No. _____

IN THE

Supreme Court of the United States

TRIUMPH FOODS, LLC, ET AL.,

Petitioners,

V.

ANDREA JOY CAMPBELL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF MASSACHUSETTS, AND ASHLEY RANDLE, IN HER OFFICIAL CAPACITY AS MASSACHUSETTS COMMISSIONER OF AGRICULTURE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court has recently evaluated several petitions challenging individual state laws attempting to regulate methods of pig farming and pork processing nationwide. This is the first opportunity for the Court to review these insidious laws on behalf of a federally regulated processor and invalidate them as preempted by the Federal Meat Inspection Act ("FMIA").

That's critical, because *National Meat Association v. Harris*, 565 U.S. 452 (2012), unanimously confirmed that the FMIA's express preemption clause "sweeps widely," preventing "a State from imposing any additional or different—even if non-conflicting—requirements that fall within the scope of the [FMIA] and concern a slaughterhouse's facilities or operations." Yet that's precisely what Massachusetts's law does by compelling processing facilities to change and conform their operations throughout the production process.

Preemption aside, on behalf of both a processor and individual farmers, these individual State laws remain unconstitutional under the dormant Commerce Clause and a variety of other constitutional doctrines. This Court's fractured decision in *National Pork Producers Council v. Ross,* 598 U.S. 356 (2023) continues to foment nationwide confusion worthy of correction. The questions presented are:

1. Whether the Act imposes additional or different—even if non-conflicting—requirements on pork producers, and is thus preempted by the FMIA under principles of express or implied preemption?

2. Whether the Act violates the dormant Commerce Clause or the other constitutional doctrines sufficiently pleaded in the Complaint?

PARTIES TO THE PROCEEDING

Triumph Foods, LLC; Christensen Farms Midwest, LLC; The Hanor Company of Wisconsin, LLC; New Fashion Pork, LLP; Eichelberger Farms, Inc.; and Allied Producers' Cooperative, individually and on behalf of its members, are the Petitioners here and were the plaintiffs-appellants below.

Andrea Joy Campbell, in her official capacity as Attorney General of Massachusetts, and Ashley Randle, in her official capacity as Massachusetts Commissioner of Agriculture, are the Respondents here and were the defendants-appellees below.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioners Triumph Foods, LLC ("Triumph"), Christensen Farms Midwest, LLC ("Christensen Farms"), The Hanor Company of Wisconsin, LLC ("Hanor"), New Fashion Pork, LLP ("NFP"), Eichelberger Farms, Inc. ("Eichelberger"), and Allied Producers' Cooperative ("APC"), both in its official capacity and on behalf of its members ("Farmer Petitioners") (all together, "Petitioners") respectfully state that Farmer Petitioners consist of several limited liability companies, a limited partnership, and a cooperative. The Hanor Company of Wisconsin, LLC, has a parent holding company identified as HK USA Holdings, Inc. None of the remaining Petitioners have parent companies and no publicly held corporation owns 10% or more of their stock.

STATEMENT OF RELATED PROCEEDINGS

The proceedings directly related to this case are:

1. *Triumph Foods, LLC, et al. v. Campbell, et al.*, No. 24-1759, U.S. Court of Appeals for the First Circuit. Judgment entered October 3, 2025. Mandate issued on October 27, 2025.

2. *Triumph Foods, LLC, et al. v. Campbell, et al.*, No. 1:23-CV-11671-WGY, U.S. District Court for the District of Massachusetts. Judgment entered July 22, 2024.

There are no additional proceedings in any court that are directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS AND ORDERS BELOW

The decision of the Court of Appeals (App.1a) appears as a published opinion at 156 F.4th 29. The decision of the district court (App.39a) is published at 742 F. Supp. 3d 63.

JURISDICTION

The Court of Appeals issued its decision on October 3, 2025. On December 31, 2025, this Court granted an application for extension of time to file a petition for writ of certiorari until March 2, 2026. *Triumph Foods, LLC v. Campbell*, No. 25A739 (Dec. 31, 2025). The basis for federal jurisdiction in the court of first instance was 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

Relevant constitutional, statutory, and regulatory provisions are reproduced in the petition appendix. App.108a-136a.

INTRODUCTION

The FMIA's express preemption clause contains some of the broadest preemption language in federal law. The statute's plain language invalidates any state law or regulation that is "in addition to, or different than" those found in the FMIA. 21 U.S.C. § 678. When previously faced with questions under this very clause, this Court—unanimously—made quick work of attempts to circumvent its broad reach.

Specifically, in *Harris*, this Court rejected California's attempt to regulate how slaughterhouses handled nonambulatory pigs. This Court concluded that the California statute was preempted by the FMIA's express preemption clause, which the Court confirmed "sweeps widely" to preempt "any additional or different—even if non-conflicting—requirements that fall within the scope of the [FMIA] and concern a slaughterhouse's facilities or operations." 565 U.S. at 459-60.

California had attempted to avoid that preemptive reach by structuring a portion of its statute as a "sales ban." *Id.* at 462-64. In other words, the statute didn't directly say what slaughterhouses had to do, it just prevented slaughterhouse from *selling* the resulting pork unless nonambulatory pigs were handled in a certain way. *Ibid.* Thus, so the argument went, the sales ban was not imposing any requirements *directly* on the slaughterhouse operations, and the FMIA's preemption clause therefore did not apply. *Ibid.*

This Court quickly, emphatically, and unanimously rejected that attempted end-run, explaining that such a theory "would make a mockery of the FMIA's preemption provision." *Id.* at 464. Despite that strong medicine, certain States have persisted in ignoring this Court's instruction.

Less than five years later, California was back at the drawing board, this time adopting "Proposition 12," its statute prohibiting sales of pork unless sows giving birth to the pigs were housed in a certain way. *See generally Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (hereinafter *NPPC*). And Massachusetts soon followed suit with its similar (albeit somewhat different) Mass. Gen. Laws Ann. Ch. 129 App. §§ 1-1 *et seq.*, the statute at issue in this case.

Once again, these statutes are framed as "sales bans" to try and avoid FMIA preemption. But this time, the ruse includes one additional wrinkle. The statutes purport to regulate just what happens on *farms* before the pigs actually get to the processing facility. Of course, Massachusetts knows full well that restricting the sales of pork unless the pigs were housed in a certain way imposes a whole bevy of additional requirements on processing facilities, which the record bore out here. From initial arrival, to inspection, to sorting, to slaughter, to post-mortem inspection, to storage, to packaging, to labeling, to transporting, to sales—every stage of slaughterhouse operations must be reorganized and changed so the processor can comply with the Act's requirements and certify that the resulting pork came from pigs compliant with the Act. And all of these required changes are of course "in addition to, or different than" those found in the FMIA.

Yet Massachusetts claims it can skirt the FMIA's express preemption provision because it doesn't directly say what must be done at the processing facility. It claims authority to regulate earlier in the supply chain (at the farms), and later in the supply chain (by structuring the statute as a sales ban), but claims it can then ignore for preemption purposes all of the changes required at the processing facility, just because it didn't expressly say what is specifically required there.

This too makes a "mockery" of the FMIA's preemption clause. Unfortunately, the First Circuit took the State's bait, and this Court's review is urgently needed to prevent additional states from imposing their own additional requirements and adding to the patchwork of compliance chaos being

imposed on processing facilities.

Further, the Act is also unconstitutional under the dormant Commerce Clause, as well as under several other provisions Petitioners alleged in the Complaint. This Court's fractured decision in *NPPC* continues to stew confusion among the lower courts, and this Court should resolve it. Specifically, unlike *NPPC*, this case presents a claim that the Act discriminates against out-of-state industry in favor of in-state interests. Moreover, despite six Justices of this Court confirming that a dormant Commerce Clause claim under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) remains good law—and five ruling that, if *Pike* remained good law, the complaint in *NPPC* stated a claim—the First Circuit rejected that claim here. That misreading of this Court's recent precedent cries out for clarification, especially considering the confusion it is causing in the lower courts.

Finally, Petitioners asserted constitutional violations under a variety of other provisions: the Due Process Clause, the Privileges and Immunities Clause, the Full Faith and Credit Clause, and the Import-Export Clause. The district court dismissed these claims without discovery, evidentiary hearing, or any analysis or reasoning, and the First Circuit gave them short shrift as well. But individual Justices and commentators have suggested that these clauses may be the proper source to invalidate States' unlawful attempts to improperly regulate conduct in sister States, and Petitioners most assuredly pled enough to state a claim under those theories.

This Court should grant the petition.

STATEMENT OF THE CASE

I. Massachusetts Passes the Act.

On November 8, 2016, Massachusetts voters approved Mass. Gen. Laws Ann. Ch. 129 App. §§ 1-1 *et seq.* ("the Act"). App.131a. Relevant here, the Act bans a "business owner or operator to knowingly engage in the sale within Massachusetts of any . . . Whole Pork Meat that the business owner or operator knows or should know is the meat of a covered animal that was confined in a cruel manner, or is the meat of the immediate offspring of a covered animal that was confined in a cruel manner." Mass. Gen. Laws Ann. ch. 129 App., § 1-3; App.132a. It defines "confined in a cruel manner" as confinement that "prevents the animal from lying down, standing up, fully extending the animal's limbs or turning around freely." *Id.* § 1-5; App.133a. Breeding pigs are "covered animals" in the Act. *Id.* § 1-5; App.133a.

The sales ban contained an exception by defining "sale" as "a commercial sale by a business" of covered Whole Pork Meat,[1] but excluding all sales "undertaken at an establishment at which inspection is provided under the Federal Meat Inspection Act[.]" *Id.* § 1-5; App.134a. After multiple extensions and delayed enforcement, due in part to this Court's decision involving the California law, *see NPPC*, 598 U.S. 356, 409 (2023), the Act became enforceable with respect to breeding pigs on August 24, 2023. *See* App.3a.

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[1] The "whole pork meat" definition itself excepted all "combination food products," like pepperoni and sausage, which are made from the sow being regulated here. Mass. Gen. Laws Ann. ch. 129 App., § 1-5; App.135a.

II. The Court Rules on *NPPC*.

On May 11, 2023, this Court issued its decision in *NPPC*. In a fractured opinion, this Court affirmed the Ninth Circuit,[2] with a plurality holding that NPPC failed to state a claim that Proposition 12 violated the dormant Commerce Clause under the limited legal theories advanced. *Id.* at 390-91. Most notably, NPPC had "disavow[ed] any discrimination-based claim, conceding that Proposition 12 imposes the same burdens on in-state pork producers that it imposes on out-of-state ones." *Id.* at 370. Given there was no discrimination allegation, this Court turned to NPPC's two remaining theories for why Proposition 12 violated the dormant Commerce Clause: (1) a per se application of what NPPC called the "extraterritoriality doctrine," and (2) the substantial-burden balancing test in *Pike*. *Id.* at 369-80.

As for the first, the Court rejected NPPC's suggested per se application of the "extraterritoriality doctrine," finding that such an application—at least on a per se basis—extended the dormant Commerce Clause too far. *Id.* at 371-77, 390-91; *see also id.* at 394 (Roberts, C.J., concurring in part and dissenting in part) ("I also agree . . . that our precedent does not support a per se rule against state laws with 'extraterritorial' effects.").

As for the second, NPPC argued that under *Pike*, "a court must at least assess 'the burden imposed on interstate commerce' by a state law and prevent its enforcement if the law's burdens are 'clearly excessive in relation to the putative local benefits.'" *Id.* at 377. NPPC then provided a list of reasons why the benefits

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[2] *Nat'l Pork Producers Council v. Ross*, 6 F.4th 1021 (9th Cir. 2021).

Proposition 12 secures for Californians did not outweigh the costs imposed on out-of-state economic interests. *Id.*

But in Part IV-A of the opinion, a majority of five Justices determined that NPPC had overstated the extent to which *Pike* "depart[ed]" from the antidiscrimination principles lying at the heart of the dormant Commerce Clause. *Id.* at 377-80. This majority reasoned that *Pike* was actually a discrimination case, because the state law at issue required business operations to be performed in the state that could be more efficiently performed elsewhere. *Id.* Consequently, the "'practical effect[s]' of the order in operation thus revealed a discriminatory purpose—an effort to insulate in-state processing and packaging businesses from out-of-state competition." *Id.* at 378.

Consequently, the majority reasoned that under *Pike*, a law that was facially neutral could still violate the dormant Commerce Clause if the "law's practical effects . . . disclose[d] the presence of a discriminatory purpose." *Id.* Applying those principles, since NPPC had disavowed any claim that Proposition 12 discriminated on its face or that its "practical effects in operation would disclose purposeful discrimination against out-of-state business," NPPC's claim failed. To be sure, even that portion of the opinion recognized that the Court "has left the 'courtroom door open' to challenges premised on 'even nondiscriminatory burdens,'" *id.* at 379 (quoting *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 353 (2008)), and that "'a small number of our cases have invalidated state laws . . . that appear to have been genuinely nondiscriminatory,'" *id.* (quoting *General Motors Corp. v. Tracy*, 519 U.S. 278, 298 n.12 (1997)). Even

so, the Court concluded that as NPPC had opted not to include discriminatory allegations in its claim, the claim "f[e]ll[] well outside *Pike*'s heartland," which was "not an auspicious start." *Id.* at 379-80.

On the question of what to do with *Pike* in *NPPC* specifically, the Court deeply fractured. Three Justices concluded that *Pike* should be a dead letter, asserting that it inappropriately asked judges to engage in a balancing act that no court was adequately equipped to perform. *Id.* at 380-84 (Part IV-B). Four Justices determined that even if the Court were to apply the *Pike* test as NPPC had articulated it, NPPC's specific allegations in the complaint failed to adequately allege a necessary prerequisite—a sufficient burden on interstate commerce—as Proposition 12 simply did not meet the level for a substantial burden as described in *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117 (1978). *Id.* at 383-87 (Part IV-C). Consequently, the plurality concluded that NPPC failed to "plausibly" suggest a substantial harm to interstate commerce. *Id.*

Four Justices dissented. While they agreed the application of a per se rule against state laws with extraterritorial effects was inappropriate, they explained that *Pike* was still good law to ensure that there be "free private trade in the national marketplace" (and, to be clear, that holding represented the view of six Justices). *Id.* at 395 (Roberts, C.J., concurring in part and dissenting in part). Applying *Pike*, the dissent concluded that because NPPC had "identif[ied] broader, market-wide *consequences* of compliance" with Proposition 12, NPPC had stated "economic harms that our precedents have recognized can amount to a burden on interstate commerce." *Id.* at 397. In response to the

dissent, three Justices disagreed with the assertion of harm to the interstate market, contending it was merely a rearticulation of the rejected per se rule. *Id.* at 387-89 (Part IV-D).

In sum, while the Court's application was deeply fractured, only a three-Justice minority suggested that judges could not engage in a *Pike* balancing test; in contrast, a six-Justice majority "affirmatively retain[ed] the longstanding *Pike* balancing test for analyzing dormant Commerce Clause challenges to state economic regulations." *Id.* at 403 (Kavanaugh, J., concurring in part and dissenting in part). In applying that standard *to NPPC's specific allegations*, two schools of thought emerged: four Justices (including two of the six holding that *Pike* should be retained) concluded NPPC's allegations in the complaint failed to allege sufficient burden on interstate commerce, which was a prerequisite before even reaching the balancing portion of the *Pike* test. And five Justices (four of whom held that *Pike* should be retained) found that NPPC had "identif[ied] broader, market-wide consequences of compliance" with Proposition 12, and thus had stated "economic harms that our precedents have recognized can amount to a burden on interstate commerce." *Id.* at 397 (Roberts, C.J., concurring in part and dissenting in part); *id.* at 393 (Barrett, J., concurring in part).

III. Petitioners Sue and Move for Preliminary Injunction; the District Court Consolidates Proceedings.

On July 25, 2023, Triumph and Farmer Petitioners[3] sued to preliminarily and permanently

[3] Triumph is a farmer-owned pork processor producing high-quality pork products sold nationally (including within Massachusetts). App.140a. The Farmer Petitioners are a

enjoin the Act. App.137a. Petitioners asserted ten claims: (1) dormant Commerce Clause violations by directly discriminating against out-of-state commerce and by unduly burdening interstate commerce as described in *Pike*; (2) Privileges and Immunities Clause violations; (3) express preemption under the FMIA; (4) implied preemption under the FMIA; (5) preemption under the Packers and Stockyards Act; (6) Full Faith and Credit Clause violations; (7) Due Process Clause violations; (8) Import-Export Clause violations; (9) declaratory relief on unconstitutionality; and (10) judicial review of the Act's regulations. App.137a-203a.

On September 6, 2023, the district court (Judge William Young) held a hearing and immediately collapsed the motion for preliminary injunction with a trial on the merits under Rule 65(a)(2). Tr. 3-4, *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Sept. 8, 2023), ECF No. 40. In response, Petitioners requested a trial be held "as soon as possible." *Id.* The district court "expressed hope" that instead of cross-motions for summary judgment, the parties could place "the agreed-upon record . . . before the Court." *Id.* at 8. The district court set a pretrial hearing for October 10, 2023. *Id.* at 7.

IV. The District Court Dismisses Nine out of Ten Claims Without Analysis or Written Order.

On September 14, 2023, the parties filed a joint status report. Joint Status Report, *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Sept. 14, 2023), ECF No. 45. Massachusetts—for the first

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collection of family-owned farmers who breed pigs to supply Triumph's pork processing operations. App.141a.

time—objected to the October 10 pre-trial conference, arguing it provided insufficient time to prepare for trial. *Id.* at 2. Massachusetts also requested the October 10 conference be continued and that a briefing schedule be set for a motion to dismiss. *See* Mot., *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Sept. 14, 2023), ECF No. 46.

Over Petitioners' objections, the district court granted Massachusetts's request and ordered Massachusetts to file its motion by Thursday, September 28, with the motion hearing for Monday, October 2—***a mere four days later***. Text Order, *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Sept. 19, 2023), ECF No. 48. The order didn't address whether, when, or how Petitioners could oppose the motion to dismiss prior to the hearing. *Id.*

On September 28, Massachusetts moved to dismiss *all ten claims* under Rules 12(b)(1) & 12(b)(6). Mot. To Dismiss, *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Sept. 28, 2023), ECF No. 53. Because Petitioners had not been given an opportunity to respond, and because the hearing was set for four days later, Petitioners filed an opposition within 24 hours. Mem. In Opp'n, *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Sept. 29, 2023), ECF No. 58.

The district court heard the motion on October 2. App.76a. After instructing the parties to argue only the dormant Commerce Clause claim (Count I), the district court orally granted the motion to dismiss as to the other nine counts, from the bench, without argument. App.88a. The sole "reasoning" for the dismissal appears in a single line in the transcript:

> I'm going to dismiss [Petitioners' claims] except for the dormant Commerce

> Clause claim, and I'm going to dismiss them because Massachusetts has every right, as against your other claims, to pursue its own approach to animal housing.

App.88a. No further reasoning was given, and no written order followed. That was it.

Accordingly, all that remained was Petitioners' dormant Commerce Clause claim (under both legal theories). The district court ordered the parties to discuss how to proceed to trial on the remaining claim, again suggesting a "case-stated" proceeding. App.94a. The district court set the final pretrial conference for October 10, 2023. App.92a.

V. The District Court Grants Summary *Judgment Sua Sponte* Against Petitioners on their *Pike* Claim.

The parties submitted a joint pre-trial memorandum in early October. Am. Joint Pretrial Mem., *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Oct. 10, 2023), ECF No. 72. Petitioners explained they were ready to proceed to trial, but considering the district court's suggestions, they were amenable to moving for partial summary judgment on their direct discrimination theory under the dormant Commerce Clause, so long as the *Pike* claim could proceed later on a case-stated (or trial) basis. *See id.* at 1-5. The district court then issued an order allowing Petitioners to file a motion for early *partial* summary judgment and set a hearing for November 14, 2023. Order, *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Oct. 25, 2023), ECF No. 85.

Accordingly, Petitioners filed their motion for *partial* summary judgment. *See* Partial Summ. J.

Mem., *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Oct. 28, 2023), ECF No. 88. Petitioners explained that there are "two ways for a plaintiff to demonstrate a violation of the dormant Commerce Clause": direct discrimination, and alternatively, that a "law violates the balancing test the Supreme Court announced in *Pike*." *Id.* at 5. Petitioners stated that "the first basis—discrimination—is the sole focus of this partial motion for summary judgment" and reserved their *Pike* claim for trial. *Id.* Accordingly, Petitioners submitted no evidence or statement of undisputed material facts in support of the *Pike* claim, because they were not moving on that basis.

Massachusetts did not cross-move for summary judgment. Instead, within its opposition brief filed on November 7, Massachusetts requested—in a single sentence—that the district court not only deny Petitioners' motion, but also *grant* summary judgment *sua sponte* to Massachusetts on the direct discrimination theory. *See* Opp'n to Summ. J. 20, *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Nov. 11, 2023), ECF No. 94. Massachusetts also requested *sua sponte* summary judgment on Petitioners' *Pike* claim, despite Petitioners expressly reserving that theory within their own partial motion for summary judgment. *Id.*

Petitioners replied five days later, again making clear they were only moving on the direct-discrimination claim, not on *Pike*. *See* Reply 19, *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Nov. 12, 2023), ECF No. 98. At no time before the November 14 hearing did the district court provide Rule 56(f) required notice.

At the November 14 hearing, the district court

committed the parties to submitting the "slaughterhouse exemption" issue—*i.e.*, the sale of non-compliant pork meat from FMIA-inspected facilities—on a case-stated basis. App.99a. It then heard the Farmer Petitioners' argument on their remaining direct-discrimination issues. App.99a-107a.

The district court—again without written order or reasoning—denied Petitioners' partial motion, *but then proceeded to grant summary judgment to Massachusetts,* dismissing all *Pike* claims, as well as Farmer Petitioners' direct-discrimination claim. *See* App.106a. When Petitioners' counsel explained that neither party had moved on the *Pike* theories, and that no evidence was submitted on that claim, the district court only stated its belief that Massachusetts's opposition "was an outright, um, opposition, and I think they're properly before me, and in any event I reject it." App.106a. The court then issued a text-only order that the "[p]arties agree to case stated solely as to pork producer slaughterhouse issue. Commonwealth's opposition motion for summary judgment allowed solely as to farmers." Text Order, *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Nov. 15, 2023), ECF No. 99.

Petitioners filed a written objection once the district court clarified it was dismissing ***all*** *Pike* claims. Obj., *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Dec. 1, 2023), ECF No. 102. The district court's only response or resolution of this objection came months later, when the district court—during a hearing on a separate motion—said "I reject the *Pike* analysis" and "I think the briefs fairly raise the issue, and since on the merits I reject the analysis, I don't think it's a question of notification or the like.

And I thought I was being fair to all parties. So I don't think I need anymore." Tr. 22, *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. Dec. 26, 2023), ECF No. 118. The district court later stated (in a different order involving a different motion) that Petitioners' objection was "of no practical moment (as the Court sought to explain during a busy motion session). The legal issue had been fully briefed and the *Court's resolution obviated the need for evidence*." App.67a-68a (emphasis added).

VI. The District Court Strikes the Slaughterhouse Exception.

The district court then set the case-stated hearing on Triumph's direct-discrimination claim. On February 5, 2024, the district court ruled that the sales exemption violated the dormant Commerce Clause because it "has a discriminatory effect" on out-of-state processors: in order to take advantage of the exemption, Triumph would need "to open its own federal inspected facility within the Commonwealth of Massachusetts[.]" and ordered that exemption severed. App.71a. Because the Act's sales ban now applied to all FMIA facilities, the district court reinstated Petitioners' FMIA preemption claims, and ordered Petitioners to move for summary judgment. App.75a.

VII. The District Court Grants Summary Judgment to Massachusetts on FMIA preemption.

Triumph moved for summary judgment per the court's order. *See* Summ. J. Mem., *Triumph Foods, LLC v. Campbell,* No. 23-CV-11671 (D. Mass. March 6, 2024), ECF No. 127. Massachusetts spontaneously cross-moved as well, but not until 30 days *after* Petitioners' motion. *See* Summ. J. Mot., *Triumph*

Foods, LLC v. Campbell, No. 23-CV-11671 (D. Mass. April 5, 2024), ECF No. 136.

On July 22, 2024—353 days after Petitioners moved for a preliminary injunction, and 323 days after the district court's consolidation—the district court denied Triumph's motion and granted Massachusetts's motion, finding the Act was not preempted by the FMIA. App.39a.

VIII. Appellate Proceedings.

Petitioners appealed. After briefing and oral argument, the First Circuit affirmed. App.1a.

First, the Court of Appeals found no procedural error in the district court's decisions to dismiss the majority of claims without written order or reasoning, and no procedural error in the district court's *sua sponte* decision to resolve Petitioners' *Pike* claim without receiving evidence or providing proper notice to Petitioners. App.7a.

Next, turning to the substance of the claims, the First Circuit analyzed Petitioners' claims under the dormant Commerce Clause and the FMIA. With respect to the first theory under the dormant Commerce Clause—that the Act discriminated against out-of-state industry—the First Circuit held that there was insufficient evidence of any such discriminatory effect and purpose. Specifically, it held that under this Court's precedents, particularly *Exxon*, "a neutral law that regulates even-handedly by treating interstate and intrastate commerce the same does not discriminate against interstate commerce simply because it affects more out-of-state businesses than in-state ones." App.20a. Further, the First Circuit held that "[n]o 'substantial' evidence of discriminatory effect, either of advantage to in-state producers or disadvantage to out-of-state producers, is

present here." App.22a.

With respect to the second dormant Commerce Clause theory—that the Act violated the *Pike* balancing test—the Court of Appeals essentially disagreed with Petitioners that *Pike* is still good law. App.28a. Interpreting this Court's decision in *NPPC*, the panel held that while Justice Barrett had ultimately agreed that the complaint at issue in the suit alleged a substantial burden on interstate commerce, she also held that the benefits and burdens of a state law were "incommensurable" and as a result, "Justice Barrett's concurrence cannot be combined with the dissenting opinions to save the day for Plaintiffs." App.28a.

Turning to preemption under the FMIA, the First Circuit held that the act at issue in *Harris* was "fundamentally different" from the Act here. App.32a. The panel found that Petitioners had not identified any operational requirement in the Act, nor could they, because the Act "regulates pork production, rather than pork inspection." App.33a. The First Circuit also disagreed that the Act created any "class of adulteration unrecognized in [the FMIA]." App.33a. For similar reasons, the Court of Appeals also held that the Act did not conflict with the FMIA, summarily concluding that the Act does not "serve as an obstacle to [the FMIA's] purposes and objectives." App.33a.

With respect to Petitioners' other claims, the First Circuit held that the Privileges and Immunities Clause does not apply to corporations, and thus Petitioners were not entitled to its protections. App.13a. With respect to the Full Faith and Credit Clause, the First Circuit held that the Act did not conflict with any right-to-farm laws in other states, as

the Act only banned the sale of products resulting from certain farming practices, and that farmers "are free to continue with their current farming practices[.]" App.35a. As for the Due Process Clause, the Court of Appeals held that the Act was not unconstitutionally vague. App.36a. And as for the Import-Export Clause, the First Circuit found that it was inapplicable to the actions of other states. App.38a.

This petition follows.

REASONS FOR GRANTING THE WRIT

I. The First Circuit Ignored This Court's Binding Precedent On Materially Important Issues.

The First Circuit's ruling that the Act is not preempted by the FMIA directly conflicts with, and misapplies, this Court's unanimous holding in *Harris*.

A. This Court should grant the petition to stop deviation from its unanimous holding in *Harris*.

1. Congress passed the FMIA to comprehensively regulate slaughterhouse operations in interstate and foreign commerce. 34 Stat. 674 (1906); *see also* 34 Stat. 1260 (1907). Sixty years after its initial passage, Congress recognized the "need for stronger, more effective and more uniform State inspection programs," due to the conflicting upsurge in individual states attempting to manage a national problem on a local scale. H.R. Rep. No. 90-653, pt. 1, at 14 (1967).

Thus, the Wholesome Meat Act of 1967 substantially amended the FMIA, seeking "a uniform framework" which would "provide consumer protection for all citizens, regardless of where their

meat originates." *Id.* The FMIA was meant to "[c]larify and broaden [federal] authority over meat and meat products capable of use as human food," and "help bring the requirements of Federal and individual State meat inspection programs into closer conformity toward eventual elimination of the multiple and conflicting requirements presently encountered[.]" *Id.* at 16-17. Congress determined that "[w]ithout such a coordinated network of Federal and State inspection programs, the health of the consumer cannot adequately be protected, nor can continued confidence in our meat supply be assured." *Id.* at 16-17.

Accordingly, the FMIA regulates all aspects of federally inspected slaughterhouse operations. To provide a few examples, all livestock are subject to the FMIA's requirements for pre- and post-slaughter inspection in order to detect any disease or adulteration rendering the meat unfit for human consumption, *see* 21 U.S.C. § 603(a) (ante-mortem), 21 U.S.C. § 604 (post-mortem), or that may trigger segregation or quarantine of the livestock, *see, e.g.*, 9 C.F.R. §§ 309.5, 309.15. As relevant here, these humane handling and inspection requirements include regulations that specifically govern how pigs are to be separated, 9 C.F.R. § 313.2(d)(l), and held for ante-mortem (pre-slaughter) inspection, 9 C.F.R. § 313.l(c), after which they may then be passed for slaughter and human consumption, 9 C.F.R. §§ 309.2(b), 311.l(a).

2. To ensure that federal law sets the sole standard for animal health and disease inspection at federally inspected facilities, the Wholesome Meat Act contains the express preemption provision at issue here. 21 U.S.C. § 678. This express preemption clause preempts any state "requirements within the scope of

this chapter with respect to premises, facilities and operations of any [federally inspected slaughterhouse], which are in addition to, or different than those made under this chapter[.]" 21 U.S.C. § 678.

This Court has analyzed this broad provision before. In *Harris*, this Court evaluated a California regulation requiring a slaughterhouse to immediately kill a nonambulatory pig; the regulation prevented any such animal from being processed for food. 565 U.S. at 460-61. Like the Act here, the relevant portion of the California law regulated through a sales ban on the food product itself. *Id.* at 462-63. Thus, the *Harris* defendants argued that portion of the law could not be preempted by the FMIA because it regulated only the sale of the product, which occurred "prior to delivery, away from the slaughterhouse itself"; thus, the sales ban did "not involve a slaughterhouse's 'premises, facilities and operations.'" *Id.* at 462. The *Harris* defendants also argued the sales ban did not violate the FMIA's preemption clause because "[o]nce meat from a slaughtered pig has passed a post-mortem inspection, the [FMIA] 'is not concerned with whether or how it is ever actually sold'" and thus could not affect any onsite operations of the facility. *Id.* at 463.

This Court unequivocally rejected these arguments. It recognized that "[t]he idea—and the inevitable effect—of the [sales ban] is to make sure that slaughterhouses remove nonambulatory pigs from the production process (or keep them out of the process from the beginning) by criminalizing the sale of their meat." *Id.* at 464. This Court reasoned that the sales ban "functions as a command to slaughterhouses to structure their operations in the exact way the [state law] mandates" and "regulates how

slaughterhouses must deal with nonambulatory pigs on their premises." *Id.* Thus, the state law was preempted; to hold otherwise would allow "any State [to] impose any regulation on slaughterhouses just by framing it as a ban on the sale of meat produced in whatever way the State disapproved." *Id.*

The *Harris* defendants contended that the law fell outside the FMIA's scope because it excluded a class of animals—nonambulatory pigs—from the slaughtering process and did not relate to the onsite slaughtering process of an FMIA facility. *Harris*, 565 U.S. at 464. But this Court disagreed, explaining the FMIA itself "exclude[d] many classes of animals from the slaughtering process"; yet, nonambulatory pigs were not included in that list. *Id.* at 465-66. And this omission proved that the state had imposed requirements different from the FMIA—not evidence that the state requirement fell outside the FMIA's scope. *Id.* at 466. Thus, the state law fell within the scope of the FMIA because the state law "endeavors to regulate the same thing, at the same time, in the same place—except by imposing different requirements." *Id.* at 468.

3. The Court's foreshadowing in *Harris*—that unless the express preemption clause applies broadly, "any State [could] impose any regulation on slaughterhouses just by framing it as a ban on the sale of meat produced in whatever way the State disapproved"—has now come to fruition. Massachusetts seeks to impose its own judgment on how a federally inspected slaughterhouse should operate. *Harris* does not allow this. Yet, the First Circuit held that the regulation in *Harris* was "fundamentally different" from the Act here, as the Act "regulates pork production, rather than pork

inspection" and that the Act did not create any "class of adulteration unrecognized in [the FMIA]." App.33a.

But that can't be so. Banning the *sale* of a product certainly regulates a facility *producing* that product for sale. In other words, the Act functions as a *command* to FMIA facilities selling to Massachusetts to structure their operations in a manner to remove noncompliant Whole Pork Meat, just as the nonambulatory pig statute operated in *Harris*. Indeed, it is *impossible* for the Act to have any impact whatsoever without the compliance of processing facilities, because Massachusetts must ensure that only "compliant" pork comes from the processors into its State. In other words, states cannot regulate the front end of the supply chain (farms), and the back end of the supply chain (sales), without also regulating the middle (processors). This clear regulation of a FMIA establishment falls squarely within the holding of *Harris*, and the First Circuit simply missed it. *See* Br. for United States at 17, Nat'l Meat Assn. v. Harris, 565 U.S. 452 (2012) (No. 10-224), 2011 WL 3821398, at *17 (asserting that the sales ban "could reasonably be characterized as an impermissible effort to add a class of adulteration unrecognized in federal law.").

To be clear, this petition is about much more than simple error correction (though the First Circuit's misconstruction of a unanimous opinion from this Court is reason enough to grant the petition). This is now the second State to adopt a law adding to the patchwork of regulation, vastly complicating on-the-ground operations. Processors are now forced to essentially operate three production lines—one for Massachusetts, one for California, and one for the rest of the country—in order to ensure they are shipping only "compliant" pork to each state. This is precisely

what Congress sought to avoid in the FMIA. And left unchecked by this Court, more states are free to add their own regulatory preferences to the patchwork.

Harris is the antidote to this end-run, and this Court should grant the petition to prescribe it.

B. The lower courts continue to misconstrue this Court's fractured opinion in *NPPC* and this Court should resolve that confusion.

The First Circuit also ignored this Court's holdings with respect to its dormant Commerce Clause jurisprudence. Recently, as described above, six Justices "affirmatively retain[ed] the longstanding *Pike* [*v. Bruce Church*] balancing test for analyzing dormant Commerce Clause challenges to state economic regulations." *NPPC,* 598 U.S. 356, 403 (2023) (Kavanaugh, J., concurring in part and dissenting in part). Four Justices (including two of the six holding that *Pike* should be retained) concluded the allegations in the complaint failed to allege sufficient burden on interstate commerce, while five Justices (four of whom held that *Pike* should be retained) found that the allegations there had "identif[ied] broader, market-wide consequences of compliance" and thus had stated "economic harms that our precedents have recognized can amount to a burden on interstate commerce." *Id.* at 397 (Roberts, C.J., concurring in part and dissenting in part).

Here, notably, the district court expressly ruled that a portion of the Act discriminated against Triumph. App.72a. And yet, the First Circuit endorsed the wholesale dismissal of Petitioners' *Pike* claim, and specifically held that there were not sufficient votes in *NPPC* to uphold *Pike* as a viable challenge under the dormant Commerce Clause. App.28a. The First

Circuit did this despite the fact that six Justices had retained *Pike* as articulated in *NPPC*.

Specifically, the First Circuit ruled that "Justice Barrett's concurrence cannot be combined with the dissenting opinions to save the day for Plaintiffs." App.28a. But the First Circuit did not explain why, or how. And the opinions themselves disprove that conclusion. Irrespective of Justice Barrett's views on the *Pike* doctrine, six Justices reaffirmed its continued existence. *NPPC,* 598 U.S. 356, 403 (2023) (Kavanaugh, J., concurring and dissenting in part). The question then becomes whether the relevant complaint's allegations state a claim under *Pike*. And on that question—evaluating a complaint with far-less detailed factual allegations than Petitioners' complaint here—Justice Barrett readily concluded that such a claim should be allowed to proceed: "If the burdens and benefits were capable of judicial balancing, I would permit petitioners to proceed with their *Pike* claim." *NPPC*, 598 U.S. at 394 (Barrett, J., concurring in part).

The majority of Justices resolved these issues in petitioners' favor, and the First Circuit's misapprehension of those resolutions is a manifest error. And this isn't the first time this confusion has arisen; recently, the Ninth Circuit also misapplied *NPPC*'s holding, finding that it was only "the specific result [of *NPPC*] is binding on lower federal courts" because there was not a "single rationale" in the case. *Iowa Pork Producers Ass'n v. Bonta*, No. 22-55336, 2024 WL 3158532, at *3 (9th Cir. June 25, 2024), *cert. denied*, 145 S. Ct. 2866 (2025).

For this additional reason, the petition should be granted.

II. These Are Overwhelmingly Important Issues Due To The Attendant Impact On Principles Of Federalism And Interstate Regulation.

For several additional reasons, these important issues warrant granting the petition. To begin, the Act (and other laws like it) represents an attempt by individual states to legislate over one another, precisely what the dormant Commerce Clause prevents. Allowing the Act to proceed unimpeded will only exacerbate the problem and embolden states to legislate in what should be a unique, federal space. Refusing to correct this errant course would implicitly endorse an individual state's regulation of an out-of-state industry based on the state's own sense of what is "moral."

It's difficult to see where that road ends. While this case involves pork, the next case could involve any good or service imaginable—ones that individual states have developed entire robust economies around—incentivizing tit-for-tat trade wars among State legislatures. And if issues of "morality" can drive the regulation of out-of-state industry, why couldn't future regulation be based on minimum wage policies of sister States, or employees' immigration status, or access to certain types of medical treatment, or any other hot-button social issue of the day? The Framers prohibited precisely this type of discriminatory out-of-state regulation.

A more targeted, and no less important impact, is the weakening of the FMIA. Again, the FMIA was enacted given concerns that unhealthy meat products "impair[ed] the effective regulation of meat and meat food products in interstate or foreign commerce," and thus aimed "to prevent and eliminate burdens upon

such commerce [and] to effectively regulate such commerce . . . ." 21 U.S.C. § 602. In contrast, the Act condones a system whereby each FMIA establishment must conduct their operations, facilities, and premises particularized to potentially 50 different state regimes. This is precisely what the FMIA's express preemption clause was intended to prevent, and the First Circuit's decision will only serve to snarl supply chains and undermine the FMIA's express purpose.

III. The First Circuit Erred On The Merits.

The First Circuit's decision was manifestly wrong, and this Court should reverse it.

A. FMIA Preemption

Grounded in the Supremacy Clause, federal law "may preempt a state regulatory scheme in three relevant ways": express, implied, and conflict. *Michigan Canners & Freezers Ass'n, Inc. v. Agric. Mktg. & Bargaining Bd.*, 467 U.S. 461, 469 (1985). Here, the First Circuit erred in holding that the FMIA does not preempt the Act, both under express preemption and conflict preemption principles.

a. Express Preemption

When analyzing the scope of a federal law that contains an express preemption clause, courts "focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent." *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 594 (2011). Here, the express preemption clause preempts any state "requirements within the scope of this chapter with respect to premises, facilities and operations of any [federally inspected slaughterhouse], which are in addition to, or different than those made under this chapter[.]" 21 U.S.C. § 678. The FMIA's preemption clause "sweeps widely"

and "prevents a State from imposing any additional or different—*even if non-conflicting*—requirements that fall within the scope of the [FMIA] and concern a slaughterhouse's facilities or operations." *Harris*, 565 U.S. at 459-60 (emphasis added).

And yet, the First Circuit gave short shrift to this language, as set forth in Section I, *supra*. It held that the Act "regulates pork production, rather than pork inspection." App.33a. But this is the same trap that *Harris* explicitly flagged, and overlooks the direct impact of the sales ban. Indeed, the "inevitable effect" of legislation such as the sales ban here is that noncompliant pork must be segregated by processors. Nowhere is this clearer than in Massachusetts's ***own concession*** before the First Circuit: "the Act neither requires segregation nor prohibits commingling of compliant and non-compliant product at any stage prior to slaughter or during shipment, ***so long as the products can be identified***." Appellees Br. 67, *Triumph Foods, LLC v. Campbell*, No. 24-1759 (1st Cir. Oct. 21, 2024) (emphasis added). This is the entire point of Triumph's argument; by requiring Triumph to do something extra inside its facilities (something major, no less), the Act runs afoul of the FMIA. And this was detailed in the record below; the new required inventory-management procedures impose millions of dollars in costs with substantial impacts on operational efficiency. *See, e.g.*, App.167a.

Specifically, the FMIA dictates what a slaughterhouse may do with pigs that arrive on its premises for ante-mortem inspection, often while the pigs are still on the farmer's truck. *Harris*, 565 U.S. at 456; *see* 9 C.F.R. § 309.1. But the Act requires altering this process, forcing the slaughterhouse to segregate pigs upon arrival to ensure they remain segregated

from non-compliant pigs. Likewise, the FMIA dictates what pigs can pass ante-mortem and post-mortem inspection by USDA officials, identifies which pigs are deemed "condemned" or "suspect," requires further action taken by the slaughterhouse, and determines whether meat is fit for consumption. *Harris*, 565 U.S. at 457; *see, e.g.,* 9 C.F.R. §§ 309.1, 309.2, 309.3, 310.1, 310.3, 310.5, 310.18, 311.1; 21 U.S.C. §§ 603-605. But here, the Act prevents non-compliant pigs from being processed into human food for Massachusetts, at all aspects of the slaughterhouse operations and even after meat leaves its facility, by banning the sale of such meat. This is indistinguishable from what occurred in *Harris*, where the law also prevented non-ambulatory pigs from being processed into human food, even though the FMIA allowed those pigs to be processed under certain circumstances. *Harris*, 565 U.S. at 461.

And to be clear, the Act exceeds the FMIA in a more pervasive manner than even the *Harris* statute did. Separating non-ambulatory pigs from an operation is certainly disruptive to FMIA-facility operations and was properly rejected as preempted. Here, *all* aspects of operations are disrupted: new SKUs, new physical sorting procedures both ante-mortem and post-mortem, how pork is physically stored at and shipped from Triumph's facility, and new and different labeling to identify that pork as compliant are several non-exhaustive examples. App.150a-171a. As a result, the Act continues to affect FMIA-facility operations—and interfere with FMIA directives—even after pork leaves the facility. By way of example, the FMIA specifically governs when a meat product must be recalled because it may be unfit for human consumption. *See* 9 C.F.R. § 418.2; 21

U.S.C. § 601. But when a FMIA-facility attempts compliance with the Act, and non-compliant pigs are inadvertently sorted or processed with compliant pigs, none of the pork can be sold. If that pork is already processed and distributed, it all must be "recalled," wasted, and cannot enter Massachusetts.

At bottom, the Act "compels them to deal with [non-compliant] pigs on their premises in ways that the federal Act and regulations do not." *Harris*, 565 U.S. at 460. Ultimately, the Act (and the statute at issue in *Harris*) requires different actions by a slaughterhouse confronted with a delivery truck containing non-compliant (or non-ambulatory) pigs than what the FMIA requires. The "former says 'do not receive or buy them'; the latter does not." *Harris*, 565 U.S. at 462.

This Court should grant the petition and reverse on this basis alone.

b. Conflict Preemption

The First Circuit also erred in its conflict-preemption analysis. In little more than a single sentence, the First Circuit summarily held that the Act does not "serve as an obstacle to its purposes and objectives." App.33a. But the central question is whether the *effect* of the state law conflicts with the "natural effects" of the federal legislation. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373-74 (2000).

Here, it is undisputed that the USDA approves the fully inspected product in the highly regulated FMIA establishments, and the Act blocks the sale of that product. If selling to Massachusetts, the FMIA establishment must take additional actions to ensure that sale can proceed, despite the product being approved for sale by the USDA. In short,

Massachusetts has pre-determined that a USDA approved product offered for sale in Massachusetts is adulterated—not fit for human consumption. Or, said another way, the Act overrides the USDA's finding that product is not adulterated—overriding the USDA's inspection and approval of the product for sale. This is in conflict with the FMIA, which already places substantial ante- and post-mortem inspection requirements on the pigs and their carcasses; but nowhere does the FMIA condition the sale of pork based on how the breeding pig, the sow, was confined, nor does it contemplate the need to accommodate such state regulations for these breeding pigs at the farms. This creates a de facto conflict, which the First Circuit incorrectly refused to recognize.

B. Dormant Commerce Clause

The First Circuit also erred in its dormant Commerce Clause analysis, both in rejecting Petitioners' intentional discrimination claim and undue burden claim under *Pike*. As for the direct discrimination claim, the First Circuit held that this Court's precedents dictated that the Act was nothing more than a "neutral law that regulates even-handedly . . . ." App.20a. But nothing could be further from the truth; Petitioners specifically alleged how the Act substantially disadvantages out-of-state farmers, as in-state farmers will be able to garner a larger market share being that they may operate "uninterrupted by any cost, delay, or burden associated with the Act." App.23a. This is a direct allegation of discrimination sufficient for a dormant Commerce Clause claim, and the First Circuit erred in holding otherwise.

The First Circuit also erred, at the very least, in holding that Petitioners failed to allege that the Act

impermissibly burdens interstate commerce in violation of *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), particularly since the district court refused to hear evidence on the matter. Even if the Act served a legitimate state interest (it does not) the impacts on interstate commerce are clearly excessive and outweigh any such interest. Petitioners alleged, at length, the devastating impact that the Act has on out-of-state farmers. *See* App.150a-171a. Petitioners detailed how the Act will create significant and extremely costly changes to farming operations in states like Iowa that have been used for decades; harm to smaller farmers who will be unable to stay in the industry; and increased capital costs to those farmers who do become compliant. *See* App.150a-171a. This was a claim that a majority of this Court explicitly condoned in *NPPC* as set forth above, *supra*; thus, the First Circuit erred in rejecting it, or better said, erred in affirming the district court's refusal to hear evidence on the theory. App.68a.

C. Privileges and Immunities Clause

The First Circuit also erred in its application of the Privileges and Immunities Clause. It held that the Clause did not apply because the Petitioners are not individuals, but corporations. App.14a. However, the Amended Complaint contains detailed standing allegations, and specifically alleges at least one of the Petitioners has organizational standing. App.171a. The First Circuit erred in its summary rejection of this argument. *See, e.g., NPPC*, 598 U.S. at 409 (Kavanaugh, J., concurring in part and dissenting in part) (stating that laws like the Act "could raise significant questions under that Clause").

D. Full Faith and Credit Clause

The First Circuit also erred in rejecting

Petitioners' claim under the Full Faith and Credit Clause. That Clause preserves rights acquired or confirmed under the public acts and judicial proceedings of one state by requiring recognition of their validity in other states. *Pac. Emps. Ins. Co. v. Indus. Accident Comm'n of State of Cal.*, 306 U.S. 493 (1939). The First Circuit was incorrect that out-of-state farmers are "free to continue with their current farming practices[.]" App.35a. Because the Act bans a particular farming practice expressly used (and regulated) in those states, Petitioners alleged that the "[Act is] in direct conflict with state statutes for the actual states in which the breeding pigs are housed." App.169a. This alleges that the Act runs afoul of those laws, and thus the Clause. *See, e.g., NPPC*, 598 U.S. at 409 (Kavanaugh, J., concurring in part and dissenting in part) (collecting supporting sources for the theory and recognizing it as a viable claim).

E. Due Process Clause

The First Circuit also erred in its rejection of Petitioners' due process claims. The court summarily held that a person of ordinary intelligence will "most likely understand" that the Act "specifically prohibits sellers from 'engaging in the sale' of products prohibited by the Act." App.37a. But Petitioners described in detail how the Act fails to define what it means to "engage in the sale" of the prohibited pork product. App.194a. Because of the interconnectedness of the national supply chain, knowingly "engaging" in the sale could mean anyone up and down that supply chain. Also, the Act and its attendant regulations failed to specify the square footage requirements for a breeding pig to "turn around freely." It's vague to simply say a pig must be able to "turn around freely" to be compliant with the Act. Indeed, Petitioners

alleged they are "unable to discern whether the shipment of their pork products into Massachusetts, if not compliant with the [the Act], is a prohibited conduct." App.195a. And this is because the ability of a sow to turn around varies. As Petitioners specifically alleged, sows are not "one size fits all." App.194a. To the extent there was any doubt about the impact of the regulations at Petitioners' farms, that was not a basis to dismiss on the pleadings. The First Circuit erred in holding otherwise.

F. Import-Export Clause

Lastly, the First Circuit erred in its analysis of Petitioners' Import-Export Clause claim. The Import-Export Clause states that "[n]o State shall, without the Consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection laws." U.S. Const. art. I, § 10, cl. 2. While the Clause has historically applied to international trade issues, several Justices have indicated that such a reading "may be mistaken as a matter of constitutional text and history: Properly interpreted, the Import-Export Clause may also prevent States 'from imposing certain especially burdensome' taxes and duties on imports from other States—not just on imports from foreign countries." *NPPC*, 598 U.S. at 408 (Kavanaugh, J., concurring in part and dissenting in part) (citations omitted).

Here, as alleged, the Act essentially imposes a duty or tax on out-of-state goods through its imposition of a particular method of raising pigs that is unquestionably more burdensome and more expensive for out-of-state entities. To gain access to the Massachusetts marketplace, Petitioners must adjust their practices. For the Farmer Petitioners, this

requires a substantial, costly overhaul to their farming practices. For Triumph, this requires segregation, labeling, and processing-line adjustments. To the extent the veracity of these allegations were doubted, that should have been addressed later in the case, and the First Circuit erred in holding otherwise.

IV. At The Very Least, This Court Should Call For The Views Of The Solicitor General

The above discussion illustrates that this Court should grant this petition on its merits alone. In the event of any doubt, this Court should at least call for the views of the Solicitor General, just as the Court did in *Harris* (No. 10-224). Given the extraordinary—and exclusive—regulatory authority vested in the USDA by Congress in the FMIA, the USDA should at least be heard on the questions presented.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-1759

TRIUMPH FOODS, LLC, CHRISTENSEN FARMS MIDWEST, LLC, THE HANOR COMPANY OF WISCONSIN, LLC, NEW FASHION PORK, LLP, EICHELBERGER FARMS, INC. AND ALLIED PRODUCERS' COOPERATIVE, INDIVIDUALLY AND ON BEHALF OF ITS MEMBERS,

Plaintiffs, *Appellants*,

v.

ANDREA JOY CAMPBELL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF MASSACHUSETTS, AND ASHLEY RANDLE, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF AGRICULTURAL RESOURCES,

Defendants, *Appellees.*

Appeal from the United States District Court
for the District of Massachusetts
[Hon. William G. Young, *U.S. District Judge*]

Before

Gelpí, Thompson, and Rikelman,
Circuit Judges.

Michael T. Raupp, with whom *Ryann A. Glenn*, *Cynthia L. Cordes*, *Spencer Tolson*, and *Husch Blackwell LLP* were on brief, for appellants.

Maryanne Reynolds, Assistant Attorney General, Massachusetts Office of the Attorney General, with whom *Vanessa A. Arslanian*, Assistant Attorney General, and *Grace Gohlke*, Assistant Attorney General, were on brief, for appellees.

October 3, 2025

GELPÍ, *Circuit Judge*. In 2016, Massachusetts passed the Act to Prevent Cruelty to Farm Animals (the "Massachusetts Act"). As relevant here, the Massachusetts Act prohibits the use of certain methods of confinement ("gestation crates") on pig farms in Massachusetts.[1] Mass. Gen. Laws Ann., ch. 129, App. § 1-2. It also prohibits the sale, in Massachusetts, of pork products derived from pigs who were confined in gestation crates. *See id.* § 1-3. Plaintiffs are out-of-Massachusetts pig farmers and the slaughterhouse those farmers co-own (collectively, "Plaintiffs"). They sued to challenge the Massachusetts Act, chiefly arguing that it violated the dormant Commerce Clause and that it was preempted by federal law. The district court disagreed, first dismissing most of the claims and later entering summary judgment against Plaintiffs on the remaining dormant Commerce Clause claim. We affirm the district court's rulings.

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[1] Gestation crates are "stalls so small [breeding pigs] cannot lie down, stand up, or turn around" in them. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 363 (2023).

I. Background

A. The Act to Prevent Cruelty to Farm Animals

The Massachusetts Act became enforceable on August 24, 2023, after a series of legal challenges.[2] Its 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." Mass. Gen. Laws Ann., ch. 129, App. § 1-1. To that end, the Massachusetts Act prohibits pig farmers within Massachusetts from knowingly causing a breeding pig "to be confined in a cruel manner," defined in relevant part as "in a manner that prevents the animal from lying down, standing up, fully extending the animal's limbs or turning around freely."[3] *Id.* §§ 1-2, 1-5.

The Massachusetts Act also makes it illegal for a "business owner or operator to knowingly engage in the sale within [Massachusetts] of any: . . . Whole pork meat that the business owner or operator knows or should know is the meat of a covered animal that was confined in a cruel manner, or is the meat of the immediate offspring of a covered animal that was confined in a cruel manner." *Id.* § 1-3. A sale is defined

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[2] Though enacted in 2016, the Massachusetts Act became effective following the Supreme Court's decision in *National Pork*, a decision we will invoke later. We note that the parties and the district court refer to that decision as "*Ross*," we adopt *"National Pork" to conform with recent circuit opinions. See Ass'n to Pres. & Protect Loc. Livelihoods v. Sidman*, No. 24-1317, 2025 WL 2304915, at *15 (1st Cir. Aug. 11, 2025).

[3] The Massachusetts Act also covers other animals and animal products, such as eggs and "veal meat." *Id.* § 1-3. We focus here only on those provisions relevant to the Plaintiffs' claims.

as "a commercial sale by a business that sells any item covered by section 3" and "shall be deemed to occur at the location where the buyer takes physical possession of" the relevant item. *Id.* § 1-5.

B. Procedural Background

Plaintiffs are a combination of pig farmers and one pork processor (Triumph). *Triumph Foods, LLC v. Campbell*, 715 F. Supp. 3d 143, 148 (D. Mass. 2024). Triumph-produced pork is sold throughout the country, including in Massachusetts. Plaintiffs are all located outside of Massachusetts, "in Minnesota, Iowa, Nebraska, Illinois, South Dakota, Wisconsin, Oklahoma, North Carolina, Missouri, Wyoming, and Indiana." *Id.* The pork products they sell are produced from pigs housed in gestation crates. On July 25, 2023, Plaintiffs sued to preliminarily and permanently enjoin the Massachusetts Act. They filed an amended complaint (hereinafter, "complaint") on July 31, 2023.

Their complaint asserted ten causes of action: (1) dormant Commerce Clause violations by directly discriminating and by unduly burdening interstate commerce; (2) Privileges and Immunities Clause violations; (3) express preemption under the Federal Meat Inspection Act (the "FMIA"); (4) conflict preemption under the FMIA; (5) preemption under the Packers and Stockyards Act (the "PSA"); (6) Full Faith and Credit Clause violations; (7) Due Process Clause violations; (8) Import-Export Clause violations; (9) declaratory relief on unconstitutionality; and (10) judicial review of the Massachusetts Act's regulations. In support of these claims, Plaintiffs pleaded that the Massachusetts Act "discriminates against out-of-state farmers and pork processors in purpose and effect," "[g]iven that no Massachusetts pig farmers confine

breeding sows in a manner that is prohibited by the [Massachusetts] Act."

The district court consolidated Plaintiffs' request for a preliminary injunction with a trial on the merits, pursuant to Federal Rule of Civil Procedure 65(a)(1). *See Triumph Foods*, *LLC v. Campbell*, 742 F. Supp. 3d 63, 66 (D. Mass. 2024). The Massachusetts Office of the Attorney General ("Massachusetts" or "the Commonwealth") then moved to dismiss the complaint on September 28, 2023. It argued that the Massachusetts Act did not discriminate facially, in purpose or effect, and that the Supreme Court's decision in *Nat'l Pork Producers Council v. Ross* foreclosed Plaintiffs' argument under the unlawful burden test set forth in *Pike v. Bruce Church*, *Inc.*, 397 U.S. 137 (1970). The district court granted Massachusetts' motion to dismiss as to all claims, except for the dormant Commerce Clause claim (Count I).

Plaintiffs then filed a motion for partial summary judgment on that remaining count, which solely focused on the direct discrimination claim. Massachusetts opposed that motion and requested that the district court enter summary judgment sua sponte. As to Plaintiffs' claim under Count I, the district court severed a provision of the Massachusetts Act, "the slaughterhouse exemption," which the district court determined violated the dormant Commerce Clause.[4]

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[4] The district court concluded that one portion of the statute did discriminate against out-of-state farmers, so it severed that portion. The "slaughterhouse exception" provided an "exemption from [the Massachusetts Act's] requirements for pork products when those products are sold on the premises of an FMIA-inspected facility." *Triumph Foods*, *LLC*, 715 F. Supp. 3d at 149. The district court held: "The only way Triumph would be able to take advantage of the slaughterhouse exception would be to open its own federally inspected facility within the Commonwealth of

It later entered summary judgment sua sponte against all Plaintiffs (aside from Triumph Foods).

Plaintiffs assert a slew of challenges on appeal, namely that the district court erred in: (1) dismissing most of their claims without a written order; (2) entering summary judgment sua sponte on their *Pike* dormant Commerce Clause claim when there were disputed material facts concerning the Massachusetts Act's burden on interstate commerce and without notice under FRCP 56(f); (3) entering summary judgment sua sponte on their direct-discrimination dormant Commerce Clause claim by holding that the Act did not discriminate against Plaintiffs and without notice under FRCP 56(f); and (4) holding that the Massachusetts Act is not preempted by the FMIA and the PSA.

II. Standard of Review

This court reviews de novo an order dismissing a complaint under Rule 12(b)(6). *See Bazinet v. Beth Israel Lahey Health, Inc.*, 113 F.4th 9, 15 (1st Cir. 2024) (citing *Rivera v. Kress Stores of P.R., Inc.*, 30 F.4th 98, 102 (1st Cir. 2022)). We review sua sponte grants of summary judgment under the same de novo standard. *See McCoy v. Town of Pittsfield*, 59 F.4th 497, 504 (1st Cir. 2023). We affirm where "the record, viewed in the light most favorable to the [appellants], discloses 'no genuine dispute as to any material fact'" and shows that Massachusetts is "entitled to judgment as a matter of law." *See id.*

Massachusetts, which the Supreme Court has held violates the Commerce Clause." *Id.* at 153. Neither party argues that severance was inappropriate, so it is not at issue before us.

III. Procedural Errors

Plaintiffs assert that the district court committed procedural error in both its order of dismissal and its grant of summary judgment. We address each argument in turn.

A. Motion to Dismiss

Plaintiffs emphasize that most of their claims were dismissed "without a written order" and "without any reasoning on the record." While recognizing there is no "technical requirement for a court to 'state findings or conclusions when ruling on a motion under Rule 12,'" they contend that the court "err[ed] both on substance and procedure." Massachusetts counters by referencing the district court's "consider[ation of] the complaint, pars[ing of] the language of the relevant statutes, and . . . due consideration [of] the parties' arguments."

As Plaintiffs concede, there is no requirement that district courts state their findings or conclusions when ruling on a motion under Rule 12. Fed. R. Civ. P. 52(a)(3). Rule 52(a) "explicitly states that district courts are 'not required to state findings or conclusions when ruling on a motion under Rule 12 or 56.'" *Barry v. Moran*, 661 F.3d 696, 702 n.9 (1st Cir. 2011) (quoting Fed. R. Civ. P. 52(a)(3)). Accordingly, "[w]e may quickly dispose of this argument." *Id.* We find no procedural error on this issue.

B. Summary Judgment

Plaintiffs also argue that the district court committed procedural error in granting summary judgment on their *Pike* claim and on the farmers' direct discrimination claim. To understand this argument, it is important to note that Plaintiffs divide

their dormant Commerce Clause claim into two legal theories: (1) intentional discrimination against interstate commerce and (2) a substantial burden on interstate commerce under the *Pike* test. Plaintiffs contend that they moved for partial summary judgment only as to the first legal theory, and not as to the second. Thus, Plaintiffs tell us, their motion for partial summary judgment contained no evidence in support of their *Pike* claim. However, in Massachusetts' opposition brief below, it requested summary judgment sua sponte as to both legal theories. The district court then entered judgment sua sponte against Plaintiffs on both dormant Commerce Clause theories. In doing so, it held that Massachusetts' opposition motion was an "outright" opposition, such that both issues were properly before the court.

Under Federal Rule of Civil Procedure 56(f), a district court may grant a motion for summary judgment "on grounds not raised by a party" after "giving notice and a reasonable time to respond." Fed. R. Civ. P. 56(f). In other words, "[a] district court can enter summary judgment even though none of the parties asks for it." *Sanchez v. Triple-S Mgmt., Corp.*, 492 F.3d 1, 7 (1st Cir. 2007). "A district court must meet two criteria before entering summary judgment sua sponte: (1) discovery must be sufficiently advanced to afford the parties a reasonable opportunity to glean the material facts; and (2) the targeted party must have been given notice and a chance to present its evidence on the essential elements of the claim or defense." *McCoy*, 59 F.4th at 504 (citation modified).

On appeal, Plaintiffs argue that Massachusetts did not move for summary judgment and that the district court did not provide the required notice of a sua sponte ruling. Plaintiffs assert that the district court

"never received *any* evidence with respect to [the *Pike*] theory." Massachusetts disagrees. According to the Commonwealth, the court (1) gave pre-summary judgment notice that the *Pike* theory was in jeopardy and (2) made the same clear at the hearing. Massachusetts also claims that the parties had "fully briefed" the *Pike* issue and theory (twice).

We first examine whether the first requirement for sua sponte summary judgment – that discovery must be sufficiently advanced to afford the parties a reasonable opportunity to glean the material facts – has been met. "[W]hat amounts to a 'reasonable opportunity' largely depends on the state of the particular litigation and the nature of the issue decided by the sua sponte summary judgment procedure." *Sanchez*, 492 F.3d at 8. We have previously held that summary judgment sua sponte is proper once "'discovery had proceeded to the point where the parties understood the material facts' at issue." *Id.* at 7 (quoting *Penobscot Indian Nation v. Key Bank of Me.*, 112 F.3d 538, 562 (1st Cir. 1997)). We have "affirmed summary judgment entered sua sponte [even] before *any* discovery had taken place, where the decision was based on legal conclusions independent of any potentially available evidence." *Id.* (emphasis added) (citing *Bank v. Int'l Bus. Machs. Corp.*, 145 F.3d 420, 431 (1st Cir. 1998)).

Here, we find that discovery did occur. When the district court issued the summary judgment, Plaintiffs' counsel had noted that "extensive discovery [was] going back and forth on issues related to" the *Pike* claim. Moreover, as Massachusetts points out, at the beginning of the case, Plaintiffs asserted that "discovery was unnecessary." In our view, Plaintiffs'

concession belies their own claims regarding lack of discovery.

Further, the district court reached legal conclusions, which informed its summary judgment decision on the *Pike* issue, independent of available evidence. The court stated that the "legal issue had been fully briefed and the [c]ourt's resolution obviated the need for evidence." *Triumph Foods*, *LLC*, 715 F. Supp. 3d at 152. Considering the briefing and record before it, the district court determined that the Supreme Court's *Nat'l Pork* decision foreclosed Plaintiffs' claim, as a legal matter. *Id.* at 151. We find no procedural error here, where the district court based its summary judgment ruling on independent legal conclusions.

We next review the second requirement for sua sponte summary judgment: the targeted party must have been given notice and a chance to present its evidence on the essential elements of the claim or defense. "In the context of a sua sponte summary judgment, 'notice' means that the targeted party 'had reason to believe the court might reach the issue and received a fair opportunity to put its best foot forward.'" *Leyva v. On the Beach*, *Inc.*, 171 F.3d 717, 720 (1st Cir. 1999) (citation omitted). "Notice" does not require that the opposing party "receive a formal document called 'notice' or that the district court had to say the words 'you are on notice' or even that the court had to explicitly tell [the opposing party], 'I am thinking of ordering summary judgment for [the winning party] sua sponte.'" *Nat'l Expositions*, *Inc. v. Crowley Mar. Corp*., 824 F.2d 131, 133 (1st Cir. 1987). Rather, the question is simply whether, "given the procedural circumstances of the case, the original movant [i.e., Plaintiffs] has had *an adequate opportunity* to show that there is a genuine issue and

that his opponent is not entitled to judgment as a matter of law." *Id.* at 133–34 (quoting 10A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2720, at 34 (1983)).

Indeed, the district court provided adequate notice that it might reach the *Pike* claim. First, in an October 25, 2023 order – in response to requests from both parties for "sweeping discovery" – the district court said it "must say frankly that the more it examines the jurisprudence of the 'dormant [C]ommerce [C]lause,'" the less it understood why certain aspects of discovery were necessary. There, the district court also cited *National Pork*, noting that Plaintiffs "frequently" relied on the *National Pork* Court's dissent. Further, during the November 14, 2023 hearing, the district court recognized that Massachusetts requested "summary judgment taken against" the Plaintiffs, which put Plaintiffs "on notice that summary judgment may be taken against them." Perhaps most importantly, in Plaintiffs' reply in support of their motion for partial summary judgment (in response to Massachusetts' opposition motion), Plaintiffs clearly recognized that Massachusetts requested summary judgment sua sponte on the *Pike* claim. There, Plaintiffs affirmatively responded to Massachusetts' request for summary judgment sua sponte, indicating Plaintiffs were aware that summary judgment on the *Pike* claim was a possibility. Thus, Plaintiffs had an "adequate opportunity," in their response in support of their motion for partial summary judgment, to show that there was a genuine issue of material fact. *See Crowley Mar. Corp.*, 824 F.2d at 133.

In their brief, Plaintiffs rely on *Leyva v. On the Beach*, *Inc.* to suggest that, as in the facts in that case, they did not "receive[] a fair opportunity to put [their]

best foot forward." 171 F.3d at 720. The facts here are clearly distinguishable from those in *Leyva*, where the district court, "[p]rior to making [a] spontaneous ruling[,] . . . never informed the plaintiffs that it was considering [rendering] a judgment" on certain claims. *Id.* Instead, "the court's margin order . . . stated in no uncertain terms that its decision would conform to the limited scope of the motion." *Id.* The court in *Leyva* thus found that the district court "did not afford the plaintiffs adequate notice and a suitable opportunity to be heard before it exceeded the scope of the motion that was pending before it." *Id.* at 721. It is clear from the facts presented to us that, as opposed to the court's actions in *Leyva*, the district court made various pronouncements that suggested the possibility that summary judgment might be taken against the Plaintiffs. Plaintiffs' reliance on *Leyva* is therefore incorrect.

Equally unconvincing is Plaintiffs' argument that the district court committed procedural error in granting summary judgment in favor of the Commonwealth on the farmers' direct discrimination claim. Plaintiffs acknowledged that the direct discrimination claim was fully briefed. Plaintiffs also asserted in their motion for partial summary judgment that the discrimination claim "[could] be decided by [the] Court without any fact finding," as it was "based on the statute itself" as well as on "publicly available uncontroverted material." Given Plaintiffs' representations, the sua sponte grant of summary judgment on the direct discrimination claim was proper. *See Bank v. Int'l Bus. Mach. Corp.*, 145 F.3d 420, 431 (1st Cir. 1998).

For these reasons, we conclude that the district court did not procedurally err in entering summary judgment sua sponte.

IV. Substantive Errors

Finding no procedural error, we next analyze the claims on the merits. We affirm both the district court's dismissal of Counts II-X and its entry of summary judgment on Count I.

A. Privileges and Immunities Clause

Plaintiffs argue that the Massachusetts Act "directly and intentionally targets and seeks to regulate out-of-state activity that is permissible in the states in which it occurs" and represents an attempt to "effectively regulate pig farming, manufacturing, and production in other states." They posit that the Massachusetts Act therefore offends the Privileges and Immunities Clause of the Constitution because that Clause protects the "right to practice a trade or profession." In support of these assertions, Plaintiffs argue that because "Massachusetts pig farms did not use gestation crates for housing breeding sows," the "burden of compliance with the [Massachusetts] Act's Minimum Size Requirements falls almost entirely on out-of-state pig farmers and pork processors to the benefit of in-state farmers and pork processors."

The Privileges and Immunities Clause provides that "Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, § 2, cl. 1; *Nat'l Pork*, 598 U.S. at 370. "[T]he Privileges and Immunities Clause is inapplicable to corporations[.]" *W. & S. Life Ins. Co. v. State Bd. of Equalization of California*, 451 U.S. 648, 656, (1981); *see also Tennessee Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 516 (2019).

Because Plaintiffs are corporations, their argument fails.[5]

B. Dormant Commerce Clause Claim

Plaintiffs articulate two theories under the dormant Commerce Clause: (1) intentional discrimination against interstate commerce and (2) a substantial burden on interstate commerce under the *Pike* test. We address each argument in turn.

i. Intentional Discrimination

The Constitution's Commerce Clause gives Congress the power to "regulate Commerce . . . among the several States . . . ." U.S. Const. art. I, § 8, cl. 3. It also "embodies a negative aspect" which "prevents state and local governments from impeding the free flow of goods from one state to another." *All. of Auto. Mfrs. v. Gwadosky*, 430 F.3d 30, 35 (1st Cir. 2005) (quoting *Houlton Citizens' Coal. v. Town of Houlton*, 175 F.3d 178, 184 (1st Cir. 1999)). This so-called dormant Commerce Clause "bars states and localities from pursuing 'economic protectionism – that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.'" *Becky's Broncos, LLC v. Town of Nantucket*, 138 F.4th 73, 78 (1st Cir. 2025) (quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273 (1988)). "To ascertain whether a regulatory measure is so designed, we look for evidence of 'either discriminatory purpose or discriminatory effect,' recognizing 'the primacy of

[5] Plaintiffs describe themselves, in their complaint, as a "farmer-owned company" and a series of member-owners, who are LLCs, an LLP, a corporation, and a cooperative. In their briefing on appeal, they also describe themselves as "several limited liability companies, a limited partnership and cooperative."

[the latter] in the dormant Commerce Clause analysis of facially neutral legislation.'"[6] *Id.* (alteration in original) (quoting *Am. Trucking Ass'ns v. R.I. Tpk. & Bridge Auth.*, 123 F.4th 27, 36–37 (1st Cir. 2024)). "[T]he Supreme Court has cautioned that the dormant Commerce Clause inquiry should be undertaken by 'eschew[ing] formalism for a sensitive, case-by-case analysis of purposes and effects.'" *Walgreen Co. v. Rullan*, 405 F.3d 50, 55 (1st Cir. 2005) (alteration in original) (quoting *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 201 (1994)).

This court has "discussed the methodology for determining legislative purpose when a state statute is allegedly motivated by an intent to discriminate against interstate commerce." *Fam. Winemakers of Cal. v. Jenkins*, 592 F.3d 1, 13 (1st Cir. 2010) (citing *All. of Auto. Mfrs.*, 430 F.3d at 37). This methodology requires us to "look to 'the statute as a whole,' including statutory text, context, and legislative history" and to "consider whether the statute was 'closely tailored to achieve the legislative purpose' the state asserted." *Id.* (quoting *All. of Auto. Mfrs.*, 430 F.3d at 37-38).

In determining whether a state law is discriminatory in effect, we must analyze whether "in practice, it affects similarly situated entities in a market by imposing disproportionate burdens on out-of-state interests and conferring advantages upon in-state interests." *Id.* at 10 (citing *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 99 (1994)). *Cf. Ass'n to Pres. and Protect Loc. Livelihoods v. Sidman*, 147 F. 4th 40, 59-60 (1st Cir. 2025)

[6] Plaintiffs here have not claimed that the Massachusetts Act discriminates on its face.

("[A] plaintiff must first show that the measure does discriminate. To do so, a plaintiff must do more than show that the measure burdens out-of-state entities more than local ones." (internal citations omitted)). When challenging a statute as discriminatory in effect, plaintiffs "must present evidence as to why the law discriminates in practice." *Jenkins*, 592 F.3d at 11 (citing *Cherry Hill Vineyard, LLC v. Baldacci*, 505 F.3d 28, 36-37 (1st Cir. 2007)). When "a statute is evenhanded on its face and wholesome in its purpose," such showing of discriminatory effect must be "substantial." *Cherry Hill*, 505 F.3d at 36.

Before a district court, "[t]he proponent of a dormant Commerce Clause claim bears the burden of proof as to discrimination." *All. of Auto. Mfrs.*, 430 F.3d at 40. "To block summary judgment, the party having the burden of proof on a critical issue must present evidence on that issue that is 'significantly probative,' not 'merely colorable.'" *Id.* (quoting *Cadle Co. v. Hayes*, 116 F.3d 957, 960 (1st Cir. 1997))(finding appellant's evidence "inadequate to make out a genuine issue of material fact" as to discrimination).

We hold that the district court did not err in finding insufficient evidence of discriminatory effect and of discriminatory purpose. To show discriminatory purpose, Plaintiffs identify supposed "legislative underpinnings" to argue that the Massachusetts Act was intended to discriminate against out-of-state pork producers. The "underpinnings" Plaintiffs identify – a comment that gestation crates are not used in Massachusetts, a comment that Massachusetts uses meat produced out of state on farms that use "these cruel tactics," and a comment that the Massachusetts Act would protect animals outside of Massachusetts – do not support the purported conclusion they draw. In

reality, none of these comments make reference to supporting in-state farmers to the detriment of out-of-state farmers.[7] As Massachusetts tells us, the Act's nondiscriminatory purpose is plain from its text: "The purpose of this Act is to prevent animal cruelty by phasing out extreme methods of farm animal confinement[.]" Further, because the Massachusetts Act was enacted as a result of a ballot initiative passed by Massachusetts voters, and not as a bill passed by the Massachusetts State Legislature, statements made during legislative hearings do not constitute an ideal "source of context." *See Simmons v. Galvin*, 575 F.3d 24, 45 (1st Cir. 2009)("[S]ince [the challenged statute] was put before the voters, the Information for Voters Guide is a better source of context" than "sporadic" comments from legislators). Plaintiffs, therefore, did not present "significantly probative" evidence to create a genuine issue of material fact concerning the discriminatory purpose of the Massachusetts Act. *See All. of Auto. Mfrs.*, 430 F.3d at 40 (quoting *Cadle Co.*, 116 F.3d at 960).

On discriminatory effect, Plaintiffs contend that the Massachusetts Act regulates conduct occurring *only* at

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[7] Plaintiffs also cite a 2016 Massachusetts Supreme Judicial Court (SJC) decision – Dunn *v. Attorney General*, 474 Mass. 675, 681 (2016) – for the proposition that "in-state farmers' economic benefit is a central purpose of the [Massachusetts] Act." Contrary to this contention, the SJC stated that the purpose was "prevent[ion of] farm animals from being caged in overly cramped conditions, consistent with the statement of purpose in section 1 of [the Massachusetts Act], 'to prevent animal cruelty by phasing out extreme methods of farm animal confinement.'" *Id.* The SJC also recognized that the Massachusetts Act "protects" Massachusetts farmers, without holding that was a purpose of the Massachusetts Act or that the protection ran afoul of the dormant Commerce Clause. *See id.*

out-of-state farms, which provides a "distinct advantage to in-state farmers." They, again, reference the legislative history of the Massachusetts Act, stating that "legislative committee hearing members had direct knowledge of" the alleged discrimination. Their sole factual allegation in support of this claim is that no Massachusetts farmers used gestation crates at the time the Massachusetts Act passed. Massachusetts counters that Plaintiffs failed to demonstrate that the Massachusetts Act imposes differential treatment on in-state and out-of-state economic interests. Massachusetts also tells us that the Supreme Court's opinion in *National Pork* is instructive in evaluating Plaintiffs' discrimination claim here, even though that case involved only a *Pike* claim.

Plaintiffs contend that *National Pork* is distinguishable from the present case because there was no discrimination claim in that case. It is true that *National Pork* did not deal directly with a discrimination claim. The *National Pork* plaintiffs conceded that the California law imposed "the same burdens on in-state pork producers that it impose[d] on out-of-state ones." 598 U.S. at 370; *see also Ass'n to Pres. & Protect Loc. Livelihoods*, 147 F.4th at 61 ("[T]he plaintiffs in *National Pork* explicitly disclaimed any discrimination-based arguments . . . . ").[8] The Court

[8] The Court in *National Pork* referred to the Massachusetts Act, stating that "Massachusetts prohibits the sale of pork products from breeding pigs (or their offspring) if the breeding pig has been confined 'in a manner that prevents [it] from lying down, standing up, fully extending [its] limbs or turning around freely.'" 598 U.S. at 365 (alterations in original) (quoting Mass. Gen. Laws Ann., ch. 129, App. §§ 1-3, 1–5 (Cum. Supp. 2023)). It also noted that Florida, Arizona, Maine, Michigan, Oregon, and Rhode Island all have similar laws that regulate animal confinement practices. *Id.*

also accepted this concession. *See Truesdell v. Friedlander*, 80 F.4th 762, 769 (6th Cir. 2023), *cert. denied*, 144 S. Ct. 1344 (2024), and cert. denied, 144 S. Ct. 1346 (2024) (citing *Nat'l Pork*, 598 U.S. at 367).

The National Pork Court addressed a California law "banning the in state sale of certain pork products derived from breeding pigs confined in stalls so small they cannot lie down, stand up, or turn around." *Id.* at 363. Much like the case before us, *National Pork* involved out of state pork producers filing suit, alleging that the law was in violation of the dormant Commerce Clause. *Id.* at 364. The Court "synthesized decades of dormant Commerce Clause jurisprudence into a few key principles. Chief among them is that economic 'antidiscrimination . . . lies at the very core of [the Court's] dormant Commerce Clause jurisprudence.'" *New Jersey Staffing All. v. Fais*, 110 F.4th 201, 205 (3d Cir. 2024) (alteration in original) (quoting *Nat'l Pork*, 598 U.S. at 369).

While the similar California law at issue in *National Pork* ultimately did not offend the dormant Commerce Clause, *see* 598 U.S. at 390-91, we acknowledge that the petitioners' concession in that case limits its instructive value for the present discrimination claim. The Court in *National Pork*, however, relied on an older case that defeats Plaintiffs' claim. *See Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 119-120 (1978) (addressing a Maryland law that prevented producers or refiners of petroleum products from operating retail service stations in Maryland). There, Exxon argued that the "effect of the [Maryland law was] to protect in-state independent dealers from out-of-state competition." *Id.* at 125. The Court recognized that all of Maryland's gasoline supply "flows in interstate commerce" and there were "no local producers,"

and, as such, "claims of disparate treatment between interstate and local commerce would be meritless." *Id.* "The Court rejected the refiners' dormant Commerce Clause challenge because the statute did not affect the right of only out-of-state entities to compete in the Maryland market; rather, all independent dealers (in and out-of-state) were permitted to compete and *all* refiners were excluded." *Walgreen Co.*, 405 F.3d at 59 (citing *Exxon*, 437 U.S.at 127).

So too, here. "[A] neutral law that 'regulates even-handedly' by treating interstate and intrastate commerce the same does not discriminate against interstate commerce simply because it affects more out-of-state businesses than in-state ones." *Truesdell*, 80 F.4th at 769 (citations omitted); *see also Pike*, 397 U.S. at 142; *Exxon*, 437 U.S. at 126. Plaintiffs' arguments on this point are no different than those the Court squarely rejected in *Exxon* over 40 years ago. The mere fact that a statute's requirements fall solely on interstate companies does not lead "to a conclusion that the State is discriminating against interstate commerce." *Exxon*, 437 U.S. at 125. Plaintiffs have not demonstrated that the Massachusetts Act affirmatively grants in-state pork producers a "competitive advantage over out of state dealers." *See id.* at 126. Thus, Plaintiffs have not "satisfied their initial burden of showing that [the Massachusetts Act] is discriminatory in effect." *See Cherry Hill*, 505 F.3d at 34.

Still, Plaintiffs urge us that this case is factually similar to *Jenkins*. There, we held unconstitutional a Massachusetts statute ("Section 19F") which established differential methods for distribution of wine within Massachusetts. *Jenkins*, 592 F.3d at 5. That statute provided that "large" wineries, that is, those producing more than 30,000 gallons of grape

wine annually, could only sell their wine *either* through wholesalers or directly to consumers. *Id.* at 8. By contrast, "small" wineries could simultaneously sell their wine through wholesaler distribution, through retail distribution, and by shipping directly to consumers. *Id.* Section 19F was "neutral on its face," as it "[did] not, by its terms, allow only Massachusetts wineries to distribute their wines through a combination" of the methods mentioned above. *Id.* at 5. "Section 19F instead use[d] a very particular gallonage cap to confer [a] benefit upon 'small'" wineries, which included all Massachusetts wineries, "as opposed to 'large' wineries," which were all located outside of Massachusetts. *Id.* We held that Section 19F violated the dormant Commerce Clause chiefly because the gallonage cap (1) had the ultimate effect of "enabl[ing] Massachusetts's wineries to gain market share against their out-of-state competitors," while simultaneously "burden[ing] all the larger out-of-state competitors" and (2) "conferred a competitive advantage upon Massachusetts wineries by design."[9] *Id.* at 12-13.

Jenkins is distinguishable from the instant case. There, we found that the evidence presented by the plaintiffs demonstrated that Section 19F created a

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[9] Plaintiffs cite *Hunt v. Washington State Apple Advert. Comm'n* for the same proposition. *See* 432 U.S. 333, 340 (1977). There, North Carolina adopted a regulation, "unique in the 50 States," which required all closed containers of apples sold in the state to display either the "applicable USDA grade or none at all." *Id.* at 337. But that case, too, is inapposite, as the statute at issue there "ha[d] the effect of stripping away from [another state's] apple industry the competitive and economic advantages it ha[d] earned for itself through its expensive inspection and grading system." *Id.* at 351. Plaintiffs do not, and cannot, point to any similar reputational "leveling effect" here. *See id.*

"competitive advantage" to in-state wineries, and a "comparative disadvantage" for out-of-state wineries. *See id.* at 11. Massachusetts wineries did, in fact, take advantage of the benefits conferred by Section 19F, with most Massachusetts' wineries obtaining the "small" wineries license and distributing "71 percent [of their annual production] through retail outlets," a benefit not conferred to "large" wineries. *Id.* at 4, 11-12. We also found that, by "[c]ombining [] distribution methods," Massachusetts wineries could sell wines "at maximum efficiency because they serve[d] complementary markets." *Id.* at 11. "'[S]mall' wineries' distribution costs [were also lowered] because they [could] choose which method or combination of methods [would] be most cost-effective for a particular wine." *Id.* By contrast, out-of-state, "large" wineries faced "comparatively greater distribution costs because they [could not] always distribute a given wine through the most cost-effective method." *Id.* at 12. "Large" wineries' option to choose between wholesaler distribution or direct shipping also implied a "significant loss of potential profits, since using a single method result[ed] in a comparative loss of consumer sales." *Id.*; *contrast id.* with *Cherry Hill*, 505 F.3d at 38-39 (finding that plaintiffs did not satisfy their burden of showing that a Maine law that allowed wineries to conduct direct sales to consumers only in face-to-face transactions was discriminatory in effect, as plaintiffs failed to present evidence that the law protected Maine vineyards or harmed out-of-state wineries).

No "substantial" evidence of discriminatory effect, either of advantage to in-state producers or disadvantage to out-out-state producers, is present here. *See Cherry Hill*, 505 F.3d at 36. Plaintiffs contend that Massachusetts farmers will obtain

competitive advantage from the Massachusetts Act, as they will "gain[] a larger market share [in Massachusetts] uninterrupted by any cost, delay, or burden associated with the Act." Plaintiffs' contention that the Act substantially disadvantages out of state farmers, however, is not supported by specific citations to record material. The summary judgment record, in fact, squarely refutes this allegation: Massachusetts pork production decreased from 2021 to 2022, the year the Massachusetts Act went into effect.[10]

In *Cherry Hill*, we highlighted the important distinction between regulatory schemes that "explicitly discriminate against out-of-state goods or products" and those that do not. 505 F.3d at 36. Because the Maine statute at issue "flatly outlaw[ed] any and all direct shipping of wine" for both "in-state" and "out-of-state wineries," we rejected plaintiffs' dormant Commerce Clause challenge. *Id.* at 30; 35-36.[11] Like Maine, Massachusetts has flatly outlawed a

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[10] We note that an amicus brief filed by another major pork producer presents data that is consistent with the record in this case. *See* Br. for Perdue Premium Meat Company, Inc. D/B/A Niman Ranch as Amicus Curiae Supporting Appellees at 11-14 (explaining that Tysons Foods, one of the world's largest meat processing companies, conceded that the materially identical California law discussed in *National Pork* did not harm the company's operations and Seaboard Foods, which maintains a herd of 7.2 million hogs, reported increased sales after the California law took effect).

[11] "[*Cherry Hill*] only addressed the kind of showing required when a statute is challenged as discriminatory in effect but is concededly non-discriminatory in purpose." *Jenkins*, 592 F.3d at 11 n.11 (citing *Cherry Hill*, 505 F.3d at 36). Here, we need not, and do not, comment on "whether a lesser showing might suffice when a law is allegedly discriminatory in both effect and purpose," as we have already concluded that the Massachusetts Act is not discriminatory in purpose. *See id.*

particular practice. Both Massachusetts and out-of-state producers must abide by the same regulations, and the Massachusetts Act does not favor local groups over similarly situated out-of-Commonwealth farmers or producers. *Cf. Walgreen Co.*, 405 F.3d at 55-60 (invalidating, on dormant Commerce Clause grounds, a Commonwealth of Puerto Rico statute requiring all pharmacies seeking to open or relocate within Puerto Rico to obtain a "certificate of necessity and convenience," but exempting existing pharmacies from such certificate requirement).[12] In short, the Massachusetts Act does not establish different "playing fields" for in and out-of-state interests. *See id.* at 58. Massachusetts "market share previously enjoyed by one group of profit-seeking, out-of-state businesses (farmers who stringently confine pigs and processors who decline to segregate their products) [may] be replaced by another (those who raise and trace [the Massachusetts Act]-compliant pork)." *See Nat'l Pork*, 598 U.S. at 385. The dormant Commerce Clause does not protect against this reality. *See id.* (citing *Exxon*, 437 U.S. at 127).

We thus discern no error in the district court's decision on this issue.

ii. *Pike*

The Supreme Court has recognized that, even where a state law is not facially discriminatory, its "practical effects may also disclose the presence of a discriminatory purpose." *Nat'l Pork*, 598 U.S. at 377. The

[12] In fact, Massachusetts asserts that the Massachusetts Act is, taken as a whole, more burdensome on Massachusetts farmers than out-of-state farmers. Massachusetts farmers can neither confine pigs in gestation crates nor sell those pigs. Mass. Gen. Laws Ann., ch. 129, App. §§ 1-2, 1-3. Out-of-state farmers can still confine pigs in gestation crates, they just cannot sell those specific, non-compliant pork products within Massachusetts.

Court articulated the "practical effects" test in *Pike v. Bruce Church, Inc.*, holding that "[w]here the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *See* 397 U.S. at 142. Such a statute "engenders a lower level of scrutiny." *All. of Auto. Mfrs.*, 430 F.3d at 35 (citing *Pharm. Rsch. & Mfrs. of Am. v. Concannon*, 249 F.3d 66, 80 (1st Cir. 2001), *aff'd sub nom. Pharm. Rsch. & Mfrs. of Am. v. Walsh*, 538 U.S. 644, (2003)).

Plaintiffs contend that the district court improperly entered summary judgment on their *Pike* claim. To succeed on a *Pike* theory, Plaintiffs "must demonstrate that a challenged law imposes a 'substantial' or 'significant' burden on interstate commerce before *Pike* balancing can occur." *Flynt v. Bonta*, 131 F.4th 918, 925 (9th Cir. 2025). "Plaintiffs here face a heavy burden: 'the Supreme Court has not invalidated a law under *Pike* in more than 30 years.'" *Id.* at 931 (quoting *Truesdell*, 80 F.4th at 773) (citation modified).

The district court relied on *National Pork* in ruling on the *Pike* issue, noting:

> The Supreme Court ruled that "harm to some producers' favored methods of operation" did not rise to a "substantial harm to interstate commerce," and that "increased production expenses" cannot be compared by a court to "noneconomic" state benefits. Further, the Court explained, "judges often are 'not institutionally suited to draw reliable conclusions of the kind that would be necessary . . . to satisfy [the] *Pike*' test as petitioners conceive it."

Triumph Foods, *LLC*, 715 F. Supp. 3d at 151 (first quoting *Nat'l Pork*, 598 U.S. at 385-87; then quoting *id.* at 380-81; and then quoting *id.* at 380).

Plaintiffs argue that the district court incorrectly relied on a portion of the *National Pork* opinion that was joined by "only three justices." Because that portion was not the majority's opinion, the argument goes, the district court erred in "refus[ing] to engage in any *Pike* analysis." In response, Massachusetts avers that "[a] majority of the *[National Pork]* Court affirmed the Rule 12(b)(6) dismissal of a *Pike* challenge to California's materially identical law. Appellants' *Pike* challenge, based on indistinguishable allegations and evidence, was therefore correctly rejected." We agree.

The record makes clear that the district court engaged with Plaintiffs' *Pike* claims both at oral argument and in its February 5, 2024 Order. *Triumph Foods*, *LLC*, 715 F. Supp. 3d at 151. While the district court did not apply the *Pike* balancing test, it did determine that the California state statute at issue in *National Pork* was "nearly identical" to the Massachusetts Act at issue here. *Id.* (citing *Nat'l Pork*, 598 U.S. at 367). Having reached that conclusion, the district court was under no obligation to apply the *Pike* test.[13] Because we hold that the Massachusetts Act is

[13] "The Justices in [*National Pork*] . . . agreed that whether a law imposes a substantial burden on interstate commerce is a threshold inquiry, although given the fractured nature of the Court's decision on the *Pike* question, there is no portion of any opinion on this point that commanded a majority." *Flynt*, 131 F.4th at 925 (first citing *Nat'l Pork*, 598 U.S. at 383 (plurality); then citing *id.* at 393 (Sotomayor, J., concurring) ("Alleging a substantial burden on interstate commerce is a threshold requirement that plaintiffs must satisfy before courts need even engage in *Pike*'s balancing and tailoring analyses."); then citing

not discriminatory, the *National Pork* holding is dispositive.

In *National Pork*, five justices concluded that the petitioners' *Pike* claim failed, but they were unable to agree on a single rationale for that holding. 598 U.S. at 390-91. Justice Gorsuch, in a plurality opinion joined by Justices Thomas, Sotomayor, and Kagan, reasoned that, because the petitioners failed to "plead facts 'plausibly' suggesting a substantial harm to interstate commerce," the *Pike* claim could not proceed. *Id.* at 385. In a separate plurality, Justice Gorsuch, joined by Justices Thomas and Barrett, concluded that this claim failed because the alleged "costs" and "benefits" of the California law were incommensurable, as economic burdens could not be weighed against noneconomic benefits. *Id.* at 380-82.

Plaintiffs claim, however, that five justices would have upheld the *Pike* claim in *National Pork:* the four justices in dissent, Chief Justice Roberts, along with Justices Alito, Kavanaugh, and Jackson, as well as Justice Barrett in her concurrence. Plaintiffs cite *United States v. Johnson*, 467 F.3d 56 (1st Cir. 2006), to suggest that we should combine their separate opinions to uphold a *Pike* claim here. But putting aside any lurking issues regarding the application of the framework set forth in *Marks v. United States*, 430 U.S. 188 (1977), *see Johnson*, 467 F.3d at 62-64, Plaintiffs are simply incorrect that there were five votes to uphold a *Pike* claim in *National Pork*. *See* 467 F.3d 56, 62-64 (1st Cir. 2006). Justice Barrett did agree with the dissenters that the complaint in

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id. at 394 (Barrett, J., concurring) (similar); and then citing *id.* at 395 (Roberts, C.J., concurring in part and dissenting in part) (similar)).

National Pork plausibly alleged, as a matter of fact, a substantial burden on interstate commerce. 598 U.S. at 393-94 (Barrett, J., concurring). Nevertheless, she concurred in the judgment that the petitioners there failed to state a Pike claim as a matter of law because the benefits and burdens of the state law were incommensurable. *Id.* The benefits and burdens Plaintiffs point to here are indistinguishable from those alleged in *National Pork*, so Justice Barrett's concurrence cannot be combined with the dissenting opinion to save the day for Plaintiffs.

The Court in *National Pork* ultimately declined the "petitioners' incautious invitation[]" to "prevent a State from regulating the sale of an ordinary consumer good within its own borders on nondiscriminatory terms." *Id.* at 390-91. We follow the rationale in *National Pork* to resolve the matter before us. Because the Massachusetts Act is not discriminatory, we find that Plaintiffs' claim also "falls well outside Pike's heartland." *See id.* at 380. For these reasons, we agree with the district court's decision to enter summary judgment against the Plaintiffs on the Pike claim.

C. Preemption

Plaintiffs alleged that both the FMIA and the PSA preempt the Massachusetts Act's enforcement. At summary judgment, the district court held that the Massachusetts Act was not preempted. *Triumph Foods, LLC*, 742 F. Supp. 3d at 66. We review the district court's entry of summary judgment de novo to determine whether Massachusetts is entitled to judgment as a matter of law. *See McCoy*, 59 F.4th at 504 (citing *Cruz v. Mattis*, 861 F.3d 22, 24 (1st Cir. 2017)).

"[C]ongressional enactments may preempt conflicting state laws." *Nat'l Pork*, 598 U.S. at 368 (citing U.S. Const. art. VI, cl. 2). "Federal preemption of a state law . . . 'may be either express or implied.'" *Nw. Selecta, Inc. v. González-Beiró*, 145 F.4th 9, 15 (1st Cir. 2025) (quoting *Bower v. Egyptair Airlines Co.*, 731 F.3d 85, 92 (1st Cir. 2013)). "When a federal statute has an express preemption clause, 'we do not invoke any presumption against [preemption].'" *Id.* (alteration in original) (quoting *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016)). Rather, we focus on the plain wording of the clause. *See id.* (quoting *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 594 (2011)). We also look to the "preemption clause's statutory context and the statute's overall purpose." *Id.*

"Conflict preemption," on the other hand, "may occur 'where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 52 (1st Cir. 2024) (quoting *Arizona v. United States*, 567 U.S. 387, 399 (2012)). "What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Me. Forest Prods. Council v. Cormier*, 51 F.4th 1, 6 (1st Cir. 2022) (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000)).

i. The FMIA

As we have previously explained, the district court ruled that one portion of the Massachusetts Act – the "slaughterhouse exception" – violated the dormant Commerce Clause. Accordingly, it severed that provision. Plaintiffs argue that, given that severance,

the Massachusetts Act is expressly preempted and preempted by conflict under the FMIA. Hearing Plaintiffs' arguments post-severance, the district court held that "Congress ha[d] not preempted the state law in question" and granted summary judgment to Massachusetts. *Triumph Foods*, *LLC*, 742 F. Supp. 3d at 66.

The FMIA is a federal statute which "regulates the inspection, handling, and slaughter of livestock for human consumption." *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452, 455 (citing 21 U.S.C. § 601 et seq.). "The FMIA regulates a broad range of activities at slaughterhouses to ensure both the safety of meat and the humane handling of animals." *Id.* Meat processing facilities are inspected under the FMIA and the United States Department of Agriculture Food Safety and Inspection Service examines the product, facilities, and records of the processing facilities. The FMIA's express preemption clause provides:

> Requirements within the scope of [the FMIA] with respect to premises, facilities and operations of any [FMIA-inspected] establishment . . . which are in addition to, or different than those made under [the FMIA] may not be imposed by any State . . . .

21 U.S.C. § 678.

The district court concluded that the Massachusetts Act is not preempted because it does not regulate how a slaughterhouse operates or prohibit a slaughterhouse from processing meat that does not comply with the Massachusetts Act. *Triumph Foods*, *LLC*, 742 F. Supp. 3d at 70. In so holding, the district court provided an overview of *National Meat Ass'n v. Harris*, 565 U.S. 455, a 2012 case in which the Court

reviewed whether the FMIA expressly preempted a California provision (the "California Act") that regulated slaughterhouses within the state. 565 U.S. at 452. There, the California Act contained, in relevant part, a provision that banned the "process, butcher, or [sale of] meat or products of nonambulatory animals for human consumption." *See id.* at 459 (quoting Cal. Penal Code § 599f(b)). The Court held that the California Act was expressly preempted by the FMIA because the California Act "substitute[d] a new regulatory regime" for the one the FMIA prescribed. *Id.* at 460. The Court further held that although "the FMIA's preemption clause does not usually foreclose 'state regulation of the commercial sales activities of slaughterhouses,' the California Act's sales ban was "a criminal proscription calculated to help implement and enforce each of the section's other regulations," and was thus preempted by the FMIA. *Id.* at 463-64.

Plaintiffs rely on the *National Meat* holding for much of their preemption argument. Because the Massachusetts Act "directly regulates FMIA regulated facilities," the argument goes, the Massachusetts Act is prohibited by the Supremacy Clause and the FMIA's express preemption clause. In advancing these arguments, Plaintiffs suggest that the Massachusetts Act functions in the same way as the California Act struck down in *National Meat.* By contrast, Massachusetts argues that Plaintiffs' "express preemption argument fails because they identify no 'requirements' 'within the scope' of the FMIA that the [Massachusetts] Act imposes on slaughterhouses." Plaintiffs also contend that the Massachusetts Act "adds a class of adulteration unrecognized in federal law by predetermining what meat may be sold."

Again, the California Act examined by *National Meat* specifically provided: "No slaughterhouse shall process, butcher, or sell meat or products of non-ambulatory animals for human consumption." *Nat'l Meat Ass'n*, 565 U.S. at 459 (quoting Cal. Penal Code Ann. §599f (West 2010)). This language was in direct contention with the FMIA's proscriptions, which include that a "slaughterhouse may hold (without euthanizing) any nonambulatory pig that has not been condemned [a]nd the slaughterhouse may process or butcher such an animal's meat for human consumption . . . ." *Id.* at 460 (internal citation omitted).

The California Act at issue in *National Meat* is fundamentally different than the Massachusetts Act. *See Triumph Foods*, *LLC*, 742 F. Supp. 3d at 70. "[T]he Act here only bans the sale of noncompliant pork meat; it does not regulate how a slaughterhouse operates." *Id.* Plaintiffs do not identify any operational requirement in the Massachusetts Act, nor could they. And the FMIA's express preemption provision applies only to "[r]equirements within the scope of [the FMIA]." *See* 21 U.S.C. § 678.

Indeed, the Supreme Court in *National Meat* expressly disavowed that its holding means what Plaintiffs now say it means. *See* 565 U.S. at 462-463. The Court stated that the record before it did not "disclose whether [the California Act's] ban on purchase ever applies beyond the slaughterhouse gate." *Id.* "And because that [was] so, [the Court had] no basis for deciding whether the FMIA would preempt it." *Id.* By contrast, the Massachusetts Act *explicitly* applies "beyond the slaughterhouse gate." *See id.; see also* Mass. Gen. Laws Ann., ch. 129, App. § 1-4(c) ("[A] covered animal shall not be deemed to be 'confined in a cruel manner' during: . . . Slaughter in

accordance with any applicable laws . . . ."). In short, unlike *National Meat* California Act, the Massachusetts Act regulates pork production, rather than pork inspection. The FMIA regulates only the latter and "Congress has yet to adopt any statute that might displace . . . laws regulating pork production . . . ." *See Nat'l Pork*, 598 U.S. at 368.

We also conclude that the Massachusetts Act does not create a "class of adulteration unrecognized in [the FMIA]." *See Va. Uranium*, *Inc. v. Warren*, 587 U.S. 761, 790-91 (2019) (Ginsburg, J., concurring) (citing *Nat'l Meat Ass'n*, 565 U.S. at 465, 467)("The distinction drawn in *National Meat* . . . supports this conclusion: A state law regulating an upstream activity within the State's authority is not preempted simply because a downstream activity falls within a federally occupied field."); *see also* Br. for Perdue Premium Meat Company, Inc. D/B/A Niman Ranch as Amicus Curiae Supporting Appellees at 9 ("Producers have used segregation and tracing mechanisms for years to provide consumers with premium pork products that follow organic, non-GMO, specific breeds, and other unique specifications.").

As for Plaintiffs' conflict preemption claim, we find that the Massachusetts Act is not preempted by conflict with the FMIA. The Massachusetts Act does not "render it impossible to comply with the [FMIA], nor serve as an obstacle to its purposes and objectives." *See Iowa Pork Producers Ass'n v. Bonta*, No. 22-55336, 2024 WL 3158532, at *5 (9th Cir. June 25, 2024), cert. denied, No. 24-728, 2025 WL 1787818 (June 30, 2025).

Accordingly, we hold that the Massachusetts Act is not preempted by the FMIA.

ii. The PSA

Plaintiffs also alleged that the Massachusetts Act is preempted by the Packers and Stockyard Act ("PSA") based on principles of conflict preemption. The PSA "makes it unlawful 'for any packer or swine contractor' to '[m]ake or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.'" *Id.*[14]

Plaintiffs argue that the PSA prevents "'unfair, discriminatory, or deceptive practices' in the packing industry . . . ." Re-emphasizing their earlier arguments on discrimination, Plaintiffs state they must now "source compliant pigs to gain access to the Massachusetts marketplace and thus must pay a premium to farmers who meet the demand." Because the Massachusetts Act does not discriminate, it follows that Plaintiffs' PSA preemption claim, based wholly on discrimination grounds, fails. The Massachusetts Act "does not require packers or wholesalers to favor or disfavor any pork producers based on their location. It instead prohibits packers and wholesalers from selling non-compliant pork meat in [Massachusetts], regardless of where such meat originates." *Id.* The Massachusetts Act does not "render it impossible to comply with the [PSA], nor serve as an obstacle to its purposes and objectives." *See id.*

Accordingly, we hold that neither the FMIA nor the PSA preempts the Massachusetts Act.

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[14] We need not address other claims dismissed by the district court – including injunctive and declaratory relief – to which Plaintiffs perfunctorily aver. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990). As those claims are underdeveloped on appeal, they are waived. *See id.*

D. Full Faith and Credit Clause

Plaintiffs allege that the Massachusetts Act is in "direct conflict" with the "Right to Farm" laws that exist in several states where the Plaintiffs operate, such as in Missouri, Wyoming, and Indiana. *See* Mo. Const. art. I, § 35; Wyo. Stat. Ann. § 11-44-104 (2025); 345 Ind. Admin. Code 14-2-3, 14-2-4 (2025). For this reason, Plaintiffs contend that the Massachusetts Act violates the Full Faith and Credit Clause.

The Full Faith and Credit Clause of the United States Constitution provides, in pertinent part, that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1. "A statute is a public Act within the meaning of the Full Faith and Credit Clause." *Franchise Tax Bd. v. Hyatt*, 578 U.S. 171, 176 (2016) (internal citations and quotations omitted). A State, however, is not required to "substitute for its own statute, applicable to persons and events within it, the statute of another State reflecting a conflicting and opposed policy." *Id.* (quoting *Carroll v. Lanza*, 349 U.S. 408, 412 (1955)). The Supreme Court has noted that a State's decision to decline to apply another State's statute cannot be preceded by that State's adoption of a "policy of hostility to the public Acts of [the] other State." *Id.* (citation modified).

The Massachusetts Act does not ban farming practices in the states Plaintiffs have cited as having Right to Farm laws. Rather, the Massachusetts Act bans the sale of products resulting from certain practices in Massachusetts. Mass. Gen. Laws Ann., ch. 129, App. § 1-3. Because these out-of-state farmers are free to continue with their current farming practices, it is our view that the Massachusetts Act does not

constitute a "policy of hostility" to their "Right to Farm" laws. *See Hyatt*, 578 U.S. at 176.

We thus find that the Massachusetts Act does not violate the Full Faith and Credit Clause.

E. Due Process Clause

Plaintiffs argue that the Massachusetts Act is "unconstitutionally vague" in violation of the Due Process Clause because (i) "it fails to define what it means to 'engage in the sale' of the prohibited pork product" and (ii) it fails "to specify the square footage requirements for a breeding pig to 'turn around freely.'" They posit that it is unclear whether "engaging" in a sale refers only to those who "sell" or includes all those who participate in the supply chain. Plaintiffs also allege that, because sows are not "one size fits all," their ability to "turn around freely" varies. As such, Plaintiffs are unable to discern whether the shipment of their pork products into Massachusetts will be compliant with the Massachusetts Act.

A statute can be unconstitutionally vague in two circumstances. "First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000) (citing *Chicago v. Morales*, 527 U.S. 41, 56-57 (1999)). Specifically, "'enactments with civil rather than criminal penalties' are held to a less exacting vagueness standard 'because the consequences of imprecision are qualitatively less severe.'" *McCoy*, 59 F.4th at 509 (quoting *Vill. of Hoffman Estates v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 495 (1982)).

The Massachusetts Act defines a "sale" as "a commercial sale by a business that *sells* any item covered [by the Massachusetts Act]," subject to certain exceptions. Mass. Gen. Laws Ann., ch. 129, App. § 1-5 (emphasis added). Moreover, a sale "shall be deemed to occur at the location where the buyer takes physical possession of an item covered by [the Act]." *Id.* In our view, a person of "ordinary intelligence" will most likely understand from this definition that the Massachusetts Act specifically prohibits sellers from "engaging in the sale" of the products prohibited by the Act. *See id.* We find it unlikely for this provision to be interpreted as being applicable to all those who participate in the supply chain, as Plaintiffs argue in their Brief. We thus disagree with Plaintiffs' argument that this phrase renders the Massachusetts Act unconstitutionally vague.

We also disagree with Plaintiffs' contention that the requirement that sows must be able to "turn around freely" is unconstitutionally vague. As contended by Massachusetts, the Massachusetts Act clearly defines "turning around freely" as "turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure or another animal." Mass. Gen. Laws Ann., ch. 129, App. § 1-2. We find that this definition clearly states the standard that pig farms must follow to comply with this requirement. The lack of square footage requirements in this provision, therefore, does not render it unconstitutionally vague.

Accordingly, we find that the Massachusetts Act is not unconstitutionally vague.

F. Import-Export Clause

Plaintiffs argue that "the [Massachusetts] Act essentially imposes a duty or tax on out-of-state goods through its imposition of a particular method of raising pigs," in violation of the Import-Export Clause of the United States Constitution. *See* U.S. Const. art I, § 10, cl. 2. In its response, Massachusetts explains that the application of the Import-Export Clause is limited to products imported from foreign countries, not other states.

We agree with Massachusetts. The Import-Export Clause prohibits States from "lay[ing] any Imposts or Duties on Imports or Exports" without the consent of Congress. U.S. Const. art I, § 10, cl. 2. "[T]he Import-Export Clause was long ago held to refer only to international trade." *Tenn. Wine and Spirits Retail. Ass'n v. Thomas*, 588 U.S. 504, 516 (2019) (citing *Woodruff v. Parham*, 75 U.S. 123, 136-137 (1869)). In a textual and historical analysis of the Constitution, the Court in *Woodruff* explained that "the words imports and imposts were used with exclusive reference to articles imported from foreign countries." 75 U.S. at 133. The Supreme Court therefore concluded that "no intention existed to prohibit, by [the Export-Import Clause], the right of one State to tax articles brought into it from another." *Id.* at 136. Plaintiffs ask us to apply the Import-Export Clause to prevent Massachusetts from "essentially impos[ing] a duty or tax" on goods imported by other States. Because the Import-Export Clause does not bar states from imposing taxes or duties on imports from other States, we conclude that the Massachusetts Act does not violate the Import-Export Clause. *Id.* at 133.

V. Conclusion

For the foregoing reasons, we *affirm*.

APPENDIX B

UNITED STATES DISTRICT COURT,
D. MASSACHUSETTS

Civil Action No. 23-11671-WGY

TRIUMPH FOODS, LLC, CHRISTENSEN FARMS MIDWEST, LLC, THE HANOR COMPANY OF WISCONSIN, LLC, NEW FASHION PORK, LLP, EICHELBERGER FARMS, INC., ALLIED PRODUCERS' COOPERATIVE, INDIVIDUALLY AND ON BEHALF OF THEIR MEMBERS,

Plaintiffs,

v.

ANDREA JOY CAMPBELL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF MASSACHUSETTS, ASHLEY RANDLE, IN HER OFFICIAL CAPACITY AS MASSACHUSETTS COMMISSIONER OF AGRICULTURE,

Defendants.

Signed July 22, 2024

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Maryanne Reynolds, Grace Gohlke, Vanessa Azniv Arslanian, Massachusetts Attorney General's Office, Boston, MA, for Defendants.

Kimberly D. Ockene, The Humane Society of the United States, Washington, DC, for Amici

The Humane Society of the United States, Animal Legal Defense Fund, Animal Equality, The Humane League, Farm Sanctuary, Compassion in World Farming USA, Animal Outlook.

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Adam F. Keats, Law Office of Adam Keats, San Francisco, CA, Jessica L. Blome, Greenfire Law, PC, Berkeley, CA, for Amici Animal Wellness Action, Animal Wellness Foundation, Center for a Humane Economy.

MEMORANDUM & ORDER

YOUNG, Judge of the United States[1]

I. INTRODUCTION

This case is about pork: how it is raised and where it may be sold for human consumption. The Plaintiffs, Triumph Foods, LLC ("Triumph"), Christensen Farms Midwest, LLC, The Hanor Company of Wisconsin, LLC, New Fashion Pork, LLP, Eichelberger Farms, Inc., and Allied Producers' Cooperative (collectively, the "Pork Producers"), seek to stop the enforcement of the Massachusetts Prevention of Farm Animal Cruelty Act ("the Act") by suing Andrea Joy Campbell, in her official capacity as Attorney General of Massachusetts, and Ashley Randle, in her official capacity as Massachusetts Commissioner of

[1] This is how my predecessor, Peleg Sprague (D. Mass. 1841-1865), would sign official documents. Now that I'm a Senior District Judge I adopt this format in honor of all the judicial colleagues, state and federal, with whom I have had the privilege to serve over the past 46 years.

Agriculture (collectively, the "Commonwealth"). Am. Compl., ECF No. 17. The Plaintiffs allege that the Federal Meat Inspection Act ("FMIA") preempts the Act's enforcement. *Id.*

[1] Along with pork, this case is about how a state may regulate its own commerce while continuing fully to participate in the national economy. *See generally National Pork Producers Council v. Ross,* 137 Harv. L. Rev. 330 (2023). The Constitution and our federal laws provide a framework for each state to follow in regulating certain industries, but, provided they do not interfere with that framework, states may still introduce and enforce their own laws and regulations. Today, the industry in question is pork; tomorrow, it could be shellfish. *See* Amicus Br. Iowa, ECF No. 71. The industry is, to some extent, irrelevant, so long as the state's statutory scheme does not conflict with that of the federal government. "The preemption of state laws represents 'a serious intrusion into state sovereignty.'" *Virginia Uranium, Inc. v. Warren,* 587 U.S. 761, 773, 139 S.Ct. 1894, 204 L.Ed.2d 377 (2019) (quoting *Medtronic, Inc. v. Lohr,* 518 U.S. 470, 488, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996) (plurality opinion)). As Congress has not preempted the state law in question here summary judgment is granted to the Commonwealth.

II. PROCEDURAL HISTORY

The Pork Producers filed their amended complaint on July 31, 2023. *See* Am. Compl. The amended complaint alleged ten causes of action, most arising under the United States Constitution. *See id.* The Pork Producers requested a preliminary injunction, and after a hearing on September 6, 2023, the Court collapsed the motion with a trial on the merits in accordance with Rule 65(a)(1). *See Massachusetts*

Lobstermen's Ass'n, Inc. v. National Marine Fisheries Serv., No. CV 24-10332-WGY, 2024 WL 2194260, at *3 n.5 (D. Mass. Apr. 16, 2024) (appeal pending). The Commonwealth then filed a motion to dismiss. Mot. Dismiss, ECF No. 53; *see also* Mem. Supp. Mot. Dismiss Compl., ECF No. 54. The Court granted the Commonwealth's motion to dismiss with respect to Counts II-X but denied the motion to dismiss with respect to Count I, alleging a violation of the Dormant Commerce Clause. *See* Elec. Clerk's Notes, ECF No. 66.

The Pork Producers then moved for partial summary judgment on the remaining Dormant Commerce Clause claim. Pls.' Mot. Partial Summ. J., ECF No. 87; *see also* Mem. Reasons Supp. Pls.' Mot. Partial Summ. J., ECF No. 88. In opposition, the Commonwealth requested that summary judgment be entered against the Pork Producers pursuant to Fed. R. Civ. P. 56(f)(1). *See* Mem. Opp'n Pls.' Mot. Summ. J. & Req. Summ J., ECF No. 94. On November 14, 2023, the parties agreed to proceed on a case stated basis on the remaining claim.

On December 19, 2023, after oral argument, the Court took the matter under advisement. *See* Elec. Clerk's Notes, ECF No. 117. On February 5, 2024, the Court entered a memorandum and order which severed the provision of the Act ("the slaughterhouse exemption") that violated the Dormant Commerce Clause from the rest of the statute and vacated in part the Court's previous dismissal of Count III in the Pork Producer's amended complaint, which claimed that the Act was preempted by the FMIA. *See* Memorandum and Order, ECF No. 125.

The Pork Producers now move for summary judgment on the ground that the Act, with the slaughter-

house exemption severed, is now preempted by the FMIA. *See* Pls.' Mot. Summ. J., ECF No. 126 ("Pls.' Mot."); *see also* Pl.'s Mem. Reasons Supp. Pls.' Mot. Summ. J., ECF No. 127 ("Mem. Supp. Pls.' Mot."). The Commonwealth cross-moves for summary judgment on the ground that the Act is not preempted by the FMIA. *See* Defs.' Mot. Summ. J., ECF No. 136 ("Defs.' Mot."); *see also* Mem. Supp. Mot. Summ. J., ECF No. 137 ("Mem. Supp. Defs.' Mot."). The parties have fully briefed the issues. *Id.;* Pls.' Reply Supp. Pls.' Mot. Summ. J. & Opp. Defs.' Mot. Summ. J. ("Pls.' Reply"), ECF No. 158.

III. UNDISPUTED FACTS

The Pork Producers are a combination of pig farmers ("the Farmer Plaintiffs") and one pork processor, Triumph. Collectively, the Pork Producers are located outside the state of Massachusetts, in Minnesota, Iowa, Nebraska, Illinois, South Dakota, Wisconsin, Oklahoma, North Carolina, Missouri, Wyoming, and Indiana. Am. Compl. ¶¶ 12-19. The Farmer Plaintiffs allege that the Act will force them to "convert their farm operations to meet Minimum Size Requirements." *Id.* ¶ 56. Triumph alleges that the adjustments it will need to make as a pork processor to comply with the Act are "penalties." *Id.* ¶ 58.

A. The Act

In 2016, Massachusetts enacted the Prevention of Farm Animal Cruelty Act, Mass. Gen. Laws ch. 129 App., § 1, through ballot initiative. *Id.* ¶ 25. The Act's 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." *Id.* § 1-1. The Act makes it unlawful "for a farm owner or operator within the Commonwealth of Massachusetts to knowingly cause any covered animal to be confined in a cruel manner." *Id.* § 1-5. The Act defines "confined in a cruel manner" as confining a "breeding pig in a manner that prevents the animal from lying down, standing up, fully extending the animal's limbs or turning around freely" ("Minimum Size Requirements"). *Id.* The Act also makes it unlawful for a "business owner or operator to knowingly engage in the sale within the Commonwealth of Massachusetts of any ... Whole Pork Meat that the business owner or operator knows or should know is the meat of a covered animal that was confined in a cruel manner, or is the meat of the immediate offspring of a covered animal that was confined in a cruel manner." *Id.* § 1-3. A sale is defined in the Act as "a commercial sale by a business that sells any item covered by Section 3." *Id.* § 1-5(M). The definition goes on to state that "[f]or purposes of this section, a sale shall be deemed to occur at the location where the buyer takes physical possession of an item covered by Section 3." *Id.*

The Attorney General has exclusive authority to enforce the provisions of the Act. *Id.* § 1-6. Each violation of the Act is punishable by a civil fine up to $1,000 and, in addition, the Attorney General may seek injunctive relief to prevent any further violations of the Act. *Id.*

B. The FMIA

The FMIA was enacted in 1906 "in light of concerns that unhealthy meat products impaired the effective regulation of meat and meat food products in interstate or foreign commerce." Pls.' St. Undisputed

Material Facts Supp. Pls.' Mot. Summ. J. ¶ 40, ECF No. 128 ("Pls.' SOF") (internal quotation marks and brackets omitted). Under the FMIA, pigs are inspected prior to entering a slaughterhouse, while in a slaughterhouse facility, and post-slaughter. *Id.* ¶¶ 47-49. The FMIA does not regulate pig farmers, only slaughterhouses. The FMIA contains an express preemption clause, which states that "[r]equirements within the scope of [the FMIA] with respect to premises, facilities and operations of any [FMIA-inspected] establishment ... which are in addition to, or different than those made under this chapter may not be imposed." *Id.* ¶ 46; *see also* 21 U.S.C. § 678.

In 1967, Congress amended the FMIA due to a "need for stronger, more effective and more uniform State inspection programs ... [to] provide consumer protection for all citizens, regardless of where their meat originates." Pls.' SOF ¶ 41. The FMIA was meant to "[c]larify and broaden [federal] authority over meat and meat products capable of use as human food," and "help bring the requirements of Federal and individual State meat inspection programs into closer conformity toward eventual elimination of the multiple and conflicting requirements presently encountered," as "[w]ithout such a coordinated network of Federal and State inspection programs, the health of the consumer cannot adequately be protected, nor can continued confidence in our meat supply be assured." *Id.*

The FMIA is enforced by the Food Safety and Inspection Service ("FSIS"), an agency of the United States Department of Agriculture ("USDA"). *Id.* ¶ 43. For each pig and pork product, the FSIS requires all slaughterhouses to keep records of the following: bills of sale, invoices, receiving and shipping papers,

descriptions of all livestock, net weight of all livestock, names and addresses of all buyers, methods of shipment, names and addresses of carriers, and the contact information for any previous owner of the livestock, as well as serial numbers and identification for each animal. 9 C.F.R. § 320.1(b).

C. Triumph's Business Model and Sales

Triumph, a farmer-owned company headquartered in St. Joseph, Missouri, is a processor and producer of pork products. Am. Compl. ¶ 12. Triumph largely receives its supply of pigs from its member-owners, many of whom were its fellow plaintiffs in this case (prior to summary judgment entering against them). *Id.; see* Elec. Clerk's Notes, ECF No. 99. Pork produced by Triumph is sold into Massachusetts as well as throughout the country. Am. Compl. ¶ 117. In 2022, Triumph processed over eleven million pounds of pork meat sold into Massachusetts. Joint Mot. Clarification & Exped. Status Conf., Attach. A, Partial Stipulation Facts ¶ 4, ECF No. 107-1. Triumph has made efforts to adjust its business model and structure in order to comply with the Act. Am. Compl. ¶ 120.

Triumph has over 1,000 product codes for its products, including for specific grocery stores, brands, pork byproducts, and type of pig ("open pen gestation", "grass-fed", "premium", etc.). Defs.' St. Facts Supp. Defs.' Mot. Summ. J. ¶¶ 26-31, ECF No. 138 ("Defs.' SOF"). To differentiate between different pigs in order to ensure they are classified with the correct product code, Triumph requires its pig farmers to deliver pigs at specific times, segregates them from other groups of pigs, keeps a count of all pigs in the group, and, after processing, maintains them in separate storage prior to shipment. *Id.* ¶ 34. Triumph

estimates it is processing approximately 58,000 pigs per month in compliance with the Act, which Triumph estimates to be about 700,000 compliant pigs (or 70 million pounds) per year available through Triumph. *Id.* ¶ 35.

Due to the Act, Triumph has created a process to differentiate between pork that meets the Act's requirements and pork that does not. Pls.' SOF ¶ 62. Triumph has also implemented new product codes, sorting procedures, and storage locations within its facility in order to ensure compliance with the Act. *Id.* ¶ 63.

IV. ANALYSIS

A. Standard of Review

[2, 3] Summary judgment is required when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). An issue of material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Materiality depends on the substantive law, and only factual disputes that might affect the outcome of the suit can preclude summary judgment. *Id.* In reviewing the evidence, this Court must "draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.,* 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000). This Court must also "disregard all evidence favorable to the moving party that the jury is not required to believe." *Id.* at 151, 120 S.Ct. 2097.

[4–6] "The [summary judgment pleading standard is] the same where, as here, both parties have moved for summary judgment." *Bienkowski v. Northeastern Univ.,* 285 F.3d 138, 140 (1st Cir. 2002). The fact that both parties have moved for summary judgment on the same issues, "neither dilutes nor distorts" the summary judgment standard of review. *See Hartford Fire Ins. Co. v. CNA Ins. Co.,* 633 F.3d 50, 53 (1st Cir. 2011). When courts are considering cross-motions for summary judgment, they must "consider each motion separately, drawing all inferences in favor of each non-moving party in turn." *AJC Int'l, Inc. v. Triple–S Propiedad,* 790 F.3d 1, 3 (1st Cir. 2015) (quoting *D & H Therapy Assocs., LLC v. Bos. Mut. Life Ins. Co.,* 640 F.3d 27, 34 (1st Cir. 2011)). "Cross-motions for summary judgment do not alter the summary judgment standard, but instead simply 'require [the Court] to determine whether either of the parties deserves judgment as a matter of law on the facts that are not disputed.'" *Wells Real Estate Inv. Tr. II, Inc. v. Chard'on/Hato Rey P'ship,* 615 F.3d 45, 51 (1st Cir. 2010) (quoting *Adria Int'l Grp., Inc. v. Ferr'e Dev., Inc.,* 241 F.3d 103, 107 (1st Cir. 2001)). The Court must "in each instance [determine] whether the moving party has met its burden under Rule 56." *Dan Barclay, Inc. v. Stewart & Stevenson Servs., Inc.,* 761 F.Supp. 194, 197–98 (D. Mass. 1991) (Caffrey, J.).

B. The Act Is Not Preempted by the FMIA.

The Pork Producers argue that the Act is preempted by the FMIA via both express preemption and conflict preemption. *See* Mem. Supp. Pl.'s Mot. These arguments misconstrue the Supreme Court's holding in *National Meat Ass'n v. Harris,* the scope of the Act, and the text of the FMIA. *National Meat*

Ass'n v. Harris, 565 U.S. 452, 132 S.Ct. 965, 181 L.Ed.2d 950 (2012).

1. Express Preemption

In *Harris,* the Court reviewed whether a California provision (the "California Act") that regulated slaughterhouses within the state was preempted by the FMIA. *Id.* at 455, 132 S.Ct. 965. The California Act had three provisions: 1) a provision banning any slaughterhouse from buying, selling, receiving "a nonambulatory animal"; 2) a provision banning the "process, butcher, or [sale of] meat or products of nonambulatory animals for human consumption"; and 3) a provision against "hold[ing] a nonambulatory animal without taking immediate action to humanely euthanize the animal."*See* Cal. Penal Code § 599f(a)-(c). The Court ruled that the California Act was expressly preempted by the FMIA because the California Act "substitutes a new regulatory regime for the one the FMIA prescribes." *Harris,* 565 U.S. at 460, 132 S.Ct. 965. The Court further held that although "the FMIA's preemption clause does not usually foreclose state regulation of the commercial sales activities of slaughterhouses," [the California Act's] sales ban was "a criminal proscription calculated to help implement and enforce each of the section's other regulations," and was therefore preempted by the FMIA. *Id.* at 463-64, 132 S.Ct. 965.

[7] The Pork Producers argue that the Act in question here functions in much the same way; because the Act's sales ban imposes additional conditions for FMIA regulated establishments, Triumph argues it "functions as a command to slaughterhouses to structure their operations in the exact way the [Act] mandates." Mem. Supp. Pls.' Mot. 17 (quoting *Harris,* 565 U.S. at 464, 132 S.Ct. 965). The

Act, however, differs from the California Act in *Harris* in a fundamental way: the Act has no provision requiring any action by a slaughterhouse other than its sales ban.

In *Harris,* the Court noted that California "may motivate an operational choice without running afoul of the FMIA's preemption provision." 565 U.S. at 463, 132 S.Ct. 965. It was the fact that the sales ban functioned "as a command to slaughterhouses to structure their operations in the exact way the remainder of [the California Act] mandate[d]." *Id.* at 464, 132 S.Ct. 965 (emphasis added). By contrast, the Act here only bans the sale of noncompliant pork meat; it does not regulate how a slaughterhouse operates. As the Commonwealth argues, "the practical result of the Act is that a slaughterhouse that wishes to sell whole pork meat in Massachusetts must be able to identify whether that meat originated from a compliant pig." Mem. Supp. Defs.' Mot. 18. Slaughterhouses may still operate in the same way they did previously – noncompliant pork processing is not only allowed, but slaughterhouses are not even required to segregate noncompliant pork from compliant pork. *See, e.g., Virginia Uranium,* 587 U.S. at 790–91, 139 S.Ct. 1894 (Ginsburg, J., concurring) ("The distinction drawn in *National Meat* thus supports this conclusion: A state law regulating an upstream activity within the State's authority is not preempted simply because a downstream activity falls within a federally occupied field.").

[8] The Pork Producers also argue that Triumph has had to make "changes to how pork is physically stored at and shipped from Triumph's facility," but it is unclear on the record why that would be required under the Act – these changes for storage

and distribution may make Triumph's tracking and organization of compliant pork easier and more manageable, but they are not required under the law. Pls.' Reply 15. As the FSIS already requires, a slaughterhouse must be able to identify where its pork meat came from.[2] *See supra,* p. 68. Organizing and storing the pork to ensure that the Act – compliant pork is shipped together is no different than the storage procedures that Triumph is already following – it segregates organic, grass-fed, or otherwise "specialty" pork. Though the Act requires changes in operations for pig farmers, which the FMIA does not cover, slaughterhouses may continue to operate as they did previously – they are simply only allowed to ship compliant pork meat for sale in Massachusetts.[3]

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[2] The Pork Producers raise, for the first time in their reply, that the Act imposes on farmers and slaughterhouses a recordkeeping requirement, "under the penalty of perjury," so different than those of the FMIA that it must be preempted. Pls.' Reply. This requirement, for certifications of how pig suppliers confine breeding pigs, however, is far outside the scope and purpose of the FMIA; again, these records are made in order to determine the treatment of the animals prior to slaughter, not to determine whether the animals are fit for human consumption. This requirement therefore sits far outside the scope of the FMIA, and consequently, the Pork Producers have not met their burden in demonstrating that the requirement is preempted.

[3] The Pork Producers also argue that the other cases cited by the Commonwealth are inapplicable because those cases involved wholesale bans on types of meat, not simply bans on how that meat "was produced or processed." Pls.' Reply 8. The Pork Producers, however, have only shown that the ban here affects how pork is "produced", which is a function of the pig farmers, and not how pork is "processed", which is a function of Triumph and other slaughterhouses. The argument, therefore, fails.

[9, 10] Finally, the Pork Producers argue that the Act "[overrides] the USDA's inspection and approval of the [pork] for sale" because Massachusetts has independently found that the pork is "adulterated, not fit for human consumption." Mem. Supp. Pl.'s Mot. 14. The Pork Producers argue that because one of the stated purposes of the Act is to protect "the health and safety of Massachusetts consumers," in banning the sale of certain pork products, the Act creates additional requirements for the same stated purpose as that of the FMIA. Mass. Gen. Laws ch. 129 App., § 1-1. As the Pork Producers also correctly explain, however, this Court must "look ... to the effect of the regulatory scheme." *Associated Indus. of Mass. v. Snow,* 898 F.2d 274, 279 (1st Cir. 1990). It is not the stated purpose of the state statute, but the operation of that statute, that determines whether it is preempted by federal law. Here, preventing consumption of adulterated products is the purpose of the FMIA, but it is not the purpose of the Act. The Act's purpose is to prevent animal cruelty. The language otherwise is just that – language – and in practice, the Act has no effect on health and safety in the Commonwealth.

The Court, therefore, determines that the Act is not expressly preempted by the FMIA.

2. Conflict Preemption

[11] The Pork Producers also argue that the Act's sales ban is preempted under principles of conflict preemption because the sales ban "conflicts with, and obstructs, the objectives of the FMIA." Mem. Supp. Pl.'s Mot. 23. Conflict preemption is triggered "when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Weaver's Cove Energy, LLC v.*

Rhode Island Coastal Res. Mgmt. Council, 589 F.3d 458, 472-73 (1st Cir. 2009). Should a statute have a preemption provision, as the FMIA does, a conflict preemption analysis is generally inappropriate. *See English v. General Elec. Co.,* 496 U.S. 72, 79, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990) (conflict preemption analysis applies in the "absence of explicit statutory language."). A presumption against preemption applies generally to such an analysis as well. *See Medicaid & Medicare Advantage Prod. Ass'n of P.R., Inc. v. Emanuelli Hernandez,* 58 F.4th 5, 11 (1st Cir. 2023). The Court here, however, will continue to conduct such an analysis.

[12, 13] A state law is preempted by conflict preemption when "it is impossible for a private party to comply with both state and federal requirements" or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *English,* 496 U.S. at 79, 110 S.Ct. 2270 (quoting *Hines v. Davidowitz,* 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 (1941)). "What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Maine Forest Prod. Council v. Cormier,* 51 F. 4th 1, 6 (1st Cir. 2022) (citing *Crosby v. National Foreign Trade Council,* 530 U.S. 363, 373, 120 S.Ct. 2288, 147 L.Ed.2d 352 (2000)).

[14] The purpose of the FMIA is "adequately" to "protect" "the health of the consumer" through the intended effect of "a uniform framework" of federal and state meat inspection programs. Pls.' SOF ¶ 41. The Act, in contrast, seeks to prevent the sale of pork raised in inhumane conditions, without concern for whether that meat is safe to eat (in other words,

an otherwise healthy pork product could be non-compliant with the Act, not because it is considered unhealthy, but because the policy preferences of the Massachusetts voters demand it not be eligible for sale). There is nothing in the record to indicate that since the Act's enactment, obstacles have occurred in ensuring safe and healthy pork in the Massachusetts market through the FMIA.

Further, as explained above, slaughterhouses can easily comply with both federal requirements and the requirements imposed by the Act because the Act does not impose any new requirements on slaughterhouses within the scope of the FMIA. As the Act does not impose any new requirements on slaughterhouses within the scope of the FMIA, it cannot, by definition, stand as an obstacle to the accomplishment or execution of Congress's objectives under the FMIA.

The Pork Producers argue that because there is "pork meat product that has passed FMIA inspection and is approved for sale by the USDA [that] is now unable to be sold," the Act conflicts with the FMIA. Pls.' Reply 19.

Although the Pork Producers point to instances in the record where a farmer, in providing both compliant and non-compliant pigs to a processor, erred in denoting pigs as compliant, resulting in pigs that had passed full USDA inspection being withdrawn from the market, such instances do not interfere with the objectives of the FMIA.[4] If the farmer had erred in labeling pigs delivered as "grass-fed", and such an

[4] The objective of the FMIA is to ensure safe pork enters the market. The FMIA, however, does not require that all safe pork available to the market be able to enter the market.

error was discovered after packaging and shipment, the mislabeled pork products would also have been withdrawn from the market to prevent misleading customers. The FMIA's purpose, to protect the health of consumers through uniform meat inspection regulations, is in no way precluded by the Act's recording requirements. The Court, therefore, determines that the Act is not preempted by the FMIA via conflict preemption.

V. CONCLUSION

After tremendously helpful briefing and oral argument, the Court took the parties' cross motions for summary judgment under advisement. The Court now, after careful consideration, determines that the Act is not preempted by the FMIA, and therefore GRANTS the Commonwealth's motion for summary judgment, ECF No. 136, and DENIES the Pork Producers' motion for summary judgment, ECF No. 126. Judgment shall enter for the Commonwealth.

SO ORDERED.

APPENDIX C

UNITED STATES DISTRICT COURT,
D. MASSACHUSETTS

Civil Action No. 23-11671-WGY

TRIUMPH FOODS, LLC, CHRISTENSEN FARMS MIDWEST, LLC, THE HANOR COMPANY, OF WISCONSIN, LLC, NEW FASHION PORK, LLP, EICHELBERGER FARMS, INC., ALLIED PRODUCERS' COOPERATIVE, INDIVIDUALLY AND ON BEHALF OF THEIR MEMBERS,

Plaintiffs,

v.

ANDREA JOY CAMPBELL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF MASSACHUSETTS, ASHLEY RANDLE, IN HER OFFICIAL CAPACITY AS MASSACHUSETTS COMMISSIONER OF AGRICULTURE,

Defendants.

Filed February 5, 2024

Robert L. Peabody, Husch Blackwell, Boston, MA, Ryann Glenn, Husch Blackwell LLP, Omaha, NE, Cynthia Cordes, Michael Thomas Raupp, Husch Blackwell LLP, Kansas City, MO, for Plaintiffs.

Maryanne Reynolds, Grace Gohlke, Vanessa Azniv Arslanian, Massachusetts Attorney General's Office, Boston, MA, for Defendants.

Kimberly D. Ockene, The Humane Society of the United States, Washington, DC, for Amici Humane

Society of the United States, Animal Legal Defense Fund, Animal Equality, The Humane League, Farm Sanctuary, Compassion in World Farming USA, Animal Outlook.

David M. Jellinek, Law Office of David Jellinek, Newton, MA, Eric H. Wessan, Iowa Department of Justice, Des Moines, IA, for Amicus State of Iowa.

MEMORANDUM & ORDER

YOUNG, DISTRICT JUDGE of the UNITED STATES[1]

I. PROCEDURAL HISTORY

The Plaintiffs Triumph Foods, LLC, Christensen Farms Midwest, LLC, The Hanor Company of Wisconsin, LLC, New Fashion Pork, LLP, Eichelberger Farms, Inc., and Allied Producers' Cooperative (collectively, the "Pork Producers") filed their amended complaint, ECF No. 17, on July 31, 2023. The complaint alleged ten causes of action, most under the dormant Commerce Clause of the United States Constitution, against the Defendants, the Massachusetts Attorney General and the Massachusetts Commissioner of Agriculture (collectively, "The Commonwealth"), due to the Prevention of Farm Animal Cruelty Act ("the Act"), Mass. Gen. Laws Ann. ch. 129 App., § 1-1. *See* Am. Compl., ECF No. 17. The Pork Producers requested a preliminary injunction and, after a motion hearing on September 6, 2023, the Court collapsed that motion with trial on the

[1] This is how my predecessor, Peleg Sprague (D. Mass. 1841-1865), would sign official documents. Now that I'm a Senior District Judge I adopt this format in honor of all the judicial colleagues, state and federal, with whom I have had the privilege to serve over the past 45 years.

merits in accordance with Rule 65(a)(2). Electronic Clerk's Notes, ECF No. 42. The Commonwealth then filed a motion to dismiss. Mot. Dismiss, ECF No. 53; *see also* Mem. Supp. Mot. Dismiss, ECF No. 54. The Court granted the Commonwealth's motion to dismiss with respect to Counts II - X but denied the motion to dismiss with respect to Count I, alleging a violation of the dormant Commerce Clause. *See* Electronic Clerk's Notes, ECF No. 66.

The Pork Producers then brought a motion for partial summary judgment on Count I. Mot. Summ. J., ECF No. 87; *see also* Mem. Supp. Mot. Summ. J., ECF No. 88. The parties fully briefed the issues and the Commonwealth requested that summary judgment be entered against the Pork Producers pursuant to Fed. R. Civ. P. 56(f)(1). *See* Mem. Opp'n Summ. J., ECF No. 94. On November 14, 2023, the Court heard oral argument on the motion for summary judgment. *See* Electronic Clerk's Notes, ECF No. 99. The Court entered summary judgment sua sponte, per the request of the Commonwealth, against all Plaintiffs aside from Triumph Foods, LLC ("Triumph"), *id.*, on all claims under a *Pike* theory of discrimination. *Id.; see* Hr'g Tr. 16:1-7,[2] ECF No. 103; *see also Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S.Ct. 844, 25 L.Ed.2d 174 (1970).

The parties agreed to proceed on a case stated basis as to Triumph's claim under Count I with respect to the sales provision of the Act (the

[2] PLAINTIFFS' COUNSEL (Mr. Raupp): With respect to the claims under *Pike* vs. *Bruce Church*, which I don't think were moved on, certainly not by us –

THE COURT: Well theirs was an outright [ ] opposition, and I think they're properly before me, and in any event I reject it [i.e., the argument based on *Pike*].

"slaughterhouse exception"). *Id.* The parties have briefed the slaughterhouse exception issue of Count I on a case stated basis. Defs.' Br. Case Stated, ECF No. 109; Pl.'s Br. Case Stated, ECF No. 110.

On December 18, 2023, the Commonwealth filed a motion to dismiss for lack of jurisdiction. *See* Mot. Dismiss, ECF No. 114; *see also* Mem. Supp. Mot. Dismiss, ECF No. 115. The parties have briefed that issue fully. *See* Opp'n. Mot. Dismiss, ECF No. 121.

II. FINDINGS OF FACT

In 2016, Massachusetts enacted the Act through ballot initiative. Am. Compl. ¶ 25. The Act's 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." Mass. Gen. Laws Ann. ch. 129 App., § 1-1. The Act makes it unlawful "for a farm owner or operator within the Commonwealth of Massachusetts to knowingly cause any covered animal to be confined in a cruel manner." *Id.* § 1-2. The Act defines "confined in a cruel manner" as confining a "breeding pig in a manner that prevents the animal from lying down, standing up, fully extending the animal's limbs or turning around freely" ("Minimum Size Requirements"). *Id.* § 1-5. The Act also makes it unlawful for a "business owner or operator to knowingly engage in the sale within the Commonwealth of Massachusetts of any ... [w]hole pork meat that the business owner or operator knows or should know is the meat of a covered animal that was confined in a cruel manner, or is the meat of the immediate offspring of a covered animal that was confined in a cruel manner." *Id.* § 1-3. A sale is defined in the Act as "a commercial

sale by a business that sells any item covered by section 3 [of the Act]," but does not include "any sale undertaken at an establishment at which inspection is provided under the Federal Meat Inspection Act." *Id.* § 1-5(M). The definition goes on to state that "for purposes of this section, a 'sale' shall be deemed to occur at the location where the buyer takes physical possession of an item covered by ... section 3 [of the Act]." *Id.*

The Attorney General has exclusive authority to enforce the provisions of the Act. *Id.* § 1-6. Each violation of the Act is punishable by a civil fine up to $1,000, and in addition, the Attorney General may seek injunctive relief to prevent any further violations of the Act. *Id.*

The Pork Producers here are a combination of pig farmers ("the Farmer Plaintiffs") and one pork processor, Triumph. Collectively, the Pork Producers are located outside the Commonwealth of Massachusetts, in Minnesota, Iowa, Nebraska, Illinois, South Dakota, Wisconsin, Oklahoma, North Carolina, Missouri, Wyoming, and Indiana. Am. Compl. ¶¶ 12-19. The Farmer Plaintiffs allege that the Act will force them to "convert their farm operations to meet Minimum Size Requirements." *Id.* ¶ 56. Triumph alleges that the adjustments it will need to make as a pork processor in order to comply with the Act are "penalties." *Id.* ¶ 58.

a. Triumph's Business Model and Sales

Triumph, a farmer-owned company headquartered in St. Joseph, Missouri, is a processor and producer of pork products. *Id.* ¶ 12. Triumph largely receives its supply of pigs from its member-owners, many of whom were its fellow plaintiffs in this case (prior to

summary judgment entering against them). *Id.; see* Electronic Clerk's Notes, ECF No. 99. Pork produced by Triumph is sold into Massachusetts as well as throughout the country. Am. Compl. ¶ 117. In 2022, Triumph processed over eleven million pounds of pork meat sold into Massachusetts. Joint Mot. Clarification Expedited Status Conf., Attach. A, Partial Stipulation of Facts ¶ 4, ECF No. 107-1. Triumph has made efforts to adjust its business model and structure in order to comply with the Act. Am. Compl. ¶ 120.

Triumph receives its orders for pork products through what it refers to as its "exclusive pork marketer," Seaboard Corporation, Seaboard Foods, LLC, and Seaboard Foods of Missouri, Inc. ("Seaboard"or "SBF"). *Id.* ¶ 99. Triumph and Seaboard's relationship is governed by a contract between the two ("the Marketing Agreement") which states that "[Triumph] shall produce pork products at the TF Plant and that [Seaboard] shall purchase, market and sell such products pursuant to this Agreement."[3] Mem. Supp. Mot. Dismiss, Declaration, Ex. A, Marketing Agreement § 2.01, ECF No. 115-2; Mem. Supp. Mot. Dismiss 3. The Marketing Agreement further states that "SBF shall have the exclusive right to, and shall be obligated to, market and sell on behalf of TF all TF Plant Products." Mem. Supp. Mot. Dismiss, Declaration, Ex. A, Marketing Agreement § 6.01(a). "SBF shall use its commercially reasonable efforts (taking into account customer needs and requirements) to schedule, market, and sell to customers all of the TF Plant Products." *Id.* Finally, the Marketing Agreement states that Triumph agrees to produce

[3] "TF Plant" refers to Triumph's pork processing plant. "SBF" refers to Seaboard, and "TF" refers to Triumph.

"pork products that conform to the relevant quality standards and specifications made available by SBF to TF (the "Quality Standards") ..., as amended from time to time." *Id.* § 7.02(a). "TF shall be solely responsible and liable for any Losses arising out of the production and sale of products produced at the TF Plant that do not meet the Quality Standards." *Id.* § 7.02(b). "TF Plant Products that do not, in the Reasonable Good Faith Determination of SBF, meet the applicable Quality Standards ("Non-Conforming Products") shall be marketed and sold to customers by SBF as it deems appropriate in its sole discretion." *Id.* § 7.02(c).

b. The Act's FMIA Exception ("Slaughterhouse Exception")

A processing facility is inspected under the Federal Meat Inspection Act ("FMIA") when the United States Department of Agriculture Food Safety and Inspection Service examines the product, facilities, and records of such pork processing plant. *See* Am. Compl. ¶¶ 76-86. Triumph is an FMIA-inspected facility. *See* Mem. Supp. Mot. Summ. J. 12. There are three pork processing facilities that are FMIA-inspected within the Commonwealth of Massachusetts. *See* Pl.'s Br. Case Stated 3. Outside Massachusetts, there are 101 other FMIA-inspected facilities that package and distribute such products for sale. *See id.*

As stated above, *see* p. 147–48, *supra*, the Act here provides an exemption from its requirements for pork products when those products are sold on the premises of an FMIA-inspected facility.

The exemption only occurs for the sale at the inspected facility. If, for instance, a Massachusetts FMIA-inspected pork processer sold non-compliant

pork on its premises to a grocery store, that sale would be exempt; however, the store's attempts to then sell that non-compliant pork in-store, off the premises of the FMIA-inspected facility, would be covered under the Act. Were that same pork processor to sell directly to the consumer at its facility, however, whether a family purchasing pork for dinner or a hospital chain purchasing pork to be served, not sold, to hundreds of patients, there would be no further sale of the pork after the sale on the facility's premises, and the noncompliant pork sale would therefore be entirely exempt from the Act.

III. ANALYSIS

A. The Commonwealth's Motion to Dismiss

The Commonwealth, in its motion to dismiss, argues that because Seaboard, not Triumph, markets and sells Triumph pork product into Massachusetts, Triumph "has not substantiated harm *to Triumph* causally connected" to the Act. Mem. Supp. Mot. Dismiss 1-2 (emphasis in original). This is a distinction without a difference, however, and the Commonwealth's motion to dismiss is denied.

1. Standard of Review

[1–3] When evaluating a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), granting such a motion "is appropriate only when the facts alleged in the complaint, taken as true, do not justify the exercise of subject matter jurisdiction." *Muniz-Rivera v. United States*, 326 F.3d 8, 11 (1st Cir. 2003); *see also MSP Recovery Claims Series 44, LLC v. Bunker Hill Ins. Co.*, No. CV 22-11681-WGY, 683 F.Supp.3d 172, 176–78 (D. Mass. July 25, 2023). "When a district court considers a Rule 12(b)(1) motion, it must credit the plaintiff's well-pled factual

allegations and draw all reasonable inferences in the plaintiff's favor." *Merlonghi v. United States*, 620 F.3d 50, 54 (1st Cir. 2010). "In addition, the court may consider whatever evidence has been submitted, such as the depositions and exhibits submitted in this case." *Aversa v. United States*, 99 F.3d 1200, 1210 (1st Cir. 1996). "While the court generally may not consider materials outside the pleadings on a Rule 12(b)(6) motion, it may consider such materials on a Rule 12(b)(1) motion." *Gonzalez v. United States*, 284 F.3d 281, 288 (1st Cir. 2002), *as corrected* (May 8, 2002).

2. Standing under Article III

[4, 5] "Article III confines the federal judicial power to the resolution of 'Cases' and 'Controversies.' For there to be a case or controversy under Article III, the plaintiff must have a 'personal stake' in the case – in other words, standing." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423, 141 S.Ct. 2190, 210 L.Ed.2d 568 (2021). "[T]o establish standing, a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *Id.* (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)).

[6] The Commonwealth characterizes Triumph's relationship with Seaboard to that of a buyer and seller. As the Commonwealth describes it, Triumph sells its pork products to Seaboard, and Seaboard then, as now-owner of these products, markets and sells them into Massachusetts. Mem. Supp. Mot. Dismiss 6-7. Triumph disputes this characterization, however, instead describing Seaboard as a contractor Triumph engages to market its products. *See* Opp'n.

Mot. Dismiss 10. Drawing every reasonable inference in favor of Triumph as the plaintiff, the contractual relationship between Seaboard and Triumph does not prevent Triumph from suffering injury under the Act. Triumph's pork products can only be sold into Massachusetts when they are compliant with the Act; who markets the products and creates relationships with customers does not change that fact.

[6] In order to produce compliant pork, Triumph must (and in fact, has begun to) restructure its processing facility and procedures, segregating pork that meets the requirements of the Act. *See* Am. Compl. ¶ 89. Without compliant pork, Triumph is unable to sell its products into Massachusetts at all. These are both concrete, particularized injuries to Triumph. *See*, *e.g.*, *Gustavsen v. Alcon Labs.*, *Inc.*, 903 F.3d 1, 8 (1st Cir. 2018) ("[A]ctual economic loss ... is the prototypical concrete harm.").

[7] This injury to Triumph is also imminent and actual economic harm. *See Lujan*, 504 U.S. at 555, 112 S.Ct. 2130. The Commonwealth argues that Seaboard is required "to sell *all* of Triumph's product." Mem. Supp. Mot. Dismiss 8 (emphasis in original). With this claim, however, the Commonwealth misreads the Marketing Agreement. Seaboard is only required to sell all of Triumph's product that meets the Quality Standards set forth by Seaboard. Product that fails to meet these Quality Standards is only sold at Seaboard's discretion, and Triumph is responsible for any loss suffered due to the sale or failure to sell such products. Seaboard designs its Quality Standards based on the needs of its consumers; consumers in Massachusetts likely have more stringent requirements due to the Act. Triumph, there-

fore, must produce pork compliant with the Act in order to make its sales.

Triumph has standing to challenge the Act. The Commonwealth's motion to dismiss is denied.

B. The Pork Producers' Claims under *Pike*

Triumph and its co-plaintiffs have attempted to reserve argument of their claims under *Pike*. *See Pike*, 397 U.S. at 142, 90 S.Ct. 844. Under this argument, the Pork Producers argue that "the burdens on interstate commerce outweigh the putative local benefits of the statute." *See* Mem. Supp. Mot. Summ. J. v. The Court entered summary judgment against this claim at oral argument; the Pork Producers, however, continue to raise it. The claim is foreclosed by the recent Supreme Court decision in *National Pork Producers Council v. Ross*, 598 U.S. 356, 371, 143 S.Ct. 1142, 215 L.Ed.2d 336 (2023), and the Court therefore entered summary judgment against the Pork Producers on this argument. In *Ross*, two organizations of pork producers filed suit on behalf of their members to challenge Proposition 12, a California state statute that is nearly identical to the Act. *Id.* at 367, 143 S.Ct. 1142. The Supreme Court ruled that "harm to some producers' favored methods of operation" did not rise to a "substantial harm to interstate commerce," and that "increased production expenses" cannot be compared by a court to "noneconomic" state benefits. *Id.* at 385-87, 143 S.Ct. 1142 (internal quotation marks omitted); *id.* at 380-81, 143 S.Ct. 1142. Further, the Court explained, "judges often are 'not institutionally suited to draw reliable conclusions of the kind that would be necessary ... to satisfy [the] *Pike*' test as petitioners conceive it." *Id.* at 380, 143 S.Ct. 1142 (quoting *Department of Revenue of Kentucky v. Davis*, 553 U.S.

328, 353, 128 S.Ct. 1801, 170 L.Ed.2d 685 (2008)). Triumph apparently wants the Court to attempt to apply the *Pike* balancing test to the facts of its case. As the Supreme Court notes, however, "[t]he competing goods are incommensurable.... In a functioning democracy, policy choices like these usually belong to the people and their elected representatives." *Id.* at 382, 143 S.Ct. 1142.

[9] "[C]ourts should not be in a position to choose between different substantive moral positions based on an inchoate balancing test. Instead, the question should be whether the state has a genuine and well-founded conscience concern underlying its law." Note, *The Dormant Commerce Clause and Moral Complicity in a National Marketplace*, 137 Harv. L. Rev. 980, 1001 (2024) ("The Dormant Commerce Clause and Moral Complicity"). As the Act here is the result of Massachusetts citizens petition process, *see* Sec'y of the Commonwealth of Mass., *Information for Voters*, *Massachusetts 2016 Ballot*, 8–11 (2016),[4] these "social norms ... have won out in the political process of [Massachusetts]." *The Dormant Commerce Clause and Moral Complicity*, *supra*, at 1000-01. Accordingly, this Court declines to engage in *Pike* balancing and rejects the Pork Producers' argument.

The Pork Producers complain that summary judgment should not have entered against them on this point as the Court gave inadequate warning of that result. *See* Fed. R. Civ. P. 56(f) ("After giving notice and a reasonable time to respond, the court may (1) grant summary judgment for a nonmovant ...."). The point is of no practical moment (as the

[4] https://www.sec.state.ma.us/divisions/elections/download/information-for-voters/ IFV 2016-English.pdf.

Court sought to explain during a busy motion session). The legal issue had been fully briefed and the Court's resolution obviated the need for evidence.

C. Constitutionality of the "Slaughterhouse Exception"

Finally, Triumph and the Commonwealth proceeded on a case stated basis regarding Triumph's last claim, the so-called slaughterhouse exception.

1. Standard of Review

[10–12] "In a case stated, the parties waive trial and present the case to the court on the undisputed facts in the pretrial record." *S´anchez-Rodr´iguez v. AT&T Mobility P.R., Inc.*, 673 F.3d 1, 10-11 (1st Cir. 2012) (quotation and citation omitted). "'Case-stated' resolution is appropriate 'when the basic dispute between the parties concerns only the factual inferences that one might draw from the more basic facts to which the parties have agreed, and where neither party has sought to introduce additional factual evidence or asked to present witnesses.'" *Id.* at 11 (quoting *United Paperworkers Int'l Union, Local 14 v. International Paper Co.*, 64 F.3d 28, 31 (1st Cir. 1995)). In a case stated procedure, "the Court approaches the issues as a neutral adjudicator and is entitled to 'engage in a certain amount of factfinding, including the drawing of inferences.'" *A & W Maint., Inc. v. First Mercury Ins. Co.*, 91 F. Supp. 3d 113, 118 (D. Mass. 2015) (citation omitted).

2. Analysis

The Act defines "sale" as: "a commercial sale by a business that sells any item covered by section 3 [of the Act]; provided, however, that 'sale' shall not include any sale undertaken at an establishment at

which inspection is provided under the Federal Meat Inspection Act." Mass. Gen. Laws Ann. ch. 129 App., § 1-5. The Act provides further that "for purposes of this section, a 'sale' shall be deemed to occur at the location where the buyer takes physical possession of an item covered by said section 3." *Id.* Sales covered under the Act must occur within the Commonwealth of Massachusetts. *Id.* § 1-3. The Act therefore exempts sales "undertaken" at federally inspected establishments within the Commonwealth of Massachusetts, so long as the "buyer takes physical possession" of the covered items while on the premises of the inspected establishment.

Triumph alleges that as an out-of-state pork processor, it cannot take advantage of this exemption, even though it operates entirely federally inspected facilities, because it ships its product into the Commonwealth from out-of-state and, therefore, its buyers do not "take physical possession" of its product while at its facilities. *See* Am. Compl. ¶¶ 232-37. Meanwhile, the federally inspected pork processors in Massachusetts could operate within this exception. *Id.* For instance, "a large end-user of pork in Massachusetts – a hospital system, the state prison system, a large school district, etc. – who has for decades been buying and taking shipment of millions of dollars of pork each year," could now purchase and take possession of cheaper, noncompliant pork on the premises of an in-state facility. Mem. Supp. Mot. Summ. J. 12, ECF No. 88. In contrast, Triumph would have no way to provide that same customer with its noncompliant pork, because it does not have an in-state, federally inspected facility.

The Commonwealth does not dispute Triumph's analysis of the regulation's exemption. *See* Mem.

Supp. Mot. Dismiss 10. Instead, it argues that this "limited exception ... does not evince an unconstitutional aim to advantage in-state businesses," *id.*, and that "the law operates to give instate and out-of-state slaughterhouses the same access to Massachusetts consumers." Defs.' Br. Case Stated 8. It is true that the Commonwealth may not have had a discriminatory purpose or intent in legislating this exception.

[13, 14] The dormant Commerce Clause, however, also asks the Court to decide whether the Act results in a discriminatory effect. "A state law is discriminatory in effect when, in practice, it affects similarly situated entities in a market by imposing disproportionate burdens on out-of-state interests and conferring advantages upon in-state interests." *Family Winemakers of Cal. v. Jenkins*, 592 F.3d 1, 10 (1st Cir. 2010) (citing *Oregon Waste Sys., Inc. v. Department of Env't Quality of State of Or.*, 511 U.S. 93, 99, 114 S.Ct. 1345, 128 L.Ed.2d 13 (1994)). "If the effect of a state regulation is to cause local goods to constitute a larger share, and goods with an out-of-state source to constitute a smaller share, of the total sales in the market ... [j the regulation may have a discriminatory effect on interstate commerce." *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 126 n.16, 98 S.Ct. 2207, 57 L.Ed.2d 91 (1978) (citing *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 347, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977); *Dean Milk Co. v. City of Madison, Wis.*, 340 U.S. 349, 352, 71 S.Ct. 295, 95 L.Ed. 329 (1951)).

Triumph alleges that, under the Act, instate processors could "create a monopoly for pork processing because they can accept all meat–regardless of whether the meat complies with the Act and the Regulations–while out-of-state processors cannot."

Am. Compl. ¶ 237. The Commonwealth counters only that this is "pure speculation," and that in-state slaughterhouses could not "accommodate that sudden skyrocketing demand." Mem. Supp. Mot. Dismiss 10; Defs.' Br. Case Stated 10.

[15] The slaughterhouse exception has a discriminatory effect. The only way Triumph would be able to take advantage of the slaughterhouse exception would be to open its own federally inspected facility within the Commonwealth of Massachusetts, which the Supreme Court has held violates the Commerce Clause. *See Gran-holm v. Heald*, 544 U.S. 460, 475, 125 S.Ct. 1885, 161 L.Ed.2d 796 (2005). Instead, Triumph and other out-of-state pork processors must face higher costs to sell pork into Massachusetts than those of their counterparts in Massachusetts, similar to the issue in *Hunt. See Hunt*, 432 U.S. at 351, 97 S.Ct. 2434 ("North Carolina apple producers, unlike their Washington competitors, were not forced to alter their marketing practices in order to comply with the statute.... Obviously, the increased costs imposed by the statute would tend to shield the local apple industry from the competition of Washington apple growers ....").

[16] As the slaughterhouse exception is discriminatory, it "is virtually per se invalid ... and will survive only if it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Jenkins*, 592 F.3d at 5 (citing *Davis*, 553 U.S. at 338, 128 S.Ct. 1801). The Commonwealth fails to demonstrate that the provision advances a legitimate local purpose. The Court takes no position on whether the Act itself serves a legitimate local purpose, *see Ross*, 598 U.S. at 382,

143 S.Ct. 1142,[5] but the slaughterhouse exception itself does not appear to meet the Act's purported local purpose, as it does not prevent noncompliant pork meat from sale in the Commonwealth of Massachusetts. The Court, therefore, rules that the slaughterhouse exception violates the dormant Commerce Clause because it discriminates against out-of-state commerce.

D. Severability

[17, 18] Although the slaughterhouse exception violates the dormant Commerce Clause, it does not render the entire Act unconstitutional; instead, the provision may be severed from the rest of the Act. Severability is governed by state law. *See Schwann v. FedEx Ground Package Sys.*, 813 F.3d 429, 440 (1st Cir. 2016). In Massachusetts, there is a "a well-established judicial preference in favor of severability and a recognition that 'the Legislature has announced its own preference in favor of severability' as well." *Id.* (quoting *Peterson v. Comm'r of Revenue*, 444 Mass. 128, 138, 825 N.E.2d 1029 (2005)); *see* Mass. Gen. Laws ch. 4, § 6, Eleventh (setting forth statutory rule of construction that "the provisions of any statute shall be deemed severable, and if any part of any statute shall be adjudged unconstitutional or invalid, such judgment shall not affect other valid parts thereof[ ]").

[5] The Commonwealth argues that the local purpose of the Act is to "promot[e] animal welfare and remov[e] inhumane products and their negative effects from its markets." Defs.' Br. Case Stated 10.

[19] The question of severability turns on legislative intent.[6] As the Act was passed by popular vote, the Court therefore must decide whether Massachusetts voters "would have enacted the particular bill without the [invalid] provision, or whether, in the absence of the [invalid] provision, the [voters] would have preferred that the bill have no effect at all." Mass. Gen. Laws ch. 4, § 6 (quoting *Peterson*, 444 Mass. at 138, 825 N.E.2d 1029). "Severability entails a two-step examination in which [the court] determine[s], first, whether the invalid portion of the statute is 'capable of separation' and, second, whether 'upholding the statute as severed would frustrate the legislative purpose.'" K.J. *v. Superintendent of Bridgewater State Hosp.*, 488 Mass. 362, 373, 173 N.E.3d 363 (2021) (citation omitted).

[20, 21] The slaughterhouse exception is "capable of separation" from the rest of the statute. A statute is "capable of separation" when the "severed [portion] is not so connected with and dependent upon other clauses of the act as to constitute an essential factor of the whole." *Id.* at 374 75, 173 N.E.3d 363 (internal quotation marks omitted). The provision here is a discrete clause and, were it severed, the Act can still function as intended.

Second, the statute as severed would not frustrate the legislative purpose of the Act. In fact, were the

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[6] Notably, the Act here contains a severability clause, Mass. Gen. Laws Ann. ch. 129 App., § 1-9, indicating the voters' intent to save any portion of the Act that could be upheld in the case of a constitutional challenge. *See Opinion of the Justices*, 330 Mass. 713, 726, 113 N.E.2d 452 (1953) ("Where the statute contains a severability clause ..., this is a declaration by the Legislature that it intends to have the principle of severability invoked wherever possible.").

slaughterhouse exception severed, the Act would only become enforceable in more locations. If anything, therefore, severing the slaughterhouse exception from the Act only serves to bolster its purpose.

E. Preemption under the Federal Meat Inspection Act

Triumph argues that the slaughterhouse exception cannot be severed from the Act since "absent the exception, the Act is unquestionably preempted by the FMIA." Pl.'s Br. Case Stated 13. This Court, however, has a number of questions before reaching that conclusion. Indeed, having declared the slaughterhouse exemption unconstitutional, it necessarily must revisit its dismissal of the Pork Producers' claim that the Act, as originally drafted, was preempted by the FMIA. Am. Compl., Count III, ¶ 200. The Court thus vacates that dismissal and grants the Pork Producers 30 days from the date hereof to move for summary judgment on the ground that the Act — with the slaughterhouse exemption severed — is now preempted by the FMIA.

IV. CONCLUSION

The Commonwealth's motion to dismiss, ECF No. 114, is DENIED. The Court concludes that the slaughterhouse exemption violates the dormant Commerce Clause, and orders that provision SEVERED from the rest of the Act.

The Court entered summary judgment against all Plaintiffs on all counts and claims save for a dormant Commerce Clause claim regarding the slaughterhouse exemption of the Act. *See* Electronic Clerk's Notes, ECF No. 99.

That order must now be VACATED in part to allow the Court to consider whether the Act — with the slaughterhouse exemption severed — is now preempted by the FMIA.

SO ORDERED.

APPENDIX D

[1] UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS (Boston)

No. 1:23-cv-11671-WGY

TRIUMPH FOODS, LLC, Individually and on Behalf of its Members,

Plaintiffs

vs.

ANDREA JOY CAMPBELL, Attorney General of Massachusetts, *et al*,

Defendants

For Hearing Before:
Judge William G. Young

Motion Hearing

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02210

Monday, October 2, 2023

REPORTER: RICHARD H. ROMANOW, RPR
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[3] PROCEEDINGS

(Begins, 3:00 p.m.)

THE CLERK: Now hearing 23-11671, Triumph Foods versus Campbell.

THE COURT: Good afternoon. Would counsel introduce themselves, starting with the plaintiff.

MS. GLENN: Good afternoon, your Honor, Ryann Glenn and Cynthia Cordes on behalf of plaintiff.

THE COURT: Good afternoon.

MS. GOHLKE: Good afternoon, your Honor, Grace Gohlke, Assistant Attorney General, on behalf of the defendants.

MS. REYNOLDS: Good afternoon, your Honor, Assistant Attorney General Maryanne Reynolds on behalf of the defendants.

MS. ARSLANIAN: Good afternoon, your Honor, Vanessa Arslanian, Assistant Attorney General, also appearing on behalf of the defendants.

THE COURT: Good afternoon to you all.

This is the defendants's motion and so we'll hear from the defendants first. Let me tee this up this way. I've read all these materials and, um, subject to hearing from the plaintiff, it appears to me you have it all your way, indeed everything is going swimmingly for the Attorney General except for their claim that the [4] dormant commerce clause has been violated, and when I look into that claim, I quite candidly don't understand the definition of the word "sale." So why don't you start by just telling me what – of course I'm going to separate out the "provide further," "provided further," because that's where you run into trouble, it seems to me. But up to that semicolon, what's this mean here?

MS. GOHLKE: Your Honor, are you referring to the text of the law –

THE COURT: I am.

MS. GOHLKE: – in Section 1-3, the "engage in sale within the Commonwealth of Massachusetts"?

THE COURT: Um, yes.

MS. GOHLKE: So, yes, so the – well I shouldn't say "Yes." The sale is used in 1-3 in the substantive

provision, but then it's defined in 1-5, and I just want to make sure I'm looking at the same text. So a commercial sale –

THE COURT: That's it. Now what's that mean?

MS. GOHLKE: A commercial sale, so the – part of the definition that – notes it shall be deemed to occur in the location where the buyer takes possession. The act is, um, covers a sale where there is a covered item that passes from the possession of a seller to a buyer. So a sale is where a good is exchanged for, um, usually [5] money, and that is deemed to occur where the buyer takes possession of the item. So if the item passes from the seller to the buyer, within Massachusetts, then that is a covered sale.

THE COURT: And how about a, um, like Triumph is indisputably, they're out of state, but all their pork products are satisfactory under the Federal Meat Inspection Act and the Egg Products Inspection Act and the like, what about them? How do they get their product consumed in Massachusetts?

MS. GOHLKE: So if Triumph was acting as the seller, so we do have – we ourselves have questions about whether Triumph is the party that engages in this sale, that's why we've requested discovery on the standing issue, but assuming for your Honor's purposes that Triumph is acting as the seller in that case, if the sale took place within Massachusetts -

THE COURT: Yeah, but it's – well, all right. Go ahead.

MS. GOHLKE: Then the –

THE COURT: I need to understand.

MS. GOHLKE: Then the sale would be covered within the terms of the Act, so that product would need

to be compliant with the Act, meaning that the, um, the origin, the housing of origin would need to be [6] compliant. So for any sale that occurs within Massachusetts, um, with the exception of a sale that is undertaken at, um – and I just want to make sure I say the language exactly right, at an official plant at which mandatory inspection is maintained under the federal act.

So if there's an establishment within Massachusetts, that's where that exemption applies, all other sales within Massachusetts are covered by the Act, meaning that they must, the meat itself must be compliant. So it must have come from –

THE COURT: No, no, I follow that. Well don't – doesn't that discriminate unconstitutionally against inspected pork products out of state? Then only people in state who go to what – I'm told there are three such inspection plants in Massachusetts, can actually sell to a supermarket in Massachusetts.

MS. GOHLKE: So the in-state processor could not sell to – could not bring the product to a supermarket and sell it, the – so the sales exception only applies at the establishment. Any downstream sales within Massachusetts would still need to be compliant even if they had come from one of these in-state facilities. So it's a very narrow carve-out. And it's done for the purposes of ensuring that there was no question of [7] preemption under the Federal Meat Inspection Act.

The discrimination analysis requires that there be a differential treatment of in and out of state businesses –

THE COURT: Yes.

MS. GOHLKE: – in such a way that benefits the in-state business. I think there are a number of –

THE COURT: And it does, doesn't it?

MS. GOHLKE: No, your Honor, I wouldn't –

THE COURT: I mean now we're into it, that's your problem. Tell me why it doesn't?

MS. GOHLKE: There are a number of reasons, your Honor.

So to start, um, the allegation of why it discriminates is that it will create this large black market.

THE COURT: No, no, no, let's just focus on – I just want to know how it works. And I respect your standing issue and we're going to get some representations as to that before I go any further.

Let's assume Triumph – where's Triumph from?

MS. GLENN: Saint Joseph Missouri, your Honor.

THE COURT: And you in fact raise pork product and have them slaughtered and inspected at the appropriate time and they come out fine?

[8] MS. GLENN: Yes, your Honor.

THE COURT: And then just on average, you don't truck them yourself, who do you sell them to?

MS. GLENN: The pork products that come out of Triumph Foods facility are sold nationwide and internationally, and so it can range from the small grocery stores all the way up to the large national retailers such as Costco and Walmart.

THE COURT: How do they get from Saint Joseph Missouri to, we'll confine ourselves to Costco in

Massachusetts and small grocery stores in Massachusetts, how do they get there?

MS. GLENN: It's largely through trucks, your Honor, from Triumph Foods's facility directly into the Commonwealth of Massachusetts.

THE COURT: Triumph's own trucks?

MS. GLENN: Or their –

THE COURT: They contract –

MS. GLENN: Their contracted trucks, yes.

THE COURT: All right. I don't understand – but that's violative of the law, you say?

MS. GOHLKE: It's the product of noncompliance.

THE COURT: But let's assume it is noncompliant under the Massachusetts law, it's perfectly fine under the federal meat inspectors and compliant with the [9] federal Act. But they're from Saint Joseph Missouri and they have to truck their product here into Massachusetts. That does not comply with the law?

MS. GOHLKE: That would – under that scenario, if the sale occurred in Massachusetts, that would be correct.

THE COURT: All right. But now let's take this hypothetical. I assume there are pork producers in Massachusetts, I don't know, but I assume that there are, there must be if we have three inspection plants in Massachusetts. So we've got someone who is a Massachusetts agriculturalist, produces the pork product, takes it to a, um, an inspection plant, it passes inspection, it's fine, and then – but they've got Massachusetts license plates on their trucks, and they take it from the plant to the supermarket, to Costco's, and to some small grocery store in Massachusetts.

Lawful, right?

MS. GOHLKE: Your Honor, that would not be lawful for several reasons. One, is that the Massachusetts producer is required to comply with the Act by a separate section, so they cannot use these confinement standards within Massachusetts separately.

THE COURT: I accept that.

[10] MS. GOHLKE: The other point is that if the sale is not undertaken at the establishment, it is not exempt. So if a truck – in the exact same scenario, you know you have product, produced – processed, I should say, processed at the facility, it's then shipped to the final consumer, that sale has now occurred at that location, so it's no longer within that exemption.

So that the plaintiff, Triumph, is similarly situated to an in-state processor, in that sales at its own facility are not covered by the law for different reasons. So because Triumph is outside of Massachusetts, it would not – you know sale at that location is not within Massachusetts, for a processor within Massachusetts exempted through this other provision. If either party sells through a shipment, it ships to a consumer, it ships to a grocery store, the buyer then takes possession at that other location, that is required to be compliant with the law. So it is the same regime as being applied in both cases.

THE COURT: But it can't just be a question of title that you get your Saint Joseph's pork inspected out there in Missouri and then you still possess it, you, Triumph, still possesses it, comes to the Massachusetts grocery store and then at that point makes the sale?

[11] MS. GLENN: Right, because the sale has occurred, is deemed to occur when the buyer takes physical possession.

THE COURT: But what you're doing, as a practical matter, is you're trying to take – and I understand the beneficent role of the Massachusetts law which, as I recall it, was called for by a citizen petition, isn't that right?

MS. GOHLKE: That's right, your Honor.

THE COURT: This is what the people of Massachusetts want.

MS. GOHLKE: That's right.

THE COURT: So I take that with great seriousness. But what you're trying to do is project the requirements that we have in Massachusetts, on Massachusetts pork producers, you're trying to project that nationwide?

MS. GOHLKE: Well, your Honor, that's exactly the argument the Supreme Court faced this summer was the argument that California was – who has a very similar sales provision, that was the subject of a 12(b)(6) dismissal, that went all the way up to the Supreme Court, and the Supreme Court said that almost all state laws have some impact outside their borders, that is that's typical of any state regulation. And so what it looked at was whether there was a particular type of [12] burden that is cognizable.

THE COURT: So you can't win on a motion to dismiss, can you?

MS. GOHLKE: Well, your Honor, the Supreme Court affirmed dismissal of a complaint on these very grounds.

THE COURT: On those facts.

MS. GOHLKE: But, your Honor, the law functions exactly the same. We have the same law, we have the same pork industry, we have the same allegations, and the Supreme Court said there is – as a matter of law the type of burden being alleged is not cognizable. It's not about whether this fact is or isn't true, which we do have a number of facts that we don't think are true, but the issue, the more fundamental starting point is that the type of burden alleged is merely to the producer's favored method of production. And the Court said under Exxon, under its own dormant commerce clause precedent, that just categorically cannot give rise to a dormant commerce clause -

THE COURT: I am very much aware of the presumption against preemption.

I'll hear Triumph. I think you're out of court on everything but the dormant commerce clause, so let's focus on that.

MS. GLENN: Thank you, your Honor. I'd like to [13] take a couple of moments just to respond to a couple of points that the Commonwealth mentioned.

First and foremost, your Honor, it is – it seems to mean that the defendants believe that the dormant commerce clause claim in this case begins and ends with the *MPCC v. Roth* case and that simply is not true.

THE COURT: Yeah, they devoted a paragraph in their brief and that's about all I heard. So go ahead.

MS. GLENN: Yes. And with all due respect, your Honor, with respect to the points that you have raised here today concerning discrimination, that claim was not squarely before *MPCC v. Roth* because the petitioners in that case did not bring a claim that

Proposition 12 discriminated against interstate commerce. And so that issue is ripe for adjudication on a trial on the merits as your Honor has already set down in this case.

To be sure that that decision is a fractured opinion, however we do know that there are two frames of thought coming out of that opinion in terms of how you can challenge a claim under the dormant commerce clause.

THE COURT: A fractured opinion nevertheless has a majority and a majority binds this court.

MS. GLENN: Understood, your Honor. However we do think that there are distinct differences with respect to how the plaintiffs here have presented its dormant [14] commerce clause claim both with respect to the discrimination against interstate commerce, both from the perspective of farmer plaintiffs and from Triumph Foods, as well as under the *Picey Bruce Church* balancing test. And I'll start briefly, um, by addressing the discriminatory aspects of it, um, if it pleases the Court.

With respect to the allegations, um, here today, your Honor, plaintiffs have pled plausible – a plausible basis for this Court to deny the motion to dismiss filed by the defendants on the basis of discrimination.

First, we can begin with who the law actually ends up regulating. We presented a wealth of facts before the Court in our amended complaint with respect to the statistics concerning Massachusetts breeding cell confinement in the Commonwealth of Massachusetts. To your Honor's question, yes, Massachusetts does have breeding cell operations, however they are de minimis, and in fact it has approximately 1,500

breeding cells and nearly 80 percent of those farms have less than 200 heads on their farm.

Putting this in perspective, your Honor, 99.5 percent of pork that is imported into the Commonwealth of Massachusetts comes from out of state from farmer [15] plaintiffs like ours as well as from out-of-state processors like Triumph Foods. Due to the size disparities that is at issue here alone on the discrimination aspect of it, at the time the law was enacted, as we have pled, not one single pig farm in Massachusetts utilized the type of cell-housing confinement that is now banned under Question 3 in its regulation.

THE COURT: Why is that significant?

MS. GLENN: Because, your Honor, we are saying that under the law, and specifically if you look to the First Circuit precedent, um, in *Family Winemakers of California v. Jenkins*, because of the fact that there are no operations in the Commonwealth of Massachusetts that utilize the type of housing that is prohibited by the Act, it is directly targeting those out-of-state farmers and the manner in which they are raising their pigs for production into pork that is imported into the Commonwealth. It is placing in-state and out-of-state farmers on vastly different, um, different wavelengths here, your Honor. And under the Jenkins, um, precedent, it held that a similarly-situated law governing wineries was invalid under the commerce clause and it changed the competitive balance.

THE COURT: Let me ask you this. Let's say you [16] can stay in this court on the dormant commerce clause claim, do you think you can win on summary judgment on the face of it?

MS. GLENN: On the face of it?

THE COURT: On the face of this statute and regulation?

MS. GLENN: We do, your Honor.

THE COURT: You do?

MS. GLENN: Well with respect to discrimination – as we have pled, your Honor.

THE COURT: No, no, as I always do, I try to think practically.

I've been through this. You've got a lot of claims, and I say this with respect, I'm going to dismiss them except for the dormant commerce clause claim, and I'm going to dismiss them because Massachusetts has every right, as against your other claims, to pursue its own approach to animal housing. The dormant commerce clause is, however narrow it may be, it is part of the jurisprudence of the United States Constitution and under the Supremacy Clause the United States Constitution is going to be enforced out of this Court as it must be.

So leaning all – and I said this to the defendants when first we met for – to plan out how [17] we're going to handle this. You want a motion to dismiss, I have to lean all Triumph's way, and I am. So you're in court. Now that means we'll have a final pretrial conference on the 10th.

But I'm wondering, do you think it's so – summary judgment does not lean all Triumph's way, summary judgment, if as plaintiff you brought it, I would have to disregard every factual allegation that is not admitted by the Commonwealth defendants. Just disregard it. So I wouldn't be too quick to say you could win on summary judgment, but maybe you can. The statute is what it is.

(Pause.)

THE COURT: Well anything more to be said?

MS. GLENN: With respect to, um, if your Honor has any additional questions concerning the discrimination aspect concerning Triumph Foods, I'm happy to answer those. I think you have certainly picked up on the "meat" of our – no pun intended, the meat of our argument concerning that aspect of the discrimination claim, your Honor. And however, um – so setting – I guess so setting that aside for just a moment, um, we certainly would be happy to answer any additional questions concerning the remaining claims that we have pursued, as we certainly do, um, feel strongly that the [18] plaintiffs have plausibly alleged grounds under especially the federal Meat Inspection Act preemption claims, your Honor.

THE COURT: Um, I've parsed the language, I – again, respectfully, I just disagree. I think that they have not, as this is drafted, come in conflict with that Act, and I'm not sure they come in conflict with any Act.

But the motion to dismiss is – while it is allowed as to all aspects of the plaintiff's complaint, it is denied as to the claim under the dormant commerce clause. I believe that's Count 1, correct?

MS. GLENN: Yes, your Honor.

THE COURT: All right. And we will hold a final pretrial conference on the 10th of October.

(Pause.)

THE COURT: Oh, we're ready to proceed on the 10th.

MS. GOHLKE: Your Honor, if I could just ask a couple of housekeeping questions on the motion to dismiss order, just to make sure I understand.

Is your Honor denying the motion to dismiss as to Count 1 both as to the discrimination and as to the burden and interest balancing, the Pike portion?

THE COURT: A good question. And on this record, [19] yes.

MS. GOHLKE: And the second housekeeping matter. How would your Honor like the defendants to handle and answer, given – the question of the pretrial conference and what sort of schedule we're looking at, whether, um, we would ask perhaps to be relieved of the obligation to answer – enter a general denial, obviously plaintiffs are aware of our positions on their various –

THE COURT: Yes, I will – again a good question, and I will accept that. We'll take it that you deny all facts, and we're going to have to sort out this standing business, though as counsel has represented, for the moment I accept counsel's representation.

Now, Ms. Gaudet properly points out to me that I set this down for an evidentiary hearing on the 10th of October. In essence I have now called my own bluff in that criminal cases go before civil and I am due –

(Talks to Clerk.)

So we're not going to start on the 10th. I start a criminal case on the 10th. I follow that with another criminal case. I follow that with the Department of Justice's antitrust case against Spirit and JetBlue, that will go a month. That doesn't mean we couldn't start before all those cases are done, but I'd have to do

mornings and afternoons. I can do that, but not for [20] very long. I can't be any more transparent.

Let's meet 2:00 on the 10th, because I'll be trying my criminal case in the morning and see where we are. Satisfactory?

MS. ARSLANIAN: Your Honor, if we might be heard on the matter of when to hold the evidentiary hearing?

THE COURT: Well I was going to say not today.

MS. ARSLANIAN: No, but is this including the final pretrial conference right now or would that be on the 10th?

THE COURT: I think what I'm saying is that would be on the 10th and we can talk about that.

They've moved for an injunction. I'm very sensitive to that. I think I am proceeding both efficiently, but efficiency is not justice, but sensitive to the fact that they claim anyway that they need an injunction right away. The rules allow me to collapse the two. I am. Living in the real world I think those other three cases are before you. Though when I get to the civil antitrust case, perhaps I can do two at a time, but not for very long. And I think, if you take counsel among yourselves, maybe we could narrow this, and I invite that, and that's the type of thing we will talk on the 10th. You will not find me saying on the 10th, "All right, call your first witness." On the [21] other hand, I'm trying to say to the extent they're going to press, I'm going to be receptive to it insofar as I can do a fair and proper job as the presiding judge.

MS. ARSLANIAN: Understood, your Honor. And the Commonwealth doesn't disagree that we should move this case along expeditiously, but what we would like to request is a brief period of discovery that we think

would not be much longer than what our schedule may be contemplating at this point. The reason for that is that based on the –

THE COURT: I'm cutting you off only because of course you're going to request that and now you're going to first talk it over with them. And of course since they want an immediate hearing and they came loaded, they're going to comply. Everyone's going to comply and everyone's going to work nonstop so that we can move expeditiously on the 10th. I understand.

MS. ARSLANIAN: So, your Honor, what we would request in the alternative –

THE COURT: Not now.

MS. ARSLANIAN: At the final trial conference on the 10th?

THE COURT: Right. But by then you will have had a discussion with them and they will be completely [22] accommodating.

MS. ARSLANIAN: So, your Honor, I think what the Commonwealth would hope for would be some schedule in place so that we can ensure that the parties are expeditiously moving towards that prior to the 10th.

THE COURT: Well of course time has passed since the initial hearing, I imagine you've been working hard on this.

MS. ARSLANIAN: We have, your Honor. We've retained an expert witness on behalf of the Commonwealth, we also are contemplating retaining another 1 to 2 witnesses. We have not yet had an opportunity to get document discovery from the plaintiffs.

THE COURT: They will be fully compliant, as will you. We'll meet on the 10th.

MS. ARSLANIAN: Okay, thank you, your Honor. THE COURT: We're going directly to trial.

MS. ARSLANIAN: I'm sorry, your Honor, I didn't hear you?

THE COURT: We're going directly to trial in a responsible manner.

MS. ARSLANIAN: On October 10th, your Honor?

THE COURT: No, not necessarily, that's why I said in a responsible manner.

[23] I know what you're trying to get, you're trying to get the schedule today, I'm not giving it today. You folks have to talk back and forth now that you've seen what's happened to the motion to dismiss. They ought not be wasting their time, nor need you, on any of the other counts. Both counts are out. The dormant – and I've focused on my problem under the dormant commerce clause, it's – well I'm guilty of overspeaking and I ought not. I think I've said enough for today.

MS. ARSLANIAN: Your Honor, would it be beneficial for the Court for the parties to appear on the 10th with a proposed schedule for discovery and for an evidentiary hearing?

THE COURT: I'm not opposed to it and if you act by agreement, I am more amenable to it.

MS. ARSLANIAN: Thank you, your Honor.

THE COURT: But my responsibility is equally to the plaintiffs who claim injunctive relief as it is to the Commonwealth defendants who quite rightly need to be fully prepared for trial on an important issue.

MS. ARSLANIAN: Of course, your Honor.

THE COURT: I know I'm just whistling to the wind, but I always liked that case-stated approach. Maybe you could discuss it.

MS. ARSLANIAN: We will, your Honor.

[24] THE COURT: This has been very helpful. Thank you all very much.

We'll stand in recess.

(Ends, 3:35 p.m.)

[25] CERTIFICATE

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do hereby certify that the foregoing record is a true and accurate transcription of my stenographic notes, before Judge William G. Young, on Monday, October 2, 2023, to the best of my skill and ability.

/s/ Richard H. Romanow 10-12-23
RICHARD H. ROMANOW Date

APPENDIX E

[1] UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS (Boston)

No. 1:23-cv-11671-WGY

TRIUMPH FOODS, LLC, Individually and on Behalf of its Members,

Plaintiffs

vs.

ANDREA JOY CAMPBELL, Attorney General of Massachusetts, et al,

Defendants

For Hearing Before:
Judge William G. Young
At Boston University Law School

Summary Judgment

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02210
Tuesday, November 14, 2023

REPORTER: RICHARD H. ROMANOW, RPR
Official Court Reporter
United States District Court
One Courthouse Way, Room 5510, Boston, MA 02210
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For Defendants

[3] PROCEEDINGS

(Begins, 2:55 p.m.)

THE COURT: Civil Action 23-11671, Triumph Foods, LLC, et al vs. Andrea Campbell, et al.

THE COURT: Would counsel identify themselves.

MR. RAUPP: Good afternoon, your Honor, Michael Raupp on behalf of the plaintiffs, together with my colleagues, Ryann Glenn, Cynthia Cordes, and Bob Peabody.

THE COURT: Well, good afternoon.

MS. ARSLANIAN: Good afternoon, your Honor, Vanessa Arslanian, Assistant Attorney General, and with me is my colleague, Maryanne Reynolds, also an Assistant Attorney General, on behalf of the defendants.

THE COURT: And good afternoon to all of you.

Let me make a suggestion here. The plaintiffs have moved for partial summary judgment on behalf of the pork processors. The defense has moved for summary judgment against all of them, against the farmers and the pork processors. At least as to the pork processors, which present, I would say, a very interesting wrinkle, it would appear that I have all the evidence necessary to resolve that issue. They say they win on that evidence, the Commonwealth says, on the same evidence, they lose.

[4] I suggest – not because I have resolved anything, I quite clearly have not, that we might address that as on a case-stated basis, in which case I will give you a half an hour, I will necessarily have to write an opinion, because as to the pork processors, I will – that will be the case. As to the rest of the plaintiffs' clients, I think the matter – they've moved to get rid of everyone else, I think we can hear that this afternoon.

When earlier I raised that, the plaintiffs were for it, the Commonwealth was against it – and I don't care, I'm just trying to administer the case.

How does the Commonwealth feel today?

MS. ARSLANIAN: With respect to only the issue of –

THE COURT: Only the issue of pork processors.

MS. ARSLANIAN: So the slaughterhouse exemption to the sales provision?

THE COURT: Yes, right.

MS. ARSLANIAN: I think, your Honor, we would potentially be amenable to that based on –

THE COURT: Well you represent the Commonwealth, so "Yes" or "No"?

MS. ARSLANIAN: Your Honor, I think actually you have all of the evidence before you to decide right now [5] –

THE COURT: That's what I thought.

MS. ARSLANIAN: – and we don't dispute any of the facts that – meaningfully dispute any of the facts that plaintiffs have put forward in this record.

THE COURT: You'd get a half an hour to argue it. MS. ARSLANIAN: We don't think we need a half hour to argue, your Honor –

THE COURT: Well all right.

MS. ARSLANIAN: But we're happy to consider that.

THE COURT: Well that's – I have to say, this comes as no surprise to me, I'm trying to administer the case, and you represent the Commonwealth, so do you want to do it?

I mean the difference is clear. If I have to review this, I have to lean entirely against their motion for partial summary judgment, then I have to lean entirely against – at least as to what your whole motion for summary judgment across the board, and if I have to do that, which I do under Rule 56, then I'm going to. I'll hear the argument this afternoon, of course, I said I was ready and I'm ready, but if we do a case-stated, somebody's going to win. At least there's the theoretical possibility that I deny it not because

someone shouldn't win, but on all this evidence if all [6] the – well between the bar stools.

Now if they say "No," that's fine too, I'm not the least offended, but I need an answer.

Do you want to do it case-stated or not, as to this slaughterhouse exemption for pork – dealing with the pork processes?

MS. ARSLANIAN: You're Honor, may I confer?

THE COURT: Sure.

Are you okay with that?

MR. RAUPP: We're okay with the case-stated basis.

THE COURT: I thought so.

MS. ARSLANIAN: To be argued subsequently, your

Honor, or right now?

THE COURT: To be argued subsequently.

MS. ARSLANIAN: Yes, we'd be happy to proceed on a case-stated basis –

THE COURT: Okay, then that takes care of that.

Now, so we're not dealing with the slaughterhouse exemption today, we're not dealing with the pork processors, though we will schedule it and we'll schedule it very promptly. Respectfully I don't have Ms. Gaudet here and so you're going to have to wait for her to schedule it.

Now as to – then we're dealing with the Commonwealth's motion for summary judgment as to the [7] other plaintiffs. And I'll hear you.

MS. ARSLANIAN: And, your Honor, just to clarify, this was plaintiffs' motion, a partial motion for summary judgment and –

THE COURT: Well you want summary judgment taken against them, that puts them on notice that summary judgment may be taken against them, of course I must lean all – as to factual matters, I must lean all against the Commonwealth now, but I'm familiar with that. And you bear the burden so I will hear you first.

MS. ARSLANIAN: Thank you, your Honor.

THE COURT: Go right ahead.

MS. ARSLANIAN: So, your Honor, it's the defendants' view that plaintiffs have failed to carry their burden on summary judgment to show that the Massachusetts act to prevent cruelty to farm animals discriminates against interstate commerce in violation of the dormant commerce clause. They have failed to show that the law discriminates on its face, they have failed to show it discriminates in its purpose, and have failed to show that it discriminates in –

THE COURT: Well it's clearly established, is it not, that this is going to pose additional costs on pig farmers, it is, and as a practical matter those costs are going to impact pig farmers in other states where [8] that sector of the economy is considerably greater than it is here in Massachusetts.

You agree to that?

MS. ARSLANIAN: We do, your Honor.

THE COURT: Okay.

MS. ARSLANIAN: But we don't think that's enough to show discriminatory effect. And I will note, your Honor, we think the record is beyond clear that there is no evidence of a motivation to discriminate against interstate commerce, meaning there's no discriminatory purpose evident here.

And with respect to the effects, just because a burden of a state law falls on some out-of-state producers, even if that means it increases costs for them – and these are just one set of out-of-state producers, that does not give rise to a showing of discriminatory effects on its own.

THE COURT: I just didn't know what you meant by "one step"? It falls on all pork producers wherever they may be.

MS. ARSLANIAN: It does, your Honor. But to clarify, on the record before you there is only evidence with respect to the burden on the these particular plaintiffs, and what the record discloses, if anything, is that many of the producers who would be compliant [9] with the law who have, you know, with the 5-year time period since the law was passed, there could be new market entrants for other out-of-state producers, they stand to benefit from the law. And there's nothing in the record either way –

THE COURT: How do they benefit, it costs them more as well?

MS. ARSLANIAN: Because they've already, um – they're already producing compliant product or they've already converted their facilities. Plaintiffs themselves already have converted portions of their facilities. And what they're saying is "We don't want to," um – "We would like the Court to make sure that we can continue to sell into California where that law's in effect, but we don't want to have to do Massachusetts." We don't think that kind of preference is protected under the dormant commerce clause.

And with respect to the other showing, the other piece of the First Circuit test for discriminatory effects,

so they have to show a disproportionate burden on out-of-state producers. We don't think they've shown that.

They also have to show that there's a benefit conferred on in-state producers. We don't think that they have shown that either. If anything, what their [10] papers suggest, is that Massachusetts farmers who, in the first place, are more constrained by the law. They do not have the option of raising noncompliant pigs and then selling it elsewhere in the domestic market or internationally, they cannot raise noncompliant pigs. Out-of-state producers can make a choice, they can sell compliant pigs into Massachusetts, or pork rather, um, or they can sell noncompliant.

But the other piece of this is that as plaintiffs note in their papers, many of the out-of-state producers are larger, they have, um, they've developed sufficient supply chains, they're at a significant scale, and they stand to be able to take advantage of that scale to sell into Massachusetts. And the law fundamentally doesn't discriminate between in-state and out-of-state, they're simply saying "We are setting a minimum standard for the sales of this consumer good, if you need it, we don't care if you're in Florida, if you're in New Hampshire, Massachusetts will buy it. But if you don't meet that standard, um, you can't sell the product here." And, um, I think that's with respect to the, um, burden on in-state producers.

I do want to emphasize again, your Honor, in cases where there are – there is evidence of discriminatory effects, and I think the *Family Winemaker's* case is a [11] good example of this, it's very distinct from the case here, and that was a case where the law itself was structured in a way to shield Massachusetts –

THE COURT: That case had a discriminatory purpose.

MS. ARSLANIAN: So the Court – you know, and this is an interesting contention of the case law because it can be based on a finding either of discriminatory purpose or discriminatory effect, but in that case certainly the evidence was, um, it was – the record was replete with a discriminatory purpose there. And that is not the case here. So we are going just on the issue of effects.

THE COURT: Understood. All right. I'll hear the plaintiffs.

MR. RAUPP: Thank you, your Honor.

With respect to the farmers, we think it's a fairly simple question, "Do in-state farmers, any in-state farmers have to make changes to farming practices to come into compliance with Question 3?" The answer to that is "No." And "Do exclusively out-of-state farmers have to make changes to their operations to come into compliance with Question 3?" And the answer to that is "Yes."

So when you have that dichotomy, that's [12] discrimination. And that's the – and I think *Jenkins* is the case to look at here. And as your Honor noted, there's both a finding there of discriminatory purpose as well as discriminatory effect. And we believe the record is established in both.

THE COURT: I don't follow you when you say that in-state pig farmers don't have to comply?

MR. RAUPP: In the opposition that the Commonwealth filed, it is uncontested for purposes of this motion, that no Massachusetts farmers, um, currently use practices

that are forbidden by Question 3, it is only out-of-state farmers.

THE COURT: But what difference does that make, I mean, they're compliant then?

MR. RAUPP: Well that's right –

THE COURT: If they were not compliant, they couldn't sell.

MR. RAUPP: The significance of that is that the burden falls exclusively out of state.

THE COURT: I see. It's undisputed that the burden in the existential world today falls exclusively out of state. I accept that. Go ahead. But is that enough?

MR. RAUPP: Yes, I believe it is, because if you look at *Jenkins*, for example, right, there you had the, [13] um, the state of Massachusetts determining what sales processes winemakers could use, and large wineries only had a couple of distribution methods and they had to pick between them and small wineries could use three different – you know three different sales mechanisms. And what the Court concluded was that Massachusetts defined "large" and "small" in such a way that the burden fell exclusively on out-of-state wineries and not at all on in-state wineries. So that's the distinction. And it's important here because, as we've talked about several times and it's included in the papers, the disparity here is huge, right, between the overall pork market that's produced within the state of Massachusetts versus outside of the state of Massachusetts. So we think that's the evidence that demonstrates the discriminatory effect of the law.

But if we also look to the discriminatory purpose. If you look at the evidence that was in *Jenkins* to establish discriminatory purpose, you look at statements of

legislators, which is included in the record here as well, and if the Court just looks to Section 1 of the statute itself, the actually-enacted statute, one of the stated purposes of the statute is, um, to prevent negative fiscal impacts on the Commonwealth of Massachusetts. So we believe that it's inherent in the [14] statute itself that there's a discriminatory purpose illustrated with respect to the definition of "farming practices."

THE COURT: How does this statute do that?

MR. RAUPP: It defines as one of its purposes to protect the –

THE COURT: But how does the statute effectuate that?

MR. RAUPP: The statute effectuates that by defining what is cruel and what is not cruel in a way that affects only out-of-state farmers and no in-state farmers.

THE COURT: All right.

MR. RAUPP: So the other point I want to make here, I just want to be clear about what we're here today on and what we're not. We're here today on a partial motion for summary judgment with respect to the discrimination claim, so we have not furthered arguments under *Pike vs. Bruce Church*, and again we believe that those are, at this point, are properly saved for trial as there's extensive discovery going back and forth on issues related to that.

But with respect to the discrimination claim, which the Supreme Court confirmed in *Ross*, one, was not an issue in *Ross*, and stands at the cornerstone of the [15] Supreme Court's jurisprudence, we believe it's clear on this record, and with no further factual development

necessary, that there's discrimination both as to effect and as to purpose.

THE COURT: Thank you.

All right. I have reflected on this carefully and I'm going to grant the Commonwealth's opposition motion for summary judgment against the pork farmers and this is the Court's essential reason, because I accept much of the factual statements that you made, the plaintiffs, but the fact that the burden of the Act falls entirely on out-of-state pig farmers does not, on its own under the controlling law, substantiate a claim under the dormant commerce clause. It's as simple as that.

Now this case is significant, it's going to require a written opinion, and we'll deal with that when we deal with the case-stated, but this is not "I tentatively think" and "I tentatively thought," the motion is granted – the Commonwealth's motion for summary judgment is granted now as to the pig farmers. We will schedule a case-stated hearing on the interesting wrinkle of the slaughterhouse exception just as soon as we can. That's the order of the Court.

MR. RAUPP: May I ask one point of clarification?

THE COURT: Yes.

[16] MR. RAUPP: With respect to the claims under *Pike vs. Bruce Church*, which I don't think were moved on, certainly not by us –

THE COURT: Well theirs was an outright, um, opposition, and I think they're properly before me, and in any event I reject it.

All right, we'll stand in recess.

THE CLERK: All rise.

THE COURT: And now we're in recess, but please be seated.

(Ends, 3:15 p.m.)

[17] CERTIFICATE

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do hereby certify that the foregoing record is a true and accurate transcription of my stenographic notes, before Judge William G. Young, on Tuesday, November 14, 2023, to the best of my skill and ability.

/s/ Richard H. Romanow 12-04-23
RICHARD H. ROMANOW Date

APPENDIX F

United States Code Annotated
Title 21. Food and Drugs (Refs & Annos)
Chapter 12. Meat Inspection (Refs & Annos)
Subchapter I. Inspection Requirements;
Adulteration and Misbranding

21 U.S.C.A. § 601
§ 601. Definitions
Currentness

As used in this chapter, except as otherwise specified, the following terms shall have the meanings stated below:

(a) The term "Secretary" means the Secretary of Agriculture of the United States or his delegate.

(b) The term "firm" means any partnership, association, or other unincorporated business organization.

(c) The term "meat broker" means any person, firm, or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation.

(d) The term "renderer" means any person, firm, or corporation engaged in the business of rendering carcasses or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines, except rendering conducted under inspection or exemption under this subchapter.

(e) The term "animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing animal food derived

wholly or in part from carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines.

(f) The term "State" means any State of the United States and the Commonwealth of Puerto Rico.

(g) The term "Territory" means Guam, the Virgin Islands of the United States, American Samoa, and any other territory or possession of the United States, excluding the Canal Zone.

(h) The term "commerce" means commerce between any State, any Territory, or the District of Columbia, and any place outside thereof; or within any Territory not organized with a legislative body, or the District of Columbia.

(i) The term "United States" means the States, the District of Columbia, and the Territories of the United States.

(j) The term "meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the Secretary under such conditions as he may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

(k) The term "capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the Secretary to deter its use as human food, or it is naturally inedible by humans.

(l) The term "prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

(m) The term "adulterated" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2)(A) if it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Secretary, make such article unfit for human food;

(B) if it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 346a of this title,

(C) if it bears or contains any food additive which is unsafe within the meaning of section 348 of this title,

(D) if it bears or contains any color additive which is unsafe within the meaning of section 379e of this title: Provided, That an article which is not adulterated under clause (B), (C), or (D) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the Secretary in establishments at which inspection is maintained under this subchapter;

(3) if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(5) if it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

(6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 348 of this title;

(8) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality

or strength, or make it appear better or of greater value than it is; or

(9) if it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

(n) The term "misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) if its labeling is false or misleading in any particular;

(2) if it is offered for sale under the name of another food;

(3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) if its container is so made, formed, or filled as to be misleading;

(5) if in a package or other container unless it bears a label showing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, That under clause (B) of this subparagraph (5), reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the Secretary;

(6) if any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuous-

ness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Secretary under section 607 of this title unless (A) it conforms to such definition and standard, and (B) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) if it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Secretary under section 607 of this title, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) if it is not subject to the provisions of subparagraph (7), unless its label bears (A) the common or usual name of the food, if any there be, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Secretary, be designated as spices, flavorings, and colorings without naming each: Provided, That to the extent that compliance with the requirements of clause (B) of this subparagraph (9) is impracticable, or results in deception or unfair competition, exemptions shall

be established by regulations promulgated by the Secretary;

(10) if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Secretary, after consultation with the Secretary of Health and Human Services, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(11) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: Provided, That, to the extent that compliance with the requirements of this subparagraph (11) is impracticable, exemptions shall be established by regulations promulgated by the Secretary; or

(12) if it fails to bear, directly thereon or on its container, as the Secretary may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the Secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(o) The term "label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.

(p) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

(q) The term "Federal Food, Drug, and Cosmetic Act" means the Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

(r) The terms "pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the Federal Food, Drug, and Cosmetic Act.

(s) The term "official mark" means the official inspection legend or any other symbol prescribed by regulations of the Secretary to identify the status of any article or animal under this chapter.

(t) The term "official inspection legend" means any symbol prescribed by regulations of the Secretary showing that an article was inspected and passed in accordance with this chapter.

(u) The term "official certificate" means any certificate prescribed by regulations of the Secretary for issuance by an inspector or other person performing official functions under this chapter.

(v) The term "official device" means any device prescribed or authorized by the Secretary for use in applying any official mark.

(w) The term "amenable species" means-¬

(1) those species subject to the provisions of this chapter on the day before November 10, 2005;

(2) all fish of the order Siluriformes; and

(3) any additional species of livestock that the Secretary considers appropriate.

United States Code Annotated
Title 21. Food and Drugs (Refs & Annos)
Chapter 12. Meat Inspection (Refs & Annos)
Subchapter I. Inspection Requirements;
Adulteration and Misbranding

21 U.S.C.A. § 602
§ 602. Congressional statement of findings
Currentness

Meat and meat food products are an important source of the Nation's total supply of food. They are consumed throughout the Nation and the major portion thereof moves in interstate or foreign commerce. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products impair the effective regulation of meat and meat food products in interstate or foreign commerce, are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that all articles and animals which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce, and that regulation by the Secretary and cooperation by the States and other jurisdictions as contemplated by this

chapter are appropriate to prevent and eliminate burdens upon such commerce, to effectively regulate such commerce, and to protect the health and welfare of consumers.

United States Code Annotated
Title 21. Food and Drugs (Refs & Annos)
Chapter 12. Meat Inspection (Refs & Annos)
Subchapter I. Inspection Requirements; Adulteration and Misbranding

21 U.S.C.A. § 603
§ 603. Examination of animals prior to slaughter; use of humane methods
Currentness

(a) Examination of animals before slaughtering; diseased animals slaughtered separately and carcasses examined

For the purpose of preventing the use in commerce of meat and meat food products which are adulterated, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all amenable species before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in commerce; and all amenable species found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, horses, mules, or other equines, and when so slaughtered the carcasses of said cattle, sheep, swine, goats, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Secretary, as provided for in this subchapter.

(b) Humane methods of slaughter

For the purpose of preventing the inhumane slaughtering of livestock, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which

amenable species are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this chapter. The Secretary may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughtering establishment if the Secretary finds that any cattle, sheep, swine, goats, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901-1906) until the establishment furnishes assurances satisfactory to the Secretary that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.

United States Code Annotated
Title 21. Food and Drugs (Refs & Annos)
Chapter 12. Meat Inspection (Refs & Annos)
Subchapter I. Inspection Requirements; Adulteration and Misbranding

21 U.S.C.A. § 604
§ 604. Post mortem examination of carcasses and marking or labeling; destruction of carcasses condemned; reinspection
Currentness

For the purposes hereinbefore set forth the Secretary shall cause to be made by inspectors appointed for that purpose a post mortem examination and inspection of the carcasses and parts thereof of all amenable species to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in any State, Territory, or the District of Columbia as articles of commerce which are capable of use as human food; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled as "Inspected and passed"; and said inspectors shall label, mark, stamp, or tag as "Inspected and condemned" all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Secretary may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection, shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated, and if any carcass or any part thereof shall, upon examination and inspection

subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Secretary may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof.

United States Code Annotated
Title 21. Food and Drugs (Refs & Annos)
Chapter 12. Meat Inspection (Refs & Annos)
Subchapter I. Inspection Requirements; Adulteration and Misbranding

21 U.S.C.A. § 605

§ 605. Examination of carcasses brought into slaughtering or packing establishments, and of meat food products issued from and returned thereto; conditions for entry

Currentness

The foregoing provisions shall apply to all carcasses or parts of carcasses of amenable species or the meat or meat products thereof which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products, which, after having been issued from any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Secretary may limit the entry of carcasses, parts of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this subchapter is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this chapter.

United States Code Annotated
Title 21. Food and Drugs (Refs & Annos)
Chapter 12. Meat Inspection (Refs & Annos)
Subchapter IV. Auxiliary Provisions

21 U.S.C.A. § 678

§ 678. Non-Federal jurisdiction of federally regulated matters; prohibition of additional or different requirements for establishments with inspection services and as to marking, labeling, packaging, and ingredients; recordkeeping and related requirements; concurrent jurisdiction over distribution for human food purposes of adulterated or misbranded and imported articles; other matters

Currentness

Requirements within the scope of this chapter with respect to premises, facilities and operations of any establishment at which inspection is provided under subchapter I of this chapter, which are in addition to, or different than those made under this chapter may not be imposed by any State or Territory or the District of Columbia, except that any such jurisdiction may impose recordkeeping and other requirements within the scope of section 642 of this title, if consistent therewith, with respect to any such establishment. Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State or Territory or the District of Columbia with respect to articles prepared at any establishment under inspection in accordance with the requirements under subchapter I of this chapter, but any State or Territory or the District of Columbia may, consistent with the requirements under this chapter, exercise concurrent jurisdiction with the Secretary over articles required to be inspected under said subchapter I, for the

purpose of preventing the distribution for human food purposes of any such articles which are adulterated or misbranded and are outside of such an establishment, or, in the case of imported articles which are not at such an establishment, after their entry into the United States. This chapter shall not preclude any State or Territory or the District of Columbia from making requirement[1] or taking other action, consistent with this chapter, with respect to any other matters regulated under this chapter.

[1] So in original. Probably should be "requirements".

APPENDIX G

United States Code Annotated
Title 7. Agriculture (Refs & Annos)
Chapter 9. Packers and Stockyards (Refs & Annos)
Subchapter II. Packers Generally
Part A. General Provisions

7 U.S.C.A. § 192
§ 192. Unlawful practices enumerated
Effective: September 30, 2005
Currentness

It shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or

(b) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect; or

(c) Sell or otherwise transfer to or for any other packer, swine contractor, or any live poultry dealer, or buy or otherwise receive from or for any other packer, swine contractor, or any live poultry dealer, any article for the purpose or with the effect of apportioning the supply between any such persons, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly; or

(d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices, or of creating a

monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or

(e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or

(f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business, or (2) to apportion purchases or sales of any article, or (3) to manipulate or control prices; or

(g) Conspire, combine, agree, or arrange with any other person to do, or aid or abet the doing of, any act made unlawful by subdivisions (a), (b), (c), (d), or (e).

United States Code Annotated
Constitution of the United States
Annotated
Article IV. States--Reciprocal Relationship
Between States and with United States

U.S.C.A. Const. Art. IV § 1 Section 1. Full Faith and Credit Currentness

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

United States Code Annotated
Constitution of the United States
Annotated
Article I. The Congress

U.S.C.A. Const. Art. I § 10, cl. 2
Section 10, Clause 2. Duties on Imports
Currentness

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

United States Code Annotated
Constitution of the United States
Annotated
Article IV. States--Reciprocal Relationship Between States and with United States

U.S.C.A. Const. Art. IV § 2, cl. 1

Section 2, Clause 1. Privileges and Immunities
Currentness

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

United States Code Annotated
Constitution of the United States
Annotated
Article I. The Congress

U.S.C.A. Const. Art. I § 10, cl. 2
Section 10, Clause 2. Duties on Imports
Currentness

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

Acts (2016)

Chapter 333

AN ACT TO PREVENT CRUELTY TO FARM ANIMALS

Be it enacted by the People, and by their authority, as follows:

Prevention of Farm Animal Cruelty Act

Section 1.

The purpose of this Act 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.

Section 2.

Notwithstanding any general or special law to the contrary, it shall be unlawful for a farm owner or operator within the Commonwealth of Massachusetts to knowingly cause any covered animal to be confined in a cruel manner.

Section 3.

Notwithstanding any general or special law to the contrary, it shall be unlawful for a business owner or operator to knowingly engage in the sale within the Commonwealth of Massachusetts of any:

(A) Shell egg that the business owner or operator knows or should know is the product of a covered animal that was confined in a cruel manner.

(B) Whole veal meat that the business owner or operator knows or should know is the meat of a covered animal that was confined in a cruel manner.

(C) Whole pork meat that the business owner or operator knows or should know is the meat of a covered animal that was confined in a cruel manner, or is the meat of the immediate offspring of a covered animal that was confined in a cruel manner.

Section 4.

For the purposes of this Act, a covered animal shall not be deemed to be "confined in a cruel manner" during:

(A) Transportation.

(B) State or county fair exhibitions, 4-H programs, and similar exhibitions.

(C) Slaughter in accordance with any applicable laws, rules, and regulations.

(D) Medical research.

(E) Examination, testing, individual treatment or operation for veterinary purposes, but only if performed by or under the direct supervision of a licensed veterinarian.

(F) The five (5) day period prior to a breeding pig's expected date of giving birth, and any day that the breeding pig is nursing piglets.

(G) Temporary periods for animal husbandry purposes for no more than six (6) hours in any twenty-four (24) hour period.

Section 5. For purposes of this Act, the following terms shall have the following meanings:

(A) "Breeding pig" means any female pig of the porcine species kept for the purpose of commercial breeding.

(B) "Business owner or operator" means any person who owns or controls the operations of a business.

(C) "Calf raised for veal" means any calf of the bovine species kept for the purpose of commercial production of veal meat.

(D) "Covered animal" means any breeding pig, calf raised for veal, or egg-laying hen that is kept on a farm.

(E) "Confined in a cruel manner" means confined so as to prevent a covered animal from lying down, standing up, fully extending the animal's limbs, or turning around freely.

(F) "Egg-laying hen" means any female domesticated chicken, turkey, duck, goose, or guinea fowl kept for the purpose of commercial egg production.

(G) "Enclosure" means any cage, crate, or other structure used to confine a covered animal or animals. "Enclosure" includes what is commonly described as a "gestation crate" or "stall" for pigs during pregnancy, a "veal crate" for calves raised for veal, and a "battery cage, enriched cage, or colony cage" for egg-laying hens.

(H) "Farm" means the land, building, support facilities, and other equipment that are wholly or partially used for the commercial production of animals or animal products used for food; and does not include live animal markets or establishments at which inspection is provided under the Federal Meat Inspection Act.

(I) "Farm owner or operator" means any person who owns or controls the operations of a farm.

(J) "Fully extending the animal's limbs" means fully extending all limbs without touching the side of an

enclosure. In the case of egg-laying hens, fully extending the animal's limbs means fully spreading both wings without touching the side of an enclosure or other egg-laying hens and having access to at least 1.5 square feet of usable floor space per hen.

(K) "Person" means any individual, firm, partnership, joint venture, limited liability corporation, estate, trust, receiver, syndicate, association, or other legal entity.

(L) "Pork meat" means meat, as defined in 105 CMR 531.012 as of June 1, 2015, of a pig of the porcine species, intended for use as human food.

(M) "Sale" means a commercial sale by a business that sells any item covered by Section 3, but does not include any sale undertaken at an establishment at which inspection is provided under the Federal Meat Inspection Act. For purposes of this section, a sale shall be deemed to occur at the location where the buyer takes physical possession of an item covered by Section 3.

(N) "Shell egg" means a whole egg of an egg-laying hen in its shell form, intended for use as human food.

(0) "Turning around freely" means turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure or another animal.

(P) "Uncooked" means requiring cooking prior to human consumption.

(Q) "Usable floor space" means the total square footage of floor space provided to each hen, as calculated by dividing the total square footage of floor space provided to hens in an enclosure (including both

ground space and elevated flat platforms) by the number of hens in that enclosure.

(R) "Veal meat" means meat, as defined in 105 CMR 531.012 as of June 1, 2015, of a calf raised for veal, intended for use as human food.

(S) "Whole pork meat" means any uncooked cut of pork (including bacon, ham, chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin or cutlet) that is comprised entirely of pork meat, except for seasoning, curing agents, coloring, flavoring, preservatives and similar meat additives. Whole pork meat does not include combination food products (including soups, sandwiches, pizzas, hot dogs, or similar processed or prepared food products) that are comprised of more than pork meat, seasoning, curing agents, coloring, flavoring, preservatives and similar meat additives.

(T) "Whole veal meat" means 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. Whole veal meat does not include combination food products (including soups, sandwiches, pizzas, hot dogs, or similar processed or prepared food products) that are comprised of more than veal meat, seasoning, curing agents, coloring, flavoring, preservatives and similar meat additives.

Section 6. The Attorney General shall have exclusive authority to enforce the provisions of this Act. Each violation of this Act shall be punished by a civil fine not to exceed one thousand dollars ($1,000). The Attorney General may also seek injunctive relief to prevent further violations of this Act.

Section 7. It shall be a defense to any action to enforce this Act that a business owner or operator relied in good faith upon a written certification or guarantee by the supplier that the shell egg, whole pork meat, or whole veal meat at issue was not derived from a covered animal that was confined in a cruel manner, or from the immediate offspring of a female pig that was confined in a cruel manner.

Section 8. The provisions of this Act are in addition to, and not in lieu of, any other laws protecting animal welfare. This Act is not intended, and should not be construed to limit any other state law or rules protecting the welfare of animals or to prevent a local governing body from adopting and enforcing its own animal welfare laws and regulations that are more stringent than this section.

Section 9. The provisions of this Act are severable and if any clause, sentence, paragraph or section of this Act, or an application thereof, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or application adjudged invalid.

Section 10. The Attorney General shall promulgate rules and regulations for the implementation of this Act on or before January 1, 2020.

Section 11. Sections 2-7 of this Act shall take effect on January 1, 2022.

Election, 2016

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Case No. 1:23-cv-11671-WGY

TRIUMPH FOODS, LLC, CHRISTENSEN FARMS MIDWEST, LLC, THE HANOR COMPANY OF WISCONSIN, LLC, NEW FASHION PORK, LLP, EICHELBERGER FARMS, INC. and ALLIED PRODUCERS' COOPERATIVE, individually and on behalf of its members,

Plaintiffs,

v.

ANDREA JOY CAMPBELL, in her official capacity as Attorney General of Massachusetts, and ASHLEY RANDLE, in her official capacity as Massachusetts Commissioner of Agriculture,

Defendants.

AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs Triumph Foods, LLC, Christensen Farms Midwest, LLC, The Hanor Company of Wisconsin, LLC, New Fashion Pork, LLP, Eichelberger Farms, Inc., and Plaintiff Allied Producers' Cooperative in its own capacity and in a representative capacity for its members ("Plaintiffs"), by and through their counsel of record, for their Amended Complaint for Declaratory and Injunctive Relief against Defendants Andrea Joy Campbell, in her official capacity as Attorney General of Massachusetts ("Campbell"), and Ashley Randle, in

her official capacity as Massachusetts Commissioner of Agriculture ("Randle") (collectively, "Defendants"), respectfully state to the Court as follows:

INTRODUCTION

1. This case challenges the constitutionality of Massachusetts' Question 3 Minimum Size Requirements for Farm Animal Containment ("Question 3"), passed by Massachusetts voters on November 8, 2016, which imposes confinement requirements on out-of-state pork producers and prohibits the sale of pork meat within the State of Massachusetts from offspring of a covered animal (as hereinafter defined) confined in a manner inconsistent with Massachusetts' Minimum Size Requirements (as hereinafter defined), regardless of where in the nation the animal was raised.

2. The Prevention of Farm Animal Cruelty Act was enacted by Acts (2016) Chapter 333 (the "Act") on December 15, 2016, which implemented Question 3.

3. Regulations to implement and address enforcement of the Act were ultimately promulgated by the Department of Agricultural Resources and went into effect on June 10, 2022, which was well beyond the original date mandated within the Act. 2022 MA REG TEXT 610066 (NS) (the "Regulations"). The Regulations are included at 330 CMR 35.01-08.

4. Question 3'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."

5. The Act's Minimum Size Requirements are inconsistent with pork industry practices and standards,

generations of farming experience, scientific research, and the consensus standards of other states. The Act will impose costly mandates that substantially interfere with commerce among the states in hog and pork markets. It will impose substantial burdens on pig farmers and pork processors primarily outside of Massachusetts, ultimately having a direct impact on the price of pork for all Americans—the vast majority of whom had no say in the Act—in the interstate pork market. It will take years and cost at least tens of millions of dollars for pig farmers to come into compliance with the Regulations.

6. The Act primarily serves as a regulation on certain animal confinement practices but seeks to regulate such confinement by banning the sale of non-compliant products. The requirements of the Act itself have nothing to do with the products sold, but instead act as a means by which Massachusetts can regulate what occurs on farms.

7. Through the Act, Massachusetts seeks to unilaterally impose sweeping changes across the national pork production industry and subject out-of-state pig farmers and processors in the pork market to Massachusetts' scientifically unsupported preferences.

8. The Act discriminates against out-of-state farmers and pork processors in purpose and effect, unquestionably directly and intentionally targets and seeks to regulate out-of-state activity that is permissible in the states in which it occurs, and substantially burdens the interstate pork market through the confinement and inspection requirements and by stifling interstate commerce through the prohibition of sale of non-compliant Whole Pork Meat (as hereinafter defined) into and within Massachusetts.

9. The Act's discriminatory purpose and effect further violates the rights of Plaintiffs under the Privileges and Immunities Clause, the Full Faith and Credit Clause of Article IV of the United States Constitution, the Due Process Clause of the Fourteenth Amendment to the Constitution, and the Import-Export Clause of Article I of the United States Constitution. The Regulations also are invalid under G.L. c. 30A and G.L. c231A. The Act is also preempted by the Federal Meat Inspection Act and the Packers and Stockyards Act.

10. The Act poses a current and imminent risk of civil enforcement and injunctive relief against Plaintiffs, as the Act imposes civil penalties on any non-compliant business owner or operator or person who knowingly engages in a sale in Massachusetts involving Whole Pork Meat that a business owner or operator knows or should know is the offspring of a breeding pig that was confined inconsistent with the Minimum Size Requirements.

11. Without immediate and permanent injunctive relief from this Court, the Act will unconstitutionally and irreparably risk and injure breeding pigs, piglets, and Plaintiffs.[1]

PARTIES

12. Plaintiff Triumph Foods, LLC ("Triumph") is a farmer-owned company and produces high-quality pork products that are sold locally, nationally, and internationally. It was founded by independently owned pork farmers in the country, including a cooperative of farmers. It is headquartered in St. Joseph, Missouri,

[1] Plaintiff will separately file a Motion for Preliminary and Permanent Injunction following service on Defendants.

and largely receives its supply of pigs from its member-owners, who are pig farmers (collectively referred to as the "Farmer Plaintiffs") and other independent pig farmers.

13. Christensen Farms Midwest, LLC, The Hanor Company of Wisconsin, LLC, New Fashion Pork, LLP, Eichelberger Farms, Inc., and Allied Producers' Cooperative ("the Farmer Plaintiffs") farm and produce pigs to supply Triumph's pork processing operations. Pork processed by Triumph is shipped directly into Massachusetts.

14. The Farmer Plaintiffs are farrow-to-finish farmers. This means that each Farmer Plaintiff has breeding pigs, and after the breeding pigs give birth, the Farmer Plaintiff raises the pigs until they are ready for market.

15. Christensen Farms Midwest, LLC ("Christensen Farms") is a member-owner of Triumph. Its farms are located in Minnesota, Iowa, Nebraska, Illinois, and South Dakota.

16. The Hanor Company of Wisconsin, LLC ("Hanor") is a member-owner of Triumph and sells approximately 1.8 million market pigs each year. Its farms are located in Wisconsin, Oklahoma, North Carolina, Iowa, Missouri, and Illinois.

17. New Fashion Pork, LLP ("NFP") is a member-owner of Triumph. Its farms are located in Minnesota, Indiana, Iowa, Illinois, South Dakota, Wyoming, and Wisconsin.

18. Eichelberger Farms, Inc. ("Eichelberger") is a member-owner of Triumph. Its farms are located in southeast Iowa, Missouri, and Illinois.

19. Allied Producers Cooperative ("APC") is a member-owner of Triumph and is a cooperative that consists of a group of midwestern farmers who are mostly multi-generational family pig farms, most of which are farrow-to-finish farmers consisting of several individual farmers. APC is headquartered in Iowa, but its members operate in various states throughout the Midwest.

20. Defendant Campbell is the Attorney General of the State of Massachusetts. Campbell is responsible for the enforcement of the Act and is sued in her official capacity only.

21. Defendant Randle is the Massachusetts Commissioner of Agriculture who oversees the Massachusetts Department of Agricultural Resources, which is responsible for implementation of the Act. Randle is sued in her official capacity only.

JURISDICTION AND VENUE

22. This Court has jurisdiction over this complaint for declaratory and injunctive relief pursuant to Fed. R. Civ. P. 57, 28 U.S.C. § 2201, 28 U.S.C. § 1441(a) and Fed. R. Civ. P. 65.

23. The Court has authority to enjoin enforcement of the Act's sales ban under 42 U.S.C. § 1983 and 28 U.S.C. § 2201.

24. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because this is the judicial district in which all Defendants reside.

BACKGROUND ON QUESTION 3 AND REGULATIONS

25. In 2016, Massachusetts enacted the Prevention of Farm Animal Cruelty Act through ballot initiative Question 3, which established minimum size require-

ments for egg-laying hens, breeding pigs, and calves raised for veal.

26. The Act's claimed 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." Mass. Gen. Laws Ann. Ch. 129 App., § 1-1 (West). *See also* SEC'Y OF THE COMMONWEALTH OF MASS., *Information for Voters, Massachusetts 2016 Ballot* at 8–11 (2016), https://www.sec.state.ma.us/divisions/elections/research-and-statistics/information-for-voters-2002-2020.htm (stating that a vote in favor "prevents cruel treatment of animals in Massachusetts" and "will remove inhumane and unsafe products from the Massachusetts marketplace" and that "because cage confinement increases food safety risks . . . a YES vote protects Massachusetts consumers.").

27. The Act makes it unlawful "for a farm owner or operator within the Commonwealth of Massachusetts to knowingly cause any covered animal to be confined in a cruel manner." The Act defines "confined in a cruel manner" as confining a "breeding pig in a manner that prevents the animal from lying down, standing up, fully extending the animal's limbs or turning around freely" (hereinafter referred to as the "Minimum Size Requirements"). Mass. Gen. Laws Ch. 129 App., § 1-5.

28. A "covered animal" is defined as any breeding pig, calf raised for veal, or egg- laying hen that is kept on a farm. A "breeding pig" is defined as any female pig of the porcine species kept for the purpose of commercial breeding.

29. The Act also made it unlawful for a "business owner or operator to knowingly engage in the sale within the Commonwealth of Massachusetts of any ... Whole Pork Meat that the business owner or operator knows or should know is the meat of a covered animal that was confined in a cruel manner, or is the meat of the immediate offspring of a covered animal that was confined in a cruel manner." Mass. Gen. Laws Ch. 129 App., § 1-3. This prohibition is without distinction regarding where in the United States the Whole Pork Meat originated from.

30. The Act does not define what it means for an individual to be "engaged in" a sale within Massachusetts, and by the plain language, an out-of-state farmer or processor is potentially subject to civil fines and injunctive relief for being "engaged in" the chain of sale of non-compliant Whole Pork Meat into the State of Massachusetts.

31. Whole Pork Meat is defined as "any uncooked cut of pork, including bacon, ham, chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin or cutlet, that is comprised entirely of pork meat, except for seasoning, curing agents, coloring, flavoring, preservatives and similar meat additives." Mass. Gen. Laws Ch. 129 App., § 1-5.

32. Pork Meat is defined as "meat of a pig of the porcine species intended for use as human food." Mass. Gen. Laws Ch. 129 App., § 1-5.

33. The limited exceptions as applicable here include only the five-day period prior to the expected date of giving birth, during nursing, and for only temporary periods of less than six hours for breeding purposes. Mass Gen. Laws Ch. 129 App., § 1-4.

34. In December 2021, the Massachusetts Legislature amended portions of the Act by passing Acts (2021) Chapter 108. The bill changed the definition of "confined in a cruel manner" regarding egg-laying hens and added other definitions regarding egg-laying hens.

35. The amendments came on the heels of industry concerns that the Act would cause an extreme shortage of eggs or a steep increase in egg prices in Massachusetts, and an apparent recognition that industry practices for housing hens were not aligned with the Minimum Size Requirements. Chris Lisinski, *Mass. Legislature passes animal welfare law changes, set to ease egg supply fears* (Dec. 20, 2021), https://www.wgbh.org/news/politics/2021/12/20/mass-legislature-passes-animal-welfare-law-changes-set-to-ease-egg-supply-fears.

36. Yet, no changes were made to the Minimum Size Requirements regarding breeding pigs, apart from extending the date by which the sale of Whole Pork Meat not in compliance with the Act would be prohibited, despite the fact that Massachusetts legislators understood at the time of or before the amendment was passed that less than 4% of pork suppliers were in compliance with the Minimum Size Requirements, and that enforcing the Act would affect the supply and/or cost of pork products within the State. Matt Murphy, *House's Hen Welfare Bill Aims to Assure Egg Supply* (Oct. 6, 2021), https://www.statehousenews.com/news/20211859.

37. Acts (2021) Chapter 108 § 6 did, however, amend the effective date for the Minimum Size Requirements as applied to breeding pigs to August 15, 2022.

38. Due to the vagueness of the Act itself, the Act mandated that Regulations be promulgated in order to ultimately assist the Attorney General in ensuring compliance with the Act.

39. Regulations to implement and address enforcement of the Act were ultimately promulgated by the Department of Agricultural Resources and went into effect on June 10, 2022, which was well beyond the original date mandated within the Act. 2022 MA REG TEXT 610066 (NS) (the "Regulations"). The Regulations are included at 330 CMR 35.01-08.

40. The Regulations included that Whole Pork Meat products already in the supply chain as of and including August 15, 2022, would be deemed compliant in what is referred to herein as the "Sell Through Provision." Plaintiffs, as well as much of the pork producing and processing industry, interpreted this to mean that so long as the offspring of a sow existed prior to August 15, 2022 (*i.e.*, the sow has already been inseminated, the offspring is in gestation, or the pig was born but not yet harvested) that the offspring would be deemed compliant and be able to be sold into Massachusetts on or after August 15, 2022. Neither the Act nor the Regulations define the "supply chain," leaving Plaintiffs uncertain in their interpretation of the Sell Through Provision.

41. The Regulations failed to provide any additional interpretation or guidance as to what constitutes a business owner or operator "engaging in the sale" of Whole Pork Meat within Massachusetts.

42. In *Massachusetts Restaurant Association et al. v. Healey* (Case No. 4:22-cv-11245 MLW) this Court ordered a stay of the enforcement of the Act and the Regulations until 30 days from the issuance of the

United States Supreme Court's final decision in *National Pork Producers Council v. Ross*, 143 S. Ct. 1142 (2023) (the "Stay Period"). (ECF No. 17). The opinion in that case issued on May 11, 2023, and the mandate issued on June 12, 2023. Recently, the Stay Period has been extended until at least August 23, 2023.

43. After the expiration of the Stay Period, the Act and the Regulations will become enforceable and prohibit the sale of non-compliant Whole Pork Meat in Massachusetts.

44. Under the Court's order staying enforcement of the Act and Regulations, Former Attorney General Healey and Former Commissioner Lebeaux agreed that they would not enforce the Pork Sale Rules[2] against any plaintiff or non-party for any conduct that occurs during the Stay Period. *See Massachusetts Restaurant Ass'n v. Healey*, No. 4:22-cv-11245-MLW, (ECF No. 17).

45. It is unclear whether this means that any Whole Pork Meat[3] that existed in the supply chain prior to the expiration of the Stay Period (*i.e.,* the sow has already been inseminated, the offspring is in gestation, or the pig was born but not yet harvested) may be sold in Massachusetts after the Stay Period, and whether the court's order staying the Act and Regulations created, in effect, another Sell Through Provision.

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[2] Pork Sale Rules are defined as "a declaration that M.G.L. c. 129 App. § 1-3(C), 330 CMR § 35.04(1)(c), and the official guidance interpreting same."

[3] The Regulations define Pork Meat as any "meat of a pig of the porcine species that is intended for use as human food." 330 Mass. Code Regs. 35.02

46. To date, the Defendants have not published any guidance regarding whether Whole Pork Meat that is already in the supply chain during the Stay Period, may be sold after that Stay Period expires, leaving Plaintiffs uncertain about whether Defendants intend to retroactively apply the Act and Regulations to prohibit the sale of Whole Pork Meat that did not comply with the Minimum Size Requirements during the Stay Period.

47. Most Pork Meat intended for sale for Massachusetts at the time the Stay Period will expire is already alive, or at least is in gestation. The breeding cycle of the pigs is four months, followed by the piglets being raised for three to four weeks before they are weaned and, ultimately, farrow to finish takes approximately 24-26 weeks.

48. Without an order confirming that the sale of Whole Pork Meat that is already in the supply chain up to and including the expiration of the Stay Period may be sold after the Stay Period, the Act and Regulations will force the unnecessary slaughter of these breeding pigs, the same pigs that Massachusetts voters were told the Act would help.

49. The Regulations also create a procedure for certifications for any farm, farm owners, or farm operators who engage in commercial transactions within Massachusetts regarding the meat or products of a covered animal and for any other person who engages in a commercial transaction within Massachusetts regarding the meat or products of a covered animal. 330 CMR 35.05.

50. The Regulations announced, for the first time, that the Department or third-party validators may go beyond the boundaries of Massachusetts and inspect a

farm "pursuant to any applicable authority" for compliance with the Minimum Size Requirements to ensure that "animals are not being Confined in a Cruel Manner." 330 CMR 35.06-.07.

51. This means that Massachusetts intends to have Massachusetts state officials go to out-of-state farms to ensure that they comply with the Act and Regulations.

52. If, during an inspection of a farm, the Department of Agricultural Resources or a third-party validator observes violations of the Act or the Regulations regarding the implementation of the Act, the Department may refer the violations to the Attorney General's Office. 330 CMR 35.06-.07.

53. The Attorney General has exclusive authority to enforce the provisions of the Act. Mass. Gen. Laws App., § 1-6. Each violation of the Act is punishable by a civil fine up to $1,000, and in addition, the Attorney General may seek injunctive relief to prevent any further violations of the Act. Mass Gen. Laws App., § 1-6.

54. No guidance has been issued to address what unit of enforcement the Defendants intend to utilize when assessing a civil fine or ultimately resorting to injunctive relief to potentially preclude a seller from importing Whole Pork Meat into Massachusetts.

55. Regardless of how the unit of enforcement is ultimately applied by the Defendant Attorney General, the civil enforcement and injunctions authorized under the Act are tantamount to a penalty against any business owner or operator who operates within the pork production supply chain in several ways.

56. The forced exclusion from the Massachusetts marketplace unless Farmer Plaintiffs convert their farm operations to meet Minimum Size Requirements is a penalty at the beginning of the pork production supply chain.

57. The exclusion from the Massachusetts marketplace operates as a sales embargo for out-of-state business owners and operators who cannot sell compliant Whole Pork Meat within Massachusetts due to the excessive restrictions imposed.

58. The forced adjustments to the processor – like Triumph's – operations are penalties at the middle phase of the pork production supply chain.

59. The risk of civil fines and injunctive relief by the Attorney General is a penalty at the end phase of the pork production supply chain for any member who engages in the sale of non-compliant Whole Pork Meat within Massachusetts, which arguably includes both Farmer Plaintiffs and Triumph.

60. On information and belief, if a seller is precluded from importing Whole Pork Meat into Massachusetts, that seller runs a substantial risk of violating contractual obligations with Massachusetts businesses, state or federal agencies who rely upon the Whole Pork Meat.

IMMEDIATE NATIONWIDE IMPACTS OF THE ACT AND REGULATIONS ON THE PORK INDUSTRY

61. The sale of Whole Pork Meat is a nationwide, regulated commodity, and the interstate pork market is wholly interconnected. Not only do the Act and Regulations impact pig farmers, but their regulatory impact flows through the complex supply chain to pork

processing operations and interferes with the federal government's role, who is already tasked with ensuring that any pork product that enters the interstate market is wholesome and fit for human consumption.

62. The Act and Regulations' unconstitutional application to out-of-state farmers and processors will have a direct impact on farming practices, processing standards, nationwide pricing of pork, the national pork supply, and consumers nationwide.

63. Despite making up a large percentage of the national consumer market, Massachusetts itself had as little as 1,500 breeding sows as of 2022, with only 6,000 total market hogs. Relatedly, Massachusetts also has a miniscule number of farms that produce pigs. As of 2017, the total number of pig farmers in Massachusetts was about 336. Of that amount, only one farmer had a herd size greater than 1,000 head, while 264 farms have a herd size of 1-24 head. USDA, National Agricultural Statistics Service, *2017 Census of Agriculture – Massachusetts State and County Data* (April 2019). Only eight Massachusetts pig farmers had a herd size of 200 or more. This means that, as of 2017, about 78% of Massachusetts pig farmers have the smallest possible pig operation.

64. In the first quarter of 2023, Missouri and Iowa—the two states that Triumph operates out of and receives a large quantity of its market hogs for processing from—had 450,000 breeding sows and 900,000 breeding sows, respectively. USDA, National Agricultural Statistics Service, *USDA Quarterly Hogs and Pigs* (March 2023).

65. Massachusetts is the fifteenth most populous state in the nation, representing 2.1% of the U.S. population and consuming approximately 356.8 million

pounds of retail pork in 2022. The volume Massachusetts demands to feed its population would well exceed the amount of pork that Massachusetts can produce and sell intrastate from Massachusetts farms, given the small number of breeding sows in Massachusetts. That volume produced within Massachusetts, assuming it is sold and *remains in* Massachusetts, is estimated at only 1.9 million pounds of retail pork in 2022. Therefore, the burden of the Act falls almost entirely upon out-of-state producers and processors, and in effect, the Act regulates pork production and processing throughout the United States, not just in Massachusetts.

66. As of 2016, when Question 3 was approved by Massachusetts, Massachusetts pig farmers did not use gestation crates for housing breeding sows. Andrea Shea, *Confinement of Farm Animals: A Primer on Question 3 in Mass.* (Sept. 20, 2016) https://www.wbur.org/morningedition/2016/09/20/farm-animal-containment-ballot-question. Given that no Massachusetts pig farmers confine breeding sows in a manner that is prohibited by the Act, the Act directly targeted out-of-state farmers only.

67. The Act's Minimum Size Requirements are inconsistent with pork industry practices and standards, generations of farming experience, scientific research, and the consensus standards of other states. The Act will impose costly mandates that substantially interfere with commerce among the states in hog and Whole Pork Meat markets. It will impose enormous costs on pork farmers outside of Massachusetts, ultimately having a direct impact on the price of pork for all Americans, the vast majority of whom had no say in the Act.

68. It will take years and cost at least hundreds of millions of dollars for pork farmers to come into compliance with the Act and Regulations or to fully convert farms to be compliant with the Act and Regulations to the extent needed in order to supply the quantity of pork into Massachusetts that is currently demanded.

69. Most Farmer Plaintiffs, from which Triumph primarily sources its supply of pigs, are not currently in compliance with the Act. And compliance measures taken to date by the Farmer Plaintiffs have been instituted in order to satisfy California's Proposition 12 requirements only, which have been insufficient to meet the needs of California, let alone for the demand that will unquestionably arise for Question 3 compliant pork.

70. Through the Act, Massachusetts seeks to unilaterally force changes across the national pork production industry and subject out-of-state individuals in the production market to Massachusetts' preferences. Currently, only a miniscule number of pig farmers nationwide could satisfy Massachusetts' onerous standards—something that Massachusetts lawmakers understood when they amended the Act in 2021. The number is even smaller when accounting for the fact that most of those pigs are already slated for processing pork for California.

71. Due to the proportion of the national pork supply destined for Massachusetts—and the significant complexity of the national pork production and distribution system—it is neither feasible nor practical for farmers to segregate their product on a state-by-state basis. While some extraordinary accommodation has been made in the interim for Proposition 12 and

Question 3, the situation is tenuous, and this cannot be done for all states across the country.

72. Furthermore, upon information and belief, Massachusetts is a pork distribution hub for other New England states. In other words, the Act's prohibition on the sale of Whole Pork Meat that is not compliant with the Act within Massachusetts affects the production and sale of pork across an entire region. This means that a significant portion of Whole Pork Meat that enters Massachusetts does not stay in Massachusetts and goes to states in New England—including states that do not have sow confinement prohibitions similar to the Minimum Size Requirements in the Act. https://www.wsj.com/articles/massachusetts-wants-your-bacon-national-pork-producers-council-farm-regulations-11660080510

73. The Act's assertion that non-compliant Whole Pork Meat "threatens the health and safety of Massachusetts consumers, and increases the risk of foodborne illness" is false and inconsistent with scientific studies surrounding housing breeding pigs in group pen settings. The ballot initiative record for Question 3 and the Regulations implementing the Act are devoid of actual proof that the Act would accomplish the goals it intended (*i.e.,* to protect farm animals from cruel confinement practices, avoid foodborne illness and negate negative fiscal impacts to Massachusetts).

74. As a result, Massachusetts is forcing massive changes to pig production and processing practices throughout the United States, and in so doing, substantially burdens the interstate pork market. Massachusetts has attempted to create a national regulation on breeding pig housing through the passage of Question 3.

75. The Act and Regulations ultimately force compliance on farmers who cannot control whether to sell into the Massachusetts market, but due to the interconnected nature of the pork market, such products may still be sold within the stream of commerce in Massachusetts.

76. Through the Federal Meat Inspection Act ("FMIA"), Congress designated the United States Department of Agriculture ("USDA") as the regulatory body to monitor meat processing. It regulates meat, poultry, and egg products and catfish through one of its own agencies, known as the Food Safety and Inspection Service ("FSIS").

77. Ensuring that pork does not leave a plant that is at risk for "foodborne illness" is specifically a role assigned to the USDA through the Congressional enacted statutory requirements imposed by the FMIA and other implementing federal laws and regulations. The USDA also is charged with preventing pest or disease of livestock in interstate commerce.

78. The USDA and FSIS are charged with ensuring that pork processors comply with federal law so that meat is "safe, wholesome, and properly labeled." *See, e.g.*, 21 U.S.C. § 602. The USDA is "one of the largest public health regulatory agencies in the U.S. Government."[4]

79. The federal government published specific guidance to identify how the inspection and segregation process is to occur within the swine industry pursuant to the FSIS, which is identified as "part of a science-based national system to ensure food safety and food

[4] Food Safety and Inspection Service, U.S. Department of Agriculture, https://www.fsis.usda.gov/.

defense. FSIS ensures food safety through the authorities of the Federal Meat Inspection Act, the Poultry Products Inspection Act, as well as humane animal handling through the Humane Methods of Slaughter Act." *See* About FSIS | Food Safety and Inspection Service (usda.gov) (last visited July 22, 2023).

80. Pursuant to the statutory requirements imposed by the FMIA, the USDA is required to be extensively and pervasively involved in performing inspections of the pork production process at all stages to ensure such products are wholesome and not adulterated. The word "adulterated" is a defined term within the FMIA, meaning a product that "consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food"; it also is defined as products that have been "prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health." 21 U.S.C. § 601.

81. To ensure compliance with federal food safety laws, the USDA regulates and inspects the pigs before they enter the facility (ante-mortem) by either (a) directly inspecting every single pig or (b) otherwise delegating portions of that responsibility to trained employees at the establishment who support the USDA with the ante-mortem inspections through the USDA's segregation procedures set forth within FSIS Directive 6100.1, known as the "Voluntary Segregation Program" ("VSP"). *See* 9 C.F.R. Part 309; FSIS Directive 6100.1. The USDA's inspection personnel are referred to as "IPP" as they are in the Inspection Personnel Program. "As required under the FMIA, IPP are to examine and inspect all livestock before slaughter to determine whether the animals are fit for

slaughter for human food." If animals are not presented for this purpose, or the processor is not otherwise fulfilling its responsibilities under the VSP, the pork products produced are not able to be marked by USDA as "inspected and passed."

82. The USDA continues to regulate and inspect the pigs after they have passed ante- mortem inspection and have entered the facility for processing (post-mortem). After entering the facility and post-mortem phase, the USDA inspects at every phase of the pig's processing, while facility employees assist with these inspections throughout the line by adhering to the USDA's FSIS regulatory requirements. *See* 9 C.F.R. § 310.26.

83. Specifically, to ensure that no adulterated products enter the interstate food supply chain, the USDA inspection process begins outside of the four walls of a FSIS processing facility. Pigs are transported by the farmer to a processing facility via truck or trailer. When the truck or trailer first arrives, farmers begin to unload their trucks carrying market pigs. Throughout this process, the USDA either directly or through their USDA VSP, begins observation for pigs that may qualify as adulterated. If a pig is identified on a truck as adulterated, then the pig will be euthanized on the truck and segregated from the delivery. Indeed, before pigs are even allowed to disembark and unload from a farmer's truck, the USDA is reviewing and inspecting the deliveries of pigs for disease, injury, and other factors to ensure that all pigs entering the plant are wholesome, unadulterated, and suitable for human consumption as final pork products. This is the first element of this phase of inspection that the USDA will engage in for the

purpose of preventing foodborne illness or adulterated pork products.

84. After this initial element of inspection on the farmers' trucks, the remainder pigs are offloaded into sorting pens and chutes that still remain *outside* the processing area of the facility for a further ongoing inspection by the USDA within the receiving alley. If not previously identified as possibly adulterated, then they enter a third component of the ante-mortem inspection in the holding pen (or a barn), in which the USDA continues observations again. These second and third components of ongoing ante-mortem inspection are for the same purpose – in addition to animal care, they are there to ensure that no pig exhibits any signs of disease specifically for the purpose of preventing any foodborne illness or adulterated pigs from entering the facility itself and ultimately in the pork distributed to the end-consumer.

85. Once a pig enters the processing facility after ante-mortem inspection has been completed by the USDA, the USDA continues inspection within the facility during the complex post-mortem inspection phase. During this lengthy phase through the full processing line, USDA inspectors are conducting observations and examinations of the head, viscera and carcass for any indication of disease, parasites, pathology, or any other signs of abnormalities. Indeed, this pervasive USDA inspection process endures from the moment the pigs enter inside the processing facility, through the harvesting process, and through the moment the finished pork products depart for the interstate market. The USDA officials inspect every phase of the processing and the establishment's employees are regulated by the FSIS to fulfill specific

and detailed requirements to support the USDA. *See* FSIS Directive 6100.2.

86. Title of a particular pig does not transfer to a processor and thus, does *not* qualify as a purchase by such processor, until the pig has passed complete and full inspection by the USDA both prior to entrance inspections at the processor and following the full inspections inside the facility.

87. Yet, Massachusetts, through Question 3, dictates to the USDA and predetermines for the FSIS regulated facility that all pigs – unless their breeding pig met the Minimum Size Requirements – are adulterated, unfit for human consumption, and cannot be processed *for sale into Massachusetts*. The determination of what is adulterated and unadulterated is specifically designated to the USDA. The FSIS facility must then adapt their premises, processing lines and operations to account for the varying additional segregation requirements both ante-mortem and post-mortem as directed by the state to accomplish the Act's requirements.

88. Pigs raised in compliance with Question 3 must be separated, and kept separated, from conventional pigs at all points during the processing process that occurs at the processing facility. Otherwise, the Question 3 qualified pigs and the conventional pigs that the Act has predetermined as "adulterated" for Massachusetts, will become unknowingly intermixed prior to entry into the processing facility, or throughout the processing line after entering.

89. Due to the nature, depth and breadth of this federal inspection process, state inspection requirements like Question 3 also add or impose requirements different from those already implemented by the

USDA and impede on the USDA's independent inspections. Further, given the nature of the national market for pork, it would not be feasible for federal inspectors to cooperate with potentially fifty different state inspection requirements; at a minimum, state regulation on the inspection processes described herein would impair the effective regulation of pork products, and create an obstacle to the accomplishment and execution of the FMIA in light of that statute's stated objectives. *See, e.g.*, 21 U.S.C. § 602. While processing plants like Triumph have tried to make some accommodation for laws like Question 3 and Proposition 12 for the interim, doing so for numerous states or fifty states would be crippling to processors, if not impossible.

90. Massachusetts, like all states, purchases its pork from multiple suppliers. Due to the highly competitive pork industry, not to mention antitrust constraints, there is no practical or risk-free way, without running afoul of antitrust laws and regulations, for pork competitors to cross coordinate or allocate their sales by geographic market to aid in the coordinated supply to one or two states, or on a state-by-state basis. This leaves each processor left to try to fulfill its portion of sales to the state on its own. No one processor can fulfill the demand for Massachusetts or California, or any other specific states, and the competitors cannot organize together to do so. Furthermore, if certain processors were able to become single state suppliers, this would only further eliminate competition and result in local market concentration and likely drive-up pricing for individual states left to obtain their pork from one or two processors nationwide.

91. The Act and its Regulations, in effect, denies market access to out-of-state pork farmers and proces-

sors, like Plaintiffs, unless their farming practices in states outside of Massachusetts comply with Massachusetts' dictates.

92. The Act and its Regulations will also increase retail pork prices for consumers in Massachusetts, and because Massachusetts imports at least 99.5% of the pork it consumes, the implementation of the Act and Regulations is likely to lead to periodic retail pork stockouts and shortages in Massachusetts.

93. In addition, the implementation and enforcement of the Act would result in a substantial adjustment for pork prices for consumers *nationwide* and a shortage of pork available for purchase.

94. More than one in five (21.6 percent) of the adults in the United States reported household food insecurity in the summer of 2022. Pork ranks third in the United States for meat consumption. Waxman E, Salas J, Gupta P, Karpman M, *Food Insecurity Trended Upward in Midst of High Inflation and Fewer Supports*, Robert Wood Johnson Foundation, https://www.rwjf.org/en/insights/our-research/2022/09/food-insecurity-trended-upward-in-midst-of-high-inflation-and-fewer-supports.html#:~:text=More%20than%20one%20in%20five,their%20White%20counterparts%20(17.3%25).

95. In 2022, food prices overall in the United States increased by 9.9 percent, and food- at-home prices increased by 11.4 percent, according to the United States Department of Agriculture. The Act and its Regulations threaten to significantly increase the cost of pork for consumers, which will make it even more difficult for economically-distressed families and those already facing food insecurity to afford this critical source of protein.

96. The Act and its Regulations also threaten the public supply of pork within Massachusetts and states to which Massachusetts service in New England, which is necessary to satisfy the needs of the businesses and state facilities, including hospitals, schools, prisons and other public agencies utilizing federal funding.

IMMEDIATE IMPACTS OF THE ACT AND REGULATIONS ON THE PLAINTIFFS

97. Triumph receives its pig supply from the Farmer Plaintiffs and some additional pig farmers, none of which operate their farms in Massachusetts.

98. The Farmer Plaintiffs and other farmers have each entered into an agreement with Triumph to sell pigs. These contracts are known as HPAs. The HPAs provide specific terms governing the sale of pigs by the Farmer Plaintiffs, including the annual supply volume of pigs required by each Farmer Plaintiff.

99. Triumph receives its orders for pork through its exclusive marketer of pork, Seaboard Corporation, Seaboard Foods, LLC and Seaboard Foods of Missouri, Inc. ("Seaboard") through a Marketing Agreement.

100. Under that Marketing Agreement, Triumph processes pork products that Seaboard markets on Triumph's behalf. Seaboard has the exclusive right to market all Triumph pork, and Seaboard makes all sales decisions on behalf of Triumph for its pork products including who and where it sells the product. While Triumph does not market its pork, it certainly has knowledge, as do the Farmer Plaintiffs, that pork processed from their pigs is sold to Massachusetts, and they supply their pigs without any control to where the pork is distributed. Massachusetts can take the position that farmers and processors who have such

knowledge and supply, are "engaged in the sale" and culpable under the statute. The statute as written creates risk and vagueness for the entire supply chain.

101. Once Triumph receives the market hogs from the Farmer Plaintiffs and other farmers, it processes the pigs and ships the pork directly to the customer from Triumph's facility.

102. Currently, Massachusetts customers demand more compliant product than what Triumph and the Farmer Plaintiffs have available or could possibly ever make available because Massachusetts' requirements are really a subset of California's, and the industry already does not have enough for California. Because Proposition 12 has been implemented and threatens criminal enforcement now, almost all Proposition 12 pork has been diverted to California. This leaves little Question 3 compliant pork available for Massachusetts, as the industry does not have sufficient volume of Proposition 12 compliant pork required to supply California's demand.

103. Several Farmer Plaintiffs, such as APC and its members, cannot convert their operations to come into compliance with the Minimum Size Requirements by the expiration of the Stay Period, or potentially at all. Since the smaller Farmer Plaintiffs cannot produce compliant pigs, they will not be able to sell Triumph the required amount of market pigs, and they will risk incurring damages or defaulting under their HPAs.

104. Compliance with the Act and Regulations requires significant and extremely costly changes to the farming operations of the country's pig farmers, including the Farmer Plaintiffs.

105. Some Farmer Plaintiffs, such as Christensen Farms, have spent significant capital in converting a

small portion of their operations to be compliant with the Minimum Size Requirements.

106. These capital and operating investments to convert even a portion of operations to be compliant are not enough to supply the volume of pork required for Massachusetts.

107. The conversions needed are not in the best interest of the breeding pig's animal welfare. Breeding pigs or sows are female pigs utilized for breeding and give birth to the piglets that ultimately become pigs sent to market. Breeding pigs are usually maintained on sow-specific farms that are commonly separated from other hog facilities, to prevent the spread of disease, for the safety of the breeding pigs, and to increase efficiency. Breeding pigs are generally artificially inseminated, litters of piglets are born, and the piglets are raised for three to four weeks before they are weaned.

108. An overwhelming majority of sow farms use some type of indoor confinement for breeding pig operations, utilizing the benefit of year-round production and protection from seasonal weather changes, disease exposure, and external predators.

109. Only a small portion of the pigs that are harvested for meat are breeding pigs that have been kept for reproduction.

110. Pursuant to decades of scientific research, industry practice is that the vast majority of all farmers house pregnant breeding pigs in individual stalls for insemination, throughout pregnancy, and for the first 30 to 40 days after weaning. This practice protects the sow, helps prevent pregnancy loss, critically permits the attachment of embryos, and guards against the high risk of loss of pregnancy

caused by aggressive behavior that commonly occurs within larger pens or open/group housing.

111. The individual stalls also permit breeding pigs to recover from weaning, experience reduced stress levels, and receive a proper amount of individualized nutrition at a time when they are vulnerable.

112. Specifically, housing breeding pigs in individual stalls permits farmers to carefully provide each breeding pigs with the right amount of feed to achieve optimal nutrition. This is difficult in a group housing system and is especially critical to maintain the appropriate body condition right after weaning.

113. Housing breeding pigs in a group pen also threatens worker safety, given the large size of the animals and the need for farm hands to enter the pens with multiple 400-pound animals, placing the safety and lives of the workers in jeopardy.

114. The Act imposes restrictions that are contrary to current time-tested, science-based, best practices for pig production. The Act, in practical effect, bans the use of individual stalls during breeding and most of the gestation period.

115. The offspring of breeding pigs are raised to market weight in separate, specialized production facilities, including: (1) feeder pig farmers or nurseries; (2) feeder pig finishers; and (3) farrow-to-finish operations. Farrow to finish takes approximately 24-26 weeks.

116. Once pigs reach harvest weight, they are sent to packing and processing facilities, like Triumph, throughout the country. Packing and processing facilities receive pigs from multiple farms, in multiple locations, operated by multiple farmers.

117. Triumph always aims to operate at full capacity. The plant processes harvested pigs into many different cuts of meat. The meat is packed and shipped to customers throughout the entire country and abroad, including Massachusetts.

118. Farmers and processors cannot realistically forego the Massachusetts market. If forced to exit the Massachusetts market, many farmers' operations will become cost prohibitive based on loss in revenue from Massachusetts and/or regional consumers. Any temporary increase of price of pork in Massachusetts will not be sufficient to offset the cost to come into compliance with the Act and Regulations. This is because it is impossible to segregate which portions of meat will be sold into the Massachusetts market alone without undergoing significant efforts. While space and efforts were made at Triumph to facilitate some allocation for Massachusetts and California for this interim period while the constitutionality of such laws are addressed, it will be impossible to do so for every state's individual preferences on how breeding pigs of the offspring pigs coming into the plant are housed. The increased cost to come into compliance cannot be recovered from Defendants due to Massachusetts' sovereign immunity, precluding the recovery of monetary damages by Plaintiffs. Or, alternatively, to come into compliance, many farmers will need to limit their supply so that their pigs will have more space, as many do not have the option to buy more real estate. This means that the national pork supply will drop, again illustrating how the Act and Regulations are affecting the entire country's pork production.

119. This process Triumph has instituted also increases substantial risk of recall and food waste, leading to additional lost revenue associated with a

conventional pig being mistakenly intermingled with a lot of Question 3 compliant pigs ready for processing. This issue would result in the necessary recall of thousands of pounds of Whole Pork Meat destined for sale to Massachusetts. This is true even though Triumph is a state-of-the-art facility and one of the best run facilities in the country. Triumph – as are all processors – is at risk for this happening at any point with the deliveries from their farmers for product it attempts to segregate for California, or when Massachusetts deliveries (assuming there is any product available for Massachusetts), or any states that have similar regulatory preferences.

120. While Triumph is undertaking extraordinary efforts for the recent California and Massachusetts pig preferences, it is impossible to do so for numerous states across the country. Even for just these two states, product that is compliant for Massachusetts is not compliant for California. As new states create their own version of the regulations, it will become more difficult for farmers and processors like Triumph to supply pork nationwide and internationally. Each new regulation would require new inventory management tools (e.g., stock keeping units, or bar codes), new sorting procedures, and new storage locations to keep each type of product separate. If enough states pass regulations like Question 3, Triumph will be forced to ration its products.

121. Additionally, the full amount of pork produced from a compliant pig is not typically utilized to fulfill Proposition 12 or Question 3 compliant orders. Pork items for which there is no demand for Proposition 12 or Question 3 pork are sold into the commodity market without any premium to offset the increased cost of production for those products.

122. The Act and Regulations' Minimum Size Requirements would require significant changes to Farmer Plaintiffs' farming operations, including significant structural changes and the requirement to reduce the number of pigs at the facility.

123. The Minimum Size Requirements will also create negative impacts on the breeding pigs that are confined within a group pen, likely resulting in significant health risks and piglet loss. The Minimum Size Requirements create significant ongoing harm to breeding pigs. Breeding pigs are subject to physical aggression, abuse, losing fetuses in utero, lameness, and the inability to obtain proper nutrition when confined in group systems.

124. Due to not being able to build new barns or retrofit existing barns, it will not be feasible for Farmer Plaintiffs to ever come into full compliance with the Minimum Size Requirements for a variety of reasons, including lack of space and financial inability. It is expected that smaller pig farmers like APC will be among those unable to comply with the Act, resulting in them being forcibly removed from the industry. This will result in an acute consolidation of the industry into large farmers and processors who may be more adept to converting facilities or assuming the risk of decreasing their herd sizes and will ultimately significantly harm Farmer Plaintiffs' smaller or family-owned farms.

125. Small farm operations are already threatened by bigger farmers and small farmers have been on the decline for the last twenty-five years.

126. As of 2017, about 7% of pigs in the United States are on farms with less than 2,000 head in inventory; 20% of the inventory is on farms with 2,000-

4,900 head; and 73% are on farms with 5,000 or more hogs. USDA, National Agricultural Statistics Service, *Census of Agriculture* (2017).

127. Pork processors like Triumph will also suffer. The vast majority of pigs that are processed, packed, and distributed by Triumph is the product of an animal not housed in compliance with the Minimum Size Requirements. Pig farmers, such as the Farmer Plaintiffs, face significant financial consequences if they are unable to meet contractual obligations to produce pigs that are compliant with the Minimum Size Requirements. Pork processors and distributors, including Triumph, may consequently be forced to severely restrict their supply of pigs by refusing to process non-compliant pigs—and therefore their products—or to risk being subjected to fines and/or injunctive relief outlined in the Act.

128. Plaintiffs are also at risk of being subject to conflicting laws throughout the remaining United States, as evidenced by the passage of Proposition 12 in California. While Proposition 12 and Question 3 contain similar language at times, the statutes and regulations implementing the requirements in these two acts contain different definitions and different requirements.

129. The states in which Triumph and Farmer Plaintiffs operate give farmers, including Farmer Plaintiffs, the right to confine breeding pigs in a manner that is expressly prohibited by the Act. This places Question 3 in direct conflict with state statutes for the actual states in which the breeding pigs are housed. Further, the states in which Triumph operates do not prohibit the sale of Whole Pork Meat if it is the product of a sow not housed in compliance with the

Minimum Size Requirements or is the offspring of such sow.

130. For example, the Missouri Constitution protects the "right of farmers and ranchers to engage in farming and ranching practices." Mo. Const. art. I, § 35.

131. Wyoming law provides that "the rights of farmers and ranchers to engage in farm or ranch operations shall be forever guaranteed in this state." Wyo. Stat. § 11-44-104. Further, Wyoming law provides that nothing in its "Protection of Livestock Animals" chapter prohibits "the use of Wyoming industry accepted agricultural or livestock management practices or any other commonly practiced animal husbandry procedure used on livestock animals..." Wyo. Stat. 11-29-115.

132. Indiana regulations, promulgated pursuant to Indiana statute, establish standards of care for livestock, including that persons responsible for caring for livestock must provide the animals with sufficient shelter from the weather; must take reasonable measures to protect the animals from injury or disease; and must provide the animals with an environment that can reasonably be expected to maintain the health of animals raised using the applicable production method. 345 Ind. Admin. Code 14-2-3 through 14-2-4.

133. Plaintiffs are uncertain whether pork already in the supply chain as of and including the expiration of the Stay Period, but which are the offspring of an animal not confined within the Minimum Size Requirements during the Stay Period, may still be sold after the Stay Period.

134. In Massachusetts, meat cannot be sold if it comes from a breeding pig that has been in confine-

ment anywhere in the country that is contrary to the Act or its Regulations.

135. Thus, Plaintiffs face immediate and irreparable harm if the Act and Regulations continue to go into effect as planned and further enforced. Injunctive relief will remedy this harm.[5]

STANDING

136. Plaintiffs have suffered, and will continue to suffer, concrete and particularized injuries that are a direct result of the Act and the Regulations. Their injuries will be redressed by a decision of this Court.

137. Plaintiff APC specifically has associational standing to challenge the Act on behalf of its members and on behalf of the entity itself.

138. One or more APC members has standing to bring this action in their own right because they are directly subject to the Act because they knowingly breed or raise pigs that are being sold into and within Massachusetts.

139. APC's Mission Statement is to "support the actions of Triumph Foods by complying with production and ethical guidelines, balancing the relationship between members of Allied Producers' Cooperative receiving the maximum return per market hog delivered to Triumph Foods and the financial strength of Triumph Foods, and continuing the creation of expansion opportunities for all America's Premium Pork members."

140. The interests APC seeks to protect are germane to APC's mission statement and purpose.

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[5] Plaintiffs will separately file a Motion for Preliminary and Permanent Injunction following service on Defendants.

141. Individual participation by APC's members is not required for the claims asserted or the relief requested.

142. Farmer Plaintiffs, including APC's members, knowingly supply pigs to be processed into pork and sold into and within Massachusetts, and expect to continue to do so after the expiration of the Stay Period. A civil enforcement by Defendants against Plaintiffs is not required to challenge the constitutionality of the Act.

143. Farmer Plaintiffs have been unable to convert enough of their farming operations, due to both financial and time constraints needed to undertake the massive conversions required, in order to supply the quantity of hogs necessary for the demand required for Massachusetts.

144. The Farmer Plaintiffs that actually can make conversions are faced with the imminent and irreparable Hobson's choice of: (1) being forced to expend significant capital to convert their operations to comply with the Minimum Size Requirements in which they know (a) are not supported by science or demonstrate best practices for the care of the sows; and (b) gamble the expenditure for laws which may be invalidated; (2) keeping their operations the same, but will risk defaulting under their HPAs with Triumph and face substantial injury as a result.

145. Plaintiff Triumph risks substantial civil enforcement measures and injunctive relief for the sale and shipment of Whole Pork Meat products into Massachusetts after the expiration of the Stay Period because it is the entity that knowingly ships Whole Pork Meat directly into Massachusetts, rendering it the party that would be considered by Massachusetts

as engaging in the sale of potentially non-compliant Whole Pork Meat into the state.

146. This risk ultimately results in Triumph losing customers, both at an individual state and potentially national level and being cut out of entire states for the pork market.

147. For example, if Seaboard is unable to supply an order that requires compliant Whole Pork Meat, Seaboard and Triumph risk losing the *entire* nationwide sale with those entities. The threat of this happening has already occurred in California, a state with the same or very similar confinement prohibitions through Proposition 12.

148. The Minimum Size Requirements will be enforceable at the expiration of the Stay Period, thereby creating immediate risk of civil penalties or "injunctive relief" against Plaintiffs. The entire national market for pork is threatened to be irreparably harmed if the Act and Regulations are enforced, with impacts on nationwide consumers who had no involvement in the passage of Question 3.

149. These injuries will be remedied by the relief sought in this action.

FIRST CAUSE OF ACTION
VIOLATION OF THE COMMERCE CLAUSE
(42 U.S.C. § 1983)

150. Plaintiffs incorporate the facts set forth in Paragraph Nos. 1-149 as though fully set forth herein.

151. Defendants, acting under color of state law, have committed, and will continue to commit, multiple constitutional torts against Plaintiffs, including by violating Plaintiffs' rights under the Commerce Clause at Article I, Section 8 of the United States Constitution.

152. The Act and its Regulations violate the Commerce Clause, as they discriminate in purpose and in effect against out-of-state farmers and processors.

153. Massachusetts' voters approved the Act on November 8, 2016, which prohibits business owners and operators from engaging in the sale of Whole Pork Meat from offspring of breeding pigs confined in a cruel manner, regardless of where the animal was confined.

154. The Regulations promulgated by the Department of Agricultural Resources acknowledge the Act is a protectionist trade barrier with a discriminatory purpose.

155. For example, the Regulations acknowledge that the Act is intended to "reduc[e] potential fiscal" threats to Massachusetts consumers. 2022 MA REG TEXT 610066 (NS). This, combined with one singular stated purpose within the Act to avoid "negative fiscal impacts to the Commonwealth of Massachusetts," portrays the discriminatory purpose.

156. Additionally, prior to the election in which Question 3 was passed by voters, no Massachusetts pig farmer used gestation crates to confine breeding pigs or used practices that otherwise would be banned by Question 3. This shows that Question 3 was specifically intended to target out-of-state farmers, further illustrating the discriminatory intent behind the Act and its Regulations.

157. Furthermore, the vast majority of pig farms in the United States are located in states other than Massachusetts and the vast majority of Whole Pork Meat is processed in states other than Massachusetts. Massachusetts has few pig farmers and few breeding sows, and the farmers that are in Massachusetts operate on a much smaller scale than Farmer

Plaintiffs' farms. Given how few pig farmers, breeding sows, and general pork production operations are in Massachusetts, in-state pig farmers will be able to easily conform their operations to the Act compared to the Farmer Plaintiffs' operations.

158. In comparison, out-of-state farmers like Farmer Plaintiffs must make conversions to their pig production facilities in order to continue to supply Pork Meat into Massachusetts.

159. Again, Farmer Plaintiffs have been unable to convert enough of their farming operations, due to both financial and time constraints needed to undertake the massive conversions required, in order to supply the quantity of hogs necessary for the demand required for Massachusetts.

160. This forced conversion to adhere to a single state's moral and policy requirements operates as a substantial, forced burden in order to gain access to the Massachusetts marketplace.

161. Massachusetts also has few USDA-certified pork processors and those that do exist provide Pork Meat primarily for export out of Massachusetts to the larger New England region and arguably do not even "engage in the sale" of Whole Pork Meat under the Act.

162. Massachusetts' three USDA processors are inspected by the USDA for compliance with the FMIA. Under the Regulations implementing the Act, a sale that is undertaken at an establishment at which an inspection is provided under the FMIA is exempted from the Act's prohibitions of a "sale" involving noncompliant Whole Pork Meat.

163. In-state processors may sell noncompliant Pork Meat from their FMIA and FSIS inspected facility if

the buyer takes possession of the product at that establishment, effectively creating a loophole for in-state farmers. In comparison, out-of-state processors cannot have the sale of any noncompliant Whole Pork Meat be excluded from the definition of a "sale" because they are not located in Massachusetts and are shipping directly into the state from out-of-state facilities.

164. The Act and the Regulations confer an advantage to in-state processors over out-of-state processors and creates an unfair advantage for in-state processors because they will not need to comply with the Act, given the exclusions in the regulatory definition of "sale."

165. The Act and the Regulations will allow farmers to offload noncompliant pigs through Massachusetts processors, diverting business from out-of-state processors like Triumph.

166. Given the regulatory definition of a "sale," in-state processors can buy noncompliant Whole Pork Meat and organize sales to occur at their in-state facilities, which would create a black market for non-compliant Whole Pork Meat and which subjects out-of-state processors to an undue, unfair, and discriminatory disadvantage.

167. Therefore, the Act imposes disproportionate burdens on out-of-state pork processors in comparison to in-state pork processors. Such burdens far outweigh any legitimate local benefit that Massachusetts contends the Act and its Regulations advance.

168. The good-faith defense, dependent upon certifications provided for in the Regulations, will in effect force out-of-state merchants to seek regulatory approval within Massachusetts before undertaking a

transaction in Massachusetts, or will result in purchasers in Massachusetts refusing to engage in commercial transactions with out-of-state suppliers, another example of the Act's discrimination against out-of-state suppliers.

169. Even further, the Regulations also require out-of-state farmers to open up their farms—regardless of where in the country they are located—to inspections by Massachusetts officials and potentially third-party certifiers. These Regulations were proposed in March of 2022 and indicated for the first time just how far beyond Massachusetts' borders the Act intends to reach. Furthermore, the Act places a substantial burden on Farmer Plaintiffs and the interstate pork market without sufficient justification. Such burdens far outweigh any legitimate local benefit that Massachusetts contends the Act and its Regulations advance.

170. Specifically, the Regulations, and the Act itself, are tantamount to Massachusetts imputing a penalty onto out-of-state pork processors, like Triumph, and onto farmers, like the Farmer Plaintiffs. Through the Act, they are banning the industry wide accepted, and USDA approved, product through an upfront sales embargo or debarment – this itself is a penalty and functions as punitive.

171. Further, a regulatory scheme created *by a single state*, is controlling other states' access to *entire markets*, as Massachusetts is the primary thoroughfare for all New England states. Said another way, if processors and farmers are not Question 3 compliant, they are penalized not just by blocked access to Massachusetts, but by being excluded and cut out from the whole of New England markets (markets that the mid-west pork industry, including the out-of-state pork

market, have operated in for decades). This further extends the out-of-bounds regulatory nature of commerce, not to mention sanction or penalty, by Massachusetts or other states both who are selling and receiving product.

172. A regulatory scheme created *by a single state* has direct economic implications that reach nationwide.

173. For example, if the Act goes into effect, and is enforced through the Regulations, it will have an impact on the national market of pork production, including: decreasing supply, forcing small pig farmers out of the market, consolidating pig production into large farmers, altering sales in all remaining states to conform to the Minimum Size Requirements, altering packers' practices to conform, and ultimately resulting in nationwide increases in the costs of Whole Pork Meat that will be passed along to consumers nationwide.

174. In effect, Massachusetts is forcing the entire nation's pig production chain to adopt its Regulations for pig production and is no longer permitting each state to set its own regulatory scheme. The Act and Regulations, in practical effect, create a national regulation, and attempt to unilaterally impose Massachusetts' moral and policy preferences for pig farming and pork production on the rest of the nation in an extraterritorial manner in violation of the Commerce Clause. These substantial burdens on the nation's pig production supply chain far outweigh any legitimate local benefit that Massachusetts contends the Act and its Regulations advance.

175. Question 3's ballot initiative record was devoid of actual proof that the Act would actually accomplish the goals it intended (*i.e.*, to protect farm animals from cruel confinement practices, avoid foodborne illness

and negate negative fiscal impacts to Massachusetts). Furthermore, Congress has already charged a federal governing body, the USDA, and its regulatory agency, FSIS, with ensuring that meat is safe and that livestock in interstate commerce is pest and disease-free.

176. These substantial burdens on commerce, which impact all stages of the national pork production market, are clearly excessive and outweigh any local benefit, which does not actually exist.

SECOND CAUSE OF ACTION
VIOLATION OF THE PRIVILEGES AND IMMUNITIES CLAUSE (42 U.S.C. § 1983)

177. Plaintiffs incorporate the facts set forth in Paragraph Nos. 1-176 as though fully set forth herein.

178. Defendants, acting under color of state law, have committed, and will continue to commit, multiple constitutional torts against Plaintiffs, including by violating rights under the Privileges and Immunities Clause at Article IV, Section 2 of the United States Constitution.

179. Article IV, Section 2 of United States Constitution states "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

180. The right to pursue a common calling, such as to pursue a trade, practice an occupation, or pursue a common calling within the state is a fundamental right protected by the Privileges and Immunities Clause. The Privileges and Immunities Clause also restrains state efforts to discriminate against out-of-state citizens.

181. Question 3 was passed on November 8, 2016, and targeted out-of-state farmers by subjecting them to the onerous Minimum Size Requirements in order to sell their pigs into and within Massachusetts.

182. The Regulations reiterate the threat of enforcement if business owners or operators sell Whole Pork Meat into Massachusetts that violate the Minimum Size Requirements.

183. Due to Massachusetts' inability to produce enough pork for the demand within its borders, combined with Massachusetts' small amount of pig farmers and pork processors, the burden of compliance with the Act's Minimum Size Requirements falls almost entirely on out-of-state pig farmers and pork processors to the benefit of in-state farmers and pork processors.

184. The Act's discriminatory and disproportionate burden on out-of-state pig farmers and pork processors, to the benefit of in-state pig farmers and pork processors, violates the Privileges and Immunities Clause.

185. The Act and its Regulations attempt to effectively regulate pig farming, manufacturing, and production in other states.

186. Sufficient justification does not exist to discriminate against out-of-state farmers and pork processors.

THIRD CAUSE OF ACTION
EXPRESS PREEMPTION BY FEDERAL MEAT INSPECTION ACT (Declaratory Relief; Preemption)

187. Plaintiffs incorporate the facts set forth in Paragraphs Nos. 1-186 as though fully set forth herein.

188. Application of the Act and its Regulations to FSIS inspected processors, like Triumph's, violates the

Supremacy Clause at Article VI, Clause 2 of the United States Constitution.

189. The Supremacy Clause of the United States Constitution provides that the laws of Congress are the "Supreme Law of the Land." A state may not enact a statute that conflicts with a federal law. A state law conflicts with federal law and thus is preempted when it is not possible for an individual to comply with both state and federal law.

190. The FMIA has an express preemption clause. The FMIA express preemption clause states that *"[r]equirements within the scope of this chapter with respect to premises, facilities and operations* of any establishment at which inspection is provided under subchapter I of this chapter, which are in addition to, or different than those made under this chapter may not be imposed by any State or Territory or the District of Columbia . . . ." 21 U.S.C. § 678 (emphasis added).

191. The FMIA has many requirements with respect to the premises, facilities, and operations of FMIA-inspected facilities. For example, the FMIA requires that "[f]or the purpose of preventing the use in commerce of meat and meat food products which are adulterated, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all amenable species before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in commerce . . . ." 21 U.S.C. § 603. Accordingly, FMIA-inspected facilities accommodate the inspection process as implemented by FMIA inspectors.

192. Furthermore, the USDA is designated to "appoint from time to time inspectors to make examination and inspection of all amenable species, inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, . . . and said inspectors shall refuse to stamp, mark, tag, or label any carcass or any part thereof . . . until the same shall have actually been inspected and found to be not adulterated . . . ." 21 U.S.C. § 621.

193. The word "adulterated" is a defined term within the FMIA, meaning a product that "consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food"; it also is defined as products that have been "prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. . . . ." 21 U.S.C. § 601.

194. Furthermore, under the FMIA, USDA inspectors are mandated to "examin[e] and "inspect[]" "all amenable species before they shall be allowed to enter into any slaughter[house] or similar establishment." 21 U.S.C. § 603.

195. In sum, the FMIA requires the USDA to complete and effectuate inspection processes at all stages of pork processing to ensure pork products that enter interstate commerce are not unwholesome or adulterated, and thus fit for human consumption.

196. However, Question 3, in purpose and effect, interferes with the USDA's independent determination by examination or inspection: (a) that pigs must be adulterated (or otherwise not used for Massachusetts)

that do not meet the Minimum Size Requirements; and (b) cause segregation of the pigs inside the FSIS inspected facility that do not meet the Minimum Size Requirements, when no such requirements are found within the FMIA or its implementing regulations governing post-mortem inspections. Indeed, Question 3 preempts the USDA in making a determination before and after entrance into the plant, that the pig is not safe for human consumption and may not be processed for pork for Massachusetts due to risk for foodborne illness; and then forces the FSIS inspected facility to segregate the pigs from both the pigs designated by the USDA as unadulterated and otherwise deemed fit for human consumption.

197. Question 3 has a direct effect on the operations of Triumph's FMIA regulated facility in both (a) the inspection and findings that are under the purvey of the USDA/FSIS and (b) the physical segregation process itself.

198. Indeed, that Question 3 falls precisely within the scope of the FMIA's express preemption clause is shown by Question 3's stated justification, which is redundant and tracks to the FMIA's express purposes: "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."

199. While Question 3 attempts to dodge a preemption claim by stating that "sales" undertaken at FSIS facilities are excluded from regulation, this is empty rhetoric without meaning, as (1) the Question 3 "sales" definition specifically excluded "sale" is *only* where the buyer takes physical possession at the

processing plant, and sales for FSIS facilities do not take place at the FSIS plants, and thereby FSIS facilities, like Triumph, do not receive insulation; and (2) there is no way for an FSIS facility to comply with Question 3 without allowing the Act's requirements to directly interfere with the USDA's purview of inspections in by both their (a) inspection findings; and (b) the physical acts of segregation.

200. As Question 3 places additional and different requirements from the inspection operations requirements imposed by the FMIA, Question 3 is in violation of the FMIA's express preemption clause.

201. Plaintiff Triumph is therefore entitled to a judgment declaring that the FMIA, 21 U.S.C. § 601 *et seq.*, and its implementing regulations, preempt the Act and its Regulations as applied to pigs and pork products derived from those pigs regulated by the FMIA.

202. Such declaration is necessary and appropriate at this time to determine the rights and obligations of the parties.

203. Because the Defendants' actions cause harm that cannot be adequately compensated in damages, Plaintiffs request the Court issue preliminary and permanent injunctive relief enjoining the Defendants from enforcing the Act and its Regulations.

FOURTH CAUSE OF ACTION
CONFLICT PREEMPTION BY FEDERAL MEAT INSPECTION ACT (Declaratory Relief; Preemption)

204. Plaintiffs incorporate the facts set forth in Paragraphs Nos. 1-203 as though fully set forth herein.

205. Application of the Act and its Regulations to FSIS inspected processors, like Triumph's, violates the

Supremacy Clause at Article VI, Clause 2 of the United States Constitution.

206. The Supremacy Clause of the United States Constitution provides that the laws of Congress are the "Supreme Law of the Land." A state may not enact a statute that conflicts with a federal law. A state law conflicts with federal law and thus is preempted when it is not possible for an individual to comply with both state and federal law.

207. The federal government of the United States has a critical interest in overseeing the safety and fitness of meat produced for human consumption throughout the Nation.

208. In response to this critical interest, Congress enacted the FMIA. The express purposes, among others, are to ensure that meat products are "wholesome, not adulterated," to carry out the "effective regulation of meat and meat food products in interstate [] commerce," and to "protect the health and welfare of consumers." 21 U.S.C. § 602.

209. Reflective of this purpose, the FMIA states that the USDA shall appoint "inspectors to make examination and inspection of all amenable species, inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, . . . and said inspectors shall refuse to stamp, mark, tag, or label any carcass or any part thereof . . . until the same shall have actually been inspected and found to be not adulterated . . . ." 21 U.S.C. § 621. In other words, the USDA is required to determine whether pork products – both before and after the pigs are harvested at the FMIA processing facility – are "adulterated."

210. The word "adulterated" is a defined term within the FMIA, meaning a product that "consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food"; it also is defined as products that have been "prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. . . ." 21 U.S.C. § 601.

211. Consequently, the question of whether Whole Pork Meat is fit and appropriate for human consumption is a responsibility delegated and assigned to the USDA, as effectuated through the FMIA's inspection processes and USDA inspectors or designees through the USDA's as effectuated through the FMIA's inspection processes and USDA inspectors or by the establishment if it is implementing voluntary segregation procedures in accordance with FSIS Directive 6100.1.

212. The inspection processes, including requirements as to inspectors themselves and how such inspections are to be carried out, have been further set forth by regulation by the USDA. *See* 9 C.F.R. Part 306; *see also* FSIS Directive 6100.1 & FSIS Directive 6600.1 (providing instructions to USDA inspectors regarding how to verify that facilities are producing ready-to-cook pork via ante-mortem and post-mortem inspections).

213. The FMIA's extensive and detailed inspection processes reflect the FMIA's emphasis on ensuring uniformity of such inspections.

214. Question 3 prohibits a business owner or operator from engaging in the sale of Whole Pork Meat

from the offspring of an animal that was not confined in accordance with the Minimum Size Requirements.

215. The FMIA or its associated regulations does not set any type of Minimum Size Requirement in the raising of breeding pigs or within the definition of what should constitute an "adulterated" product or in determining what is fit for human consumption.

216. By banning sales downstream from the FMIA processing facility and designating all other pork as adulterated, or unfit for human consumption in Massachusetts, Question 3 preempts the inspection processes at FMIA-inspected facilities and infringes on the Congressionally delegated authority to the USDA, and therefore conflicts with the stated intentions of the FMIA.

217. Implementation of Question 3 predetermines, from the outset and on the alleged basis of protecting the health of consumers, what pigs are fit for purposes of human consumption. Such predetermination takes the matter out of the hands of the duly appointed federal inspectors in charge of making such decisions.

218. As a result, Question 3 presents an obstacle to the accomplishment and execution of the full purposes and objectives of Congress as set forth in the FMIA.

219. Therefore, Question 3 is preempted by the FMIA under principles of conflict preemption.

220. Plaintiff Triumph is therefore entitled to a judgment declaring that the FMIA, 21 U.S.C. § 601 *et seq.*, and its implementing regulations, preempt the Act and its Regulations as applied to pigs and pork products derived from those pigs regulated by the FMIA.

221. Such declaration is necessary and appropriate at this time to determine the rights and obligations of the parties.

222. Because the Defendants' actions cause harm that cannot be adequately compensated in damages, Plaintiffs request the Court issue preliminary and permanent injunctive relief enjoining the Defendants from enforcing the Act and its Regulations.

FIFTH CAUSE OF ACTION
PREEMPTION BY PACKERS AND
STOCKYARDS ACT (42 U.S.C. § 1983)

223. Plaintiffs incorporate the facts set forth in Paragraph Nos. 1-222 as though fully set forth herein.

224. Defendants, acting under color of state law, have committed, and will continue to commit, multiple constitutional torts against Plaintiffs, including by violating Plaintiffs' rights under the Supremacy Clause at Article VI, Clause 2 of the United States Constitution.

225. The Supremacy Clause of the United States Constitution provides that the laws of Congress are the "Supreme Law of the Land." A state may not enact a statute that conflicts with a federal law. A state law conflicts with federal law and thus is preempted when it is not possible for an individual to comply with both state and federal law.

226. Massachusetts approved Question 3 on November 8, 2016, which prohibits the sale of Whole Pork Meat by any business owner or operator from an animal that was not confined in accordance with the Minimum Size Requirements.

227. The Packers and Stockyards Act, 7 U.S.C. § 192, prohibits any meat packer/producer from providing

any preference to a particular person or locality and from subjecting any particular locality to a "disadvantage" in the sale of meat. It also prohibits any processor from engaging in any unfair or unjustly discriminatory practice. Further, the Packers and Stockyards Act prohibits processors from taking action that will result in a restraint on trade.

228. Triumph meets the definition of a "packer" under the Packers and Stockyard Act, contained at 7 U.S.C. § 191.

229. The Act and the Regulations encourage processors and packers to either source their supply of pigs only from farmers who are completely compliant with the Act or to pay a premium to farmers who produce pigs that are compliant with the Act.

230. This implicit advantage creates a conflict with the Packers and Stockyards Act because processors like Triumph would necessarily discriminate against farmers who are not compliant with the Act or its Regulations and would provide an unreasonable preference to particular farmers or localities, in violation of the Packers and Stockyards Act.

231. These trade restraints will also impact the interstate pork industry including, but not limited to, through forcing small businesses out of the market, passing along increased costs to consumers, and reducing the supply of Pork Meat in the state, which also creates a conflict with the Packers and Stockyards Act.

232. Additionally, three USDA processors operate in Massachusetts. Those processors are inspected by the USDA for compliance with the Federal Meat Inspection Act (21 U.S.C. § 601 *et seq.*) ("FMIA"). Under the Regulations implementing the Act, a sale that is

undertaken at an establishment at which an inspection is provided under the FMIA is exempted from the Act's prohibitions of a "sale" involving noncompliant Whole Pork Meat.

233. In-state processors may sell noncompliant Whole Pork Meat from their FMIA facility if the buyer takes possession of the product at that establishment, effectively creating a loophole for in-state farmers. In comparison, out-of-state processors cannot have the sale of any noncompliant Whole Pork Meat be excluded from the definition of a "sale" because they are not located in Massachusetts and are shipping directly into the state from out-of-state facilities.

234. The Act and the Regulations confer an advantage to in-state processors over out-of-state processors and creates an unfair advantage for in-state processors because they will not need to comply with the Act, given the exclusions in the regulatory definition of "sale."

235. The Act and the Regulations will allow farmers to offload noncompliant pigs through Massachusetts processors, diverting business from out-of-state processors like Triumph.

236. Given the regulatory definition of a "sale," in-state processors can buy noncompliant Whole Pork Meat and organize sales to occur at their in-state facilities, which would create a black market for non-compliant Whole Pork Meat, and which subjects out-of-state processors to an undue, unfair, and discriminatory disadvantage.

237. By organizing their sales in this way, in-state processors can essentially create a monopoly for pork processing because they can accept all meat—regardless of whether the meat complies with the Act

and the Regulations —while out-of-state processors cannot.

238. Furthermore, the additional capital investments or contributions for equipment changes and facility conversions that Farmer Plaintiffs will need to undergo for compliance with the Minimum Size Requirements may create a significant obstacle for pork processors to have their pig supply needs met by farmers.

239. Thus, it is impossible for pork processors to comply both with the Act, its Regulations and the Packers and Stockyards Act.

240. At a minimum, the Act and the Regulations create hurdles to comply with the Packers and Stockyards Act and the Act.

241. The Act is therefore preempted by the Packers and Stockyards Act.

242. The Regulations are therefore invalid.

SIXTH CAUSE OF ACTION
VIOLATION OF THE FULL FAITH AND CREDIT CLAUSE (42 U.S.C. § 1983)

243. Plaintiffs incorporate the facts set forth in Paragraph Nos. 1-242 as though fully set forth herein.

244. Defendants, acting under color of state law, have committed, and will continue to commit, multiple constitutional torts against Plaintiffs, including by violating these individual members' rights under the Full Faith and Credit Clause at Article IV, Section 1 of the United States Constitution.

245. Under the Full Faith and Credit Clause, states are to respect the laws and judgments from other states.

246. The laws of the states in which Farmer Plaintiffs operate their farms do not subject farmers to prohibitions that rise to the level of the Minimum Size Requirements in the Act, and therefore those states confer a right to Farmer Plaintiffs to house breeding pigs in a manner that is expressly prohibited by the Act and the Regulations.

247. The laws of some states in which Farmer Plaintiffs operate their farms specifically give the Farmer Plaintiffs the right to engage in their farming practices or provide standards of care for livestock with which Farmer Plaintiffs comply.

248. The laws of Missouri where Triumph operates its pork processing facility either confers a right to, or at least do not prohibit, Triumph to engage in the sale of Whole Pork Meat products that are expressly prohibited from being sold in Massachusetts by the Act.

249. Even if Farmer Plaintiffs did not want to sell within Massachusetts, it is impossible to prevent pork products from being sold within Massachusetts given the interconnected nature of the pork industry and the logistics behind the production and packing of pork products.

250. Through the passage of Question 3 and implementation of the Act through the Regulations, Massachusetts is denying Plaintiffs the rights they are guaranteed under the laws in which they operate.

SEVENTH CAUSE OF ACTION
VIOLATION OF THE DUE PROCESS CLAUSE
(42 U.S.C. § 1983) (FACIAL AND AS
APPLIED CHALLENGE)

251. Plaintiffs incorporate the facts set forth in Paragraph Nos. 1-250 as though fully set forth herein.

252. Defendants, acting under color of state law, have committed, and will continue to commit, multiple constitutional torts against Plaintiffs, including by violating Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

253. The Act violates the Due Process Clause because it is unconstitutionally vague on its face because it is vague in all its applications.

254. The Act also violates the Due Process Clause as applied to Plaintiffs because it does not define the offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.

255. The Act makes it unlawful for a "business owner or operator to knowingly engage in the sale within the Commonwealth of Massachusetts of any ... Whole Pork Meat that the business owner or operator knows or should know is the meat of a covered animal that was confined in a cruel manner, or is the meat of the immediate offspring of a covered animal that was confined in a cruel manner." Mass. Gen. Laws Ch. 129 App., § 1-3.

256. The Act and Regulations fail to define material words and terminology like "engage in the sale within the Commonwealth of Massachusetts."

257. "Engaging in the sale" is the critical action prohibited by the Act and Regulations and yet no business owner or operator of ordinary intelligence can discern what it means to *be engaged in* the sale.

258. When a term as central to the offense as "engage in the sale" is vague, the Act does not give business owners or operators a reasonable opportunity to know what conduct is prohibited and thus, is vague in all its applications.

259. The Act and Regulations further fail to identify what Massachusetts interprets as compliant breeding pig housing specifications to meet the standards set forth in the Minimum Size Requirements.

260. The square footage requirements for a breeding pig to turn around freely, without touching the sides of an enclosure or other animal can be interpreted in many different ways.

261. For example, the ability of a sow to turn around in the manner specified in the Minimum Size Requirements is expressly dependent on how large the breeding pig actually is. The length of a sow is not a "one size fits all" size.

262. The failure to define the square footage specifications makes the Act and its Regulations vague both on its face and as applied to the Farmer Plaintiffs' operations.

263. The Act and Regulations' failure to define material words and terminology also makes the Act vague as applied to Plaintiffs.

264. Plaintiffs are a pork processor and farmers located outside the Commonwealth of Massachusetts, but pigs raised and ultimately processed by Plaintiffs are shipped directly into Massachusetts.

265. Because the Act and Regulations fail to define material words and terminology like "engage in sale within the Commonwealth of Massachusetts," and provide further specifications for compliance with the Minimum Size Requirements as set forth herein, Plaintiffs are unable to discern whether the shipment of their pork products into Massachusetts, if not compliant with the Minimum Size Requirements, is a prohibited conduct.

266. Moreover, the Act and Regulations failure to define material words and terminology is insufficiently definite such that it will lead to arbitrary and discriminatory enforcement.

267. In other words, the Act fails to provide explicit standards for enforcement and so, it is vague as applied to Plaintiffs.

268. Each violation of the Act is punishable by a civil fine up to $1,000, and in addition, the Attorney General may seek injunctive relief to prevent any further violations of the Act. Mass Gen. Laws App., § 1-6.

269. While the Act purports to impose civil penalties only—fines and injunctive relief, the fines are so substantial that they are tantamount to criminal penalties.

270. Moreover, the injunctive relief available to the Attorney General operates in the same manner as debarment—another criminal penalty.

271. Accordingly, the Act is a quasi-criminal statute.

272. For a statute to be unconstitutional for due process, enforcement is not required; enforcement must just be imminent or the legal authority to enforce must be available to the authorities.

273. Enforcement in this context would carry the presumption that the Whole Pork Meat entering the

State of Massachusetts is unfit for human consumption, unwholesome and adulterated.

274. Plaintiffs have a constitutional right to liberty to be free from risk of enforcement, and associated penalties, of a vague law.

EIGHTH CAUSE OF ACTION
VIOLATION OF THE IMPORT-EXPORT CLAUSE
(42 U.S.C. § 1983)

275. Plaintiffs incorporate the facts set forth in Paragraph Nos. 1-274 as though fully set forth herein.

276. Defendants, acting under color of state law, have committed, and will continue to commit, multiple constitutional torts against Plaintiffs, including by violating these individual members' rights under the Import-Export Clause at Article I, Section 10, clause 2 of the United States Constitution.

277. Article I, Section 10, clause 2 of the United States Constitution states, "No State shall, without the Consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection laws."

278. The Import-Export Clause may be interpreted to prevent states from imposing certain especially burdensome taxes and duties on imports from other states, or in interstate commerce, and not just on imports from foreign countries.

279. The Act and the Regulations, in effect, levy a burdensome duty on out-of-state pork goods because the Act and the Regulations conditions the sale of a good within Massachusetts on the use of Massachusetts' preferred farming practices in the other states in which sows were farmed.

280. In addition, the Act and the Regulations levy a duty on Triumph to require and confirm a valid certification exists from its Farmer Plaintiffs and other out-of-state pig farmers under the Regulations for all pigs it obtains that may ultimately be processed and distributed to Massachusetts.

281. The Act and Regulations force Plaintiffs, as a pork processor and farmers, to incur a penalty, either through forced compliance with a regulatory scheme set by a single state to remain active in entire markets (Massachusetts and New England markets) or risk exclusion from those markets, including markets that the mid-west pork industry, including the out-of-state pork market, has operated in, sold to, and transacted in, for decades.

282. Sufficient justification does not exist to levy a duty on Whole Pork Meat that was derived from breeding pigs not confined in compliance with the Minimum Size Requirements.

NINTH CAUSE OF ACTION
DECLARATORY RELIEF (28 U.S.C. § 2201)

283. Plaintiffs incorporate the facts set forth in Paragraph Nos. 1-282 as though fully set forth herein.

284. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning whether, under the Stay Order, Defendants are allowing the sale of Whole Pork Meat after the expiration of the Stay Period so long as the offspring to be sold into Massachusetts was in gestation before the expiration of the Stay Period.

285. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning whether the Act and its Regulations violate the

dormant Commerce Clause of the United States Constitution, as set forth in the First Cause of Action.

286. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning whether the Act and its Regulations violate Plaintiffs' privileges and immunities under the Privileges and Immunities Clause of the United States Constitution, as set forth under the Second Cause of Action.

287. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning whether the Act and its Regulations violate the Supremacy Clause of the United States Constitution, as set forth in the Third, Fourth and Fifth Causes of Action.

288. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning whether the Act and its Regulations violate the Full Faith and Credit Clause of the United States Constitution, as set forth in the Sixth Cause of Action.

289. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning whether the Act and its Regulations violate the Due Process Clause of the United States Constitution, as set forth in the Seventh Cause of Action.

290. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning whether the Act and its Regulations violate the Import-Export Clause of the United States Constitution, as set forth in the Eighth Cause of Action.

291. The Act and its Regulations will be enforceable as of the date of the expiration of the Stay Period. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law.

292. Plaintiffs are therefore entitled to a judicial declaration of their rights and the duties of Defendants under 28 U.S.C. § 2201.

293. Because the Defendants' actions cause harm that cannot be adequately compensated in damages, Plaintiffs request the Court issue preliminary and permanent injunctive relief enjoining the Defendants from enforcing the Act and its Regulations.

TENTH CAUSE OF ACTION
JUDICIAL REVIEW OF VALIDITY OF
REGULATIONS, PURSUANT TO G.L. c. 30A
and G.L. c231A

294. Plaintiffs incorporate the facts set forth in Paragraph Nos. 1-293 as though fully set forth herein.

295. The Commissioner of Agriculture promulgated the Regulations to govern the enforcement of the Act and guide the pig farming and pork production industry.

296. The Regulations are found at 330 CMR 35.00.

297. 330 CMR 35.04 details the prohibition on the sale of products derived from covered animals who were confined in a cruel manner as set forth in 330 CMR 35.03, parroting the prohibitory sale language concerning the Minimum Size Requirements found within the Act.

298. The prohibition of sale of Whole Pork Meat within 330 CMR 35.04 violates Article I, Section 8 of the Constitution, as set forth more fully in Cause of Action I.

299. The prohibition of sale of Whole Pork Meat within 330 CMR 35.04 violates Article IV, Section 2 of the Constitution, as set forth more fully in Cause of Action II.

300. The prohibition of sale of Whole Pork Meat within 330 CMR 35.04 violates Article VI, Clause 2 of the Constitution, as set forth more fully in Count III – V.

301. The prohibition of sale of Whole Pork Meat within 330 CMR 35.04 violates Article IV, Section 1 of the Constitution, as set forth more fully in Cause of Action VI.

302. The prohibition of sale of Whole Pork Meat within 330 CMR 35.04 violates the Due Process Clause of the Fourteenth Amendment to the Constitutions, as set forth more fully in Cause of Action VII.

303. The prohibition of sale of Whole Pork Meat within 330 CMR 35.04 violates Article I, Section 10, clause 2 of the Constitution, as set forth more fully in Cause of Action VIII.

304. 330 CMR 35.05 details certification requirements for any person who engages in the sale of Whole Pork Meat within Massachusetts.

305. These certification requirements are a precondition to the sale of Whole Pork Meat within Massachusetts.

306. 330 CMR 35.07 provides third-party validators authority to ensure compliance with the Act.

307. The Act, however, provides the Attorney General's Office with exclusive authority to enforce any violations of the Act.

308. No provision of the Act vests the Commissioner of Agriculture with the authority to delegate enforcement means away from the Attorney General and vest compliance actions within third-party validators.

309. Because this is not authorized by the enabling Act, it is an unlawful delegation of authority, in excess of the Department's statutory authority, arbitrary or capricious, and otherwise not in accordance with law.

310. Because of these constitutional violations, and unlawful delegation of authority, and pursuant to G.L. c. 30A, § 7 and G.L. c. 231A, the Regulations at 330 CMR 35 and any guidance issued thereunder must be declared invalid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court set this matter for hearing on a preliminary injunction following review of Plaintiffs' separate Motion for Preliminary and Permanent Injunction to be submitted separately, and award the following relief:

1. At a minimum, issue an immediate stay of enforcement of the Act until a final, non- appealable judgment is entered in this matter;

2. Issue a preliminary and permanent injunction prohibiting the enforcement of the Act, its Regulations, its policies, practices and customs by Defendants, employees and agents, and all persons acting in privity and/or in concert with them;

3. Enter judgment declaring that the Act, its Regulations and related policies, practices and customs of the Defendants violate the United States Constitution and may not be lawfully enforced, both now and in the future;

4. Enter judgment declaring that the Regulations and related guidelines issued thereunder invalid pursuant to G.L. c 30A, § 7 and G.L. c. 231A;

5. Enter judgment declaring that Whole Pork Meat products derived from breeding pigs that have been in

gestation prior to the expiration of the Stay Period, may be sold into and within Massachusetts after the expiration of the Stay Period or another date after that time as agreed upon by the Plaintiffs and Defendants;

6. Grant Plaintiffs reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

7. Any further relief that the Court deems just and equitable.

Dated: July 31, 2023.

TRIUMPH FOODS, LLC, CHRISTENSEN FARMS MIDWEST, LLC, THE HANOR COMPANY OF WISCONSIN, LLC, NEW FASHION PORK, LLP, EICHELBERGER FARMS, INC., and ALLIED PRODUCERS' COOPERATIVE, in its official capacity and on behalf of its members, Plaintiffs.

By: */s/ Ryann A. Glenn*

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