rather, the lower courts would provide "an appropriate forum in which the Issues tendered here may be litigated." *Arizona v. New Mexico*, 425 U.S. 794, 797 (1976). Such is evident from the fact that States led by Missouri have already availed themselves of federal question jurisdiction to challenge California's similar law in the U.S. District Court for the Eastern District of California, albeit in a suit dismissed for want of standing, *see* 847 F.3d at 650. Maintaining an action in this Court is simply unnecessary, and the lower courts are a more appropriate forum to address the fact-intensive and novel claim that the case presents.

First, this is not a circumstance where "recourse to" this Court's original jurisdiction "is necessary for the State's protection," *Arizona v. New Mexico*, 425 U.S. at 797 (quoting *Massachusetts v. Missouri*, 308 U.S. 1, 18 (1939)). Nor is it a matter "of urgent concern to the entire country." *South Carolina v. Katzenbach*,

383 U.S. 301, 307 (1966). In *Katzenbach*, for example, the Court recognized the necessity of putting to rest as soon as possible the question of the Voting Rights Act's constitutionality and therefore found it appropriate to short-circuit review by lower courts. *See id.* No such exigency exists here.

Where litigation in the lower courts is an alternative means for resolving a dispute, this Court has often declined jurisdiction—even in cases that, unlike this one, "plainly present[ed] important questions of vital national importance." *Washington v. Gen. Motors Corp.*, 406 U.S. 109, 112-14 (1972) (declining to accept case in part because of "the availability of the federal district court as an alternative forum"); *see also, e.g.*, *Arizona v. New Mexico*, 425 U.S. at 796-97 (declining jurisdiction over constitutional challenge to electrical energy tax, where taxed Arizona utilities had filed suit in New Mexico state court); *Louisiana v. Mississippi*, 488 U.S. 990 (1988) (summary denial of boundary dispute that was already the subject of state-court suit); *Illinois v. Michigan*, 409 U.S. 36, 37 (1972) (per curiam) (declining suit to enforce reciprocal insurance statute on ground that the "original jurisdiction of the Court is not an alternative to the redress of grievances which could have been sought in the normal appellate process, if the remedy had been timely sought"). These decisions reflect the Court's recognition that "[t]he breadth of the constitutional grant of this Court's original jurisdiction dictates that" the Court "exercise discretion over the cases [it] hear[s]," "lest [the Court's] ability to administer [its] appellate docket be impaired." *Gen. Motors*, 406 U.S. at 113; *see also Texas v. New Mexico*, 462 U.S. at 570 (exercise of

Court's original jurisdiction should be "with an eye to promoting the most effective functioning of this Court within the overall federal system"). The same considerations weigh in favor of declining jurisdiction here.

Second, the Plaintiff States' claim is ill-suited to this Court's docket. To begin with, the complaint fails to establish their standing to sue. *See* Part II, *infra*. Were this Court to grant the Plaintiff States' motion, considerable jurisdictional discovery, expert analysis, and motion practice would be required simply to ascertain whether the Plaintiff States have suffered an injury that could justify their proceeding at all. This question alone implicates myriad factual issues, including the evolving state of animal husbandry practices and consumer demand in the national and state-specific egg and meat markets (which increasingly include quite an array of options: organic, grass-fed, cruelty-free, pasture-raised, free-range, cage-free, "enriched environment," and the like); the numerous variables affecting the prices for these products in the various markets; the interstate price effects, if such can even be forecast, of a Massachusetts law not yet in effect on this range of products; and the extent of the Plaintiff States' own purchasing and farming activities. This case thus does not present a pure question of law ready for this Court's decision. *Cf. Wyandotte Chems.*, 401 U.S. at 498 (noting the Court is "structured to perform as an appellate tribunal" and "forced, in original cases, awkwardly to play the role of factfinder without actually presiding over the introduction of evidence").

Moreover, even if the Plaintiff States' novel theory of "extraterritoriality" had a basis in fact, it should percolate in the lower courts before this Court considers adopting it as a matter of constitutional law. The theory lacks a precursor in this Court's dormant Commerce Clause precedents, which amply vindicate Massachusetts' authority to regulate its food supply in a nondiscriminatory manner for the good of its residents. *See* Part III, *infra*. The Plaintiff States cast their claim as akin to a smattering of dormant Commerce Clause challenges in entirely different contexts, involving distinct extraterritorial arguments. *See* Br. 15-19; *see also infra* at 33 n.11. As in those challenges, the issues here belong in the lower courts, where the Plaintiff States' factual assertions can be tested, and where courts can air the nuances (and potential downstream consequences) of such novel theories—all subject to this Court's review. *See Wyandotte Chems.*, 401 U.S. at 498-99.

II. The Plaintiff States do not have standing.

Putting aside this Court's prudential guarding of its docket, Article III itself bars the Plaintiff States' claim. As in any federal court, plaintiffs in this Court must prove standing. *Wyoming v. Oklahoma*, 502 U.S. at 447; *Maryland v. Louisiana*, 451 U.S. at 735-36. They must have "suffered an injury in fact" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; that is "fairly . . . trace[able] to" Massachusetts' conduct; and that likely can be redressed by this Court. *Lujan v. Defenders of Wildlife*, 504 U.S. at 560 (quotations omitted). Here, the Plaintiff States claim two sets of injuries: to Indiana in its capacity as a farmer, and to

the Plaintiff States and their residents as purchasers of eggs and whole pork and veal meat. *See* Compl. ¶¶ 20-46. The first claimed injury is factually deficient "makeweight," *Tennessee Copper*, 206 U.S. at 237, and the second rests on speculation already correctly rejected by the Ninth Circuit in the California egg litigation, 847 F.3d at 653-54 (citing *Lujan*, 504 U.S. at 562).[4]

Indiana's claim that the Act will injure Purdue University's animal sciences program is "makeweight" of no weight at all: the complaint's own allegations establish that Massachusetts' law simply does not apply to Indiana. The Act applies only to "sale[s] within the Commonwealth of Massachusetts." Act § 3. Indiana does not allege that Purdue conducts any sales in Massachusetts; to the contrary, it freely admits that Purdue's "sales of meat are transactions that occur wholly outside the Commonwealth of Massachusetts." Compl. ¶ 31; *see also* Compl. ¶ 29 (averring that Purdue "sells livestock in Indiana and to nationwide meat distributors who then resell the products").

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[4] The Plaintiff States appear to concede, as they must, that they lack *parens patriae* standing to represent particular agricultural interest groups in their States that may object to the Act. *See* Br. 20 (citing *Oklahoma ex. rel. Johnson*, 304 U.S. at 394, and discussing alleged harms to consumers generally). *But see* Compl. ¶ 46 (claiming "standing . . . to prevent injury to [the Plaintiff States'] farmers through the increase in their production costs"). To maintain a *parens patriae* action, "the State must articulate an interest apart from the interests of particular private parties"; "more must be alleged than injury to an identifiable group of individual residents." *Snapp*, 458 U.S. at 607.

That national distributors to whom Purdue sells products *may* themselves resell the products in Massachusetts also fails to establish that Indiana's "intended future conduct is 'arguably . . . proscribed by [the] statute.'" *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2344 (2014) (quoting *Babbit v. Farm Workers*, 442 U.S. 289, 298 (1979)). Indiana has not even established that the "nationwide meat distributors" that purchase its products actually sell State-produced meat in Massachusetts; rather, the complaint alleges only that the "meat distributors . . . resell the products to retailers, some of whom *are presumably located in* Massachusetts." Compl. ¶ 29 (emphasis added).[5] The complaint nevertheless appends a declaration containing an unexplained "opinion" from a university official that "Purdue University must comply with the requirements of the Massachusetts Animal Law or cease selling our meat to distributors who sell the products across the country since a product *may* be ultimately sold in Massachusetts." Compl. App. 10-11 ¶ 8 (emphasis added).

The plain text of Massachusetts' law establishes that Indiana would not be liable for Massachusetts transactions by a distributor that had purchased products from Purdue in Indiana. The Act makes it "unlawful for a business owner or operator to knowingly engage in the sale *within the*

[5] The complaint also contains no allegations regarding the form in which the Indiana meat is resold. *See* Compl. ¶ 30. Massachusetts' law applies only to relatively unprocessed cuts of "whole pork meat" and "whole veal meat." *See* Act §§ 5(S)-(T) (defining those terms). The law therefore would not preclude sales of Indiana-produced meat in a processed form.

Commonwealth of Massachusetts" of the various products. Act § 3 (emphasis added). The statute then specifically defines "sale" "to occur at the location where the buyer takes physical possession of an item." *Id.* § 5(M). Because Indiana admits it does not engage in sales in Massachusetts and that its buyers take possession in Indiana, Indiana's sales are not governed by the law. *See* Compl. ¶ 31. Indiana therefore has entirely failed to allege an injury that is "*certainly* impending" on the basis of its Purdue meat sales. *Lujan*, 504 U.S. at 565 n.2 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990); emphasis in original).[6]

The Plaintiff States' other allegations of harm—whether to the States in their proprietary capacity or to consumers within those States—all rest on broad speculation that Massachusetts' law will lead to price increases across the country, supposedly with respect to both Massachusetts-compliant and non-compliant products. *See* Compl. ¶¶ 34, 39, 42; Br. 20 (asserting without further elaboration that "the consumer prices paid by nearly every citizen of the Plaintiff States are likely to be negatively affected by the Animal Law"). Such speculation is insufficient to state a cognizable injury under Article III.

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[6] If Indiana's distributor does choose to resell whole cuts of Indiana meat in Massachusetts, the distributor could indeed be subject to the Massachusetts law. But Indiana makes no allegation of any resulting harm to Indiana. Nor could Indiana plausibly so allege; among other reasons, Indiana is apparently unaware whether *any* of its meat ends up in Massachusetts, *see* Compl. ¶ 32.

As this Court emphasized in *Lujan*, plaintiffs face a "'substantially more difficult'" burden in proving standing when "a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*"; for, in such cases, "causation and redressability ordinarily hinge on the response of the regulated (or regulable) third party to the government action or inaction—and perhaps on the response of others as well." 504 U.S. at 561-62 (quoting *Allen v. Wright*, 468 U.S. 737, 758 (1984); emphasis in original). Whether prices will increase in the Plaintiff States follows from "unfettered choices made by independent actors not before" this Court, and "whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict." *Id.* at 562 (quoting *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989) (Kennedy, J.)). It is the Plaintiff States' "burden . . . to adduce facts showing that those choices have been or will be made in such manner as to produce causation and permit redressability of injury." *Id.*

The Plaintiff States cannot meet this burden here, because the complaint is devoid of plausibly alleged facts showing the chain of causation by which Massachusetts' law will lead to price increases in the Plaintiff States, where businesses remain free to sell non-Massachusetts-compliant eggs. On this key point, the complaint simply asserts in conclusory fashion that "as a result of complying with the Animal Law, Indiana farmers will experience an increase in their production costs" that "will increase the price of eggs and pork in Massachusetts as well as Plaintiff States." Compl. ¶ 40. Although the Plaintiff States have attached to their complaint an affidavit from an

economist testifying to price increases he found as a result of California's egg law, the study addressed only price increases *within* California—where consumers are, by law, required to purchase eggs complying with California's standards. *See* Compl. App. 22-23 ¶ 18 (finding "welfare losses of at least $117 million *for the three California markets* over the observed time horizon" (emphasis added)).[7] Of course, neither the Plaintiff States nor consumers within their borders are required to purchase Massachusetts-compliant products. *Cf. Pennsylvania v. New Jersey*, 426 U.S. at 664 ("No State can be heard to complain about damage inflicted by its own hand."). Nor are the Plaintiff States or their residents likely to be significantly affected by any price increase that occurs within Massachusetts; none of the Plaintiff States even shares a border with Massachusetts.

And there are additional causal gaps. For example, the Plaintiff States do not allege facts establishing that farmers in the Plaintiff States will actually choose to make any necessary investments to comply with Massachusetts law—as opposed to just continuing with their current practices and selling their products at the same (fluctuating) prices

[7] In this regard, the declaration appears to be very carefully drafted, never positively asserting that price increases will occur for non-Massachusetts-compliant eggs. *See, e.g.*, Compl. App. 24 ¶ 24 ("This increase in product cost will not only affect farmers who will have to comply with the Massachusetts law in order to sell their products there, but also consumers who will be charged higher prices *for meat and eggs produced according to the Massachusetts standards*." (emphasis added)); Compl. App. 25 ¶ 26 ("In sum, the Massachusetts Animal Law will result in retail price increases for eggs similar to those experienced *in California*." (emphasis added)).

elsewhere. Conversely, to the extent that farmers in the Plaintiff States do increasingly choose to raise eggs and meat under conditions meeting Massachusetts' standards, the Plaintiff States would have to show that these evolving farm practices (and any attendant price increases) were an effort to comply with Massachusetts' law—and not part of the nationwide trend toward such products driven by the demands of consumers and retailers.[8]

Addressing California's egg law prior to its implementation, the Ninth Circuit thus rightly found that "the unavoidable uncertainty of the alleged future changes in price makes the alleged injury insufficient for Article III standing." 847 F.3d at 653. Like the plaintiffs there, the Plaintiff States here "have failed to explain how the injury is '*certainly* impending.'" *Id.* at 654 (quoting *Lujan*, 504 U.S. at 565 n.2; emphasis in original); *see also Energy & Envir. Legal Inst. v. Epel*, 793 F.3d 1169, 1174 (10th Cir. 2015) (Gorsuch, J.) (rejecting as speculative claimed out-of-state price increases due to Colorado renewable energy mandate). In other words, this is

[8] *See, e.g.*, Jade Scipioni, *How 2015 Became the Year of the Cage-Free Hen*, FOXBusiness, Dec. 21, 2015, at http://www.foxbusiness.com/features/2015/12/21/how-2015-became-year-cage-free-hen.html (reporting that, in 2015 alone, a large number of retailers—including, among others, Costco, Starbucks, Dunkin Brands, General Mills, Kellogg's, and McDonald's—all "vow[ed] to go completely cage-free"); *see also* Dan Charles, *Most U.S. Egg Producers Are Now Choosing Cage-Free Houses*, NPR, Jan. 15, 2016, at https://www.npr.org/sections/thesalt/2016/01/15/463190984/most-new-hen-houses-are-now-cage-free (quoting observation of chicken-housing seller that "we are seeing this change based solely on the market," as no state law completely prohibits cages).

not a case where hundreds of millions of dollars of a discriminatory tax are certainly being foisted on out-of-state consumers, *see Maryland v. Louisiana*, 451 U.S. at 731-34 & n.7, nor a case where Massachusetts is threatening to cut off completely its neighbors from a crucial commodity that they would certainly have to replace at immense expense, *see Pennsylvania v. West Virginia*, 262 U.S. at 592.

Because the Plaintiff States have failed to show they have been or will be injured by Massachusetts' law, the Court should deny leave to file the complaint.

III. The Plaintiff States' dormant Commerce Clause claim lacks merit.

The Court should deny leave to file the complaint for the further reason that the Plaintiff States have failed to state a claim that Massachusetts' law violates the dormant Commerce Clause. The law does not discriminate against or impose a substantial burden on interstate commerce. Even if the law were found to impose some burden, it is constitutional because it "even-handedly" furthers Massachusetts' legitimate interests in regulating its food supply, and any "effects on interstate commerce are only incidental" and not "clearly excessive." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

To begin with, Massachusetts' law does not discriminate against interstate commerce either directly or in practical effect. The ban on sales of certain animal products in Massachusetts "'regulates evenhandedly,'" applying alike to all covered products "without regard to whether the [products] or the sellers are from outside the State." *Minnesota v.*

Clover Leaf Creamery Co., 449 U.S. 456, 471-72 (1981) (quoting *Pike*, 397 U.S. at 142); *see also Exxon Corp. v. Maryland*, 437 U.S. 117, 127 (1978) (rejecting argument that "the Commerce Clause protects the particular structure or methods of operation in a retail market"). Moreover, although the Plaintiff States emphasize the percentage of eggs sold in Massachusetts that are produced in other States, Br. 13, "[t]he fact that the burden of a state regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce." *Exxon*, 437 U.S. at 126. The Act thus does not "impose commercial barriers or discriminate against an article of commerce by reason of its origin or destination out of State." *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 390 (1994).

Nor does Massachusetts' law impose a substantial burden on interstate commerce. Indeed, it places no special "burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear." *Am. Trucking Ass'n, Inc. v. Mich. Pub. Serv. Comm'n*, 545 U.S. 429, 433 (2005) (quoting *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 180 (1995)). The Act governs sales only "within Massachusetts" and defines "sale" narrowly to capture only those sales "where the buyer takes physical possession of" the food item in Massachusetts. Act §§ 3, 5(M). Accordingly, noncompliant food products may travel freely in interstate commerce through Massachusetts on their way to sales elsewhere. Moreover, because the law contains an exemption from its minimum-cage-size requirements during transportation of the animal, *id.* § 4(A), the law's standards do not apply during periods

when animals themselves are traveling through Massachusetts. There is thus not "*any* disparate impact on out-of-state as opposed to in-state businesses." *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 346 (2007) (plurality opinion; emphasis in original).

And the law lacks the "extraterritorial" characteristics proscribed by this Court in the cases on which the Plaintiff States principally rely, *see* Br. 10-11. The law does not directly or in practical effect regulate sales in other States; retailers and consumers remain free to sell and buy outside Massachusetts whatever eggs, pork, and veal that are legal to sell under other States' and federal laws. *Cf. Edgar v. MITE Corp.*, 457 U.S. 624, 641 (1982) (plurality opinion) (law "directly regulat[ing] transactions which take place across state lines, even if wholly outside the State"). The law also does not effectively impose a tariff to destroy out-of-state competitors' commodity price advantages. *Cf. Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 521-22 (1935) (law effectively imposing tariff on out-of-state milk by precluding resale in New York if milk was purchased elsewhere for a price below New York's minimum). Nor does it otherwise have the impermissible effect of regulating prices in neighboring states. *Cf. Healy v. Beer Institute*, 491 U.S. 324, 338-39 (1989) (Connecticut price affirmation statute that "ha[d] the practical effect of controlling Massachusetts prices"); *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 579-80 (1986) (New York price affirmation statute "mak[ing] it illegal for a distiller to reduce its price in other States during the period that the posted New

York price [wa]s in effect").[9] Far from establishing an "inevitable effect" on prices outside Massachusetts, *Pharmaceutical Research & Manufacturers of America v. Walsh*, 538 U.S. 644, 669 (2003) (quotation omitted), the Plaintiff States' own expert projects price increases only within Massachusetts itself. *See supra* at 24-25 & n.7.

Even if this Court were to find a cognizable burden on interstate commerce imposed by Massachusetts' law, the law readily passes muster under the applicable *Pike* balancing test, *see Clover Leaf Creamery*, 449 U.S. at 471. Indeed, Plaintiff States do not even cite *Pike* in their brief, let alone attempt to mount an argument that the Act fails the test.

Pike itself presents an instructive contrast. There, the Court struck down an Arizona law that required that cantaloupes be packed in certain closed containers approved by a state official that advertised that the cantaloupes were grown in Arizona. 397 U.S. at 138, 144. This law, the Court found, effectively required the plaintiff to build expensive packing facilities in Arizona, rather than utilizing its existing, nearby packing facilities in California where its Arizona-grown melons could be packed and shipped. *Id.* at 139-40. In finding this burden on interstate commerce "clearly excessive" in relation to the "tenuous" local benefits, the Court contrasted the

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[9] Although the Plaintiff States also cite *C & A Carbone* in support of their extraterritoriality argument, *see* Br. 12, the statute there—which required that all solid waste go to a particular in-state processing facility—was struck down as discriminatory and "protectionist," not for an extraterritorial effect. *See* 511 U.S. at 389-94.

regulation's aim—to preserve Arizona's reputation vis-à-vis the quality of its produce—with "'state legislation in the field of safety[,] where the propriety of local regulation has long been recognized[.]'" *Id.* at 142-45 & n.6 (quoting *Southern Pac. Co. v. Arizona*, 325 U.S. 761, 796 (1945) (Douglas, J., dissenting)).

Here, any incidental burden on interstate commerce is not "clearly excessive" in comparison with the "putative local benefits." 397 U.S. at 142. Massachusetts voters expressly invoked health and safety concerns in adopting the law. *See* Act § 1. The Plaintiff States rightly acknowledge that the Act addresses an eminently appropriate subject of state legislation.[10] *See* Br. 6 ("Massachusetts may legitimately protect its consumers from harmful foodstuffs produced elsewhere[.]"); *see also, e.g.*, *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 443-44 (1960) ("[T]he Constitution . . . never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens,

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[10] *See, e.g.*, Thomas Denagamage et al., *Risk Factors Associated with Salmonella in Laying Hen Farms: Systematic Review of Observational Studies*, 59 Avian Diseases 291, 293 (2015) (noting that the European Union has banned the use of conventional battery cages and the sale of shell eggs from hens reared in such cages since January 2012 and citing four studies "demonstrat[ing] strong evidence for the effect of housing type on *Salmonella* contamination"); *see also* European Food Safety Authority (EFSA), *Report of the Task Force on Zoonoses Data Collection on the Analysis of the Baseline Study on the Prevalence of Salmonella in Holdings of Laying Hen Flocks of Gallus Gallus*, 97 EFSA J. 1, 40, 46 (2007), http://www.efsa.europa.eu/en/efsajournal/pub/rn-97 (concluding that "[c]age flock holdings are more likely to be contaminated with *Salmonella*" and discussing reasons why this may be).

though the legislation might indirectly affect the commerce of the country." (quoting *Sherlock v. Alling*, 93 U.S. 99, 103 (1876))). The law also, of course, serves Massachusetts' well established interest in preventing animal cruelty. *See United States v. Stevens*, 559 U.S. 460, 469 (2010) (noting that "the prohibition of animal cruelty has a long history in American law, starting with the early settlement of the Colonies").

Massachusetts' law thus falls within a very long line of this Court's precedents recognizing States' strong interests in regulating their food supply and rejecting dormant Commerce Clause challenges to analogous nondiscriminatory statutes. *See, e.g.*, *Sligh v. Kirkwood*, 237 U.S. 52, 58-62 (1915) (ban on sale of immature citrus fruits); *New York ex rel. Silz v. Hesterberg*, 211 U.S. 31, 40-41 (1908) (prohibition on possessing game birds out of hunting season, whether domestic or imported from out of state); *Plumley v. Massachusetts*, 155 U.S. 461, 478-80 (1894) (ban on manufacture or sale of artificially colored yellow oleomargarine).

Numerous more recent similar statutes have been upheld by the lower federal courts applying this Court's clear precedents. *See, e.g.*, *Ass'n des Eleveurs de Canards et D'Oies du Quebec v. Harris*, 729 F.3d 937, 948 (9th Cir. 2013) (upholding ban on foie gras produced by force-fed ducks in part because a "statute that '[t]reats all private companies exactly the same' does not discriminate against interstate commerce" (quoting *United Haulers*, 550 U.S. at 342)); *Empacadora de Carnes de Fresnillo, S.A. de C.V. v. Curry*, 476 F.3d 326, 335 (5th Cir. 2007) (holding that a statute that "treat[s] both intrastate and interstate

trade of horsemeat equally by way of a blanket prohibition" cannot be "considered economic protectionism"); *Pac. Nw. Venison Producers v. Smitch*, 20 F.3d 1008, 1012 (9th Cir. 1994) (holding that "[a]n import ban that simply effectuates a complete ban on commerce in certain items"—elk and certain species of sheep and deer—"is not discriminatory, as long as the ban on commerce does not make distinctions based on the origin of the items"); *Cresenzi Bird Importers, Inc. v. New York*, 658 F. Supp. 1441, 1447 (S.D.N.Y. 1987) (rejecting bird importers' challenge to New York ban on sale of live wild birds and recognizing State's "interest in cleansing its markets of commerce which the Legislature finds to be unethical").[11]

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[11] The two lower court decisions on which the Plaintiff States rely in claiming a circuit split partially in their favor, *see* Br. 15-16, concern statutes in different contexts involving readily distinguishable extraterritoriality claims. *See North Dakota v. Heydinger*, 825 F.3d 912, 921 (8th Cir. 2016) (Loken, J.) (finding energy statute invalid because it had the practical effect of regulating out-of-state utilities' "activities and transactions that are otherwise entirely out-of-state" due in part to the fungible and non-traceable nature of electricity); *id.* at 923-27 (Murphy, J., concurring in part and concurring in judgment) (disagreeing with extraterritoriality analysis as resting on factually "incorrect assumptions" but finding statute preempted by the Federal Power Act); *id.* at 927 (Colloton, J., concurring in judgment) (finding statute preempted); *Nat'l Solid Waste Mgmt. Ass'n v. Meyer*, 63 F.3d 652, 658, 662 (7th Cir. 1995) (striking down Wisconsin statute barring dumping of solid waste unless the originating community—including any out-of-state community—adopted a recycling program qualifying as "effective" under Wisconsin standards, where court found that "all persons in that non-Wisconsin community must adhere to the Wisconsin standards whether or not they dump their waste in Wisconsin,"

In sum, Massachusetts' law stands as a completely nondiscriminatory health and safety and anti-animal-cruelty measure that in no way infringes on Congress' exclusive authority to regulate interstate commerce. This Court should decline the Plaintiff States' invitation to use the dormant Commerce Clause "to rigorously scrutinize . . . legislation passed under the auspices of the police power." *United Haulers*, 550 U.S. at 347 (plurality opinion); *see also id.* at 349 (Scalia, J., concurring in part) ("[T]he balancing of various values is left to Congress[.]"); *id.* at 354-55 (Thomas, J., concurring in judgment).

CONCLUSION

For the foregoing reasons, the Court should deny the motion for leave to file a bill of complaint.

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and there was an "available, less discriminatory alternative" in the form of "mandating that all waste entering the State first be treated at a materials recovery facility").

Respectfully submitted,

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